

**MARTINIANO P. VIVO, IN HIS CAPACITY AS (ACTING)
COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON.
GAUDENCIO CLORIBEL, IN HIS CAPACITY AS JUDGE OF THE COURT
OF FIRST INSTANCE OF ...**

G.R. No. L-24946. January 18, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Private respondents Tiu Siok Tin and her two minor children Lim I Chi and Lim U Te arrived for the first time in the Philippines on December 13, 1960 with an initial authorized stay of three (3) months as non-immigrants temporary visitors. The following day, December 14, respondent Tiu Siok Tin in her own behalf and that of her two minor children, applied for admission^[1] as temporary visitors with the Immigration Bureau stating, inter alia, that Lim Siong is her husband; that she wanted to visit him here; that her stay will be three months; that she has four children, two of whom are with her; that they have never been in the Philippines before and that their stay is guaranteed by a P24,000 cash bond posted by her husband.

Later, on repeated requests, respondents' period of stay was extended up to December 12, 1961.^[2]

On November 27, 1961, respondents requested^[3] the Secretaries of Foreign Affairs and of Justice, respectively, to change their status as temporary visitors to that of special non-immigrants under Sec. 47(a-2) of the Philippine Immigration Act of 1940, as amended, and to extend their authorized stay until the oath-taking of their husband and father Lim Siong whose petition for naturalization had been granted on October 14, 1961.^[4] This was favorably acted upon by the Foreign Affairs Secretary on November 28, 1961, approving respondents' change of status as special non-immigrants for a period of stay up to October 14, 1963. The Secretary of Justice likewise, upon due indorsement, approved the extension of respondents' stay up to October 14, 1963 provided that the latter secure re-entry permits to Hongkong and maintain their cash bond with the Bureau of Immigration.^[5]

Despite the foregoing, respondents, on December 12, 1961, still made another request to the Commissioner of Immigration for an indefinite extension of their stay in the country. The Commissioner granted extension, not indefinitely as prayed for, but only up to September 12, 1962.^[6]

On August 29, 1962, the Commissioner of Immigration under the new administration, abrogated all extensions of stay of temporary visitors who arrived in 1961, thru Circular No. V-101, duly approved by the Secretary of Justice. On August 31, 1962, the Commissioner wrote Lim Siong, respondents' husband/father who was also their guarantor, requiring respondents to leave the country on or before September 12, 1962.^[7]

On said date, however, respondents, instead of departing, filed a petition for prohibition with preliminary injunction with the Court of First Instance of Manila to prevent their arrest and deportation.^[8] The court, Judge Cloribel presiding, on September 13, 1962 gave due course to the petition, required the Commissioner of Immigration to answer and issued preliminary injunction upon a P3,000 bond.

The Commissioner filed his answer with a motion to dissolve the injunction on September 24, 1962. On November 17, 1962, Judge Cloribel denied the motion to dissolve the injunction.

On May 18, 1964, petitioner Commissioner of Immigration moved for preliminary hearing on his special and affirmative defenses. Respondents counter-moved with a request to admit supplemental pleadings alleging that on February 24, 1964, their husband/father took his oath as a Filipino^[9] and consequently, respondents' minor children became Filipinos while respondent wife acquired a vested right to prove that she could be naturalized.

The lower court, on June 25, 1964, admitted the supplemental pleadings over petitioner's opposition. A subsequent motion to reconsider failed.

On July 16, 1965, petitioner Commissioner moved for the outright dismissal of the case or at least the dissolution of the preliminary injunction issued upon the authority of *Vivo v. Arca*, L-21728, December 27, 1963, which ruled, principally, that the refusal of the trial court to dissolve a preliminary injunction after the expiration of the alien visitors' authorized stay in the country is contrary to law and constitutes grave abuse of discretion. Upon respondents' opposition, Judge Cloribel denied the motion to dismiss for being without merit.

On September 7, 1965, the Commissioner on Immigration instituted the present petition for certiorari and prohibition with preliminary injunction, questioning the orders of the lower court dated September 13, 1962 giving due course to the petition filed therein and issuing the writ of preliminary injunction and the order of July 25, 1965 denying petitioner's motion to dismiss or dissolve preliminary injunction.

We gave due course to the petition, required respondents to answer, which they did, and issued the preliminary injunction prayed for.

For resolution now are the following questions:

1. Did the lower court gravely abuse its discretion in denying petitioner's motion to dismiss or to dissolve the injunction anchored on the precedent-setting decision of *Vivo v. Arca*, supra?
2. Was petitioner's failure to file a motion for reconsideration a fatal defect?
3. Would certiorari and prohibition be the proper remedy to question a denial of a motion to dismiss?

The present case is akin to that of *Vivo v. Cloribel*, L-23239, November 23, 1966, which arose out of practically identical circumstances. There, respondents' alien wife and her two minor children arrived for the first time here in 1961 as temporary visitors and were allowed by the Secretaries of Justice and Foreign Affairs to stay until June 24, 1963, which would also be the tentative date of oath taking of their husband/father whose naturalization had been granted. The Immigration Commissioner however limited their period of stay up to October 17, 1962. Subsequently, the Commissioner, thru Circular No. V-101, required them to leave on September 18, 1962 but the order was temporarily enjoined by Judge Cloribel in a prohibition case filed by respondents. On January 7, 1964, the Commissioner moved to dissolve the preliminary injunction on the ground that respondents' authorized stay had incontestably expired on June 24, 1963. The lower court denied the motion. The Commissioner immediately filed petition for certiorari and prohibition with this Court, and there We held:

1. That the refusal of the lower court to dissolve the preliminary injunction even after the terminus of respondents' longest authorized stay here was against the law and constitutes grave abuse of discretion and excess of jurisdiction, as held in *Vivo v. Arca*, supra. Judge Cloribel should have taken note of said precedent-setting case promulgated even before the motion to dissolve the writ was filed and denied;
2. That the naturalization of respondent wife's husband, even if conceded, would not automatically make her a Filipino who can not be deported;

3. That respondents' alien children, after the lapse of their authorized stay could no longer be said to have "lawful residence" or be dwelling here. Also, the requirement that they have to be schooled here refers to the period before their father files the petition for naturalization;
4. That appeal is not the adequate remedy. Pending appeal, the aliens would be able to unduly prolong their illegal stay here in violation of the country's immigration laws and policies;
5. That a motion to reconsider was unnecessary and would involve more delay which would further prejudice government interest; and
6. That the prohibition case before the trial court has become moot, because of the expiration of the alien visitors' longest authorized stay. The naturalization of their husband/father would not improve their position. Hence, the lower court's only jurisdiction would be to dismiss the main case.

In the present case before Us, respondents' authorized stay here indubitably expired after October 14, 1963 thereby rendering the prohibition case in the lower court moot and academic; thus Judge, Cloribel plainly ignored Our ruling in *Viva v. Arca*, supra, and, without cause, sanctioned the open and continuing violation of the country's immigration laws and policies by allowing respondents to unduly prolong their illegal stay here, all contrary to law and in grave abuse of discretion; and also in view of the further delay that would ensue in the proceedings, clearly prejudicial to the interest of the government, appeal would not be an adequate remedy and a motion for reconsideration could be dispensed with.

WHEREFORE, the petition, being meritorious, is granted; the assailed orders of September 13, 1962 and the order of July 25, 1965 are annulled and set aside; and respondent Judge Cloribel of the Court of First Instance of Manila or whoever has taken or will take his place to preside in said court is hereby permanently restrained from further taking cognizance and assuming jurisdiction over Civil Case No. 51574, except to dismiss it for having become moot. No costs.

SO ORDERED.

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

Ruiz Castro, J., in the result.

Makalintal, J., did not take part.

[1] Annex A, Petition.

[2] Annexes B, B-1 & B-2, Petition.

[3] Annex C, Petition.

[4] The naturalization case was also in the sala of Judge Cloribel (Rollo, pp. 173-180).

[5] Annexes D & E, Petition.

[6] Annex F, Petition.

[7] Annexes G & G-1, Petition.

[8] Civil Case No. 51574.

[9] There is, incidentally, a pending motion before the lower court to set aside the entire naturalization proceeding and for cancellation of the certificate of naturalization subsequently issued therein.

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