

TIU CHUN HAI AND GO TAM, PETITIONERS AND APPELLEES, VS. THE COMMISSIONER OF IMMIGRATION AND THE DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, RESPONDENTS AND APPELLANTS.

G.R. No. 10009, December 22, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Manila, in Civil Case No. 27885, entitled "Tiu Chun Hai, et al., petitioners vs. Commissioner of Immigration, et al., respondents," granting the petition for a writ of habeas corpus and ordering the immediate release of the petitioners from confinement.

Petitioners are citizens of the Republic of China who have overstayed their temporary visitor's permit in the Philippines. Go Tarn was admitted as a temporary visitor in the Bureau of Immigration in the year 1947, while Tiu Chun Hai, on the 23rd of December, 1949. They had filed bonds for their stay, and from time to time have secured extension of their permits. On August 31, 1955, the Commissioner of Immigration issued warrants for their arrest. The warrant for the arrest of Tiu Chun Hai states that his permit to stay as transient has already expired (Exh. "3"), while that of Go Tarn is to the effect that his deportation was ordered on October 12, 1950, and pending said deportation he was released under bond with the condition that he would not change his address nor be employed without the written consent of the Commissioner of Immigration, but these conditions were violated by him (Exh. "4"). The warrants of arrest expressly order that the petitioners be brought before the Commissioner for them to show cause why they should not be deported under the provisions of the Philippine Immigration Act of 1940.

At the hearing of the case before the court below, the petitioners claimed that their continued detention in the Bureau of Immigration was illegal; that as regards Tiu Chun Hai, no deportation proceedings have yet been instituted against him, nor any investigation ever conducted to show why he should be deported. With respect to Go Tam, it is claimed that his temporary permit to stay has not expired and there is no justification for the denial of the extension of his stay. Against the above claims the Government argued that the detention of the petitioners was in accordance with law because they are being detained by virtue of a warrant of arrest duly issued by the Commissioner of Immigration, who has the authority or jurisdiction to hold them and subject them to deportation proceedings; that the warrants for their arrests are temporary complaints, specifying the cause therefor, and the causes specified therein are sufficient for their deportation, and that in any case the delay in the deportation proceedings against them is not attributable to the Commissioner of Immigration, and, therefore, such delay can not be a ground for the granting of the petition.

The court a quo found that the petitioners have been paying the corresponding fees for their stay until the year 1955, and held that since they do not belong to an enemy country and no criminal charges have been filed against them, nor a judicial order for their arrest issued, they cannot be confined indefinitely; that if the purpose of the Commissioner of Immigration is to retain control and vigilance over their persons so that when deportation

becomes possible, he can arrest them, such end may be accomplished by taking the necessary precaution, without depriving them of their liberty. Against this decision, the respondent appealed to this court.

With respect to petitioner Tiu Chun Hai, the lower court found as a fact that when his arrest was ordered, his right to continue his temporary stay had been extended to December 31, 1955 because he has paid the corresponding fees for services in accordance with Exhibit "N". We have examined Exhibit "N" and we find that the payment by him of the service fees for his stay from March 31, 1955 to December 31, 1955 was made only on October 26, 1955, not before his arrest on August 31, 1955. It is not true, therefore, as found by the trial court, that the permission for said petitioner to stay in the Philippines had been extended up to December 31, 1955 when he was arrested. When he was arrested on August 31, 1955, he had not yet paid the fees from March, 1955.

As regards petitioner ' Go Tarn, the record shows that his deportation was ordered as early as June 9, 1950 (Exhibit "1", Exh. "1-A", and Exh. "2"). On December 16, 1950, as a condition for allowing him to continue in the Philippines, he filed a bond (Exh. "5"), in which he expressly agreed not to engage in any business enterprise without a written consent previously granted by the Commission on Immigration. The purpose of his arrest on August 31, 1955 was to determine whether or not he had complied with the conditions of his bond under which he was able to secure the privilege to continue staying in the Philippines notwithstanding the previous deportation order against him issued as early as June, 1950.

As a first ground for granting the writ the judge below said that the arrest of the petitioners was unlawful from the very beginning because there was no warrant for their arrest at the time of their apprehension and detention; that even if a warrant for their arrest existed at the time of their apprehension, their detention without the filing of the proper action before the judicial authorities is illegal and a warrant of arrest issued by a court is necessary to justify the continuance of their detention.

There is no justification in law for the reasoning or the conclusion of the court below. Proceedings for the deportation of aliens are not criminal proceedings, and neither do they follow the rules established in criminal proceedings. Deportation proceedings are summary in nature and the proceedings prescribed in criminal cases for the protection of an accused are not present or followed in deportation proceedings. Said this Court, through Mr. Justice Bengzon, in *Lao Tang Bun vs. Fabre*, 81 Phil. 682, 691:

"It is of course well-settled that deportation proceedings do not constitute a criminal action. The order of deportation is not a punishment, (*Mahler vs. Eby*, 264 U. S., 32), it being merely the return to his country of an alien who has broken the conditions upon which he could continue to reside within our borders (*U. S. vs. De los Santos*, 33 Phil., 397). The deportation proceedings are administrative in character, (*Kessler vs. Strecker*, 307 U. S., 22) summary in nature, and need not be conducted strictly in accordance with the ordinary court proceedings (*Murdock vs. Clark*, 53 F. [2], 155). It is essential, however, that the warrant of arrest shall give the alien sufficient information about the charges against him, relating the facts relied upon. (*U. S. vs. Uhl*, 211 F., 628.)"

The law which governs deportation of overstaying aliens is Commonwealth Act No. 613, Sec. 38 (a) (7), which is as follows:

"Sec. 38. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

* * * * *

"(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant; * * *"

As we have stated in the case of *Ong Se Lun vs. Board of Immigration Commissioners*, 95 Phil., 785, the presence in the Philippines of an overstaying Chinese is a matter of privilege and they are not entitled to the same rights and privileges as resident aliens.

The holding of the trial court that the arrest of petitioners is illegal because no court proceedings have been instituted is, therefore, incorrect.

But the legal excuse for the court below to grant the writ are the cases of *Mejoff vs. Director of Prisons* 90 Phil., 70) and *Chriskoff vs. Commission on Immigration* (90 Phil., 256). We have carefully read and considered these cases and we find the facts in each case to differ from those of the case at bar. In the case of *Mejoff*, petitioner filed a first petition for habeas corpus in the year 1948. Petitioner was arrested on March 18, 1948 and attempts were made to deport him and after repeated failures in said attempts, he was removed to Bilibid Prison in October, 1948. When the first case was presented the petition was denied on the ground that temporary detention is necessary to carry out the exclusion or expulsion of undesirable aliens and that pending arrangements for deportation, the government has the right to hold them under confinement for a reasonable length of time. The majority of the members of the Court held that petitioner's detention at the time of the filing of the first petition was not so unreasonable as to entitle him to the writ. Two years later he again filed the second petition for habeas corpus. It was then that this Court held that the writ should issue. Note that in the first case the petitioner was arrested since March 18, 1948 and his detention continued till the petition was filed. We held in our second decision (of September 26, 1951), which took place three years after the beginning of the confinement, that he had been held for an unreasonable period of time, for which reason the writ should issue. This case cannot be cited as a precedent in the case at bar where the warrants for the arrests of the petitioners were made on August 31, 1955 and they sought to be released from the arrest as early as October 17, 1955, or about one and a half months after their arrest.

In the case of *Chirskoff*, petitioner entered the Philippines on June 19, 1946 and was arrested on March 16, 1948. On April 5, 1948, the Deportation Board ordered his deportation to Russia. But the deportation authorities were not able to carry out the deportation order. *Chirskoff* since then was under detention and on October 26, 1951, three years after his arrest, this Court ordered his release. The reason given by the Court for granting the writ was that since the warrant of deportation could not be executed and it did not appear possible to have it executed, the warrant for deportation is *functus officio* and the alien should no longer be detained.

The above cases of *Mej off* and *Chirskoff* may not, therefore, be cited as precedents binding us in the case at bar. In those cases there was impossibility of carrying out the deportation because the deportees were not recognized as citizens of the country to which deportation was attempted. In the case at bar no such impossibility occurs; the country of the deportees is not unknown and the existence of the means of carrying out the deportation is not denied or disputed. There has been a delay in the deportation because the petitioners had come as temporary visitors in 1947 and 1949. The delay is clearly attributable to the neglect or complacency of the executive department, induced by loathsomeness on the part of the home country (of the deportees) to accept them, perhaps to give the latter opportunity to continue enjoying our hospitality. Not any one of the above causes, or a combination of any two or all of them, can destroy the right, duty or power of this country, inherent in its sovereignty, to effect the deportation at any time it desires to do so. Neglect of the Government or of its officers or their complacency, can not operate as a waiver of this country's right or power to effect the deportation. Neither may the loathsomeness of the country of the deportees under the guise of peaceful negotiation impair such right and power.

The right of this Government to have the petitioners deported cannot be questioned. The right of a country to expel or deport aliens because their continued presence is detrimental to public welfare is absolute and

unqualified. In case of temporary visitors such detriment is not necessary; it is enough that they have overstayed the period of their permits. We do not believe that this right or power, or even duty, has in any way been lost, or can in any way be denied by the neglect of the executive department. We are aware that certain negotiations are being conducted between this country and the country to which the deportation is to be made. We are not aware what these are, but in no case can they be considered as having ripened into the recognition of any right on the part of the overstaying aliens to continue in the country. Mere courtesy can not create a right or privilege. Neither can inaction on the part of the host create such right or privilege, however long such courtesy may have continued.

We, therefore, find that the granting of the writ by the court below cannot be sustained. The decision appealed from is, therefore, hereby reversed, and the petition for the writ denied, with costs against the petitioners.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endenia, JJ., concur.

Judgment reversed

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