

**GO OH, HELEN GOOH, JAMES GOOH, WILLIAM GOOH, HENRY GOOH,
THE LAST FOUR AS REPRESENTED BY GO OH,
PETITIONERS-APPELLEES, VS. MARTINIANO VIVO, VIRGILIO
GASTON AND MARCIAL RAÑOLA, I...**

G.R. No. L-24898. March 31, 1971

Ponente: CONCEPCION, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/907601786098/>

CONCEPCION, C.J.:

Appeal by respondents Martiniano Vivo, Virgilio Gaston and Marcial Rañola, in their capacity as Commissioner and Associate Commissioners of Immigration, respectively, from a decision of the Court of First Instance of Manila, the dispositive part of which reads:

"x x x in view of the foregoing considerations, the petition is hereby granted and judgment is rendered –

"(1) Declaring the decisions of the Board of Special Inquiry dated September 8, 1962 and of the Board of Commissioners dated December 20, 1962 null and void;

"(2) Prohibiting permanently the respondents and their subordinates from arresting and excluding the petitioners Go Oh and her minor children Helen, James, William and Henry all surnamed Gooh from the Philippines, and making permanent the writ of preliminary injunction heretofore issued.

"Without pronouncement as to costs."

It is not disputed that on January 1, 1962, herein petitioners Go Oh and Helen, James, William and Henry, all surnamed Go Oh, arrived in the Philippines from Hongkong with certificates of registration and identity Nos. 1061 to 1065 issued by the Philippine Consulate in Hongkong. On August 2, 1962, a Board of Special Inquiry of the Bureau of Immigration conducted an investigation to determine petitioners' political status. After such investigation, the Board rendered, on September 8, 1962, a decision excluding the petitioners from the Philippines. Pertinent parts of said decision are of the following tenor:

"So it is that Go Oh and her children rely for their admission on the Philippine citizenship of Go Oh's alleged father, Paulino Roon, but it is a fundamental concept of our immigration laws and regulations that the burden of proof lies with an applicant to prove her right to be admitted into the Philippines on whatever ground such laws and regulations permit. In the instant case, the herein applicants are forced to lean upon the citizenship of a supposed father whose very status himself as it now stands has toppled over into grave doubt. Go Oh and her children cannot be expected to have a stronger claim than their very predecessor.

"It has been argued, and as a matter of fact it has been made the basis of an urgent motion to postpone the present case indefinitely, that the decision of this case should be held in abeyance pending the final adjudication on the issue of Paulino Roon's citizenship. The Board cannot sustain such an argument precisely for the reason stated in the next preceding paragraph that Go Oh and her children have the onus probandi of proving their right to admission. Furthermore, what if the Paulino Roon case should drag on from agency to agency and from court to court for ten years or more? Should the Bureau of Immigration in the meantime

sanction the questionable stay of the herein applicants when the fact is they have never been legally admitted before? The questions beg the answers.

"It should also be mentioned that the cancellation of the alien registry of Go Len Sing, Go Chong Chiu and Go Song Hiap[1] have likewise been set aside. For the time being, therefore, they hold no probative value in this case. As for the certificates of registration and identity issued by the Philippine Consulate General in Hongkong, the events and circumstances of the last few months of 1961, the mad scramble of alleged Philippine citizens into the country duly equipped with similar certificates, the scandal and the investigations now being conducted by police and other agencies of the government, all these militate against giving evidentiary credit to these highly unsound certificates.

"At most, Go Oh must now rely on her testimony to bolster her right to admission. And in this score her declarations before the Board fail to satisfy the standards set up by the rules on evidence and simple logic. On examination, she admitted that the minor applicants, her children allegedly, have only come to use the names mentioned in the caption of this decision in 1961, the truth being that before then they have been using the names Tan Yan Hui, Tan Hong Yan, Tan Sui Lin and Tan Sit Lian, respectively. What does this admission prove? Simply this: that their names were changed to make it appear that they are the natural or illegitimate children of Go Oh in furtherance of an attempt to prove that Go Oh and her husband Tan Man Eng were never legally married, and this on the information that under Philippine law illegitimate children or natural ones follow the surname of their putative mother. This is exactly the pattern followed in a multitude of cases that have come before the official scrutiny of this Board. Required to submit a record of birth of her children from the Hongkong Government, the suspicion noted above is further corroborated by the entry in one such certificate that the minor now registered as Henry Gooh was in fact registered at the time of his birth in 1959 as Shek Lin, being the child of Chan Man Loun and Ng Choi Lam. We note the idem sonans between Sit Lian and Shek Lin. We also note with special attention that the same birth record makes possible two or more conclusions, namely, that Go Oh's real name is Ng Choi Lam or that Henry Gooh, also known as Tan Sit Lian, also known as Chan Shek Lin, is not the son of Go Oh!

"As we examine the true marital status of Go Oh and Tan Man Eng, the Board finds that if we must believe Go Oh's simple statement that she and the minor applicants' father were not legally married in the face of the above birth record, then we shall go against fundamental presumptions in our civil law, among them that the legitimacy of a child is presumed, and that all intendment of the law lean toward the existence and validity of a marriage.

"The Board is forced to observe at this juncture that there is no civil registry of births, deaths and marriages in mainland China. Neither, it seems, is there a distinct line which separates common law marriage and ceremonial marriage. Under such a system of civil intercourse and relationship dominated not by law but by customs and practices outdating even Western civilization, a proper must perforce rely on testimony to ferret out such matters as the existence or non-existence of a marriage. By the evasive and generalized answers of Go Oh tending to parry the issue of whether she married her co-applicants' father or not, the Board is not convinced that she is not actually married. Thus, we must assume that Go Oh or Ng Choi Lam or by whatever other identity she is known was in fact married to Tan Man Eng (Chan Man Loun), and in the absence of proof that her husband mentioned was a Filipino citizen, this Board declares that Go Oh is likewise a Chinese subject thru marriage.

"FOR ALL THE FOREGOING REASONS, this Board of Special Inquiry resolves to exclude Go Oh and her four co-applicants in view of her failure to prove her claim to Philippine citizenship, and with Go Oh the failure of the minors to prove any better right."

On September 20, 1963, petitioners received a letter of the Secretary of the Board of Commissioners, Bureau of Immigration, dated December 20, 1962, enclosing therewith a copy of the decision of said Board, dated December 20, 1962, affirming that of the Board of Special Inquiry. Said decision of the Board of Commissioners was as

follows:

"This case is now before this Board on review motu proprio pursuant to the provision of Section 27(b) of the Philippine Immigration Act of 1940, as amended.

"The Board of Special Inquiry which heard the within application for admission as Philippine citizens of GO OH, female, 29 years old, and her alleged minor children, GO OH HELEN, 12 years old, GOOH JAMES, 8 years old, GOOH WILLIAM, 6 years old, and GOOH HENRY, 3 years old, in a decision, dated September 8, 1962, decided to exclude said subject-applicants for failure to prove their claim to Philippine citizenship. After a review of the proceedings had on the application and the evidence presented in connection there-with, this Board finds no basis to disturb the findings of the Board of Special Inquiry for which reason, this Board hereby affirms the Decision of said Board of Special Inquiry, dated September 8, 1962, and orders the exclusion of subjects and their immediate removal to the port whence they came on the first available transportation, in accordance with law."

Together with said decision of the Board of Commissioners was a "Warrant of Exclusion, " likewise dated December 20, 1962, stating:

"WHEREAS, upon review motu proprio by the Board of Commissioners pursuant to the provision of Section 27(b) of the Philippine Immigration Act of 1940, as amended, of the proceedings had on the application for admission as Philippine citizens of GO OH, female, 29 years old, GO OH HELEN, female, 12 years old, GOOH JAMES, male, 8 years old, GOOH WILLIAM, male, 6 years old, and GOOH HENRY, male, 3 years old, finds no basis to disturb the decision of the Board of Special Inquiry which heard the case and which orders the exclusion of subjects;

"WHEREAS, the Board of Commissioners in a Decision dated December 20, 1962 affirms the Decision of the Board of Special Inquiry, dated September 8, 1962, excluding subjects from admission as Filipino citizens;

"AND WHEREAS, the Decision of the Board of Commissioners, dated December 20, 1962 has now become final and executory;

"NOW THEREFORE, by virtue of the authority granted in the undersigned by law, you are hereby ordered to exclude subjects and effect their removal from this country on the first available transportation in accordance with law."

Soon after, or on September 28, 1963, petitioners herein filed, with the Court of First Instance of Manila, a petition for certiorari and prohibition with preliminary injunction against the Board of Commissioners, praying, inter alia, that the aforementioned decision thereof be declared null and void; that petitioners be declared entitled to reside in the Philippines permanently; that respondents and their subordinates be prohibited permanently from arresting and excluding the petitioners from the Philippines; and that a writ of preliminary injunction be issued restraining respondents from enforcing said decision during the pendency of this case. On October 11, 1963, the lower court issued the writ of preliminary injunction prayed for and, subsequently, or on July 15, 1965, it rendered, after appropriate proceedings, the appealed decision in favor of petitioners herein.

The main issues in this case are (1) whether petitioners have been denied due process, owing to the fact that notice of the decision of the Board of Special Inquiry had not been served upon them prior to its affirmation by the Board of Commissioners, and (2) whether the Board of Commissioners had acted in excess of its jurisdiction in affirming said decision of the Board of Special Inquiry.

With respect to the first issue, it is not denied that petitioners herein had been heard and had ample opportunity to introduce their evidence before the Board of Special Inquiry. Their alleged denial of due process is predicated

upon the failure to give them notice of the decision of said Board, before it was reviewed motu proprio and affirmed by the Board of Commissioners. Petitioners maintain that they were thus deprived of the opportunity to interpose their own appeal before the Board of Commissioners. Upon a review of the record, We are satisfied that petitioners herein have not been denied due process.

Paragraphs (b) and (c) of Section 27 of Commonwealth Act No. 613, as amended by Section 9 of Republic Act No. 503, provide:

"(b) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue subpoena and/or subpoena duces tecum. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision. At the conclusion of the hearing of any case, the board of special inquiry shall at once proceed to deliberate and decide on the merits thereof. The decision shall be promulgated and the findings and recommendation, in proper cases, submitted not later than two days from the date of the deliberation. Should the board of special inquiry need more time to make a written decision of findings and recommendation in view of the nature of the case, the chairman thereof shall report the case to the Commissioner of Immigration who may grant an extension of time if he considers it necessary.

"(c) An alien excluded by a board of special inquiry or a dissenting member thereof may appeal to the Board of Commissioners, whose decision in the case shall be final. The decision on appeal shall be put in writing and promulgated not less than seven days from the time the case is submitted for decision. In appeal cases, the alien shall have the right to be re-presented by an attorney or counsel who shall have access to the record of the board of special inquiry in the particular case on appeal."

Pursuant to these provisions, the decision of a Board of Special Inquiry may be reviewed by the Board of Commissioners, either on appeal taken by an alien excluded by said decision, or motu proprio "within one year from the promulgation of said decision." The proceedings before the Board of Special Inquiry "shall be conducted under the rules of procedure to be prescribed by the Commissioner of Immigration," pertinent provisions of which are:

"When an alien is excluded by a board of special inquiry he shall be advised of the decision together with the reason or reasons therefor; also of his right to appeal his case to the Board of Commissioners. In every case the alien shall be furnished with a copy of the decision upon promulgation thereof. If the applicant appeals, he shall thereupon be informed of his right to be represented by attorney or counsel in prosecuting his appeal. An attorney or counsel representing an appellant shall have access to the records of the proceedings of the board in the particular case, and may also appear in person before the Board of Commissioners on behalf of his client." (Section 14)

"Appeals must be in writing and filed with the board of special inquiry which decided the case, within forty-eight hours from the time a copy of the decision is furnished the applicant. No appeal filed after this period shall be accepted." (Section 16, subdivision B, Rule 2)

"The record of the hearing and all documents considered by a board of special inquiry in reaching its decision shall be forwarded, within two days from the date of notice of intention to appeal is filed, to the Commissioner of Immigration for consideration by the Board of Commissioners." (Section 17)

Pursuant to these rules, an alien whose exclusion has been ordered by a Board of Special Inquiry "shall be advised of the de-cision, together with the reason or reasons therefor; also of his right to appeal his case to the Board of Commissioners," and the appeal "must be in writing and filed with the board of special in-quiry x x within forty-eight hours from the time a copy of the de-cision is furnished the applicant." In the case at bar, it is conce-ded that petitioners herein had no notice of said decision of the Board of Special Inquiry until September 20, 1963, when they received the communication of the Secretary of the Board of Com-missioners enclosing copy of the decision thereof dated December 20, 1962, affirming that of the Board of Special Inquiry, dated Sep-tember 8, 1962. Said decision of the Board of Commissioners explicitly stated that "in a decision, dated September 8, 1962, " the Board of Special Inquiry had "decided to exclude" the petitioners "for failure to prove their claim to Philippine citizenship." This was sufficient notice of said decision of the Board of Special Inquiry, so that, if pe-titioners wanted to appeal therefrom, they could have done so within the period prescribed in the aforementioned rules, but petitioners herein did not do so. As a consequence, said decision of the Board of Special Inquiry has become final and executory, owing to petition-ers' failure to appeal therefrom or to move that the decision of the Board of Commissioners be reconsidered or set aside, so that they (petitioners) could appeal from the decision of the Board of Special Inquiry.

The decision of the Board of Commissioners is assailed as null and void, upon the ground that the authority of that Board to motu proprio review the proceedings may be exercised only "within one year from the promulgation" of the decision of the Board of Special Inquiry of September 8, 1962, or not later than September 8, 1963, and that notice of the decision of the Board of Commis-sioners was not serve upon petitioners herein until September 20, 1963, or twelve (12) days after the expiration of said period. The flaw in this argument is manifest. It is based upon the assumption that the action of the Board of Commissioners is coetaneous with the service of said notice, which is obviously false.

Moreover, the record shows that the Board of Commissioners had gone over the records of the case and voted thereon on Decem-ber 20, 1962, or well within the aforesaid period of one year from September 8, 1962. This fact has been fully established by the vot-ing slip of said Board, by the testimony of its Secretary, Pio Noche, and by the Memorandum Exh. H of Victor F. de Romas, the Chief of the Law and Investigation Division of the Bureau of Immigration It is already settled that "the operative date of the Commissioners action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision in extenso was prepared, written and signed," for, in the language of Mr. Justice J. B. L. Reyes:

"x x x the decision in extenso must relate back to the day the resolution to exclude was ac-tually adopted. Necessarily, the extended opinion had to be posterior to the day when the Commis-sioners voted and resolved to reverse the findings of the Board of Special Inquiry. The Secretary's certificate (Annex F, L-24853) shows that the Board of Immigration Commissioners acted upon not less than eight immigration cases (including that of the Gatchalians) on July 6, 1962; and it was of course impracticable to prepare and sign fully reasoned decisions in all these cases on the same day. "

This view, expressed in *Arocha v. Vivo*,¹ and *Vivo v. Arca*,² was reiterated in *Neria v. Commissioner of Immigra-tion*.³ What is more, the philosophy thereof was justified in the *Neria* case, in which, referring to the Board of Special Inquiry, Mr. Justice Castro, speaking for the Court, said:

"If, as provided in section 12 above, 'the result of the deliberation [of the Board of Special Inquiry] shows that at least two members vote for landing, a note thereof shall be made and the alien shall, without waiting for the decision to be put in writing, be released from custody', then promulgation can take place even before a decision is actually written and a copy thereof served upon the alien. Again, if, as provided in section 14 above, '[i]n every case the alien shall be furnished with a copy of the decision upon promulgation there-of, then notice of a decision of the board shall be made only after or upon promulgation, and not before. In both

sections 12 and 14, therefore, promulgation always takes place before copy of the written decision of the board is furnished to an alien. Of course, section 12 contemplates an alien who is under 'custody', while section 14 contemplates a case of an alien 'excluded by a board of special in-quiry'. Nonetheless, there seems to be no reason why the same rule would not apply to the case at bar, where the petitioner, who was 'unanimously voted' for admission by the Board of Special Inquiry No. 1, was at liberty pending the conclusion of the investigation of his filiation and paternity to a Filipino citizen. And in any of these circumstances, the date of promulgation is the date when the Board of Special Inquiry in question voted and resolved to admit an alien, and this date can be ascertained from the mi-nutes of the proceedings had before such board. x x."

In short, the decision of the Board of Special Inquiry was re-viewed and affirmed by the Board of Commissioners on December 20, 1962, or within the period prescribed by law therefor. Hence, the decision of the Board of Commissioners is perfectly valid, ap-art from the fact that, independently of said decision, that of the Board of Special Inquiry may be deemed final and executory owing to petitioners' failure to appeal therefrom.

It may not be amiss to note, also, that petitioners have never assailed the correctness of the findings made and the conclusions reached in either decision. Referring to a comparable situation, in connection with taxes, it has been held:

"Yet further, the confessed purpose of the mo-tion of April 9, 1940, condemns it, and the action on it. The legislative policy of speeding the disposal of income tax controversies by limiting the time for review cannot be thus nullified. Aside from the statement attributed to the Board member, the purpose of the procedure is evident on the face of the motion. The sole reason it offered for vacating the decision was that a copy had not been served. It was not asserted that the decision was incorrect or irregular in itself. What sense would there be in vacating a correct decision in order to serve another identical decision? x x x." [Commis-sioner of Internal Revenue v. Realty Operators, Inc., 118 F. 2d 286, 288-289.]

WHEREFORE, the decision of the lower court should be as it is hereby reversed, and another shall be entered dismissing the petition herein and dissolving the writ of preliminary injunction issued by the lower court, with costs against herein peti-tioners-appellees.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Villamor, and Makasiar, JJ., concur.
Barredo, J., concurs in a separate opinion.
Fernando, J., reserves his vote.

[1] Alleged children of Paulino Roon and alleged brothers of petitioner Go Oh.

1 L-24844, October 26, 1967.

2 L-24853, October 26, 1967.

3 L-24800, May 27, 1968.

Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;
mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in;
mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New
Roman";}

CONCURRING OPINION

BARREDO, J.:

I concur.

I find it necessary, however, to make it clear that the reason for my concurrence is because I agree with the holding that the Board of Commissioners has acted, contrary to petitioners' contention, well within its prerogatives and within the period allowed to it by law within which to act, rather than because I consider the decision of the Board of Special Inquiry as having already become final and executory. Truth to tell, I feel very strongly that the admitted failure of the immigration authorities to serve on petitioners notice of the decision of the Board of Special Inquiry before the Board of Commissioners took up and decided the case *motu proprio* is somehow short of being fair, even as I agree, not without reluctance which I shall explain, that from the strict technical viewpoint, such failure did not constitute a denial of due process, specially in the procedural sense.

As stated in the main opinion, the pertinent legal provision is the following paragraph of the Philippine Immigration Act, Commonwealth Act 613, as amended:

"(b) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue subpoena and/or subpoena duces tecum. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. The decision of any two members of the Board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings within one year from the promulgation of said decision. At the conclusion of the hearing of any case, the board of special inquiry shall at once proceed to deliberate and decide on the merits thereof. The decision shall be promulgated and the findings and recommendation, in proper cases, submitted not later than two days from the date of the deliberation. Should the board of special inquiry need more time to make a written decision of findings and recommendation in view of the nature of the case, the chairman thereof shall report the case to the Commissioner of Immigration who may grant an extension of time if he considers it necessary.

"(c) An alien excluded by a board of special inquiry or a dissenting member thereof may appeal to the Board of Commissioners, whose decision in the case shall be final. The decision on appeal shall be put in writing and promulgated not less than seven days from the time the case is submitted for decision. In appeal cases, the alien shall have the right to be represented by an attorney or counsel who shall have access to the record of the board of special inquiry in the particular case on appeal." (Section 27, Commonwealth Act 613, as amended by Section 9 of Republic Act No. 503.)

On the other hand, the applicable provisions of the rules prescribed by the Commissioner of Immigration pursuant to authority under the same law^[1] read thus:

"14. When an alien is excluded by a board of special inquiry, he shall be advised of the decision together with the reason or reasons therefor; also, of his right to appeal his case to the Board of Commissioners. In every case, the alien shall be furnished with a copy of the decision upon promulgation thereof. If the applicant appeals, he shall thereupon be informed of his right to be represented by attorney or counsel in prosecuting his appeal. An attorney or counsel representing an appellant shall have access to the records of the proceedings of the board in the particular case, and may also appear in person before the Board of Commissioners on behalf of his client." (Rule 1, Subdivision E, Par. 14, Immigration Rules and Regulations of January 1,

1941.)

"15. An alien desiring to appeal may do so personally, or through any relative or friend, or through any person, including attorneys permitted to practice before immigration authorities. Where such an appeal has been taken, any further appeal shall be disregarded. Appeals purporting to be filed on behalf of an alien but without his knowledge or consent previously obtained, may be ignored. A board member who dissents from a majority vote to admit, also may take an appeal by observing all the rules concerning appeal. In such a case, the alien shall be allowed the same opportunity for representation as though the appeal were his, but his brief or argument must be submitted at the same time that the board member's appeal is forwarded to the Board of Commissioners." (Rule 2, Subdivision A, Par. 15, Ibid.)

"16. Appeals must be in writing and filed with the board of special inquiry which decided the case, within forty-eight hours from the time a copy of the decision is furnished the applicant. No appeal filed after this period shall be accepted." (Rule 2, Subdivision B, Par. 16, Ibid.)

"17. The record of the hearing and all documents considered by a board of special inquiry in reaching its decision shall be forwarded, within two days from the date notice of intention to appeal is filed, to the Commissioner of Immigration for consideration by the Board of Commissioners.

"18. The applicant or his attorney or counsel may submit a memorandum, if he so desires, to the Board of Commissioners within five days from the date he is notified of the receipt in the Office of the Commissioner of Immigration of the records of the proceedings of the board of special inquiry." (Rule 2, Pars. 17 & 18, Subdivision C, Ibid.)

"21. The Commissioner of Immigration, in his discretion, may allow or permit the alien applicant or his counsel to argue orally his case before the Board of Commissioners. For this purpose, the applicant shall be given one hour, which period may be extended in the discretion of the Commissioner of Immigration." (Rule 3, Subdivision A, Par. 21, Ibid.)

"22. The decision of any two members of the Board of Commissioners shall prevail, and said decision in the case shall be final.

"23. At any time before the alien is deported, but not later than seven days from the date he receives notice of the decision on appeal of the Board of Commissioners, the applicant or his attorney or counsel may file a petition for rehearing only on the ground of newly discovered evidence. Such petition shall be in writing and shall set forth the nature of the evidence discovered and the reason or reasons why it was not produced before. If in the judgment of the Board of Commissioners such evidence is material and not merely cumulative and is of such a nature as to warrant, in the opinion of the above-mentioned Board, a change in the decision of the board of special inquiry, and a proper showing is made that the existence of such new evidence was unknown at the time of the hearing and could not by reasonable diligence have been found and produced, the Board of Commissioners may remand the case to the same or another board of special inquiry for rehearing which shall have the effect of staying the order of deportation. The procedure of hearing and appeal as discussed under Rules 1 and 2 shall be observed.

"24. Not more than one motion for rehearing and no motion for reconsideration of the decision of the Board of Commissioners shall be entertained." (Rule 3, Subdivision A, Par. 21; Subdivision B, Par. 22; Subdivision C, Pars. 23 & 24, Ibid.)

Reading the legal provision and implementing rule together, I am convinced that the so-called right of an alien or applicant for admission into the Philippines to appeal from an adverse decision of the Board of Special Inquiry is not such a substantive one as to render without legal efficacy a review thereof by the Board of Commissioners even when no appeal has been taken thereto by the excluded party, either due to his own fault or any other cause. The law appears to be very clear in that even without any appeal, the Board of Commissioners, may *motu proprio*

review the decision of the Board of Special Inquiry within one year from the promulgation of the same. It follows, therefore, that in every case where the Board, of Commissioners exercises this power of review *motu proprio*, any right to appeal on the part of the excluded alien is a mere formality adding nothing either to the reviewing faculty of the Board or to the scope of the action that it may take within its authority. Adding strength to this conclusion is the fact that as may be seen in the above provisions of the law and the rules, any member of the Board who dissents from a majority ruling of exclusion may appeal in his own name, and in such a case, such appeal inures to the benefit and may be availed of by the excluded party.

In the light of this discussion, when does a decision of the Board of Special Inquiry adverse to an applicant become final and executory? Both the law and the rules have no specific provision on the matter. With the exception of the provision in the rules that no appeal filed after forty-eight hours after the applicant is furnished with a copy of the decision of the Board of Special Inquiry may be accepted, there is nothing else to indicate what happens to said decision should no appeal therefrom be opportunely made either by the applicant or any member of the Board. I cannot imagine, however, that it becomes final and executory upon the expiration of the above forty-eight hours without any appeal being taken, for such a view would in effect negate the power of the Board of Commissioners to act thereafter. The most then that can be said in such regard is that after said forty-eight hours, the applicant may no longer assail the decision of the Board of Special Inquiry upon his own initiative and that he is thereafter left, in a manner of speaking, to the mercy of the Board of Commissioners. On the other hand, under the rules, no motion for reconsideration of the decision of the Board of Commissioners is allowed, only a motion for rehearing on the sole ground of newly discovered evidence and filed within seven (7) days from the date notice of the decision is received by the aggrieved party may be entertained, and so it is the decision of the Board of Commissioners that may be said to become final and executory, whether such be by virtue of an appeal of the applicant or member of the Board of Special Inquiry or a *motu proprio* review by the Board of Commissioners upon the expiration of the said seven (7) days. Of course, if no appeal is taken and the Board of Commissioners does not act within one year, then the decision of the Board of Special Inquiry becomes automatically final and executory upon the expiration of such one year period. As I see it, therefore, there is no instance when the decision of the Board of Special Inquiry becomes final and executory merely because of the expiration of the period of forty-eight hours within which the excluded applicant may appeal.

It is only in the light of the foregoing views and the fact that it does not appear that petitioners are questioning at this stage the correctness of the decision of the Board of Special Inquiry that I find it possible to overlook the admitted complete failure of the immigration office to notify petitioners in this case of the adverse decision of the Board of Special Inquiry. Otherwise, I would hold that such incomprehensible lack of notice is not only an unexcusable dereliction of duty and a censurable act of plain injustice but also a ground for setting aside the proceedings in the Board of Commissioners, so that petitioners may be given the chance to appeal, the possibility of the Commissioners being already probably inclined against them notwithstanding. In other words, it is only because, as I have stated, I do not find that our immigration law makes the appeal from a decision of the Board of Special Inquiry a substantive right protected by the due process requirements of the Constitution that I concur in the result of this case.

As stated in the main opinion, the first time petitioners were notified of the decision of the Board of Special Inquiry adverse to them was on September 20, 1963 when they were at the same time notified of the *motu proprio* review by the Board of Commissioners and of their decision. As a matter of fact, it is not clear to me that in the said notice of September 20, 1963, petitioners were even informed of the reasons why they were excluded by the Board of Special Inquiry, in violation of the rules I have quoted above. Much less does it appear that they were furnished with a copy of said decision as required by said rules. I am at a loss to understand how, under such circumstances, the decision of the Board of Special Inquiry in the case at bar could have become final and

executory by reason of the failure of the petitioners to appeal the same. I find unacceptable the proposition, seemingly implied in the main opinion, that such appeal could still have been made even after the Board of Commissioners had already decided the case after a review *motu proprio* of the decision of the Board of Special Inquiry. It is simply beyond me how such an appeal could have been made, and if what is meant by such view is that anyway, the right to file a motion for reconsideration is in effect a mode of giving petitioners a chance to present or voice their side before the Board of Commissioners, as an alternative to their lost right to appeal, I cannot see how even this could have been done because, as already demonstrated, no motion of such kind may be filed under the rules.

Frankly, I cannot escape the conclusion that herein petitioners were deprived of their opportunity to appeal to which they are entitled specifically under the law and the procedure for which is outlined completely with elaborate details in the rules. Not for nothing has the law granted such right and the rules fixed such an elaborate procedure therefor. Indeed, while such denial is in a sense lamentable, because once a right is granted, it best that it is respected no matter how legally insubstantial it may be, in another sense, petitioners have very little cause for complaint, since the Board of Commissioners has reviewed their case and found the decision of the Board of Special Inquiry against them to be correct. After all, as I have earlier observed, petitioners do not question in this proceeding the merits of the said decision. Their alleged causes of action here are limited to the alleged lack of jurisdiction of the Board of Commissioner to act and illegality of the denial to them of their right to appeal. On these two scores, and for the considerations I have already discussed above, I have no reason to disagree with the main opinion. Accordingly, I have to also vote to reverse the judgment of the court *a quo*.

[1] Section 3.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.