

LU CHOY FA, ET AL., PETITIONERS AND APPELLANTS, VS. COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. L-20597. November 29, 1963

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

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

On November 14, 1961, petitioners Lu Choy Fa and her minor children Ong Chui Man, Ong Yu Ling and Ong Chui Cheung filed with the Philippine Consulate General in Hongkong a sworn application for non-immigrant passport visa to the Philippines (Exhibits A, A-1, A-2, A-3). On November 15th, the Consul General issued in favor of the applicants temporary visitors visa No. 171 (Exhibit D).

In accordance with immigration rules and regulations, Ong Tai, petitioner's husband and father, respectively, filed a cash bond of P22,000 in behalf of the petitioners to guarantee their faithful compliance with the terms and conditions of their admission as temporary visitors (Exhibit E).

On November 18, 1961, the petitioners arrived and were admitted to the Philippines as temporary visitors for a period of two months ending on January 18, 1962. Upon petitioners' repeated requests, the respondent extended the period of their temporary stay to February 18th, then to March 15th, again to March 30th, and finally to April 15, 1962.

On December 27, 1961, the court of First Instance of Manila (Branch XIX) entered a decree holding that Ong Tai, the petitioner's husband and father, respectively, has all the qualifications and none of the disqualifications to be admitted a citizen of the Philippines and thus granted his petition (Annex A, petition). From such decree the Government has appealed (G.R. No. L-19418).

On April 12, 1962, the petitioners tendered to the respondent a check for P840 covering extension fees allegedly due from them for the period of April 15, 1962 to December 27, 1963, to enable them to stay in the Philippines while Ong Tai is awaiting the expiration of two years from the date of promulgation of the decree granting his application for admission as a citizen of the Philippines. The respondent refused to accept payment of the fees because he had declined to extend the period of their temporary stay after April 15, 1962.

Hence, the instant proceeding was filed in the court of

First Instance of Manila (Branch XIX) by the petitioners to prevent their arrest, confinement, and deportation and the confiscation of their cash bond of P22,000 filed in their behalf by Ong Tai (Case No. 50127). As prayed for, the trial court issued a writ of preliminary injunction enjoining the respondent from arresting, confining and deporting the petitioners and confiscating said cash bond filed for them.

After hearing, during which both parties introduced only documentary evidence in support of their respective claims and defenses, on October 22, 1962, the trial court rendered judgment, holding that, since they were admitted into the Philippines as temporary visitors for a definite period of time which had already expired, the petitioners are duty bound to return to their country of origin; and that there is nothing to justify the extension of

the petitioners' period of temporary stay beyond the limit authorized by the respondent.

Upon the foregoing reasons, the trial court denied the petitioners' prayer for relief and dissolved the writ of preliminary injunction which it had theretofore issued.

On November 7, 1962, the petitioners filed a motion for reconsideration. On November 12, 1962, the lower court denied said motion; but, upon further motion of the petitioners, it reinstated the writ of preliminary injunction therefore issued.

The petitioners appealed to this Court.

The appeal is without merit.

We have ruled in a series of decisions (the latest being *Kua Suy, et al. vs. Commissioner of Immigration*, L-13790, October 31, 1963) that a temporary visitor acquires no right to remain in the Philippines beyond the authorized period, and that upon its expiration the duty of the Immigration Commissioner to expel them becomes inescapable.

We have also ruled that the fact that the visitor's husband has been declared by the Court of First Instance to be qualified for naturalization does not automatically vest citizenship upon him; that the change of nationality does not occur until the lapse of the probationary period and the fulfillment of the conditions prescribed by law. This being so, a mere naturalization decree can not vest upon the applicant's consort and next of kin the right to remain in this country beyond the time set in the entry visa and by any valid extensions thereof (*Kua Suy, et al., vs. Commissioner of Immigration, supra*). It follows that no error was committed by the court below in holding that the authorities' refusal to extend their term of stay terminated these visitor's right to remain here. In truth, if the preliminary induction had not been issued *ex parte*, and if the Commissioner had been only given a hearing before the restraining order was issued, appellants' lack of on justification for remaining in the Islands would have become speedily apparent, and their exclusion could have proceeded without unnecessary delay.

The duty of consorts to live together is irrelevant to the issue in the case, that concerns only the right of a sovereign state to determine what aliens can remain within its territory and under what conditions they can stay therein.

Appellants finally invoke an alleged Cabinet resolution of 29 February 1956, to allow the members of the immediate family of applicants for naturalization to remain until naturalization is completed. No evidence of any such policy has been furnished; the text of the resolution is merely to—

"indorse the request of the above named Chinese" (*Go Siok Hue, Go Soo Lim, and Baby Go*) "as well as those of other aliens similarly situated, to the Secretary of Justice and the Secretary of Foreign Affairs for determination of the question involved, giving them at the same time, power to act in the matter."

As may be seen, no universal rule was laid down or contemplated; the plain import of the preceding resolution was that the two Secretaries (of Justice and of Foreign Affairs) should act on each individual request in accordance with law. There being no showing that in the case of these particular appellants the two Secretaries have granted any extension beyond April 15, 1962, the Immigration Commissioner's right and duty to exclude these aliens from the Islands becomes indubitable.

Moreover, if the purpose of these appellants had been from the beginning to take up residence until the husband *Ong Tai* should have become naturalized, on the theory that the Cabinet resolution of February 29, 1956 authorized them to do so, then they should have so stated in their application for entry, instead of solemnly representing that they would be only temporary visitors. Under the circumstances, their application for a

temporary visitor's visa appears to be a fraud, perpetrated on the Immigration authorities of the Republic, that denies the holders thereof any right to favorable treatment.

We reiterate the following observations made in our decision in *Chiong Tiao Bing vs. Commissioner of Immigration*, 99 Phil., 1020; 55 Off. Gaz. 6551, on pp. 6552-6553:

"* * *. It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. * * *. Any other ruling would, as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort in examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The dangers inherent in such a ruling are self-evident."

Wherefore, the decision appealed from is affirmed. Costs against appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepción, Barrera, Paredes, and Makalintal, JJ., concur.

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