

ANG LIONG, PETITIONER AND APPELLANT, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.*G. R. No. L-12231. December 29, 1959*

Ponente: PADILLA, J.

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This is an appeal from a judgment of the Court of First Instance of Manila dismissing the petitioner's complaint that prays for the issuance of a writ of preliminary- injunction to enjoin the respondent from forfeiting a cash bond of P10,000 filed by the petitioner for his wife Wong Woon Pun alias Ong Siu and P4,000 for his son Ang Hua; requiring new cash bonds in the same amounts to suspend the enforcement of the respondent's order for their arrest and confinement; and carrying out the said order of arrest and confinement should they fail to file the cash bonds demanded within 48 hours from 22 November 1955; and after hearing, for judgment declaring null and void the respondent's order forfeiting in favor of the Government the said cash bonds filed by the petitioner for his wife and son; making final the writ of preliminary injunction to be issued; ordering the respondent to pay the petitioner the sum of P5,000 for moral damages and P1,000 for attorney's fee; and granting him other just and equitable relief and remedy (civil No. 28274).

The facts, as gathered from the pleadings, stipulation of facts and documentary evidence filed and submitted by the parties, are: The appellant applied to the appellee for temporary admission into the Philippines under the provisions of section 9, Commonwealth Act No. 613, of his wife Ong Siu and son Ang Hua. On 27 June 1955 the appellant executed in favor of and filed with the Bureau of Immigration cash bonds in the total sum of P14,000 to guarantee the faithful compliance by the visitors of the terms and conditions of their temporary stay in the Philippines. On 1 August 1955 the appellant's wife and son arrived in the Philippines from Hongkong on board a plane of the Philippine Air Lines and were granted by the Commissioner of Immigration a period of three months temporary stay in the Philippines from 1 August to 1 November 1955. On 1 October 1955 Attorney Jose R. Abalos wrote to the Secretary for Foreign Affairs, coursing it through the appellee, requesting that the temporary stay of the two visitors be extended for another three months. On 7 November 1955 the appellee wrote to the appellant reminding him that the authorized temporary stay of the two visitors already had expired on 1 November 1955, requiring him, as bondsman, to effect their departure not later than 12 November 1955, and enclosing a copy of the letter of the Undersecretary for Foreign Affairs dated 29 October 1955, where the latter suggested that, as a matter of policy, the mere filing of petitions for extension of stay of temporary visitors be not considered as a reason for allowing them to stay beyond the period actually authorized and that in cases where the Department of Foreign Affairs should state that the same would be the last extension to be granted the alien concerned, no further petitions be accepted or coursed by that Bureau to that Department; and requested the cooperation of the Bureau of Immigration by taking appropriate steps to effect the departure of all those whose authorized stay already had expired regardless of whether they had filed petitions for extension, if such petitions had not been acted upon on the last day of their authorized stay. On 10 November 1955 the appellant wrote to the appellee requesting that the temporary stay of the two visitors be extended to 30 November because he and his wife had to wind up family affairs in Manila and that he had to prepare for their airplane booking and necessary

bank licenses. On the same date, 10 November, the appellee denied his request. On 11 November 1955 the appellant wrote to the appellee acknowledging receipt of his letter dated 7 November 1955, reiterating his request for a few days extension of the visitors' temporary stay and promising not to ask for further extension. He assured the appellee that should they fail to depart from the country at the expiration of the period of grace granted, the appellee could confiscate the bonds he had filed. On the same date, 11 November, Jose R. Abalos, counsel for the appellant, wrote to the appellee requesting for extension up to 18 November 1955 of the visitors' temporary stay. On 14 November 1955 the appellee granted the appellant's request for extension up to 19 November 1955 within which to cause the departure of the two temporary visitors. On 16 November 1955, Attorney Apolonio A. Gonzalez, in behalf of the two visitors, wrote to the Secretary for Foreign Affairs requesting for three months extension of their temporary stay. On 17 November 1955, in his indorsement to the appellee, the Secretary for Foreign Affairs authorized the temporary stay of the two visitors for another three months from the expiration of the period of their original authorized stay, provided that their reentry permits to Hongkong continue to be valid at least one month over and beyond their extended stay and provided that the cash bonds filed with the Bureau of Immigration in their behalf be maintained. On 22 November 1955 the appellee wrote to the appellant advising him that the Secretary for Foreign Affairs had granted Attorney Apolonio A. Gonzales, request for a three months extension of the two visitors' temporary stay, but that the cash bonds filed by him (the appellant) in favor of the Bureau of Immigration in their behalf were declared forfeited in favor of the Government for violation of the terms and conditions thereof in asking for extension of their temporary stay and in failing to depart from the Philippines on 19 November 1955, the date set for their departure by the appellee; and requiring him to file new cash bonds in the same amounts for the visitors within 48 hours from receipt of notice. On 25 November 1955 the law firm of Gianzon, Uy and Calma wrote to the appellee requesting extension up to 30 November 1955 within which to raise the amount to put up the cash bonds or to avail of other remedies under the circumstances. On 26 November 1955 the appellee granted the appellant's request and postponed the issuance of warrants for the arrest of the visitors until 30 November 1955, but required him (the appellant) to file the cash bonds of P14,000 before that date or cause them to leave the country on said date. On 9 December 1955 the appellant filed an additional cash bond of P3,000 for the temporary stay of the visitors up to their departure on 7 January 1956. On the last mentioned date the two visitors departed from the Philippines.

Section 40, paragraph (a), sub-paragraph (1), Commonwealth Act No. 613, provides that "The Commissioner of Immigration shall have the power to exact bonds in such amounts and containing such conditions as he may prescribe" "to control and regulate the admission into, and departure from, the Philippines of aliens applying for temporary admission." The cash bonds filed by the appellant in behalf of the temporary visitors, which embody the same terms and conditions, partly provide;

WHEAREAS, the undersigned ANG LIONG has applied to the Commissioner of Immigration of the temporary admission into the Philippines under Section 9, of the Philippine Immigration Act of 1940, as amended, of one ONG SIU, Chinese female, 35 years of age, a passenger of the due to arrive/ who arrived at the port of Manila, on....., 195.....I, C. No.....;

AND WHEREAS, the Commissioner of Immigration has agreed to the temporary stay of said ONG SIU upon filing a cash bond of TEN THOUSAND PESOS, Phil. Currency, with the Bureau of Immigration (Official Receipt No. A-0382921, dated June 27, 1955), (P10,000.00), which cash bond is subject to the following conditions:

(a) That the undersigned, with full knowledge that ONG SIU is a temporary visitor whose authorized stay in this country is limited only up to (status) and including 3 months, 195....., do hereby undertake that said ONG SIU will actually depart from the Philippines on or before said date so specified, or within such period, as in his discretion, the Commissioner of Immigration or his authorized representative may properly allow;

(a-1) That the undersigned hereby guarantees that no request for extension of the original authorized stay of three (3) months will be filed by him, the alien himself/herself or any other person in his or her behalf;

* * * * *

That breach of any of the conditions above-mentioned shall entitle the Commissioner of Immigration to declare this cash bond or part thereof forfeited, but shall not release the undersigned from the obligation to produce said ONG SIU for such action as may be taken against him/her. no modification of this agreement shall be valid and effective unless made in writing and signed by the Commissioner of Immigration or his duly authorized representative.

Paragraphs (a) (a-1) of the terms and conditions of the bonds filed by the appellant in behalf of the two temporary visitors were violated because instead of departing from the Philippines on 19 November 1955, the date set by the appellee for their departure, on 16 November 1955 Attorney Apolonio A. Gonzales requested the Secretary for Foreign Affairs in their behalf to authorize an extension of three months of their temporary stay from the expiration of the period of their original authorized temporary stay, which request was granted under the terms and conditions stated in an indorsement dated 17 November 1955. Hence the appellee was justified in declaring the bonds forfeited for violation of the terms thereof.

Appellant's claim that the extensions sought by Attorney Jose R. Abalos on 1 October 1955, before the expiration of the original period, and by Attorney Apolonio A. Gonzales on 16 November 1955, in behalf of the two visitors, from the Secretary for Foreign Affairs, are not violative of the terms and conditions of the bonds and of the appellant's promise made in his letter dated 11 November 1955 not to ask for further extensions, is without merit and does not alter the fact that the terms of the bond were violated because of their failure to depart from the Philippines on 19 November 1955, the date set by the appellee for their departure, and for that reason the forfeiture of the bonds, as already stated, was justified.

The fact that the Secretary for Foreign Affairs granted their request for another three months extension from the expiration of the original authorized period of their temporary stay does not relieve the appellant from liability on the bonds for violation of their terms and conditions. His undertakings in the bonds guaranteeing "that no request for extension of the original authorized stay of three (3) months will be filed by him, the alien himself/herself or any other person in his or her behalf" and to effect their departure upon expiration of their authorized period of temporary stay, or within such period at the discretion of the Commissioner of Immigration or his authorized representative may allow, are contractual, and the Secretary for Foreign Affairs cannot "alter, vary or modify them. Commonwealth Act No. 613 governs the entry of aliens into the Philippines: Under section 3 of the same Act, the Commissioner is the administrative head of the Bureau of Immigration and in charge of the administration of all laws relating to the immigration of aliens into the Philippines. Under section 47 of the same Act, when public interest so warrants, the President of the Philippines may "admit, as non- immigrants, aliens not otherwise provided for by this Act, who are coming for temporary period only, under such conditions as he may prescribe." The Secretary for Foreign Affairs is not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines.

The letter dated 15 September 1954 of the Executive Secretary to the Secretary for Foreign Affairs, quoted in full by the appellant on pages 45 to 46 of his brief, which does not form part of the stipulation of facts entered into by and between the parties, where the Secretary for Foreign Affairs was informed that the Cabinet at its meeting decided that "requests for extension beyond the three-month period under the Cabinet policy embodied in the letter of this Office dated March 22, 1954 from those who have been admitted to the Philippines as temporary visitors," "should be considered and acted upon by the Department of Foreign Affairs, along with the power to process and approve applications for entry of aliens under established categories," did not and does not deprive

the Commissioner of Immigration of his powers to declare a bond forfeited for violation or breach of its terms or conditions. The Secretary for Foreign Affairs was merely authorized by the Cabinet to act upon requests from temporary visitors for extension of their stay beyond three months, and such authority did not relieve the bondsman from the liability for breach of the terms and conditions of the bonds.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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