

NG HIN, PETITIONER AND APPELLEE, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.

G.R. No. 13026. March 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Manila, Hon. Froilan Bayona, presiding, declaring that an order of the Commissioner of Immigration, annulling that of the First Deputy Commissioner changing the status of the petitioner from "temporary visitor" to "permanent resident," is null and void, and restraining the Commissioner of Immigration from carrying out the warrant of deportation dated March 26, 1951, etc. The petition was decided upon a stipulation of facts which is as follows:

"1. That appellee Ng Hin, a Chinese, was a permanent resident in this country prior to 1940;

"2. That sometime in 1940, appellee left the country for China, and while there, he secured a returning resident visa which was issued by the American Consulate in Amoy, China in November 22, 1941. Said visa however was not used;

"3. That on March 4, 1948, upon his application, he was issued a returning resident visa but again, he did not make use of the same and instead, applied for a temporary visitor visa;

"4. That on November 26, 1948, provided with such, temporary visitor's visa, appellee arrived at the port of Manila and was allowed to land as a temporary visitor's;

"5. That upon his request, appellee was granted by the appellant several extensions for his temporary stay in this country, the last of which expired on March 25, 1950;

"6. That upon his failure to leave the country on said date, 'Warrant of Arrest No. 1182' was issued against the appellee for violation of his stay in this country and deportation proceedings was instituted against him (Annex A of the Answer to the Amended Petition, p. 19, rec.);

"7. That after due hearing, the Board of Commissioners promulgated its decision on June 14, 1950, ordering the deportation of the appellee to the country of origin (Annex E of the Answer to the Amended Petition, p. 20, rec.);

"8. That pursuant thereto, a 'Warrant of Deportation' was issued on March 26, 1951, by the appellant herein (Annex C of the Answer to the Amended Petition, p. 21, rec.),

"9. That three years thereafter, i.e., on June 29, 1954, appellee filed with the appellant a petition for correction of his status from temporary visitor to that of returning resident (par. 2 of the Amended Petition, p. 95, rec.);

"10. That on July 19, 1954, First Deputy Commissioner of Immigration Francisco de la Rosa, issued an order allowing the correction to be made, and cancelling and/or refunding the bonds filed for the appellee's temporary admission, (Annex D of the Answer to the Amended Petition, p. 22, rec.);

"11. That on August 6, 1955; the herein appellant in his communication to the appellee (Annex E, of the Answer to the Amended Petition, p. 23, rec), set aside the said order of the First Deputy Commissioner of Immigration dated July 19, 1954, correcting the status of appellee from temporary visitor to returning resident and, proceeded to enforce the Warrant of Deportation previously issued against the appellee, at the same time, requiring the latter to file a new cash bond of P3,000 and surety bond in the amount of P7,000 within 72 hours from receipt to guarantee his temporary release; and

"12. That on August 11, 1955, the appellee instituted the instant proceedings for certiorari with preliminary injunction in the Court of First Instance of Manila."

Upon the above stipulation of facts the court below held that it is not necessary for an alien who is a "permanent resident," but who had left the Philippines and is later admitted as "temporary visitor" in order to join his family and arrange his affairs, to first leave the Philippines and thereafter seek for his reentry as permanent resident, citing the case of Chiong Tiao Bing and Chiong Tiao Siong vs. The Commissioner of Immigration, 99 Phil., 1020; 52 Off. Gaz. [15] 6551.

The Commissioner of Immigration has appealed to us from the said decision, arguing that the decision of the court below has overlooked certain important facts disclosed by the documentary evidence, namely, that after the admission of petitioner-appellee on November 26, 1948, as a temporary visitor, he had made several requests for the extension of the period of his stay, which were granted up to March 25, 1950; that upon petitioner's failure to leave the country on the said date a warrant for his arrest was issued and proceedings for deportation instituted against him; that after due hearing, the Board of Commissioners promulgated its decision on June 14, 1950 ordering appellee's deportation; and that pursuant thereto a warrant of deportation was issued on March 26, 1951. So, it is argued, that petition for correction of petitioner's status was requested only after over three years, since the warrant of deportation was issued. We find this contention of the respondent-appellant well founded. The above facts are contained in the stipulation of facts but appear to have been actually ignored by the trial court and omitted in his findings of facts.

It is next contended on behalf of the respondent-appellant that an alien who has been admitted as a temporary visitor cannot change his status without first departing from the country as expressly provided by Section 9, last paragraph, of the Philippine Immigration Act of 1940, as amended by Republic Act No. 503. The provision 'cited is as follows:

"Sec. 9. * * *

"An alien who is admitted as a nonimmigrant cannot remain in the Philippines permanently. To obtain permanent admission, a nonimmigrant alien must depart voluntarily to some, foreign country and procure from the appropriate Philippine consul the proper visa and thereafter undergo examination by the officers of the Bureau¹ of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act."

The above provision has been applied by us in the case of Chiong Tiao Bing, et al. vs. Commissioner of Immigration, supra; Ong Se Lun, et al. vs. Board of Immigration Commissioners, et al., 95 Phil, 785; Sy Hong, et al. vs. Commissioner of Immigration, G. R. No. L-10224, May 11, 1957.

The case cited by the court below is an exception to the application of the rule contained in the last paragraph of Section 9 of the Philippine Immigration Act of 1940, as amended, which exception was justified by the circumstances of the case. In that case we said:

"But the circumstances of petitioners' entry negates any misrepresentation or estoppel. The state does not deny that they originally had the right to return as permanent residents; that they had been exercising efforts to have

that right recognized since the termination of the Pacific war, and that their acceptance of the temporary visitor's visa was due to their effort to escape from the Communist forces that shortly afterwards took over their place of residence in China. The Philippine Government was not therefore misled as to the real claims of petitioners, that they were returning residents; and hence, taking into account that petitioners were themselves minors when they returned, we believed the Ong Se Lun ruling does not apply to their case. In effect, the issuance of a temporary visa in their favor appears as an assent on the part of the Philippine authorities to their entry pending final decision on their right to return. The decision in their favor was made in tile order of Deputy Commissioner de la Rosa on June 25, 1954 (Exh. A), which could not be validly revoked without notice to and due hearing of petitioners herein. (Chiong Tiao Bing, et al. vs. Commissioner of Immigration, supra.)

In the case at bar the petitioner-appellee was admitted to the Philippines since 1948, but he did not seek a correction of his status until June 29, 1954 and only, after Ms deportation had been ordered on June 14, 1950 and a warrant for his deportation issued on March 26, 1951. Had there been any special cause or reason why the general rule should not apply to him, the petitioner-appellee should have taken steps to make the correction as soon as his entry as a temporary visitor was allowed in 1948. Note that while in the case of Chiong Tiao Bing and Chiong Tiao Siong vs. The Commissioner of Immigration, supra, in which an exception to the general rule was made, this Court found that petitioner therein had to accept temporary visitor's visa to escape from communist forces and that the Government was not misled as to the real claims of petitioners that they were returning residents. No such circumstances have been proved or expressed in the stipulation of facts. There is, therefore, no reason for making an exception to the general rule clearly stated in the above-quoted provision of the law.

For the foregoing considerations, the decision appealed from is hereby reversed and the injunction issued by the court below preventing deportation of petitioner is hereby set aside, with costs against the petitioner-appellee. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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