

KO WAI ME, PETITIONER, VS. EMILIO L. GALANG, FRANCISCO DE LA ROSA AND FELIX S. TALABIS, COMMISSIONERS OF IMMIGRATION, RESPONDENTS.

G.R. No. 13661. November 28, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Manila, Hon. Gregorio S. Narvasa, presiding, granting the petition of Ko Wai Me to be admitted to the country as a temporary visitor.

The record discloses that on June 28, 1956, Chua Tao, alleged husband of the petitioner, asked the Department of Foreign Affairs, through the Bureau of Immigration, for the issuance of a temporary visitor's visa in favor of his alleged wife, petitioner herein Ko Wai Me. In its indorsement dated July 7, 1956, the Bureau of Immigration, through Commissioner Emilio L. Galang, recommended denial of said application. He called attention to the decision of the Board of Commissioners dated September 29, 1954, finding petitioner herein Ko Wai Me guilty of violation of the provisions of the Immigration Act, for having slipped into the country surreptitiously while a passenger aboard the S. S. President Cleveland, which arrived in Manila on January 9, 1953, without inspection and admission by, or permission of, the immigration authorities—she failed to appear before the departure control officer when said vessel left port on January 10, 1959 (Annex "B", p. 14, Record). In spite of this adverse comment the Secretary of Foreign Affairs authorized the issuance of a visitor's visa to petitioner Ko Wai Me, provided she is in possession of a valid Chinese Nationalist passport, a round trip plane or ship ticket to Hongkong and re-entry permit to Hongkong valid at least 6 months, and that the Philippine Consulate is satisfied after thorough screening that she is the wife of Chua Tao, a Chinese resident of the Philippines, and is otherwise admissible and without any derogatory information against her (Annex "C", p. 15, Record). Because of this order of the Secretary of Foreign Affairs, petitioner was granted a visa and she arrived in the port of Manila aboard a Cathay plane on September 28, 1956.

On October 1, 1956, an inquiry was made by the Board of Special Inquiry and, thereafter, on October 4, 1956, the Board recommended that she be admitted for entry (Annex "G", p. 19, Record). It is to be noted that the Board expressly stated that a warrant for her arrest and deportation was issued on January 19, 1953, for having entered the country without inspection and admission by the immigration authorities and ordered deported in a decision of the Board of Commissioners on September 5, 1954, at her own expense. It stated that as she had not been deported as shown in her acts, she could be admitted as temporary visitor for 3 months from date of her arrival. The report of the Board of Special Inquiry passed through the hands of First Deputy Commissioner Francisco de la Rosa, who made the following note to Commissioner Galang:

"KO WAI ME qualifies for entry as a temporary visitor under the Cabinet policy in view of the satisfactory evidence showing her marriage to a local resident alien. In view of her proper documentation as she possesses a valid passport and a valid visa for entry into the Philippines and the fact that she is applying for temporary admission only, her case falls under Section 29 (b) (2) in which the Commissioner is given the discretion to

permit her entry." (Exhibit "1", par. I).

The second Deputy Commissioner, according to Commissioner de la Rosa, was of the opinion that since the petitioner was a previous deportee who may be admitted only in the discretion of the Commissioner, the case should be referred to Commissioner Galang. So they endorsed the papers to the Commissioner, with the notation that appellant may be admitted only in the discretion of Commissioner Galang (t. s. n., p. 7-de la Rosa).

Upon receipt of the note or indorsement of the deputy commissioners, respondent Commissioner Galang on September 18, 1959, decided petitioner's exclusion and ordered his first deputy commissioner to effect exclusion (Exhibit "1-a"). Commissioner de la Rosa did then issue, in accordance with his superior's instructions, an order for petitioner's exclusion. The order is as follows:

"It appearing that the Commissioner of Immigration did not permit Ko Wai Me, Chinese, female, 31 years of age, to enter as a temporary visitor, in the exercise of his discretion under Section 29 (b) (2) of the Philippine Immigration Act of 1940, as amended, and it further appearing that he manifested his decision to effect the exclusion of the above-mentioned applicant, per his instruction to the First Deputy Commissioner in his note to him of October 18, 1956, and in compliance therewith, it is hereby ordered that said Ko Wai Me be excluded in accordance with law." (Exhibit "2").

The legal ground upon which the exclusion was based is the provision of Section 29 (6) (2) of the Philippine Immigration Act of 1940, as amended.

The court below held that as the order of exclusion issued for Commissioner Galang by First Deputy Commissioner de la Rosa has nothing to support it and that on the other hand, the Board of Special Inquiry had rendered a favorable decision upon the right of petitioner to enter, the Board of Commissioners rendered their unanimous decision disapproving the application without nothing to support it and said decision is a nullity.

"We have shown that the Order of Exclusion of the petitioner dated October 19, 1956 has nothing to support it. On the other hand, we have clearly established by documentary evidence that the Board of Special Inquiry of the Bureau of Immigration has rendered a favorable decision upon the question of the right of the petitioner to enter the Philippines. Such decision has become final, there having been no appeal and there being no showing that the three members of the Board who rendered a unanimous decision abused their authority. This Honorable Court therefore has jurisdiction to review the Order of Exclusion in this case with nothing to support it and which Order is therefore a nullity, it being directly attacked in this proceedings. Much more so, when there is no showing, as in this instant case, that the Board of Special Inquiry abused its authority when it found in its decision that the petitioner has a right to enter the Philippines. In relation to administrative decisions, it has been held:

'A verdict or decision with nothing to support it is a nullity, at least when directly attacked. In such case, this court has jurisdiction to review, though, as we have generally held, the decision of the administrative officers upon the question of the right of an alien to enter the Philippine Islands is final when no abuse of authority is shown.' (Edwards vs. McCoy, 22 Philippine 598; Ngo Yao & Chua Eng Cheng vs. Sheriff of Manila 27 Phil., 378)".

There are no grounds legal or factual to support the conclusion arrived at by his Honor, the judge below. The report of the Board of Special Inquiry, Exhibit "E", expressly mentions the fact that petitioner herein had by a final decision of the Board of Immigration. Commissioners (Annex "B") been ordered arrested on a warrant of arrest dated June 18, 1953, for entry without inspection and admission, but that she left the country voluntarily at her own expense. On these facts, contained in the very decision of the Board of Special Inquiry, this Board concluded that petitioner had not been deported within the purview of the Philippine Immigration Act. This conclusion, i. e., of the Board of Special Inquiry that the voluntary departure of an alien ordered by a final

decision of the Commissioners of Immigration to be deported is not deportation or exclusion if deportee leaves the country voluntarily and at her own expense, is, indeed, error. The mere fact that the petitioner herein voluntarily left the Islands at her own expense did not have the effect of revoking the final order of deportation and the decision supporting the same. The mere fact that she voluntarily departed at her own expense did not erase the fact that she had entered the country surreptitiously and without permit from the proper authorities and with proper documents and is subject to deportation. Evidently, the first deputy commissioner, in believing that the petitioner could only be admitted in the discretion of Commissioner, actually reversed the legal conclusion of the Board of Special Inquiry, that by the petitioner's voluntary exit from the Philippines at her own expense, the offense that had been committed against the Immigration laws had been completely wiped out. This principle, that voluntary departure of a deportee sentenced to deportation did not operate to revoke the final decision of deportation, is the reason or ground why the deputy commissioners had decided that petitioner may only be authorized entry under the provisions of sub-paragraph (2), paragraph (b), Section 29 of the Immigration Act, as amended, which is as follows: "

Sec. 29. (a) The following classes of aliens shall be excluded from entry into the Philippines:

* * * * *

'(15) Persons who have been excluded or deported from the Philippines, but this provision may be waived in the discretion of the Commissioner of Immigration: Provided, however, That the Commissioner of Immigration shall not exercise his discretion in favor of aliens excluded or deported on the ground of conviction for any crime involving moral turpitude or for any crime penalized under sections forty-five and forty-six of this Act or on the ground of having engaged in hoarding, black-marketing or profiteering unless such aliens have previously resided in the Philippines immediately before his exclusion or deportation for a period of ten years or more or are married to native Filipino women." (Pp. 15-16, Brief for the appellants).

Even admitting arguendo that as the petitioner herein is not a deportee because she had not been deported, because she voluntarily left the country at her own expense, then at least she is a person who has been excluded from the Philippines within the meaning of the first paragraph of the above section. The decision of the Board of Immigration Commissioners ordering her deportation is conclusive evidence of this fact. As such she can only be admitted when the Commissioner waives the application of the law in favor of allowing the alien to enter the Philippines.

We find that the decision appealed from is not supported by the law, and we hereby set it aside dismissing the petition for habeas corpus, with costs in both instances against the petitioner-appellee.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Endencia, Barrera, and Gutierrez David, JJ., concur.

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