

COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. FRANCISCO ARCA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH I, SY KIB @ SY GIP, CO CHIN LUN AND BABY CO, RESPONDE...

G.R. No. L-25383. February 26, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Sy Kib, alias Sy Gip, and her two minor children, Co Chin Lun and Baby Co, previously visited this country as temporary visitors on May 5, 1955 up to April 6, 1956 and on February 7, 1959 up to March 6, 1960. Upon previous application, they were again admitted here on July 30, 1960 under Section 9(g) of the Immigration Act, as amended, Sy Kib, as a pre-arranged employee for Ang Pao & Company where she had allegedly invested \$10,000 and was to work as cashier and treasurer, and two minor children, as here dependents. Their authorized stay was three years, counted from the date of their arrival.[1] This period expired on July 29, 1963. The request for extension of their stay, filed by Ang Pao, Manager of the Company, dated June 4, 1963, was granted on October 12, 1964 by the Commissioner of Immigration provided that they leave the country on or before November 30, 1964.

Several months after the period last mentioned had expired, however, Sy Kib and her children still remained in the country. On March 12, 1965, Acting Commissioner of Immigration Martiniano Vivo ordered her to depart from the country with her children. Said Commissioner denied subsequent requests by the First Secretary and concurrent-ly Consul General of the Chinese Embassy for a year's extension of their stay, on the ground that Sy Kib has had enough time to liquidate her business here.

Sy Kib and her aforementioned children then petitioned on August 7, 1965 the Court of First instance of Manila,[2] to enjoin the Commissioner of Immigration from arresting them, cancelling their bonds and deporting them and to allow their stay until Co Te, Sy Kib's husband and father of her children, becomes naturalized and until Sy Kib, now allegedly an indispensable business partner in the Ang Pao Company, liquidates her interests in said company. Their arrest and deportation was temporarily en-joined by said court, pending hearing on the plea for pre-liminary injunction.

Respondent Acting Commissioner of Immigration opposed the petition and moved for its dismissal, alleging his discretion on extensions of aliens' stay in the country and that his authority to arrest them was not subject to injunction. Further alleged were non-exhaustion of administrative remedies and the fact that Sy Kib's husband, who had merely filed a declaration of intention to file a petition for naturalization, can very well tend to her alleged business interests. Despite said opposition the Court of First Instance presided by Judge Francisco Arca denied the dismissal of the petition and enjoined, by preliminary injunction, until further notice, the respondent from arresting and deporting Sy Kib and her two children.

The Commissioner of Immigration is now⁴ before Us asking that We enjoin the lower court from enforcing its

own injunction, questioning its jurisdiction over the case and re-asserting his discretion and power over the extension of the period of an aliens' stay here.

Before Us for consideration is the propriety of the lower court's taking cognizance of the case and its issuance of the injunction.

The administration of immigration laws is the primary responsibility of the executive branch of the government. Extensions of stay of aliens are discretionary on the part of immigration authorities,⁵ and neither a petition for mandamus nor one for certiorari can compel the Commissioner of Immigration to extend the stay of an alien whose period to stay has expired.⁶ Should the actuations of the Commissioner be unsatisfactory, the parties concerned should address themselves to the President of the Philippines who by law has the final authority on such questions of deportation.⁷ Applicable jurisprudence therefore, plainly shows the lower court to have erred in entertaining the case and in enjoining further actions which the Commissioner was duty bound to carry out.

Sy Kib's husband's application for naturalization or the fact of Sy Kib's having had three other Manila-born minor children, does not change her situation nor that of her children who came with her. In several instances, after the husband had been granted his petition for naturalization but before his oath as a citizen, We held that the alien wife as well as their children whose period of stay has expired, must leave the country.⁸ Their remedy is to secure permission to re-enter permanently after having left the country.

Contrary to Sy Kib's claim that they entered the country as non-quota immigrants, the record shows them to have been accepted as non-immigrants,⁹ and as such they cannot remain here permanently without first departing and then requesting for permanent re-entry. Furthermore, the order of their admission expressly stated that their stay shall not exceed three years from their date of arrival. Knowing the limited duration of her stay, Sy Kib, as well as her company, risked its non-extension and consequent loss of money by supposedly engaging extensively in the business in which Sy Kib allegedly played an indispensable role. Also, We find tenable the Commissioner's argument that her business interests can be taken care of by her husband. At any rate, the extension of her stay for at least a year was made as early as March 21, 1965. The pendency of the present case has more than provided her wish. There is no question now that she and her two children must leave the country.

WHEREFORE, the respondent court is enjoined from carrying out its injunction, which is hereby dissolved, and the Commissioner of Immigration is ordered to proceed in accordance with law. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Annex A, Order of Admission, p. 11 of Record.

[2] Petition for Prohibition with Preliminary Injunction, Civil Case No. 62578.

3 Annexes I & J, pp. 31 & 32 of the Record.

4 Petition for Certiorari and Prohibition with Preliminary Injunction.

5 *George Bisschop v. Galang*, L-18365, May 31, 1963.

6 See *Guan v. Commissioner of Immigration* L-21811, Nov. 1965 *Kwok Kam Lien v. Vivo*, L-22354, March 31, 1965.

7 Gaw Lam v. Conchu, L-20267, Oct. 31, 1964.

8 Ngo Chiao Lin v. Commissioner of Immigration, L-21523, Feb. 28, 1966; Kuah Suy v. Commissioner of Immigration, L-13790, Oct. 31, 1963.

9 Order of Admission as pre-arranged employee, June 26, 1959, Annex A, p. 11 of the Record.

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