

ANG IT, PETITIONER AND APPELLANT, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G. R. No. 10225. November 29, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is an appeal from a decision rendered by the Court of First Instance of Manila in Civil Case No. 27176 filed by petitioner-appellant, wherein she prayed that a writ of preliminary injunction be issued to enjoin the respondent Commissioner of Immigration from (1) exacting the cash and surety bonds and from collecting the service fees from the herein petitioner as directed in respondent's letter of August 9, 1955; (2) causing the arrest and confinement of herein petitioner during the pendency of these proceedings; and (3) carrying out the warrant of deportation issued against the herein petitioner on March 27, 1952; and that, after due hearing, the said order of August 9, 1955 be declared null and void and that the writ of preliminary injunction sought for be declared permanent.

After the parties, had joined issues and the case been duly heard, the trial court denied the petition and set aside the preliminary injunction issued against the respondent in virtue of the petition. And upon denial by the Court of the motion for reconsideration of the decision, the petitioner appealed contending that the trial court erred—

- In holding that the respondent-appellee Commissioner of Immigration can still carry out the order of deportation of April 19, 1950 against the petitioner-appellant for overstaying in this country as temporary visitor despite the order of September 14, 1951 recognizing correct status as that of returning residents;
- In applying to the present case the ruling laid down by the Honorable Supreme Court in *Ong Se Lam vs. the Board of Immigration Commissioner*, 9-5 Phil., 785, since the circumstances of the present case are different from that cited case;
- In holding that the requirement of physical departure provided for in section 9 of the Philippine Immigration Act, as amended by Republic Act 503, section 3, must be complied with and that the petitioner-appellant in the present case must first depart from the country, apply for proper documentation as permanent resident from a Philippine Consulate abroad and thereafter undergo examination by immigration officials at a port of entry in the Philippines before being entitled to permanent admission in this country; and
- In not granting the petition."

The case was decided by the lower court on the basis of a stipulation of facts which reads as follows:

"Both parties hereto are agreed on the following established facts appearing on record, to wit:

- Petitioner was a permanent resident in this country prior to 19-16.
- Sometime in 1946, the above-named petitioner went to China, for a temporary visit from which she was expected to return to this country.

- Petitioner was unable to return to the Philippines immediately and it was only on November 17, 1947 that she came back of Philippines and was admitted as a temporary visitor.
- Petitioner's stay as a temporary visitor having (expired,, warrant of arrest against her was issued by the Commissioner of Immigration on May 19, 1951, and she was asked to show cause why she should not be deported from the Philippines under the provisions of the Philippine Immigration Act of 19-10, as amended.
- That upon the institution of deportation proceedings and after investigation duly conducted in accordance with the provisions of section 37 of the Philippine Immigration Act of 1940, as amended, petitioner was ordered departed, warrant of deportation having been issued on March 27, 1952, for having violated section 37(a) (7) of the Philippine Immigration Act of 1940, as amended, as found by the Board of Commissioners in its decision dated February 18, 1952, copy of which has been attached &s Annex "2" of respondent's answer.
- On August 14, 1954, petitioner, thru course!, requested for the correction of her status from temporary visitor to returning-resident, and acting upon this request, the First Deputy Commissioner, Hon. Francisco de la Rosa, who was then Acting Commissioner of Immigration, following the findings and recommendation of an investigator assigned to investigate petitioner's request, in an order dated September 2, 1954 ordered that the records of the Bureau of Immigration be duly corrected to make petitioner-appear that she has "been readmitted on November 17, 1947 as a returning resident instead of as a mere temporary visitor, and that, the corresponding immigration certificate of residence to evidence permanent resident be issued to her. (Annex 'A', Petition.)

Upon careful scrutiny of the record of the case, we find it completely identical to that case of *Sy Hong et al., petitioners-appellants, vs. Commissioner of Immigration, respondent-appellee*, G. R. No. L-10224, which we decided on May 11, 1957, for the facts involved in that case and the stipulation of facts submitted therein are completely similar to the facts and stipulation of facts involved herein, and the questions raised in this case are exactly the same as those raised in that case. Hence we find that our ruling in the aforementioned case of *Sy Hong et al. vs. Commissioner of Immigration* is controlling in the present case, and for this reason we hereby reproduce it:

"We agree with the Court below and the respondent Commissioner of Immigration that appellants' case falls squarely under the doctrine laid down by this Court in the case of *Ong Se Lun, et al. -vs. Board of Immigration Commissioners*, 95 Phil., 785. It is true that appellants were, prior to February, 1940, admittedly permanent residents of this country. It is also admitted, however, that they were unable to return to the Philippines within the period of the validity of their special return certificates and gained admission into this country on May 10, 1948 only as temporary visitors. Having lost their right to reentry as permanent residents, and having been admitted as temporary visitors or non immigrants! and the period allowed for their temporary sojourn in these Islands having already expired, appellants are, under the law, subject to deportation by the Commissioner of Immigration.

"Appellants insist that they are not really temporary visitors but permanent residents, and that their status had already been corrected by former Deputy Commissioner of Immigration Francisco de la Rosa, after proper investigation, from temporary visitors to returning permanent residents. We have, however, already ruler] such corrections of aliens' status by the Commissioner of Immigration as illegal and against public policy in the already cited case of *Ong Se Lun vs. Board of Immigration Commissioners*, as well as in the more recent case of *Chiong Tiao Bing vs. Commissioner of Immigration*, (99 Phil., 1020, 52 Off. Gaz., [15] 6551) wherein we said:

'(1) Under the law then in force, the Boards of Inquiry only "have authority to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded" (C. A. 613, section 27 (6), and nowhere in the law are these Boards conferred power to determine whether an alien who has already landed or entered as "temporary visitors" should be admitted for permanent residence (*Ong Se Lam vs. Board of Immigration, supra*.)

'* * * 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. No officer can relieve him of the departure requirements of section 9 of the Immigration Act, under the guise of "change" or "correction", for the law makes no distinctions, and no officer is above the law. 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 danger inherent in such a ruling is self-evident.' (Chiong Tiao Bing vs. Comm. of Immig., supra.)

"Nor can there be merit in appellants' argument that the order of former Deputy Commissioner De la Rosa correcting their status from 'temporary visitors' to 'permanent residents' is *res judicata*, and that the incumbent Commissioner of Immigration is now in estoppel to set aside said order. As we have previously held, decisions of the immigration officials do not constitute *res judicata* so as to bar reexamination of the aliens' right to enter or stay (Ong Se Lun vs. Board of Immigration Commissioners, ante). And what is more, no vested rights can be acquired on a wrong construction of the law by administrative officials, and such wrong interpretation does not place the government in estoppel to correct or overrule the same (Hilado vs. Collector of Internal Revenue and Court of Tax Appeals, 100 Phil., 288, 53 Off. Gaz., [8] 248). Appellants, therefore, cannot find relief in the illegal correction of their status by the former Deputy Commissioner of Immigration. The course open to them to gain permanent admission to this country is, as pointed out in the Ong Se Lun case, to voluntarily depart to some foreign country and procure from the appropriate consular official the proper visa for admission to the Philippines as permanent residents.

"Finally, appellants, in a supplemental memorandum, call attention to our recent decision in the case of Chiong Tiao Bing vs. Commissioner of Immigration, G. R. L-9966, promulgated September 28, 1956, (already cited above), and urge that their case falls within its purview. Again we fail to find merit in this argument. The holding of this Court in the Chiong Tiao Bing case allowing the petitioners minors to stay permanently in this country although they were admitted as 'temporary visitors', was based on the important consideration that there had been no misrepresentation or deceit on their part as to their real status; for long before their entry, right after the termination of the last war, they had already claimed, exercised efforts, and made representations with our government to have their right to return as permanent residents recognized, and they accepted temporary visas only to escape from the Communist forces that had taken over their place of residence in China while awaiting action on their case. Hence, we held that the issuance of the temporary visas to them by our government was an assent to their entry pending final decision on their right to return as permanent residents, which decision was later rendered in their favor in the order of the Commissioner of Immigration recognizing their status as permanent residents.

"No parallel facts may be found in the present case of appellants. All that appears in the parties' stipulation of facts is that appellants, although permanent residents of this country prior to 1940, gained entry thereto in 1948 as temporary visitors. It does not appear that appellants had, like the petitioners in the Chiong Tiao Bing case, made known to the Philippine government and sought to establish their right to enter these Islands as permanent residents prior to their admission therein as temporary visitors; nor does it appear that, like the petitioners in the Chiong Tiao Bing case, appellants were only forced to accept temporary visas to escape from Communist invasion in China. All that is admitted is that appellants gained entry to this country on the strength of a deliberate and voluntary representation that they would enter only for a limited time; and it was only after the issuance of a warrant of deportation against them upon the expiration of the period of their temporary stay that they asserted for the first time their previous status as permanent residents. Having made a representation to stay in this country only for a limited time, and having benefited by such representation, appellants can not

later be allowed to go back on their word and insist on permanent residence, without first departing from the Philippines as they had bound themselves to do. The reason is, as explained by us in the Chiong Tiao Bing case (cited on page 4, ante)', to discourage and avoid entry of aliens to this country on false pretenses."

Wherefore, finding no errors in the decision appealed from, the same is hereby affirmed, with costs against the appellant.

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

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