

LIM CHIOK, CHEUNG BO CHOI ALIAS TIU SHU BEE, ET AL., PETITIONERS AND APPELLANTS, VS. HON. MARTINIANO VIVO, RESPONDENT AND APPELLEE.

G.R. No. L-20513. December 26, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

Appeal from the decision of the Court of First Instance of Manila (in Civil Case No. 50988) denying the petition to stay the order of the Commissioner of Immigration for petitioners' exclusion from the country.

Petitioners Cheung Bo Choi alias Tiu Shu Bee, Lim Wan Thon, Lim Chin Doo and Lim Chin Eng, mother and her 3 minor children, entered the Philippines on October 8, 1960 as temporary visitors for an initial authorized stay of 3 months. Upon their request, petitioners' stay have been extended by the Commissioner of Immigration several times, the last of which was to expire July 21, 1962.

In the meantime, or on January 23, 1961, the Court of First Instance of Manila granted the petition for naturalization of petitioner's husband. Thereafter, the immigrants petitioned the Secretary of Foreign Affairs and the Secretary of Justice for a change of their status from temporary visitors to special non-immigrants, in view of the fact that by January, 1963, their husband and father would become a Filipino citizen by taking the corresponding oath of allegiance. This was granted.

Later, however, this extension was declared a nullity by the new Secretary of Foreign Affairs.

On June 25, 1962, petitioners requested the respondent Commissioner of Immigration that they be allowed to pay the extension fees up to January 23, 1963, but the same was denied and they were ordered instead to leave the country in 7 days. Thereupon, a petition for prohibition was filed in the Court of First Instance of Manila to stop such order by the Immigration Commissioner. After due hearing, the trial court denied the petition.

Petitioners have taken this appeal assigning the following as errors allegedly committed by the lower court, to wit:

1. The court a quo erred in holding that the Cabinet had acted without legal authority in passing resolution of February 29, 1956;
2. The court a quo likewise erred in holding that the secretary of Foreign Affairs and the Secretary of Justice acted without legal authority in granting the request of change of category from temporary visitors to special non-immigrants and extension of stay of petitioners-appellants;
3. The court a quo further erred in resolving that petitioners-appellants have violated their contract with the Philippine Government in refusing to leave after the respondent-appellee has ordered them to do so; and
4. The court a quo has finally erred in refusing to consider that the approval of the petition for naturalization of petitioners-appellants' husband and father is one of the considerations for their continued stay up to and including January 23, 1963.

The legal issue raised in this appeal are not new; in fact, they have been already resolved in previous similar cases. We have already said that the administration and enforcement of our immigration laws lie with the Bureau of Immigration. The so-called Cabinet Resolution of February 29, 1956 did not specifically authorize the Secretaries of Foreign Affairs and of Justice to extend the stay of temporary visitors. It could not legally do so because under the express provisions of the Immigration Law, it is the Commissioner of Immigration who is vested with the power and authority to grant such extensions. And, the Cabinet has no power to amend or modify the law. We so declared in *Ang Liong vs. Commissioner of Immigration* (51 Off. Gaz., 2893) when we said:

"The Secretary of Foreign Affairs is not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines."

Neither can the two Secretaries authorize the change of status from temporary visitors to special non-immigrants. The law and our decisions on the matter are clear on this point: temporary visitors can not have their status changed to special non-immigrants without first departing from the country (Sec. 9, Philippine Immigration Act of 1940, as amended; *Ong Se Lun vs. Board of Commissioners* G.R. No. L-6017, Sept. 16, 1954; *Sy Ong vs. Commissioner of Immigration*, G.R. No. L-10224, May 11, 1957; *Ng Hin to Commissioner of Immigration*, G.R. No. L-13026, March 30, 1960.) Having come to this conclusion, we find it unnecessary to discuss the other points raised. At any rate, the extension to January 23, 1963 granted by the two Secretaries and invoked and relied upon by the petitioners in this case had already expired, and since no other legal extension has been obtained, this appeal has become moot. The act of the respondent to carry out his order complained of would be justified.

As a consequence, the decision appealed from is hereby affirmed, with costs against appellants. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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