

THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION AND DEPORTATION, PETITIONER, VS. JUNG KEUN PARK @ JUNG GEUN PARK @ CHUNG KEUN PARK, RESPONDENT.

G.R. No. 159835. January 21, 2010

Ponente: BRION, J.

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BRION, J.:

Before the Court is the Petition for Review on Certiorari[1] filed by the petitioner Board of Commissioners of the Bureau of Immigration and Deportation (BID) assailing the June 13, 2002 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 67614, which reversed the deportation orders issued by the BID. The petition also assails the CA's September 4, 2003 Resolution[3] which denied the BID's motion for reconsideration.

THE FACTS

Respondent Jung Keun Park (Park) is a national of the Republic of Korea who came to the Philippines with his family in the early 1990s to invest in various businesses in the country.

Sometime in 2000, the BID received a letter dated July 6, 2000[4] (July 6, 2000 letter) from Gyung Taek Cha, Consul/Police Attaché of the Embassy of the Republic of Korea in Manila, requesting the BID's assistance and cooperation in deporting Park as he was purportedly facing charges of fraud in Korea for which a warrant for his arrest had been issued by the Korean Police. The letter also stated that Park's Korean Passport No. NW0057145 had been cancelled on March 8, 2000 and no other passport had been issued to him since. Acting on this July 6, 2000 letter, the BID officials arrested Park and deported him to Korea on July 24, 2000.

On October 28, 2000, Park returned to the Philippines, entering via Zamboanga City from Malaysia, aboard the Sampaguita Ferry 2. Believing that Park re-entered the country without a valid passport, the BID again arrested Park on December 11, 2000 and, through a Charge Sheet[5] dated December 22, 2000, indicted him for violating Section 37(a)(7)[6] of Commonwealth Act No. 613 or the Philippine Immigration Act of 1940, as amended (Immigration Act).

On the very same date that Park was indicted, the BID issued a Summary Deportation Order (SDO) against Park after finding that he had indeed violated the Immigration Act. Accordingly, the BID ordered Park to be deported, imposed upon him administrative fines and fees, and included him in its Blacklist.

To secure his provisional release pending deportation, Park filed on January 19, 2001 a Petition for Bail[7] with the BID, stating that he had already paid the administrative fines and fees imposed on him in the SDO. Park also claimed that he should no longer be considered an undocumented alien because (a) he had been issued a Travel Certificate by the Embassy of the Republic of Korea in Manila that was valid from January 16, 2001 up to June 19, 2001, and (b) he was a holder of a Special Investor's Resident Visa (SIRV). The BID, however, did not act on his petition, prompting Park to move for its early resolution on February 19, 2001.[8] Apart from reiterating his plea for his provisional liberty, Park pointed out that there was no longer any basis for the execution of the SDO.

Apparently, Park learned, after communicating with the Korean Embassy, that it did not issue the July 6, 2000 letter that declared his Passport No. NW0057145 as cancelled. Park argued that since the SDO was issued solely on the basis of the July 6, 2000 letter, the Korean Embassy's disavowal of the letter should result in the nullification of the SDO against him. In an Order dated February 27, 2001, the BID granted Park's petition for bail but did not resolve his claim against the validity of the SDO.[9]

About six months after the BID issued the SDO, Park filed a motion to have it set aside.[10] He insisted that he should not be considered as an undocumented alien since his Passport No. NW0057145 had not really been cancelled as falsely stated in the July 6, 2000 letter - a letter which he claimed was later disavowed by the Korean Embassy. Even assuming that this passport was actually cancelled, Park argues that the Korean Embassy had already issued him a new passport (Passport No. PH0003486) on April 5, 2001, with validity up to April 5, 2006. Moreover, he was a holder of a SIRV and a travel certificate. Without, however, going into the merits of Park's claims, the BID denied his motion to set aside the SDO in a Resolution dated October 15, 2001 (October 15, 2001 Resolution); it ruled that the motion was belatedly filed, since the SDO had already become final and executory for Park's failure to appeal it within the reglementary period provided in the Rules of Procedure to Govern Deportation Proceedings (Deportation Rules).

Park assailed the BID's SDO and October 15, 2001 Resolution, through a certiorari petition filed before the CA.[11] He reiterated his arguments why he should no longer be considered as an undocumented alien and submitted the following in support of his claim:

- the February 16, 2001 letter[12] from the Embassy of the Republic of Korea in Manila written by Young Chai Kim, Consul for Passport Affairs, stating that he did not write the July 6, 2000 letter and that a travel certificate had been issued in Park's favour; and
- the May 28, 2001 letter[13] from the Embassy of the Republic of Korea in Manila written by Consul/Police Attaché Gyung Taek Cha (the same person who wrote the July 6, 2000 letter), stating that Park had no pending criminal cases in Korea.

Park also claimed that he had been denied of his right to due process, since no hearing of his case was conducted before the BID's Board of Special Inquiry or the Board of Commissioners; the SDO was in fact issued on the same day that the Charge Sheet was filed.

In its Decision dated June 13, 2002,[14] the CA found Park's certiorari petition meritorious. It considered material the February 16, 2001 and May 28, 2001 letters of the Korean Embassy officials that effectively negated the July 6, 2000 letter. The appellate court also relied on Park's travel certificate and SIRV as documents supporting his claims. As a result, it set aside the SDO and the October 15, 2001 Resolution of the BID.[15] As the BID's motion for reconsideration of the CA decision had been denied in a resolution dated September 4, 2003, it filed before this Court the present petition for review on certiorari.

THE ISSUE and THE PARTIES' ARGUMENTS

At the core of the present controversy is the validity of the two issuances by the BID: the SDO dated December 22, 2000 and the October 15, 2001 Resolution denying Park's motion to set aside the SDO. The CA declared that the BID's issuance of the SDO and the October 15, 2001 Resolution was characterized by grave abuse of discretion and, accordingly, nullified them. The BID contests this ruling as legally erroneous and invokes the Court's appellate jurisdiction via a Rule 45 petition.

In its petition, the BID insists that it had sufficient basis for ordering Park's deportation - Park did not have with him a valid passport when he returned to the Philippines on October 28, 2000, and was therefore not lawfully

admitted. At the time Park was indicted, the July 6, 2000 letter reporting the cancellation of Park's Passport No. NW0057145 stood uncontroverted. The BID thus claims that its reliance on the July 6, 2000 letter cannot be considered an abuse of its discretion.

Although Park was able to present letters[16] from the Korean Embassy that apparently repudiated the July 6, 2000 letter, the BID alleges that these letters were submitted when the SDO had already become final and executory, since Park failed to appeal the SDO with the Office of the President within the 30-day period provided under Rule XIII of the Deportation Rules[17]; the BID, therefore, found it unnecessary to consider the February 16, 2001 and May 28, 2001 letters. As the SDO had already lapsed into finality, the BID posits that it could not be faulted for denying Park's motion to set aside the SDO in its October 15, 2001 Resolution.

Park counters the BID's allegations by insisting that he had a valid and existing passport when he returned to the Philippines on October 28, 2000. He claims that his Passport No. NW0057145 was never cancelled; otherwise, he would not be able to use the same on a trip to Malaysia days prior to his return to the Philippines. As proof, he appends to his Comment and Memorandum a photocopy of this passport bearing stamp marks showing the date of his arrival in and departure from Malaysia on October 20, 2000 and October 27, 2000,[18] respectively, and of his arrival in the Philippines on October 28, 2000.[19] Moreover, he contends that the Korean Embassy's February 16, 2001 and May 28, 2001 letters constituted a repudiation of the July 6, 2000 letter upon which the SDO was based. With this repudiation, Park insists there was no more basis for upholding the SDO. Park also relies on the travel certificate and SIRV issued to him by the Korean Embassy and the Philippine government (through the Bureau of Investments), respectively, as documents that further evidenced his authority to enter and remain in the country.

While Park concedes that his motion to set aside the SDO was filed beyond the 30-day period, he nevertheless contends that the SDO could never achieve finality because it was, in the first place, null and void. He attacks the SDO by claiming it was issued in violation of his right to due process, under Section 37(c) of the Immigration Act, which reads:

No alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.

First, Park claims that the Charge Sheet indicting him for violation of the Immigration Act failed to sufficiently inform him of the specific grounds for his deportation. He was accused of violating Section 37(a)(7) of the Immigration Act[20] for remaining in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant. A charge for violation of Section 37(a)(7), he alleges, is contrary to the BID's claim that he was not lawfully admitted when he returned to the Philippines on October 28, 2000 because he did not have a valid passport then. If he was not lawfully admitted in the first place, he could not have violated any limitation or condition of his admission into the country.

Second, he posits that his case should have been heard under the regular deportation proceedings, not the summary deportation proceedings. Rule X of the Deportation Rules states that summary deportation shall be observed in cases where the charge is either overstaying or expiration of passport. Since he had been charged for allegedly violating the conditions of his admission, Park contends his case is not among those covered by summary deportation proceedings.

THE COURT'S RULING

We resolve to grant the petition.

A review of the records compels us to rule that the BID had sufficient factual and legal basis for the SDO and the

October 15, 2001 Resolution. The CA committed legal error in finding that the BID acted with grave abuse of discretion when it issued the SDO and the October 15, 2001 Resolution.

Non-immigrants are required by law to present valid passports and visas upon entry into the Philippines

All non-immigrants are required to present unexpired passports and valid visas prior to their admission into the Philippines under Section 10 of the Immigration Act:

Section 10. Non-immigrants must present for admission into the Philippines unexpired passports or official documents in the nature of passports issued by the governments of the countries to which they owe allegiance or other travel documents showing their origins and identity as prescribed by regulations, and valid passport visas granted by diplomatic or consular officers, except that such document shall not be required of the following aliens: (a) a child qualifying as a non-immigrant, born subsequent to the issuance of the passport visa of the accompanying parent, the visa not having expired; and (b) a seaman qualifying as such under section (9) of this Act. [Emphasis supplied.]

Park was indicted for violating this requirement because when he returned to the Philippines on October 28, 2000, he used his Passport No. NW0057145 - a passport that had already been cancelled according to the Korean Embassy's July 6, 2000 letter. At the time Park was indicted, there was no official document repudiating the July 6, 2000 letter. Park did not present other competent proofs that his Passport No. NW0057145 had not been cancelled. In deportation proceedings, the alien bears the burden of proving that he entered the Philippines lawfully.[21] We do not believe that Park was able to discharge this burden by belatedly presenting a photocopy of his Passport No. NW0057145 that bore stamp marks of the date of his arrival in and departure from Malaysia, just days before his return to the country. In all his pleadings before the BID and the CA, he never mentioned this prior Malaysian trip, and he conveniently excused the presentation of his Passport No. NW0057145 by claiming he had misplaced/lost it. Since the authenticity of the arrival and departure stamp marks in Park's Passport No. NW0057145 had not been passed upon by either the BID or the CA, we cannot accord it weight and credence.

As things therefore stood on December 22, 2000 (when the SDO was issued), there was no evidence that would negate the cancellation of Park's Passport No. NW0057145 that was stated in the Korean Embassy's July 6, 2000 letter. The BID had sufficient ground to believe that Park did not have with him a valid and existing passport upon his return to the country. We thus cannot fault the BID for relying in good faith on the letter when it issued the SDO; its act can hardly be classified as a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction, correctable by a writ of certiorari.

No due process violation when the summary deportation proceedings were held and when the SDO was issued

Were the documents that Park subsequently presented sufficient to set aside the SDO? The BID posits that these documents should not even be considered because the SDO had already lapsed into finality (for which reason, the BID denied Park's motion in its October 15, 2001 Resolution). Park disagrees and claims that the SDO cannot be final because its issuance was tainted with due process violations by the BID. We, however, fail to see the SDO the way Park does.

The Charge Sheet[22] indicted Park for violating Section 37(a)(7) of the Immigration Act, which provision reads:

Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another 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:

x x x x

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant; [Emphasis supplied.]

However, the Charge Sheet contained not just a citation of the provision of law allegedly violated by Park, but more importantly, a statement of the act constituting the offense, i.e., Park's status as an undocumented alien whose passport had been cancelled by the Korean Government. The pertinent portion of the Charge Sheet reads:

The undersigned Special Prosecutor charges CHING GEUN PARK @ JUNG GEUN PARK @ CHING KEUN PARK, Korean national, for deportation for violation of Section 37 (a)(7) of the Philippine Immigration Act of 1940, as amended, committed as follows:

That the respondent's passport was cancelled by the Korean Government, therefore, he is now an undocumented alien in violation of Section 37(a)(7) of the Philippine Immigration Act of 1940, as amended. [Emphasis supplied.]

The actual designation of the offense is not material so long as the act constituting the offense was clearly alleged in the Charge Sheet and sufficient enough to inform Park of the specific ground for his deportation. In this case, we think it was. Notably, in the pleadings Park filed with the BID, he insisted that his Passport No. NW0057145 had not been cancelled; that he possessed the requisite travel documents; and that he is not an undocumented alien. Under these circumstances, we highly doubt Park's claim that he had been denied of his right to be informed; otherwise, he would not have found the need to raise such defenses against the charge. Our opinion is fortified by the fact that Park never raised this particular objection to the charge when the case was still before the BID and the CA. Thus, the allegations in the Charge Sheet were sufficient, and there was full compliance by the BID with the requirement under Section 37(c) that no alien shall be deported without being informed of the specific grounds for his deportation.

We likewise do not agree with Park's claim that his case should be heard under the regular deportation proceedings where a full hearing is required before the BID's Board of Special Inquiry. Section 1, Rule X of the Deportation Rules states that:

Summary deportation shall be observed in cases where the charge against the alien is overstaying or expiration of his passport. In such case, the Board of Special Inquiry shall merely require the presentation of the alien's valid passport and shall submit the appropriate recommendation on the bases thereof. [Emphasis supplied.]

Park was charged for having a cancelled passport, which theoretically is equivalent to an expired passport - in either case, the alien does not possess the valid passport required under Section 10 of the Immigration Act. The July 6, 2000 letter in fact stated that "Park's Korean Passport No. NW0057145 has been expired and cancelled." The BID Office Memorandum Order No. 19 on Summary Deportation[23] lists aliens with cancelled passports to be covered under Summary Deportation Proceedings. Thus, Park's case was properly heard as one for summary deportation, and a full-blown deportation hearing was not necessary.

After rejecting Park's legal objections against the SDO, we proceed to a determination of whether there remains factual basis to uphold the SDO and affirm the October 15, 2001 Resolution.

Before anything else, we note that upon issuance of the SDO, Park immediately and without any question or reservation paid the administrative fines and fee imposed on him under the SDO. He supposedly paid the fees to support the petition for bail which he filed with the BID. The payment of the administrative fines and fees, however, is not material in considering a bail petition. In deportation proceedings, the decision to grant bail is entirely at the discretion of the BID Commissioner.[24] While not material in the grant of his bail petition, the payment of the fines and fee was nonetheless a significant indication of Park's acceptance of and compliance with

the SDO. Park's act of payment effectively placed him in estoppel and now bars him from contesting the validity of the SDO.

Park mainly relies on the following documents that purportedly evidenced his authority to enter and remain in the country: the February 16, 2001 and May 28, 2001 letters of the Korean Embassy which, he claims, repudiated the July 6, 2000 letter on which the SDO was based; the travel certificate dated January 16, 2001, also issued by the Korean Embassy; the SIRV issued on January 8, 1997 by the Bureau of Investments; and the new Passport No. PH0003486 issued on April 5, 2001. The CA considered the above documents sufficient to overturn the SDO and the October 15, 2001 Resolution, and thus faulted the BID for disregarding them. A closer inspection of these documents, however, compels us to rule for the BID.

Contrary to Park's claims, the February 16, 2001 and May 28, 2001 letters did not categorically repudiate the cancellation of Park's Passport No. NW0057145 that was stated in the July 6, 2000 letter. The February 16, 2001 letter simply declared that its author, Young Chai Kim, did not write any letter similar to the July 6, 2000 letter - an immaterial allegation since it was Gyung Taek Cha who wrote it. Gyung Taek Cha's May 28, 2001 letter cannot be considered a repudiation of his July 6, 2000 letter, as it only stated that Park, as of that date (May 28, 2001), did not have any pending criminal cases in Korea. Not one of the letters definitely stated that Park's Passport No. NW0057145 was not cancelled on March 8, 2000. Gyung Taek Cha may have written a letter on October 7, 2002 acknowledging error in making the July 6, 2000 letter, but this came in too late and was vague in denying the cancellation of the passport. Besides, the fact that Park had been previously deported on the strength of the July 6, 2000 letter renders the October 7, 2002 letter suspect. Simply put, the Korean Embassy's letters never directly repudiated the cancellation of Park's Passport No. NW0057145.

Park's SIRV and travel certificate cannot stand as substitutes for his cancelled passport. As mentioned, Section 10 of the Immigration Act requires non-immigrants to have (1) unexpired passports, and (2) valid passport visas. The grant of the SIRV only relieves the alien from the necessity of securing a valid visa; it does not replace the requirement of a valid passport. Section 2(a) of Executive Order No. 63 declares that the SIRV entitles the alien to enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports. Neither can Park rely on the travel certificate; it was issued on January 16, 2001 by the Korean Embassy after Park had been charged and indicted, and served only as authority for Park to return to Korea.

The issuance of a new passport to Park in no way obliterated the fact that he entered the country on October 28, 2000 without the requisite valid passport. Park's Passport No. PH0003486 was issued only on April 5, 2001, months after he had been charged and indicted for violating our immigration laws.

While we ruled in the 2004 case of *Domingo v. Scheer*[25] that the subsequent issuance of a new and regular passport to the alien rendered the SDO moot and academic, we cannot adopt that principle in the present case because the Scheer ruling was arrived at after considering a significantly different factual situation.

The cancellation of Scheer's passport resulted in the loss of his privilege to stay in the country and for which reason, the BID ordered his deportation. The subsequent issuance of a new passport to Scheer, however, remedied his undocumented status and authorized his continued stay; thus, we declared the SDO against him moot and academic. On the other hand, Park was ordered deported because his cancelled passport denied him of the privilege to re-enter the country. The subsequent issuance of a new passport to Park, as we said, did not erase the fact that he was not lawfully admitted into the country in the first place, as he returned without a valid passport. When an alien has already physically gained entry in the country, but such entry is later found unlawful or devoid of legal basis, the alien can be excluded anytime after it is found that he was not lawfully admissible at the time of

his entry.[26]

Given these findings, we rule that the supporting documents presented by Park do not provide sufficient factual basis for overturning the SDO that, at that point, had already lapsed into finality for Park's failure to contest it on time. The BID thus correctly denied Park's motion to set aside the SDO in its October 15, 2001 Resolution.

Deported aliens are generally barred from re-entering the territory of the deporting state

We conclude this case by recognizing and pointing out certain aspects that the BID may, in its discretion, still want to look into. Section 29 (a) of the Immigration Act states:

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

x x x x

(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 of profiteering unless such aliens have previously resided in the Philippine immediately before his exclusion or deportation for a period of ten years or more or are married to a native Filipino woman; [Emphasis supplied.]

As a rule, an alien is barred from re-entering the territory of the deporting State. However, States may, upon proper application, waive previous deportation orders and allow an alien to re-enter, provided, the re-entry and readmission of the alien do not pose a risk to the general welfare. As stated in the quoted provision above, the Commissioner of Immigration may exercise sound discretion in the readmission of previously excluded aliens (subject to certain limitations). After Park was first deported back to Korea on July 24, 2000 on the strength of the July 6, 2000 letter, he returned to the Philippines apparently without the requisite consent of the Commissioner of Immigration prior to his re-entry. Whether the July 6, 2000 letter was actually repudiated by the Korean Embassy does not figure into this equation, as Park's earlier deportation was already a fait accompli. His failure to secure the Commissioner of Immigration's consent/waiver prior to readmission into the deporting State leaves the Commissioner sufficient ground to charge him with violation of Section 37(a)(2) of the Immigration Act, which declares that:

Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him or 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:

x x x x

(2) Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry; [Emphasis supplied.]

WHEREFORE, we GRANT the petition for review on certiorari and REVERSE the June 13, 2002 Decision and September 4, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 67614. The Summary Deportation Order of December 22, 2000 and Resolution of October 15, 2001 of the petition is AFFIRMED and REINSTATED. This ruling is without prejudice to such action the Bureau of Immigration and Deportation may undertake for the commencement of the proper proceedings against respondent Jung Keun Park for his re-entry into the Philippines on October 28, 2000, subsequent to his deportation.

SO ORDERED.

Carpio, J., (Chairperson), Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the Rules of Court; rollo, pp. 10-45.

[2] Penned by Associate Justice Eugenio S. Labitoria (retired), and concurred in by Associate Justice Teodoro P. Regino (retired) and Associate Justice Juan Q. Enriquez, Jr.; id. at 47-53.

[3] Id. at 54-55.

[4] Id. at 56.

[5] Id. at 57.

[6] Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him or 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:

x x x x

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

x x x x

[7] Rollo, pp. 58-61.

[8] Motion for Early Resolution dated February 19, 2001; id. at 67-68.

[9] Id. at 63-64.

[10] Motion to Set Aside Summary Deportation Order dated December 22, 2000, filed on June 1, 2001; id. at 70-73.

[11] Id. at 77-99.

[12] Id. at 155.

[13] Id. at 156.

[14] Supra note 2.

[15] Supra note 3.

[16] Referring to the February 16, 2001 and May 28, 2001 letters, supra notes 12 and 13.

[17] Rule XIII, Section 3 states:

Section 3. Promulgation of Decision. Finality. - The decision of the Board [of Commissioners] shall be returned to the Board of Special Inquiry for promulgation. Service of a copy of the decision to the last known or given address of the respondent or at the office of his counsel shall be deemed promulgation. The decision shall become final and executory after thirty (30) days from promulgation, unless within such period, the President shall order the contrary.

[18] Rollo, p. 249.

[19] Id. at 250.

[20] Supra note 6.

[21] Immigration Act, Section 37(d).

[22] Rollo, p. 57.

[23] Dated April 5, 1990.

[24] Section 37 (e), Immigration Act.

[25] G.R. No. 145745, January 29, 2004, 421 SCRA 468.

[26] Secretary of Justice v. Koruga, G.R. No. 166199, April 24, 2009.

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