

**HON. MARTINIANO P. VIVO, AS COMMISSIONER OF IMMIGRATION,
PETITIONER, VS. HON. GAUDENCIO CLORIBEL, AS JUDGE OF THE
CFI OF MANILA, TSOI SAU CHUN, CHUA LE GUAT AND HER MINOR
CHILDR...**

G.R. No. L-25442. June 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This case is an offshoot of G.R. No. L-22354, decided by this Court on March 31, 1965.

It will be recalled that the herein private respondents are Chinese citizens who, on various dates, arrived in the Philippines as temporary visitors, and succeeded in securing several extensions of their stay in this country.

On or about February, 1962, allegedly upon solicitation of the then Macapagal administration for foreign capital, five of these respondents requested the President of the Philippines to be allowed to invest some money in the Philippines. The request was indorsed by the then Acting Commissioner of Immigration who suggested favorable action thereon, in line with the socio-economic policy of the Government. While their requests were pending, the said aliens sought further extensions of their stay as temporary visitors but these were denied by the President; portion of the letter of denial reads thus:

"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 recommendation to this Office."

On August 29, 1962, the Commissioner of Immigration, issued 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 and that all said aliens 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."

Alleging that the Commissioner of Immigration acted with abuse of discretion amounting to lack of and/or excess of jurisdiction in issuing the said circular, the aliens filed with the Court of First Instance of Manila a petition for prohibition and mandamus with preliminary injunction against the enforcement of said circular. The lower court issued a writ of preliminary injunction against the Commissioner and granted the prayer to allow the said aliens to deposit with the court their extension fees.

After a protracted trial, the lower court rendered judgment, thus:

"x x x This court is of the opinion that the public interest that is warranted in 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 aforesaid 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 and 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."

The Commissioner of Immigration was by that decision ordered to register the aliens as special non-immigrants under Section 47(a) 2 of the Immigration Act of 1940, in lieu of their recorded non-immigrant status; to authorize them 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 making permanent the writ of preliminary injunction theretofore issued.

Upon appeal here (said G. R. No. L-22354) the CFI decision was reversed, this Court declaring:

"x x x 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 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."

The aliens failed to leave the country upon finality of the decision. Instead, on October 11, 1965, they wrote the Commissioner of Immigration requesting that they be allowed the "use and enjoyment of their rights to a valid and lawful extended stay decreed in their favor by the Supreme Court of the Philippines in its decision in Case No. G. R. L-22354, at least temporarily until they leave and depart for their country of origin not earlier than the termination of President Macapagal's Socio-Economic Program."

This request was denied by the Commissioner of Immigration and so the aliens filed again with the Court of First Instance of Manila, a petition for mandamus with preliminary injunction praying for judgment ordering the respondent to accept and receipt for all monthly payments of P10.00 per person extension fees; and ordering the respondent Commissioner to schedule the departure of the aliens not earlier than the period contemplated in the socio-economic program of the President (Civil Case No. 63135).

On October 29, 1965, the herein respondent Judge of the Court of First Instance gave due course to the petition and issued an order directing the Commissioner of Immigration "to desist from executing the acts complained of."

This petition seeks to annul the said order of October 29, 1965.

Requiring the herein respondent to answer the petition, this Court, at the commencement of these proceedings on December 23, 1965, issued a writ of preliminary injunction, restraining the respondent Judge, in the meanwhile, from enforcing the order dated October 29, 1965, and from otherwise taking cognizance of and assuming jurisdiction over Civil Case No. 63135.

On January 3, 1966, counsel for herein private respondents filed with this Court a manifestation praying that the case be dismissed for lack of cause of action, attaching thereto a true copy of a "Motion to Withdraw Petition" in Civil Case No. 63135, filed by said respondents in the Court below, pertinent portions of which read:

"1. That by virtue of a Supreme Court resolution dated December 14, 1965, copy attached as ANNEX "A" hereof,

received by petitioners on December 24, 1965, thru ordinary mail, and issued in Case No. G. R. L-22354 (Kwok Kam Lien et al. vs. The Hon. M. P. Vivo, etc.) the Supreme Court has just remanded to this very court the said Case No. G. R. No. L-22354.

"2. That meanwhile, when this case was filed with this Honorable Court on October 28, 1965; it was after respondent Commissioner of Immigration sought to arrest your petitioners on October 22, 1965, two (2) days after the reglemen-tary period expired since peti-tioners received the denial of their last motion to reconsider the Supreme Court decision in said Case No. L-22354 which denial was received by petitioners on September 25, 1965, such that the cause of action of your petitioners in this case was based primarily on the Supreme Court deci-sion having become final and executory on October 20, 1965;

"3. That the aforestated reso-lution of the Supreme Court dated December 14, 1965, was in virtue of a separate motion for reconsideration NG HUI CHING, which in effect further extended the regle-mentary period without the knowledge of herein petitioners;

"4. That in view of the said resolution of the Supreme Court dated December 14, 1965, the in-stant petition with this Honorable Court in the above-entitled case is now left without support on its cause of action and therefore your petitioners has no other alterna-tive than to withdraw their petition in this case."

In the meanwhile, this court denied the prayer for dis-missal of the petition. The Solicitor General then filed his memorandum for the petitioner. In their re-ply memorandum, respondents reiterate their prayer for dismissal of the case, calling our attention to the fact that the Solicitor general, while having discussed the issues raised, has forgotten to make mention of the above-quoted manifestation filed by respondents.

The respondent judge was served with the writ of preliminary injunction, issued by this Court, a day be-fore respondents' withdrawal motion in Civil Case No. 63135. Said injunction having restrained him from fur-ther taking cognizance of the case, the Judge could not issue any order of dismissal pursuant to the motion, al-though from the facts above narrated, the discontinuance of Civil Case No. 63135 will not possibly yield any dis-advantage or prejudice upon the Government. The respondent Judge should thus grant the respondent's motion to withdraw and thereby dissolve the restraining order is-sued therein on October 29, 1965.

Upon the foregoing considerations, and by virtue of the withdrawal of said Civil Case No. 63135 in the court below, this case has become moot and academic.

WHEREFORE, the petition is hereby dismissed, without costs, with the pronouncement, however, that the decision of this Court in G. R. No. L-22354 be immediately and fully implemented. Costs against private respondents.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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