

GAW LAM, ET AL., PETITIONERS AND APPELLANT, VS. HON. AGAPITO CONCHU, IN HIS CAPACITY AS ACTING COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. L-20267. October 31, 1964

Ponente: REGALA, J.

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REGALA, J.

This is an appeal from the order of the Court of First Instance of Manila dismissing petitioners-appellants' action for prohibition in Civil Case No. 49076.

The petitioner Caw Lam is the husband and father, respectively, of the other petitioners—Hung Cho alias Ang Cho (wife), Gaw Lina, Gaw Li Eng, Gaw Yok alias Yuk Yu, and Gaw Yuk Ki alias Yuk Ki.

The said Gaw Lam is a Chinese national who came to the Philippines on June 14, 1940. In 1948, however, he went to Hongkong and got married there, after which he came back to reside here. On August 21, 1960, he applied for Philippine citizenship and this was granted by the Court of First Instance of Manila on September 22, 1961 in Civil Case 44145.

On September 8, 1961, the wife and children of said Gaw Lam came to the Philippines and were admitted as temporary visitors under section 9 (a) of the Immigration Act of 1940, for pleasure or for reasons of health. In the affidavit of Ang Cho, the wife, sworn before the Philippine Consul General of Hongkong on August 28, 1961, she affirmed that she was coming to the Philippines with her four children to visit her husband and that they would stay in this country only for three (3) months and would never attempt to change their status as temporary visitors.

Likewise, in the cash bond filed by Gaw Lam, dated September 28, 1961, and approved by the Associate Commissioner of Immigration, he obligated himself that his wife and children would actually depart from the country on or before the expiration of their permit and that said petitioners would continue their status under which they were admitted and would not violate any limitation or condition of their admission under the immigration laws.

Despite the abovementioned affidavit and bond, the wife and children, nevertheless, had requested for a change of status from temporary visitors to special non-immigrants.

On October 27, 1961, the Secretary of Foreign Affairs, in a 1st Indorsement to the Secretary of Justice, approved the request for a change in category of the petitioners wife and children.

On November 6, 1961, the Undersecretary of Justice returned the papers to the Foreign Affairs Secretary, in a 2nd Indorsement, also approving the requested extension up to September 22, 1963, but with the following provision:

"* * * It is understood, however, that the extension herein granted is subject to the condition that Hung Cho, Gaw Lina, Gaw Li Eng, Gaw Yok Lin and Gaw Yuk Ki shall secure reentry permits to Hongkong valid at least two months over and beyond their extended stay and that they shall maintain their cash bonds filed with the

Bureau of Immigration. This approval is also subject to the condition that the corresponding fees shall be paid to the said Bureau."

In a 3rd Indorsement, the papers were forwarded to the Commissioner of immigration on November 7, 1961.

On March 27, 1962, Gaw Lam, with his wife and children filed with the Court of First Instance of Manila a petition for prohibition with preliminary injunction, alleging that the Acting Commissioner of Immigration was about to deport his said wife and children from the Philippines on the ground that their entry permits for temporary stay would expire on March 30, 1962 and may confiscate or otherwise dispose of the cash bonds which he posted for them if the latter fail to leave the country on that date.

Alleging lack of jurisdiction on the part of the Commissioner of Immigration, His petitioners give the following reasons: (1) Hint in accordance with the 1st and 2nd Indorsements of the Secretary of Foreign Affairs and the Undersecretary of Justice, dated October 27, 1961 and November 6, 1961. respectively, the wife and minor children have been authorized to stay in the Philippines up to September 22, 1962, which authority cannot be revoked unilaterally by respondent: (2) that deportation will disrupt the schooling of petitioners Gaw Lam, Gaw Li Eng and Gaw Yok Lin, all of whom are enrolled in schools in the Philippines—which is in compliance by Gaw Lam with the requirements of Commonwealth Act 473, of the Naturalization Law; and (3) that under the rules of private international law and civil law, a man's domicile is also the domicile of his wife and minor children, and he is duty bound to protect, support and keep them in his company.

As prayed for, writ of preliminary injunction was issued against the respondent by the court on March 23, 1962, with a bond of P2,000.00.

Instead of an answer, the Solicitor General, in behalf of the respondent, filed a motion to dismiss the petition on the ground that it does not state a cause of action.

Responsive pleadings, such as a reply, rejoinder and surrejoinder, were filed by the respective parties subsequent to the filing of the motion to dismiss.

After due deliberation, the Court of First Instance dismissed the petition. And petitioner having failed in a motion to reconsider the order of dismissal, now appeals.

The appeal is without merit.

In the case of *Ang Liong vs. The Commissioner of Immigration*, 106 Phil., 793; 57 Off. Gaz., 2893, it was held by this Court that the Secretary of Foreign Affairs is not authorized to extend the temporary stay of aliens in the Philippines. There the Court said:

"Com. Act No. G13 governs the entry of aliens into the Philippines. Under Sec. 3 of said 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 Sec. 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 of Foreign Affairs is not authorized to admit aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines" (*Italics supplied.*)

It is worthy to note that, in line with the abovesited case, the Secretaries of Foreign Affairs and Justice seem to have changed their position by adopting a hands-off policy on the matter of aliens' extensions of stay here. For in a subsequent immigration case similar to the case at bar, which was brought before them, both Secretaries, in their 2nd and 3rd Indorsements, respectively, made the opinion that "the Cabinet resolution of February 29, 1956 granting to the Secretary of Foreign Affairs and the Secretary of Justice concurrent jurisdiction to act on petitions

for extension of stay of temporary visitors has no force and effect since the law vests the power to extend the stay of aliens in the Philippines in the Commissioner of Immigration.

It is also to be observed in this case, as did the lower court, that the condition imposed by the Undersecretary of Justice, in his 2nd Indorsement dated November 6t 1961, for the wife and children to secure reentry permits to Hongkong valid at least two months over and beyond their extended stay and to maintain their cash bonds filed with the Bureau of Immigration, was not complied with. What they did instead was to make a request for a change of category from temporary visitors to that of special non-immigrants under section 47(a) (2) of the Philippine Immigration Act which, apparently, was denied by the Commissioner of Immigration.

Under the foregoing circumstances, there appearing to be no patent abuse of discretion or lack of jurisdiction on the part of the respondent, the lower court did not commit a mistake in restraining itself from issuing the writ of prohibition asked for. As correctly stated by Judge Solidum of the lower court, in his questioned order of dismissal, should the petitioners be not satisfied with the actuations of the Commissioner of Immigration, their remedy should be to address themselves to the President of the Philippines who is vested by law with the final authority to decide whether they should be deported or not. In other words, this matter is exclusively within the province of the Executive Department and unless all remedies therein are exhausted, courts will not interfere.

Wherefore, the order appealed from is hereby affirmed. Costs against the petitioners-appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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