

## KWOK LAM LIEN, ET AL., PETITIONERS AND APPELLEES, RS. TUB HON. MARTINIANO P. VIVO, AS ACTING COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.

*G.R. No. L-22354. March 31, 1965*

Ponente: PAREDES, J.

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### PAREDES, J.:

Petitioners herein are Chinese citizens who arrived in the Philippines at various dates and entered as "temporary visitors". A number of them came to this country with their minor children. As temporary visitors, they succeeded in securing several extensions, the latest authorized dates of stay having expired as follows:

|                     |                     |    |
|---------------------|---------------------|----|
| Kwok Kam Lien ..... | Aug. 28, 1962 ..... | 9  |
| Chua Lee Guat ..... |                     |    |
| Sep. 2, 1962 .....  |                     | 9  |
| Ng Hui Ching .....  | Sep. 3, 1962 .....  | 17 |
| Tsoi Sau Chun ..... | Sep. 3, 1962 .....  | 14 |
| Lee Keng Chao ..... | Aug. 29, 1962 ..... | 11 |
| Lam Pek Yuh .....   | Aug. 29, 1962 ..... | 15 |
| Wong Shu Kuk .....  | Aug. 29, 1962 ..... | 11 |
| Sy Siok Hian .....  | Sep. 4, 1962 .....  | 7  |
| Tsai Bun .....      | Sep. 3, 1962 .....  | 15 |

On or about February, 1962, allegedly upon solicitations of the New Administration for foreign capital, five (5) of herein appellees requested the President of the Philippines, that they be allowed to invest in the Philippines. The request was indorsed by the then Acting Commissioner of Immigration, Agapito R. Conchu, who suggested favorable action on the premises, the same being in pursuant to the socio-economic policy of the President (Exh. B). While their requests were pending action, petitioners herein sought further extensions of their stay as temporary visitors. The extensions were denied by the President in a letter dated July 31, 1962, of the following tenor:

"With reference to your separate requests for the indefinite extension of the stay of Kwok Kam Lien, Ng Hui Ching, Tsoi Sau Chun, Cihia Lee Guat and Lee Keng Chao, all Chinese temporary visitors, who propose to make investments in this country in response to the administration's invitation for foreign investments, I wish to inform you that, as held by the Acting Commissioner of Immigration, there is no legal basis for granting the

requests on the reason given. Moreover, it is believed that foreigners may make 'investments locally without necessarily taking up residence here or being allowed prolonged stay. In view thereof, this Office is constrained to deny the petitions.

"As to your request for presidential sanction on the desire of said aliens to make investments in the Philippines and for guidance on the procedure to be followed in the implementation of their investment projects, it is suggested that the matter be taken up directly with the Chairman of the National Economic Council and the Secretary of Commerce and Industry who may thereafter make the necessary recommendations to this Office."

Under date of August 29, 1962, respondent Commissioner of Immigration Martiniano P. Vivo, promulgated "Immigration Circular No. 101, providing that the authorized stay of all "bonded alien temporary visitors who arrived in the Philippines in 1961 and prior years are hereby terminated, and requests for extension of such periods will not be entertained hereafter," and that "all of said alien temporary visitors should leave not later than September 19, 1962, if their prior authorized stay expires later than September 19, 1962, and those having dates of expiry before said date should leave on the corresponding expiry dates." (Annex F)

Alleging that the respondent Commissioner acted with grave abuse of discretion, amounting to lack of and/or excess of jurisdiction, in issuing and enforcing the said circular, for the same has no basis in law, it is high-handed and arbitrary, denies due process, the petitioners presented with the CFI of Manila a petition for Prohibition and Mandamus with Preliminary Injunction, directed against the Commissioner of Immigration, praying that he be enjoined or restrained (1) from enforcing Circular No. 101 against herein petitioners; (2) from doing or performing any act or acts, or taking any action or actions affecting the petitioners in their persons, properties and/or interests; (3) that an Ex-Parte Order issue, during the pendency of the case, to allow them to deposit Three (3) months Extension Fees, at P10.00 per month for each of them, said deposit to continue until the final determination of the case; and that Immigration Circular No. 101, be declared illegal, unconstitutional and void. On September 5, 1962, the lower court issued a writ of preliminary injunction as prayed for, and granted the prayer to allow petitioners to deposit with the court the extension fees.

The Solicitor General moved for a reconsideration of the Ex-Parte Order granting the Writ of Preliminary Injunction, the resolution of which on September 29, 1962, v;v3 hold in abeyance until the case is finally decided on the merits. In due time, the State presented its Answer to the petition, and interposed Special and Affirmative Defenses.

After a protracted trial, wherein petitioners endeavored to prove that they have already invested considerable amounts of money in various businesses, the lower court rendered judgment, the pertinent portions of which recite:

"\* \* \*. This Court is of the belief that the authority granted by the Office of the President allowing the petitioners to invest in the Philippines operates in derogation of petitioners' temporary visitors' status under Section 9(a) of the Philippine Immigration Act as amended. And although for a moment petitioners under the law became aliens without any covering law, Section 47 (a) 2 of the same Act under and by virtue of which the presidential directive appears to have been issued by the Office of the President comes immediately to the rescue of the petitioners.

"The said Section 47 (a) 2 provides that, "Notwithstanding the provisions of this Act, the President is authorized: (a) When the Public interest so warrants.

(1) \* \* \*

(2) To admit as non-immigrant; aliens not otherwise provided for by this Act, who are coming for temporary period only under such conditions as he may prescribe. \* \* \*."

This Court is of the opinion that the public interest that is warranted 111 the exercise of the provisions of this Section 47 (a) 2 is clearly the official government invitation of foreign capital mentioned Prominently in the said presidential directive of July 31st and August 17th as the basis of the authority granted the herein petitioners allowing them to invest in the Philippines. And the covering law of their immigration status is Section 47 (a) 2 already aforestated legally vesting the petitioners with the status of special non-immigrant under the said covering law. \* \* \*. The immigration Circular No. V-101 is inapplicable to the instant case of the petitioners inasmuch as said circular seeks application on temporary visitors and1 aliens other than those covered by the exercise of the provisions of Section 47 of the Philippine Immigration Act of 1940 and petitioners are held by this Court to be under the provisions of Section 47.

"Wherefore, Judgment is hereby rendered—

(1) ordering the respondent to register the petitioners as special non-immigrants under Section 47 (a) 2 of the Immigration Act of 1940, as amended, in lieu of their recorded 'non-immigrant status under Section 9 (a) of the same Act;

(2) authorizing the petitioners to continue operating their business establishment until December 31, 1967 and to liquidate their business investments, repatriate their capital and depart for their country of origin on or before said date; and

(3) making permanent the writ of preliminary injunction heretofore issued."

The decision is now before Us on appeal, on five (5) counts, which converge into three propositions, to wit:

(1) Do petitioners have the right to stay in the Philippines, inspite of the expiration of their respective authorized sojourn in the Islands?

(2) Did respondent act without and/or in excess of jurisdiction or with grave abuse of discretion in promulgating Circular No. V-101 and ordering appellees' departure?;

(3) Was it proper for the trial court to order the withdrawal of the deposits of extension Tees?

Appellees predicate their right to stay in the Philippines on the assumption that since the President had invited investments of foreign capital in the country, their status as temporary visitors, has been automatically changed to that of special non-immigrants covered by Section 47 (a) 2 of the Immigration Act. The lower court shared their view, which, to Us, is untenable. It is true that the President can, when public interest so warrants, admit aliens as non-immigrants. It is equally true, however, that the directive of the President dated July 31, 1962, did not indicate at all, that he (the President) was admitting appellees as non-immigrants. On the contrary, the same communication pointed out that there was no legal basis for granting the requests for indefinite extension of stay of the appellees, as suggested by the then Acting Commissioner of Immigration. Had the intention of the President been to change the status of appellees from temporary visitors to special non-immigrants, his directive should have clearly stated so. We should not assume the intent of the President, specially on matters of this nature, without the most convincing and positive proof to that effect.

When the respondent Acting Commissioner of Immigration ordered the appellees to leave the country, lie was merely performing a duty enjoined upon him by law (*Ang Liong vs. Comm. of Immigration*, 160 Phil. 793. The Commissioner had jurisdiction over the matter of appellees' stay in the Philippines and to order their departure at the expiration of their authorized stay. His acts, herein denounced, therefore, were valid exercise of jurisdiction, and cannot be reached by prohibition (Sec. 2, Rule 65, Revised Rules). The duty to administer immigration laws of the country falls on the shoulders of the Commissioner of Immigration. To prevent the exercise of such duty, it must be sufficiently shown that there is lack or excess of jurisdiction or grave abuse of discretion (*Ma-ao Sugar Central Co., Inc. vs. Barrios*, 79 Phil., 666). There is grave abuse of discretion when there is a capricious and

whimsical exercise of judgment, as is equivalent to lack of jurisdiction (*Alafriz vs. Nable*, 72 Phil., 278). No such abuse of exercise of judgment, was shown in the case at bar.

Mandamus lies when one is unlawfully excluded from the enjoyment of a right to which he is entitled (Sec. 3, Rule 65, Revised Rules). Appellees have not shown that they are entitled, as matter of clear right, to remain in the country. Their right, if any, is dubious, uncertain and nebulous. Having entered the country as temporary visitors, and the directive they claim to have changed their status not being clear, petitioners can not now claim a different status (*Ang K Liong vs. Hoard*, L-8289, May 18, 1965). But even if grant, for purposes of argument, that there was a change in the status of appellees, still this circumstance will not entitle them to a prolonged stay, over and beyond the period stated in their permits. In the case of *Shui Shua Man vs. Galang*, L-16486, Dec. 30, 1961, it was held that the change of status from temporary visitor to a pre arranged employee, does not alter the character of the stay as temporary visitor, subject to deportation upon expiration of the period granted. Again, even if those who have investments were allowed to stay under the covering law (Section 47 (a) 2 of the Immigration Act), still, We find no justification for the prolonged stay of their children.

Referring to the withdrawal of the deposits, it is quite evident from the allegations of the petition itself, that the amount deposited are fees due the government. This being the case, appellees no longer have any right to the money and the court a quo erred in authorizing its withdrawal. While it is true that the deposits were in lieu of extension fees, it cannot, however, be disputed that appellees had succeeded in prolonging their stay in the Philippines in virtue thereof. Moreover, the said deposits were self-imposed, as a condition for the granting of the writ of preliminary injunction and for the continuance of the same.

In this connection, We would like to remind the trial court what We have stated in a recent decision:

"This case, and many others of the same nature that this Court has had to decide, are strong evidence of a tendency on the part of certain aliens to enter on visitor's permits and thereafter rely on the improvident issuance of the injunctions in immigration cases by the Courts of First Instance; for even if the error is subsequently corrected on appeal said aliens are meanwhile able to unduly prolong their illegal stay, in violation of our country's immigration law and policies. We cannot, therefore, overemphasize the need for extreme caution in issuing such injunctions. Aliens who voluntarily enter under temporary permits must be strictly required to abide by the periods fixed therein, because laxity in this matter would merely encourage entry under false pretenses." (*Kua Suy vs. Coram. of Immigration*, G.R. No. L-13790, Oct. 31, 1963.)

Premises considered, the decision appealed from should be, as it is hereby reversed, and another entered, declaring the appellees without right to stay in the Philippines and/or to be considered special non-immigrants; the respondent Commissioner of Immigration with power and authority to order their departure. It is further ordered that appellees return the amount of P1,700.00 to the government and that each one of them, pay the government the same amount of P10.00 per month extension fees, from the time they began staying in the Philippines, over and beyond the period authorized by the Commissioner of Immigration, until they leave. The injunction by the lower court having been issued illegally and improvidently should be, as it is hereby, dissolved. Costs against appellees.

Bengzon, C. J., Bautista Angelo, Conception, Reyes, J.B.L., Barrera, Dizon, Regala, Maknilita, Bengzon, J.P., and Zaldivar, JJ., concur.

Decision reversed.

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