

ROLTON S. NORICO AND BENJAMIN V. GENOTA, PETITIONERS, VS. ARNEL DAYANGHIRANG, RESPONDENT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before us is a Petition for Review[1] under Rule 43 of the Rules of Court filed by petitioners to assail the July 14, 2006 Decision[2] of the Office of the Ombudsman , Mindanao, rendered in Case No. OMB-M-A-06-017-A for Grave Misconduct/Oppression. The assailed Decision decreed thus:

“WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence to hold respondents BENJAMIN ROBLE LAO, ROLTON SANDOVAL NORICO and BENJAMIN VICERA GENOTA GUILTY of GRAVE MISCONDUCT and OPPRESSION pursuant to Section 52 (A)(3) and (14) and Section 55 of Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service and are hereby DISMISSED from the service with forfeiture of all the retirement benefits, if any, and with prejudice to re-employment in any branch, agency, or instrumentality of the government including government-owned or controlled corporations.

The Honorable Commissioner Alipio F. Fernandez, Jr., is hereby directed to immediately implement the Decision and to inform this Office of the action taken within ten (10) days from receipt hereof.

SO DECIDED.”

Petitioners likewise assail its September 8, 2011 Resolution[3] denying their motion for reconsideration.

The Antecedents

The facts, as culled by the Office of the Ombudsman, are as follows:

For arbitrarily detaining two (2) Chinese nationals and soliciting for their release \$5,000.00 U.S. Dollars per person, Alien Control Officer Benjamin Roble Lao, Immigration Officer I Rolton Sandoval Norico, and Intelligence Officer II Benjamin Vicera Genota, of the Bureau of Immigration and Deportation (BID), Davao District Office, Davao City, are administratively charged with Grave Misconduct and Oppression.

In his affidavit[4], complainant Arnel A. Dayanghirang alleged that on December 31, 2005, at around 3:30 in the afternoon, Mr. Linkun Qui and Ms. Qingying Wang, Chinese Nationals, were illegally detained by respondent Benjamin Genota, at the Bureau of Immigration and Deportation (BID) under the verbal order of Commissioner Alipio Fernandez of BID. He was requested by the above-mentioned Chinese Nationals to inquire as to the legality of their detention in the Immigration Office. Accordingly, on the said date, he asked respondent Genota if he has any evidence or document to support the legality of the detention but respondent Genota did not present the Charge Sheet or any evidence or document. Allegedly, respondent Genota asked him how much was his budget to facilitate the release of the two Chinese Nationals, and he told him (Genota) that he did not know what he meant by it so he remained mum about it.

On the following day, January 1, 2006, he went to the Immigration Office together with Atty. Pablo Teñoso to

inquire as to the legality of the detention of the said Chinese Nationals but unfortunately respondent Genota again failed to present the Charge Sheet. Instead respondent Genota advised them to ventilate their query before the Commissioner of the Bureau of Immigration and Deportation.

On January 2, 2006, at around 11:50 in the morning, he together with respondent Genota, Johnny Go (Chinese Interpreter) and an unnamed intelligence agent, were in the office of respondent Benjamin Lao to follow-up the detention of the said aliens. On the said instance, respondent Lao told him to settle the matter amicably with respondent Genota. Allegedly, respondent Lao allowed the use of his office in order to facilitate their corrupt practices to his prejudice. Thus, he asked respondent Genota how to settle the matter amicably. When respondent Genota was about to answer, respondent Norico opened the door of the office of respondent Lao and called the former to go outside the room. After five minutes, respondent Genota came back in the room and told him that the amicable settlement for the release of the detained aliens was \$5000.00 U.S. Dollars per person because according to him the Manila head office already knew of the said situation and that was the amount his boss told him. He told respondent Genota that he cannot afford to pay such amount and he will just settle this matter by legal means.

Complainant stressed that the Memorandum dated December 31, 2005 issued by respondent Rolton Norico and the Commitment Order dated January 2, 2006 issued by Atty. Faizal Hussin, the Chief of the Intelligence Division of the BID contained the names Chen Hua and Lze Zhiang Hua. However, in the Joint-Affidavit executed by the detained Chinese Nationals, their names are Mr. Linkun Qui and Ms. Qingying Wang. Due to the discrepancy of the above-mentioned documents, it is apparent that the immigration officers are detaining the wrong persons. In fact, from December 31, 2005 up to January 4, 2006, the said Chinese Nationals were still arbitrarily detained in the Immigration Office. Hence, the complaint before the Office of the Ombudsman.

Affiants Barsabas “Bobby” B. Largo and Marconi “Jong” Sukyo, Jr., both media men of Gold City Express Publication, corroborated the statement of complainant Dayanghirang that they heard and saw respondent Benjamin Genota asked \$5,000.00 U.S. Dollars per head to facilitate the release of two (2) Chinese Nationals.[5]

Affiants Mr. Linkun Qui and Ms. Qingying Wang in their Joint-Affidavit[6], alleged that on December 31, 2005, at around 3:30 in the afternoon, they were detained illegally without any legal grounds whatsoever by respondent Genota. They further alleged that they were not aware of any charge whatsoever, as there was no evidentiary document presented to them, and they do not know why they were detained.

Finding the complaint sufficient in form and substance, the Office of the Ombudsman issued an Order directing the therein respondents to answer the charge.[7]

Vehemently denying the allegations and insinuations made against them, respondents in their joint counter-affidavit[8] explained among others, that last December 31, 2005, respondent Rolton Norico was the Acting Officer-In-Charge assigned at the Davao International Airport.[9]

Upon the arrival of Silkair Flight No. MI-566 at around 2:45p.m. on that day, among the passengers were two persons who were deported by Singapore immigration authorities for, among others, holding altered U.S. visas and photosub (substituted photos) Philippine Passports.[10] When the said two Chinese looking persons were interviewed by respondent Rolton Norico, they were holding Philippine Passports with Nos. HH507550 and GG804852, respectively, identifying them as Mr. Virgilio Parumog and Ms. Marie Christine Litton.

However, despite having Philippine Passports, the said persons were unable to answer questions posed to them in Filipino and even when the questions were made in English.

Upon examination of the passports, it was revealed that they had exited from the Philippines on July 4, 2005, as shown by the departure stamp with No. 446.[11] These circumstances prompted respondent Rolton Norico to

instruct Atty. Samson Magoncia, the assigned immigration officer on duty, to hold the said passengers and to submit the necessary incident report and have the said passports turned over for investigation.

Strangely, instead of doing all of these things, Atty. Magoncia just took the said passengers' Philippine passports and apparently went to the Departure Area of the airport and subsequently left the premises of the airport.[1]2

Since Atty. Magoncia had disappeared, respondent Norico called up respondent Genota and took these passengers to the Davao District Office and turned them over to respondent Genota.

Allegedly, the said incident was immediately reported by respondent Genota to Atty. Faizal Hussin, the Chief of the Intelligence Division of the Bureau of Immigration who instructed respondent Genota to hold the said aliens and, subsequently, a formal commitment order was issued. Thus, the passengers were immediately detained at the detention center for further investigation.[13]

Allegedly, upon investigation, the said passengers gave their Chinese names as Lee Zhiang Hua and Chen Hua, and claimed to be nationals of the People's Republic of China (PROC) from the Fujian Province. Subsequently, said Chinese nationals were brought from the Davao International Airport to the detention area of the Davao District Office at around 4:00 p.m. on December 31, 2005.

Considering that these passengers have neither cellular phones nor any opportunity up to that point to call any person, it is quite strange that only a few minutes later at around 4:10 in the afternoon, complainant Arnel Dayanghirang arrived at the Davao District Office and went directly to the office of Atty. Magoncia.

Accordingly, complainant together with Atty. Magoncia, talked to respondent Norico requesting that the said Chinese nationals be released, which request was rejected by respondent Norico.[14]

On January 2, 2006, complainant together with his lawyer and others talked to respondents Lao and Genota. Allegedly, complainant Dayanghirang and Atty. Tenoso were requesting the release of the detained nationals. Respondents Lao and Genota denied the request of complainant Dayanghirang to release the two aliens.

However, complainant Dayanghirang and Atty. Tenoso talked to the said Chinese nationals with the help of Mr. Johnny Go and another interpreter. Accordingly, they were trying to convince the said Chinese nationals to sign a prepared affidavit alleging that they were being illegally detained by respondent Genota without any basis. It was in the said affidavit that the Chinese nationals first identified themselves as Linkun Qui and Qingying Wang.[15]

After the affidavit was signed, complainant and his party left. Respondents maintained that at no instance during these meetings with complainant Dayanghirang and Atty. Tenoso, were there any discussions about payments or amounts of money for the release of the Chinese nationals. While the original schedule for the said Chinese nationals to be brought to Manila for further investigation and deportation proceedings, if necessary, was on January 2, 2006, the lack of available seats on airline flights caused a delay, and the two aliens were brought to Manila and turned over to the Bureau of Immigration Intelligence Office only on January 6, 2006.

Respondents maintained that it is incumbent upon them to detain the subject Chinese nationals because of the obvious circumstances indicating fraudulent travel documents as well as false representations. They further maintained that the accusation of attempted extortion is false and intended solely to malign them.

Pursuant to Administrative Order No.17, amending Rule III of A.O. No. 07 providing for the Rules of Procedure of the Office of the Ombudsman, both parties were directed to file their respective verified position papers.[16]

Except for complainant Arnel Dayanghirang, respondents Benjamin Lao, Benjamin Genota and Rolton Norico submitted their Position Paper.[17]

On April 10, 2006, the Office of the Ombudsman directed Atty. Samson Magoncia, Senior Immigration Officer, Bureau of Immigration, Davao District Office, to comment on the Joint Counter-Affidavit of respondents Benjamin R. Lao, Rolton S. Norico and Benjamin V. Genota,[18] and likewise directed to furnish the Office of the Ombudsman the certified true copies of the subject passports and travel documents of A.K.A. Lze Zhiang Hua and Chen Hua.

In his comment,[19] Atty. Samson Magoncia denied among others, that the passports were with him because Rolton Norico, as apprehending officer, never gave him the falsified Philippine passports and other travel documents of the two Chinese nationals. Not being the apprehending officer, he did not have the custody of the Chinese nationals, their Philippine passports and other travel documents. Accordingly, it was not his duty to prepare an incident report, not being the officer who apprehended the two (2) Chinese nationals and confiscated their passports and other travel documents.

On July 14, 2006, the Office of the Ombudsman rendered the assailed Decision finding herein petitioners guilty of Grave Misconduct and Oppression and ordering their dismissal from the service.

Petitioners' motion for reconsideration of the assailed Decision was further denied in its September 8, 2011 Order.

Hence, the instant Petition for Review under Rule 43 of the Rules of Court.

The Issues

- Whether or not petitioners may be held liable for grave misconduct; and
- Whether or not petitioners may be held liable for Oppression.

This Court's Ruling

The issues shall be jointly discussed for being interrelated.

In its decision, the Office of the Ombudsman cites the pieces of evidence that support its ruling. It discussed its findings thus:

“One of the constitutional requirements of a valid search warrant or warrant of arrest is that it must be based upon probable cause. Probable cause is based neither on clear and convincing evidence of guilt nor evidence establishing absolute certainty of guilt. It is merely based on opinion and reasonable belief, and so it is enough that there exist such state of facts as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.

As observed the two (2) Chinese nationals were arrested by respondent Rolton Norico on the pretext that the two were holding falsified U.S. visas and photosub (substituted photos) Philippine passports. But respondents cannot even present the falsified U.S. Visas and photosub Philippine passports. The defense of respondent Rolton Norico that the subject U.S. Visas and photosub Philippine passports of the two aliens were in the possession of Atty. Samson Magoncia is weak. Records show respondent Rolton Norico was the Acting Officer-in-Charge assigned at the Davao International Airport last 31 December 2005. He was the one who interviewed the two Chinese looking persons and examined the passports of the two Chinese nationals who were allegedly holding Philippine Passports with Nos. HH507550 and GG804852. He even apprehended the two (2) Chinese nationals. Since respondent Norico was the apprehending officer, why would he direct Atty. Samson Magoncia to hold the passports of the two Chinese nationals and to submit an incident report?

Moreover, it is highly unusual that if indeed the falsified passports of the two Chinese nationals bore departure stamp no. 446, why would respondent Norico entrust the said passports to Atty. Magoncia since said passports are the evidence that they bore departure stamp no. 446?

Likewise, the asseveration of a certain Bobby Salvacion that he turned over personally the passports of the two Chinese nationals to Atty. Magoncia is unconvincing. Respondent Norico in his defense asserted that “when the said two Chinese looking persons were interviewed by respondent Rolton Norico, they were holding Philippine Passports with Nos. HH507550 and GG804852, respectively, identifying them as Mr. Virgilio Parumog and Ms. Marie Christine Litton”. By respondent Norico’s assertion, the passports were not in the possession of Atty. Samson Magoncia. Besides, Atty. Samson Magoncia vehemently denied having in his possession the alien’s passports and other travel documents.

Based upon the foregoing circumstances, respondent Norico had no reason to apprehend the two aliens because there was no evidence submitted that the two aliens were in possession of a (sic) falsified passports and other travel documents.

On the other hand, the detention by respondent Benjamin V. Genota of the two Chinese nationals is highly irregular. In the first place, respondent Genota had no personal knowledge as to the incident of the arrest of the two (2) Chinese nationals. In fact, respondent Genota was not at the Immigration counter when the two aliens were inspected and subsequently apprehended by respondent Norico. Besides, the memorandum dated 31 December 2005 of respondent Genota addressed to Commissioner Alipio F. Fernandez, Jr. is inaccurate. It was not Atty. Samson Magoncia who intercepted the two (2) PROC nationals but respondent Rolton Norico. Moreover, a careful perusal of the said memorandum, the same is not based on his personal knowledge but merely a reiteration of the memorandum of respondent Norico.

Furthermore, at the time of the detention no charges were lodged against the two Chinese nationals. Neither a warrant of arrest was issued by the Commissioner of Immigration and Deportation at the time the two (2) PROC nationals were apprehended by respondent Norico.

X x x

The commitment order by Atty. Faizal U. Hussin, Chief, Intelligence Division, Bureau of Immigration, Manila, was issued only on 2 January 2006. Moreover, the Office of the Bureau of Immigration and Deportation, Davao City, thru respondent Benjamin Lao was informed of the notice of deportation of Mr. Virgilio Parumog and Ms. Marie Christine Litton from Singapore Airlines (SILK AIR) on 3 January 2006.

Based upon the foregoing, the arrest of the two Chinese nationals was not based on probable cause. Neither was the arrest made by virtue of carrying out a final order of deportation. Records show that the Summary Deportation Order was issued against the persons of Chen Hua @ Marie Christine Litton and Lze Zhiang Hua @ Virgilio Parumog on 24 February 2006. The theory that immigration officers may arrest any alien just for questioning or investigation, without any warrant of arrest, represents an ideology incompatible with human dignity. Reason revolts against it.

X x x

X x x. A violation therefore of any of the rights accorded to the two aliens constitutes a violation of their human dignity. The circumstantial setting of the instant case impels us to hold that the apprehension of the two aliens and their subsequent detention are tainted with the vice of irregularity, for evidently the two aliens were detained without legal grounds.

Respondents, by the very nature of their functions, should be more circumspect in the performance of their duties. In apprehending suspicious persons, respondent Norico should endeavor assiduously to ascertain the facts and the evidence to duly support the Incident Report and the Charge Sheet. He had no business arresting aliens and, immediately thereafter, turned them over to the Warden without even securing the documentary

evidence to prove the charges.

Similarly, respondent Benjamin Genota should have carefully and diligently studied the endorsement of the two aliens made by respondent Norico. Moreover, prudence dictates that respondent Genota should have first asked respondent Rolton Norico for the falsified Philippine passports and other travel documents of the two (2) aliens. Had respondent Genota asked for the same, he would have surely noticed that no such falsified passports were in the possession of respondent Norico, which eventually could not have precipitated the unwarranted deprivation of liberty of the two aliens. This he failed to do, without any explanation.

Based upon the foregoing, for arbitrarily detaining the two (2) aliens, this Office finds substantial evidence to hold respondents Benjamin R. Lao, Benjamin V. Genota and Rolton S. Norico guilty of Grave Misconduct and Oppression.

Moving now to a related point, anent the issue of soliciting \$5,000.00 U.S. Dollars/person, Section 7 (d) of R.A. 6713, reads:

“SECTION 7. Prohibited Acts and Transactions. – In addition to acts or omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

X x x

(d) Solicitation or acceptance of gifts. – Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.”

The defense that “at no instance during these meetings with Mr. Dayanghirang and Atty. Teñoso, were there any discussions about payments or amounts of money for the release of the Chinese nationals” is not tenable.

As attested by complainant Dayanghirang, the solicitation by respondent Benjamin Genota occurred on 2 January 2006, at noon time in the office of co-respondent Lao.

X x x

Witnesses for the complainant Barsabas B. Largo and Marconi Sukyo, Jr., corroborated the allegation that respondent Genota solicited \$5,000.00 U.S. Dollars each for the release of the two detained Chinese nationals.

Despite the vehement denial of the respondents, complainant Dayanghirang had positively asserted that respondent Genota solicited \$5000.00 U.S. Dollars/person from him for the release of the two (2) detained aliens.

The fact that respondent Genota took advantage of his official position when he solicited \$5,000.00 U.S. Dollars from complainant Dayanghirang, aggravates his administrative liability.

X x x

Accordingly, this Office finds substantial evidence that respondent Benjamin Genota is again guilty of grave misconduct, particularly for soliciting \$5,000.00 U.S. Dollars/person from complainant Arnel Dayanghirang.

Petitioners contend that the Office of the Ombudsman miserably failed to consider that to hold a public officer liable for arbitrary detention, it is crucial that he detains a person without any legal ground. Petitioners asseverate that the Chinese nationals used fraudulent passports and they were falsely trying to pass themselves off as Filipino citizens while clearly being foreign nationals. Accordingly, it was incumbent upon them as immigration officers, faced with the obvious fact indicating fraudulent travel documents as well as false representation, to hold the said

Chinese nationals for investigation for either criminal or deportation proceedings depending on the final results of the investigation. Petitioners further assert that when the matter was immediately reported to Atty. Faizal Hussin, the Chief of the Intelligence Division of the Bureau of Immigration, he immediately gave verbal instructions to petitioner Genota to hold the said Chinese nationals which was later formalized with the issuance of the Commitment Order. Thus petitioners, particularly Mr. Genota, cannot be blamed for simply following and abiding by the instructions of a superior officer.

As to the alleged attempted bribery committed by petitioner Genota, petitioners argue that if there was truly any intention on the part of petitioner Benjamin Genota to extort money from the Chinese nationals, then why did he personally and immediately report the incident to Atty. Faizal Hussin, the Chief of the Intelligence Division. By doing so, he relinquished any discretion or authority on his part or that of his co-petitioners, to release the Chinese nationals because upon the immediate directive of Atty. Hussin to hold them and the subsequent issuance of the Commitment Order, only the Commission on Immigration could overrule Atty. Hussin or recall the Order. Thus, none of the petitioners, especially Benjamin Genota, was in any position to bargain with Mr. Dayanghirang for the release of the detained Chinese nationals.

Petitioners also emphasize the inconsistency between the stories of Mr. Dayanghirang and that of Largo and Sukyo. In the affidavit of Largo and Sukyo, they made it appear that there was already an agreement between Dayanghirang and petitioner Benjamin Genota while in Dayanghirang's affidavit, he claims to have immediately rejected Genota's alleged demand. Furthermore, affiants Barsabas B. Largo and Marconi Sukyo, Jr. voluntarily executed an Affidavit of Recantation[20] on August 8, 2011 recanting what they have stated in their Joint Affidavit of January 5, 2006.

Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[21] As a general rule, factual findings of administrative bodies are accorded great respect by this Court. However, after a painstaking review of the records in this case and the evidence presented by the parties, this Court finds sufficient reason to depart from this policy.

The core inquiry is the legality of the arrest and detention of the Chinese nationals by the Immigration officers. Respondent insists that petitioners have no power, authority or jurisdiction to cause the arrest and detention of the Chinese nationals because under the 1987 Constitution, it is provided that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce ..." [22]

Under Commonwealth Act No. 613, as amended by R.A. 118, R.A. 135, R.A. 144, R.A. 503, R.A. 749, R.A. 827, R.A. 1901, R.A. 4376, R.A. 5171, R.A. 5701 and P.D. 524, otherwise known as An Act to Control and Regulate the Immigration of Aliens Into the Philippines, Section 37 (a) thereof provides:

"Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

X x x

Further, Section 45 thereof provides:

Sec. 45. Any individual who:

X x x

(c) Obtains, accepts or uses any immigration document, knowing it to be false; or

(d) Being an alien, enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by willful, false, or misleading representation or willful concealment of a material;

(e) Being an alien shall, for any fraudulent purpose, represent himself to be a Philippine citizen in order to evade any requirement of the immigration laws: or

X x x

(h) Attempts or conspires with another to commit any of the foregoing acts, shall be guilty of an offense, and upon conviction thereof, shall be fined not more than one thousand pesos, and imprisoned for not more than two years, and deported if he is an alien.

More importantly, Section 6 of C.A. 613, as amended, provides:

Section 6. Powers of Immigration Officer. - The examination of aliens concerning their right to enter or remain in the Philippines shall be performed by Immigrant Inspectors with the advice of medical authorities in appropriate cases. Immigrant Inspectors are authorized to exclude any alien not properly documented as required by this Act, admit any alien complying with the applicable provisions of the immigration laws and to enforce the immigration laws and regulations prescribed thereunder. Immigrant Inspectors are also empowered to administer oaths, to take and consider evidence concerning the right of any alien to enter or reside in the Philippines, and to go aboard and search for aliens on any vessel or other conveyance in which they believe aliens are being brought into the Philippines. Immigrant Inspectors shall have the power to arrest, without warrant, any alien who in their presence or view is entering or is still in the course of entering the Philippines in violation of immigration laws or regulations prescribed thereunder. (emphasis supplied).

Hence, it is clear that a warrant of arrest is not necessary in order for the herein petitioners to arrest and detain the Chinese nationals considering the fact that they were attempting to enter the Philippines in violation of Immigration laws and regulations. Their failure to present the evidence consisting of the falsified passport and travel documents had been sufficiently justified by the subsequent events as revealed by the evidence attached in the records of this case. Further, the subsequent deportation of the Chinese nationals justifies the stance of the herein petitioners that indeed a violation of the immigration laws and regulations was committed by the Chinese nationals.

The circumstances obtaining in this case impels this Court to take a closer look on the events that really transpired leading to the filing of the administrative charges against the petitioners. At the outset, the two Chinese nationals were detained for allegedly possessing altered U.S. Visas and photosub (substituted photos) Philippine Passports. However, the said altered U.S. Visas and photosub Philippine passports cannot be presented by petitioners contending that the said evidence was turned over by respondent Norico to Atty. Samson Magoncia, the assigned immigration officer on duty. However, the records of this case reveal that Atty. Samson Magoncia vehemently denied having in his possession the said altered U.S. Visas and photosub Philippine Passports. This denial of the alleged possession by Atty. Magoncia of the evidence for the detention by petitioners of the Chinese nationals and the fact of its non-presentation prompted the Office of the Ombudsman to rule against the herein petitioners holding that based upon the foregoing circumstances, respondent Norico had no reason to apprehend the two aliens because there was no evidence submitted. However, after a careful perusal of the records in this case, this Court notes that certain supervening events transpired after the said detention by petitioners of the Chinese

nationals. These supervening events include the fact that the said Chinese nationals were subjected, by the Commission on Immigration, to summary deportation proceedings and subsequently deported and fined. This is supported by the Summary Deportation Order issued by the Board of Commissioners of the Bureau of Immigration.²³ The Summary Deportation Order provides as follows:

“That on or about December 31, 2005. Respondents were apprehended at the Davao International Airport after they were excluded by Singapore Immigration Authorities and sent back to the said airport, for having in their possession spurious and fraudulent Philippine Passports.

That upon verification with the Department of Foreign Affairs, it was confirmed that the said Philippine passports were indeed spurious and fraudulent and that Philippine passports nos. GG804852 and HH507550 were issued to Clint Fusana Taluz and Tamsia Tubal Callon, respectively.

That during investigation, respondents admitted that they are Chinese (PROC) nationals and not Filipinos.

Furthermore, respondents failed and refused and continues to fail and refuse to present their passport/immigration documents.”

WHEREFORE, pursuant to Memorandum Order No. ADD-01-035, respondents @ CHEN HUA @ MARIE CHRISTINE LITTON and @ LZE ZHIANG HUA @ VIRGILIO PARUMOG, being undocumented and undesirable aliens, are hereby ordered to be summarily deported to his country of origin, China, subject to the following: (1) submission of the clearances from the National Bureau of Investigation, Local Courts and Police and (2) payment of immigration arrearages in the amount of FIFTY THOUSAND PESOS (P50,000.00) EACH and (3) Express lane fee in the amount of FIVE THOUSAND PESOS (P5,000.00) EACH. This Order shall be implemented only upon the submission of an original passport or travel document issued under respondent’s names.

Respondents’ names are directed to be included in the Blacklist immediately upon implementation of this Order.

X x x.”

Likewise, this Court also notes the events which transpired in relation to Atty. Samson Magoncia. As alleged by the herein petitioner Norico, the supposed evidence for the detention of the two Chinese nationals were turned over by him to Atty. Samson Magoncia, which fact was denied by the latter. However, as the record shows, Atty. Samson Magoncia has been preventively suspended and subjected to a Formal Charge^[24] before the Board of Commissioners for his anomalous participation in this incident. The Formal Charge provides:

“After preliminary investigation, this Office finds a prima facie case against you, Atty. Samson S. Magoncia, Senior Immigration Officer, for the administrative charge of Grave Misconduct pursuant to Section 52 A 3 Rule IV of the Uniform Rules on Administrative Cases in the Civil Service committed as follows:

On December 29, 2005, two Chinese nationals who allegedly used assumed names, Lee Zhang Hua a.k.a. Virgilio Parungao and Chen Hua a.k.a. Marie Christine Litton, and who allegedly possessed fake passports, were allowed to depart for Singapore from Davao on board Silkair flight number 556.

Singapore Immigration uncovered the alleged fraud and sent the two Chinese nationals back to Davao on board Silkair flight number MI-566 on December 31, 2005.

On the said day, you were on duty at the Davao International Airport.

Per incident report dated January 2, 2006 of Rolton S. Norico, Acting Officer-in-Charge of Davao International Airport on December 31, 2005, the two, upon their arrival, queued at your counter. When discussion between the two and you ensued, Norico examined their passports and found that the same may have been tampered.

The passports bore departure stamp no. 446 which was issued to you. Norico instructed you to hold the two and to turn over their passports as well as their other travel documents. The two were held at BI-Davao City at the instance of Norico.

You did not submit an incident report. You also did not turn over the passports and other travel documents of the two.

Later on, you interceded on their behalf and asked Norico to release them on recognizance to a certain Arnel Dayanghirang, which request was denied.

In view of the foregoing, you are hereby directed to submit your answer within five (5) days from receipt hereof. You are to indicate in your answer whether or not you elect a formal investigation of the charge. You are also advised of your right to be assisted by a counsel of your own choice.

In the meantime, you are hereby placed under a ninety (90)-day preventive suspension pursuant to Section 19 Rule II of the Uniform Rules on Administrative Cases in the Civil Service to commence upon your receipt hereof.

X x x.”

As to the alleged attempted bribery/extortion committed by petitioner Benjamin Genota, affiants Barsabas B. Largo and Marconi Sukyo, Jr. executed an Affidavit of Recantation[25] freely and voluntarily recanting their statements in their Joint Affidavit[26] and stating in the said Affidavit of Recantation the fact that they were informed by Atty. Magoncia that they should attest that they heard Mr. Benjamin Genota telling Mr. Arnel Dayanghirang that – “okay, \$5,000.00 per head for the release of the two detained Chinese nationals”. As stated in the Affidavit of Recantation, they were promised a financial reward by Atty. Magoncia but failed to comply with his promised reward for them.

The aforecited subsequent events pose serious doubts on the charge of grave misconduct and oppression against the herein petitioners. Obviously, there can be no arbitrary detention where there is a legal ground for detaining a person. It is clear that the two Chinese nationals were holding falsified Philippine passports and they were trying to pass themselves off as Filipino citizens while clearly being foreign nationals. The Passenger Manifest[27] clearly contains the names Mr. Virgilio Parumog and Ms. Marie Christine Litton. Furthermore, as to the alleged turnover of the evidence consisting of the falsified passport and other travel documents, the affidavit of Mr. Bobby Salvaleon, employee of Mindanao Airport Services Corporation rendering services at the Davao International Airport as ground handler of Silk Airlines, will prove that the passport and other documents were brought and turned over personally to Atty. Samson Magoncia, the Immigration Officer manning the arrival counter.

Although it is true that the two Chinese nationals were detained without a warrant of arrest having been first issued by the Commissioner of Immigration, the fact remains that immigration officers may arrest, without a warrant, any alien who in their presence or view is entering or is still in the course of entering the Philippines in violation of immigration laws or regulations pursuant to Section 6 of C.A. 613, as amended. Moreover, a Commitment Order was subsequently issued by Atty. Faizal Hussin, the Chief of the Intelligence Division of the Bureau of Immigration. In fact, it should be emphasized that when the matter was immediately reported to Atty. Faizal Hussin, he gave instructions to petitioner Benjamin Genota to hold the said Chinese nationals which was later formalized with the issuance of the Commitment Order. Thus, petitioner Benjamin Genota simply abided by the instructions of a superior officer.

As to the charge of attempted bribery against respondent Benjamin B. Genota, without the statements of the affiants Barsabas Largo and Marconi Sukyo considering that they have voluntarily executed an Affidavit of

Recantation, the affidavit of respondent Dayanghirang alone would not suffice to prove the alleged bribery committed by respondent Genota. Such allegation is easily concocted but is difficult to prove especially in the light of the circumstances attending its alleged commission. Special circumstances exist which raise serious doubt as to the accountability of petitioner Genota. The affidavit of Recantation rendered some truth to Genota's innocence. Although a retraction does not necessarily negate an earlier declaration, and for which reason, courts look with disfavor upon retractions, when confronted with a recanting witness, the Supreme Court has emphasized that courts must not automatically exclude the original statement based solely on the recantation. Courts should determine which statement should be given credence through a comparison of the original and the new statements, applying the general rules of evidence.[28] We believe that giving credence to the affidavit of recantation executed by the supposed witnesses is more plausible considering the inconsistency in their original joint affidavit compared with that of Mr. Dayanghirang's affidavit. In the affidavit of Largo and Sukyo, they made it appear that there was already an agreement between Dayanghirang and petitioner Benjamin Genota while in Dayanghirang's affidavit, he claims to have immediately rejected Genota's alleged demand. Furthermore, it is quite impossible for the herein petitioner to extort money from the respondent in the presence of many people.

Had Benjamin B. Genota really extorted money from the Chinese nationals, it would have been unnecessary for him to immediately report the matter to Atty. Faizal Hussin, the Chief of the Intelligence Division. Such act amounts to a relinquishment of any discretion or authority on his part or that of the other respondents, to release the Chinese nationals because upon the immediate directive of Atty. Hussin to hold them and the subsequent issuance of the Commitment Order, only the Commissioner of Immigration could overrule Atty. Hussin or recall the Order. Moreover, if it were true that petitioner Genota really had intentions of extorting money from the Chinese nationals, would he have done it out loud in the presence of the media men Largo and Sukyo? Logic and human experience tells us otherwise.

It is readily apparent that the Chinese nationals were subsequently deported. Hence, the herein petitioners were correct that the said foreign nationals used falsified passports and travel documents, only that they were not able to present the same since as alleged by them, the said documents were in the possession of Atty. Magoncia, who was also preventively suspended subsequently in connection with this case. Considering the aforementioned facts and circumstances, this Court does not find the acts of herein petitioners as included in the term Grave Misconduct or Oppression.

The Supreme Court defined misconduct as an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official.[29] As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest,[30] which is obviously lacking in petitioners' case. Oppression, on the other hand, has been defined as "an act of cruelty, severity, unlawful exaction, domination or excessive use of authority." [31] It is a demeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury.[32] Hence, like Grave Misconduct, also classified as grave offense under civil service laws. A finding of Oppression requires the attendance of malice and bad faith in the act complained of. Nor do petitioners' acts amount to unlawful oppression as they were only doing what their job demands of them, in pursuit of the orders of the superior officer and there is no indication that it was attended by malice or bad faith.

It must be stressed that grave misconduct has always been and should remain anathema in the civil service. It inevitably reflects on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[33]

However, in the present case, the petitioners are not guilty of any misconduct or any act of unlawful oppression. They were justified in detaining the Chinese nationals and they were duty bound to do so as the said Chinese nationals violated the Philippine Immigration laws and regulations.

This case is an eye opener as to the existence of a syndicate operating to provide alien nationals with falsified Philippine passports and allowing Philippines to be used as the transshipment point for these alien nationals to travel to other countries under fake assumed identities. It saddens us to know that some of the government officials and employees are involved in this illegal scheme. Protection must also be given to the Immigration officers who are merely doing their duties to see to it that all our immigration laws and regulations are strictly applied.

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The assailed July 14, 2006 Decision of the Office of the Ombudsman in Case No. OMB-M-A-06-017-A is hereby REVERSED AND SET ASIDE and in lieu thereof, the complaint against petitioners is hereby DISMISSED for lack of merit.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 11-28.

[2] Id, Annex “A” of the Petition, pp. 32-53, Penned by Eline S. Esparagoza-Haw, Graft Investigation and Prosecution Officer II.

[3] Annex “C” of the Petition, Id., p. 64-70.

[4] Record, pp. 1-2.

[5] Joint-Affidavit, Record, p.3.

[6] Record, p. 4.

[7] Record, pp. 13-14.

[8] Record, pp. 18-27.

[9] Record, p. 28.

[10] Passenger Manifest (Arrival), Record, p. 29; and Letter dated January 3, 2006, addressed to Mr. Benjamin Lao from Singapore Airlines, Record, p. 30.

[11] Departure Manifest of Silkair Flight MI 566 dated December 29, 2005, Record, p. 31.

[12] Affidavit of Bobby Salvaleon, an employee of Mindanao Airport Service Corporation (MASCOR) attesting to the fact that the said passports were turned over to Atty. Samson Magoncia, Record, p.32.

[13] Memorandum dated December 31, 2005, Record, p. 33; Incident Report, Record, pp. 34-35; Memorandum of Immigration Officer I Norico to Benjamin V. Genota, Record, p. 36; Commitment Order issued by Chief Atty.

Faizal U. Hussin, Record, p.37.

[14] Security Guard's Log, Record, pp. 38-39.

[15] Record, p. 40.

[16] Record, p. 47.

[17] Position Paper for the respondents, Record, pp. 53-74.

[18] Record, pp. 79-80.

[19] Record, pp. 86-92.

[20] Rollo, pp. 157-160.

[21] Velasquez v. Hernandez, G.R. No. 150732, August 31, 2004.

[22] Article III, Section 2.

[23] Rollo, pp. 153-154.

[24] Rollo, p. 155-156.

[25] Rollo, pp.157-160.

[26] Rollo, p. 90.

[27] Rollo,p. 75.

[28] PLDT v. Bolso, G.R. No. 159701, August 17, 2007.

[29] Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005.

[30] Id.

[31] Golangco v. Fung, G.R. No. 147640, October 12, 2006.

[32] Estrada v. Badoy, A.M. No. SB-02-10-J, January 16, 2003.

[33] Civil Service Commission v. Cortez, G.R. No. 155732, June 3, 2004.

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