

**HON. MARTINIANO P. VIVO, AS COMMISSIONER OF IMMIGRATION,
PETITIONER, VS. HON. FRANCISCO ARCA, ET AL., RESPONDENTS.***G.R. No. L-21728. December 27, 1963*

Ponente: REYES, J.B.L., J.

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The Commissioner of Immigration has resorted to this Court in quest of a writ of certiorari with preliminary injunction, to review and set aside the preliminary injunction issued on September 26, 1962 by the respondent judge of the Court of First Instance of Manila, in its case No. 51699, as well as his order, dated, July 29, 1963, refusing to dissolve said injunction, alleging that the same were issued in excess of jurisdiction and abuse of discretion.

The essential facts are not controverted. On June 15, 1960, respondents Chua Giok King alias Insa Lim, wife of Lim Chiao Cun, then a Chinese resident of Manila, applied to the Philippine Consulate General at Hongkong for a non-immigrant Passport Visa for the Philippines for her and her three minor children, Richard, Helen, and Douglas Lim, had with Lim Chiao Cun. She stated that she and her children desired to enter the Philippines to visit her husband for three months, and that upon termination of their stay in the Philippines they would proceed to Hongkong. On the strength of the application, the Consulate issued, on June 24, 1960, a non-immigrant visitor's visa, valid until June 23, 1961.

At the time of the application for visa, Lim Chiao Cun. had already applied for naturalization as a Filipino citizen (Civil Case No. 42020 of the Court of First Instance of Manila), but no mention was made of the fact.

The husband and father Lim Chiao Cun, in his turn, applied to the Bureau of Immigration for temporary admission of his wife and children, and posted a cash bond of P22,000 upon condition, inter alia, that the entrants would maintain their status at admission, and would not violate any limitation or condition of their admission.

Arriving on June 25, 1960, the wife and her children were admitted as temporary visitors with an authorized stay of 3 months, until September 25, 1960. After four extensions and a refusal of further delay, the visitors applied to the Office of the President, and obtained a fifth prorogation of stay for 15 days from July 11, 1961.

Pursuant to a cabinet resolution of February 9, 1956, empowering the Secretaries of Justice and Foreign Affairs to act on petitions for extension of temporary stay of visitors, the Secretary of Foreign Affairs, F. Serrano, on July 17, 1961, referred the matter to the Secretary of Justice, in an indorsement stating:

"Respectfully referred to the Honorable, the Secretary of Justice, Manila, hereby approving the change in category from temporary visitors to that of special non-immigrants under Section 47(a) (2) of the Philippine Immigration Act of 19401, as amended, in the case of CHUA GIOK KING alias INSA LIM, RICHARD LIM, LIM TONG and DOUGLAS LIM, all Chinese, for a period of stay up to June 9, 1963, it appearing that the petition for naturalization as Philippine citizen of their husband/father, LIM CHIAO CUN, has been granted by the Court of First Instance of Manila in its decision dated June 9, 1961, which has not been appealed.

This matter is being coursed through the Department of Justice, in accordance with' the resolution of the Cabinet dated February 29, 1956."

On July 19, 1961, Secretary of Justice Mabanag replied as follows:

"Respectfully returned to the Secretary of Foreign Affairs, Manila, hereby approving the extension up to June 9, 1963 of the stay of CHUA GIOK KING alias INSA LIM, RICHARD LIM alias LIM WAI LIM, seven (7) years old, LIM TONG TONG, two (2) years and six (6) months old, and DOUGLAS LIM alias LIM WAI TIONG, one (1) year old, all Chinese, who are the wife and minor children of Lim Chiao Cun, a resident Chinese businessman whose petition for naturalization was granted by the "Court of First Instance of Manila in a decision rendered on June 9, 1961, it appearing that no appeal has been taken by the Office of the Solicitor General from said decision (see attached Certificate of the Clerk of Court dated July 15, 1961, and the Certification of Mr. Herminio Z. Florendo, Chief, Docket Division, Office of the Solicitor General, dated July 17, 19(51). The herein petitioners will become citizens by operation of law, if "otherwise qualified, when the decision of the court becomes executory "after two years from its promulgation", pursuant to Republic Act No. 520. (Opinions No. 332, s. 1956, No. 258, s. 1957 & Nos, 18 & 32, s. 1958.) It is understood, however, that the extension herein granted is subject to the condition that Chua Giok King, Richard Lim, Lim Tong Tong, and Douglas Lim 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."

Upon the advent of a new administration after the 1961 elections, the new Secretaries of Foreign Affairs and Justice ruled that the power to extend the stay of aliens was vested by Law not in them but in the Commissioner of Immigration; and, accordingly, said officer, on August 29, 1962, issued Immigration Circular No. V-101, approved by the Secretary of Justice, abrogating all extensions of stay of temporary visitors. Private respondents, Lim Chiao Cun, his wife Chua Giok King, and their children then filed action in the Court of First Instance of Manila to enjoin the petitioner, Commissioner of Immigration, from enforcing, as to them, and their bond, the aforesaid Circular. The lower court issued a writ of preliminary injunction to that effect. After issue was joined, and after several incidents, the Commissioner, represented by the. Office of the Solicitor General, petitioned on June 25, 1963 for the lifting of said injunction since the extension granted by Secretaries Serrano and Mabanag to the respondent visitors had already expired on June 9, 1963. But upon opposition of the latter, the Court refused to dissolve the injunction. Thereupon, the Commissioner resorted to this Court, alleging abuse of discretion amounting to excess of jurisdiction.

Up to the present, Lim Chiao Cun, husband of respondent Chua Giok King, and father of respondent minors Richard, Helen, and Douglas Lim, has not assumed Filipino citizenship. While declared entitled to naturalization by final judgment, his right to take the oath of allegiance at the end of the probationary period set by statute was contested by the Solicitor General, and his case is still pending appeal. His wife and children, therefore, remain aliens.

Many questions have been raised in the case now at bar, such as (a) whether or not the President of the Philippines, being empowered by section 47 of the Immigration Act (C.A. No. 613 as amended) "to admit as non-immigrants, aliens not otherwise provided for, who are coming for temporary period only", has authority to change the status of temporary visitors and relieve them from the obligation imposed expressly by section 9 of the law, as amended by Republic Act No. 503) to depart first to some foreign country and secure the proper visa before permanent admission; (b) whether, assuming that the President has any such power, he may delegate it to a Department Secretary; and (c) whether an extension of stay granted to a temporary visitor may be revoked before expiration of the extension. However, we deem it unnecessary to rule upon these questions, which are also pending decision on, the merits in the court below, ' because we agree with the Solicitor General that, even if

these visitors were validly granted by the Secretaries of Justice and Foreign Affairs (Serrano and Mabanag) an extension up to June 9, 1963, and the prorogation had not been revoked, these aliens are now subject to expulsion by the Commissioner of Immigration, their extended period of stay having expired without further prolongation by competent authority.

It is argued for these visitors that the indorsements of the Secretaries of Justice and Foreign Affairs (heretofore quoted) effected a change, in their status from temporary visitors, to special non-immigrants, entitled to residence until the naturalization, case of the husband, Lim Chiao Cun, is finally decided. We find this proposition untenable, because both indorsements clearly specify that they were only granted "a period of stay up to June 9, 1963", a fixed date that can not imply an indefinite stay. It is to be presumed that both Secretaries knew that the final acquisition of Filipino citizenship by the husband Lim Chiao Cun can not be set, under the existing law, at any definite date after a judgment declaring him qualified for naturalization, since later on he may be found unfit to take the oath of allegiance; and that a definite terminus for the stay of his wife and children is incompatible with an intent to let them stay until the end of the naturalization proceedings.

Another circumstance indicating that the terminal date, June 9, 1963, was wholly unconnected with Lim Chiao Can's naturalization case is the requirement of the Secretary of Justice that the visiting wife and children "shall secure re-entry permits to Hongkong valid at least two months over and beyond their extended stay"; for this condition connotes the idea that the visitors must leave within 2 months from the expiry date of the extension, without regard to the result of the naturalization case.

Finally, an extension of an alien's period of stay, being a matter of grace, and not of right, should be strictly interpreted.

As it is not disputed that further staying here of these visitors has not been authorized, the refusal of the court to dissolve its preliminary injunction after June 9, 1963, as prayed for by the petitioning Commissioner, in so far as the stay of these visitors are concerned, was against the law, and, therefore, in abuse of discretion and excess of jurisdiction. We have heretofore discussed the imperative reasons for requiring temporary visitors to adhere strictly to their authorized periods of sojourn, and need not repeat them here (*Ong Se Lun vs. Board of Immigration* 95 Phil., 785; *Kua Suy vs. Commissioner of Immigration*, L-18790, October 31, 1963; *Choy Fa vs. Commissioner*, L-20597, November 29, 1963).

That the preliminary injunction issued by the respondent judge Area sought to restrain also the confiscation of the bond given by Lim Chiab Cun until final adjudication does not justify his refusal to permit the Commissioner of Immigration to proceed with the expulsion of respondents Chua Giok King and her three children, whose authorized stay had incontestably expired. The propriety and legality of the confiscation of the bond can be litigated independently.

WHEREFORE, the writ of certiorari. prayed for is granted, and the preliminary injunction issued by respondent Judge Francisco Area, in Case No. 51699 of the Court of First Instance of Manila, as well as his order of July 29, 1963, in so far as they restrain the Commissioner of Immigration from compelling the departure from the Philippines of respondents Chua Giok King alias Insa Lim, with her children Richard, Helen, and Douglas, surnamed Lim, are hereby annulled and set aside, without prejudice to further proceedings conformable to this opinion. Costs against the respondents above-named.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Parades, Dizon, Regala and Makalintal, JJ., concur.

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