

JAN BAYER, PETITIONER AND APPELLANT, VS. THE HONORABLE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. L-16932. September 29, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

In the Court of First Instance of Manila, Jan Bayer filed a petition for certiorari with preliminary injunction seeking to set aside "an order of the Board of Commissioners of the Bureau of Immigration compelling him to leave the country." At the commencement of the action, a writ of preliminary injunction was issued prohibiting the arrest and deportation of petitioner pending the consideration and resolution of his petition. After the parties had filed their responsive pleadings, they presented a stipulation of facts. Based upon this agreement of facts and the respective memoranda submitted by both parties, the court rendered a decision dismissing the petition. The petitioner appealed to the Court of Appeals but that court has certified the case to Us on the ground that only questions of law are involved.

The facts of the case as stipulated by the parties are as follows:

The petitioner is a Polish citizen, of legal age, single, and a holder of an expired Polish passport. He arrived at Manila on March 17, 1949 and was allowed to land as transient under section 9 (b) of the Philippine Immigration Act of 1940, as amended, and to remain herein for a period which expired on May 15, 1949. Failing to leave within this specified period, the petitioner was issued a warrant of arrest by the immigration authorities. Deportation proceedings was accordingly instituted under this warrant, but petitioner requested for an extension of his temporary stay, and in a letter of the then Acting Commissioner of Immigration, his petition was granted for a period ending February 9, 1950. This was further extended to March 25, 1950 by the same official.

On April 3, 1950, the said Acting Commissioner of Immigration, upon petitioner's request, allotted to the Philippine Consulate at Hongkong Polish non-preference immigration quota No. 1 for the use of said petitioner. Pursuant to this, he was advised to depart for Hongkong to secure his visa from the Philippine consulate thereat, with the warning that failure on his part to leave the country for that purpose would render the allotment automatically cancelled. Upon petitioner's failure to leave, the Commissioner of Immigration, on November 6, 1950, issued a second warrant for his arrest. The petitioner, however, requested permission to have another quota number allotted to him for the year 1951, and acting favorably on this request, the Board of Commissioners, under a decision dated December 28, 1950, suspended the deportation proceedings then pending and allowed him to reside in the Philippines until he could secure his new allotment, for which he was for a second time required to depart for Hongkong to secure a visa. Having been again unable to secure this visa, petitioner once more requested for another immigration quota number for 1952, this time with the prayer that the visa be waived by the Office of the President in order that he would not have to leave the country for Hongkong. This was denied by the said office on May 16, 1952.

In a letter dated August 11, 1952, from the Commissioner of Immigration, the petitioner was granted a further extension of 20 days ending August 31, 1952 to stay in the country. On account of his failure to depart on or before that date, another warrant of arrest was issued against him on November 24, 1952 and deportation proceedings was again instituted.

Before the Board of Commissioners could render a decision, the Commissioner of Immigration, on December 9, 1952, upon petitioner's filing of a cash bond of P3,000.00 and surety bond of P5,000.00, issued an order releasing the latter temporarily from custody pending his voluntary departure not later than June 1, 1953.

On May 26, 1953, Andres Soriano and Co. filed an application for prearranged employment for the petitioner but this application was denied by the Board of Commissioners on July 21, 1953.

On September 1, 1954, the petitioner, thru counsel, wrote the Secretary of Foreign Affairs requesting that he be authorized to remain in the Philippines and be allowed to pursue a lawful occupation. This letter was indorsed to the Commissioner of Immigration, and on October 12, 1954 the First Deputy Commissioner denied the petition on the ground that the Commissioner of Immigration is devoid of power or discretion to permit alien temporary visitors or transients to remain in this country for a period exceeding one year from the date of entry. Petitioner was again given 15 days grace within which to depart voluntarily.

On November 3, 1954, petitioner wrote direct to the President of the Philippines begging that he be granted political asylum in this country. This letter was indorsed to the Secretary of Foreign Affairs who, on a return indorsement, dated November 17, 1954, also recommended for the denial of the request, stating that there is a derogatory information against the petitioner in the possession of the Military Intelligence Service. It was on this same date that the petitioner instituted the present proceedings.

The action must fail for being premature, it appearing that the deportation proceeding object of the petition is still pending before the Board of Commissioners of the Bureau of Immigration.

As shown from the facts narrated above, while it is true that petitioner had been issued warrants of arrest, on three different occasions, on account of his repeated violation of the conditions of his permit to temporarily remain in this country, his expulsion had always been stayed by the immigration authorities, in the latter's consideration to give him a chance to legalize his stay here, as when on quite a number of times, they allowed him the opportunity to convert his status from a temporary visitor to a non-quota immigrant. The reason why deportation proceedings instituted under the last warrant had not yet been terminated is that, before the Board of Immigration Commissioners could render a decision thereon, petitioner made a request for his temporary release under bond pending his voluntary departure, which was granted on December 9, 1952, subject to certain conditions, one of which is that "the petitioner shall depart herefrom at his own expense as soon as conveniently possible, but in no case later than June 1, 1953." Petitioner made another violation of his permit when he did not leave on or before the date just mentioned. And again, the immigration authorities could not act upon this violation by resuming deportation proceedings, because the petitioner, in an effort to further prolong his stay, made appeals, first with the Secretary of Foreign Affairs, and finally direct to the Chief Executive, to grant him political asylum. It was upon denial of these requests that the petitioner filed his petition for certiorari without waiting for the decision of the immigration authorities on his proposed deportation.

In the case of *Johnson vs. the Commissioner of Immigration*, 101 Phil., 654; 56 Off. Gaz., (44) 6767, the petition for habeas corpus questioning the authority of the immigration authorities to arrest and detain the petitioner, was denied, for the reason that the same had been filed before the Board of Commissioners of the Bureau of Immigration has rendered its decision. As in that case, there appears to be no order or decision of the immigration authorities in this instance that could be the object of certiorari proceedings, and it does not appear that they are

unduly delaying their decision.

"Unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it can not deport him or unless the detainee is being held for too long a period our courts will not interfere. * * *." (Borovsky vs. Commissioner of Immigration and Director of Prisons, 84 Phil, 16., cited in Johnson vs. The Commissioner of Immigration, supra.)

In view of the foregoing, and without going into the other various issues raised in this appeal, the decision of the lower court dismissing the petition for certiorari is hereby affirmed, with costs against the petitioner.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., and Paredes, JJ., concur.

Bautista Angelo, Barrera and Dizon, JJ., on leave, took no part.

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