GERONIMO S. ROSAS, PETITIONER, VS. DILAUSAN MONTOR AND IMRA-ALI M. SABDULLAH, RESPONDENTS.

G.R. No. 204105. October 14, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari[1] assailing the March 9, 2012 Decision[2] and October 16, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 05497 which affirmed the Office of the Ombudsman's (OMB's) March 2, 2007 Decision[4] and July 4, 2008 Order[5] in OMB-V-A-05-0036-A finding petitioner Geronimo S. Rosas, Regional Director of the Bureau of Immigration Mactan International Airport Station, guilty of grave misconduct.

The facts follow:

On December 7, 2004, Jafar Saketi Taromsari (Taromsari) and Jalal Shokr Pour Ziveh (Ziveh), both Iranian nationals, arrived in the Philippines at the Mactan-Cebu International Airport (MCIA). After staying in a hotel in Cebu City for a few days, they left for Narita, Japan on December 14, 2004.

On December 16, 2004, Japanese immigration authorities discovered that Taromsari and Ziveh had counterfeit or tampered Mexican and Italian passports and used falsified names: "Jaime Humberto Nenciares Garcia" for Ziveh and "Marco Rabitti" for Taromsari. For using these fraudulent passports and lack of entry visa, the Japanese immigration authorities denied entry to Taromsari and Ziveh and sent them back to the Philippines. Taromsari and Ziveh arrived at MCIA on the same day at 6:45 p.m. and admitted at the detention cell of the Bureau of Immigration (BI) Cebu Detention Center.[6]

In a Memorandum[7] dated December 15, 2004 addressed to BI Commissioner Alipio F. Fernandez, petitioner Geronimo S. Rosas, Senior Immigration Officer and Alien Control Officer of Cebu Immigration District Office, who was then also designated as Regional Director, gave the following report:

> On flight PR 433 from Narita International Airport, Japan on Thursday, 16[th] of December 2004 at 18:45 Hours, passengers JAFAR SAKETI TAROMSARI @ Marco Rabitti (Italian) and JALAL SHOKR POUR ZIVEH @ Jaime Humberto Nenciares Garcia (Mexican), both Iranian nationals, were boarded back to Mactan-Cebu International Airport after caught by the Japanese Immigration authorities thereat for using fake and fraudulent Italian and Mexican passports, respectively.
>
> During the investigation conducted by Atty. Serafin A. Abellon, Special Prosecutor in the presence of Regional Director Geronimo S. Rosas, subjects admitted that they bought the Italian and Mexican passports from a certain "KURAM" in Tehran, Iran, whom they allegedly attached their respective pictures substituting the pictures of the real owners and paid US$3,000 at US$1,500.00 each, for the purpose of traveling in comfort without the requirement of entry visa to Japan and finally, to work thereat, considering that JAFAR SAKETI TAROMSARI had worked there before for three (3) years from 1999 to 2002 and earned a lot of money until he was caught and deported by Japanese Immigration authorities, that they both arrived in the Philippines for

> the first time at MCIA on December 07, 2004 on board MI 566 from Singapore using Italian and Mexican passports under the names of MARCO RABITTI and JAIME HUMBERTO NECIARES GARCIA, respectively. Subsequently, they left for Narita, Japan on December 14, 2004 and were sent back to MCAI on December 16, 2004.
>
> That the acts committed by the subjects are plain violations of our PIA of 1940 as amended under Section 29 (a) (14) and therefore, they are excludable. Recommend inclusion of their names in the Blacklist.

Thereupon, an Exclusion Order[8] was issued against Taromsari and Ziveh on grounds of "Not Properly Documented" and "No Entry Visa."

On December 17, 2004, security guards Elmer Napilot (Napilot) and Jose Ramon Ugarte (Ugarte) received a written order from petitioner directing them to escort Taromsari and Ziveh from Bi Detention, Mandaue City to MCIA pursuant to the aforementioned exclusion order for violation of Sec. 29 (a) (17) of Commonwealth No. 613 or the Philippine Immigration Act(PIA)of 1940.[9]

On December 19, 2004, Taromsari and Ziveh were released from detention and brought by Napilot and Ugarte to the MCIA for deportation.[10] They were allowed to leave for Tehran, Iran via Kuala Lumpur, Malaysia on board Malaysian Air Lines.[11]

On January 18, 2005, respondents Imra-Ali Sabdullah and Dilausan S. Montor, employees of the Bureau of Immigration (BI), Cebu, filed a Complaint-Affidavit[12] before the OMB against petitioner, Napilot and Ugarte for grave misconduct, violation of Section 3(e)[13] of Republic Act (RA) No. 3019 and conduct prejudicial to the interest of public service. Respondents alleged that petitioner irregularly and anomalously handled and disposed of the case involving two restricted Iranian nationals by allowing them to leave the country without initiating any proceeding for violation of immigration laws considering that said aliens were potential threats to the country's national interest and security. It was further contended that the Iranian nationals should have been charged for deportation because they violated Section 37(a)(9), in relation to Sections 45 and 46 of PIA.

In his Counter-Affidavit,[14] petitioner denied the allegations against him and asserted that he should not be made liable for acts that do not fall within his area of responsibility. He pointed out that it is the immigration officers who are incharge of primary inspection of incoming and outgoing passengers as well as the determination of whether a passenger should be excluded, and the management, control and supervision of such duties pertain to the Head Supervisor, Mr. Casimiro P. Madarang III. He also averred that he did not have prior knowledge of the two Iranian nationals' previous entry to the country as he was, in fact, not at the MCIA on that particular date and time of their first arrival in the Philippines.

Petitioner, nonetheless, contended that the two Iranian nationals were proper subjects for exclusion under Section 29(a)(17)[15] since they used Iranian passports without the requisite Philippine entry visas when they arrived on December 16, 2004. He explained that the counterfeit Italian and Mexican passports were confiscated by the Japanese Immigration authorities when Japan excluded the Iranian nationals. Such use of Iranian passports without entry visas served as the basis for their exclusion from our country. He likewise denied giving preferential treatment to the detained Iranian nationals, citing his Memorandum dated December 17, 2004 where he reported to the BI Commissioner that two Iranian nationals violated Section 29(a)(17) of the PIA of 1940 and recommended placing them both in the Blacklist.

On March 2, 2007, the OMB rendered its Decision finding substantial evidence of petitioner's grave misconduct. It held that in unduly releasing the two Iranian nationals, petitioner showed manifest partiality, evident bad faith and gross inexcusable negligence. It also stated that petitioner's claim that he had no prior knowledge of the unlawful entry was belied by his December 17, 2004 Memorandum. Napilot and Ugarte were acquitted from the

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charges as they merely acted on petitioner's orders and no evidence was presented to suggest that they were in conspiracy with the petitioner.

The OMB thus ruled:

> In view of the foregoing, this Office finds [petitioner] Rosas guilty of Grave Misconduct. Considering the gravity of the offense and the fact that this is not the first time [petitioner] Rosas is administratively sanctioned, the penalty of DISMISSAL is hereby imposed pursuant to Rule XIV, Section 23 of the Omnibus Rules Implementing Book V of Executive Order No. 292.
>
> However, finding no conspiracy between [petitioner] Rosas and respondents Elmer Napilot and Ramon Ugarte, the case against Napilot and Ugarte is hereby dismissed for want of substantial evidence.
>
> SO DECIDED.[16]

On December 27, 2007, the OMB issued an Order[17] for the immediate implementation of the March 2, 2007 Decision. Petitioner's motion for reconsideration was likewise denied.[18]

Via a petition for review,[19] petitioner assailed the OMB's ruling in the CA, arguing that he should not be held administratively liable for the release of the two Iranian nationals pursuant to a validly issued exclusion order.

In its March 9, 2012 decision, the CA affirmed the OMB's ruling. The CA held that there was sufficient evidence on record for the OMB's conclusion that the release of the two Iranian nationals was irregular and not in accord with existing immigration laws. It stressed that the matter was not one that merely involved the lack of entry visas but that petitioner had knowledge that the two Iranian nationals were excluded from Japan for using fraudulent passports. Plainly, the results of the investigation provide sufficient basis for deportation proceedings. The CA concurred with the OMB that petitioner had the duty to initiate deportation and criminal proceedings against the Iranian nationals for violation of Section 37(a)(9) of the PIA in relation to Sections 45 and 46. Thus:

> WHEREFORE, in view of the foregoing premises, the Petition for Review dated November 2, 2010 is hereby DISMISSED.
>
> SO ORDERED.[20]

Petitioner moved for reconsideration but it was denied.[21]

Hence, this petition.

Petitioner reiterates that he cannot be held administratively liable for a validly issued exclusion order which is an examining immigration officer's function under the PIA of 1940. He asserts that there was lack of substantial evidence to hold him liable for giving unwarranted benefit to the Iranian nationals.

On his part, the Solicitor General argues that Section 37 of the PIA of 1940 mandates the BI to arrest aliens who enter the Philippines by false means and misleading statements. He explains that the two Iranian nationals were held in detention not for the lack of entry visas but for using falsified documents when they entered the Philippines on December 7, 2004 and when they left for Japan on December 14, 2004. Such was evident from the investigation conducted by the BI on the two Iranian nationals.

Petitioner submits the following assignment of errors:

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> WHETHER PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL FOR THE PURELY DISCRETIONARY ACTS OF THE

ASSIGNED IMMIGRATION OFFICERS IN ORDERING THE EXCLUSION OF THE IRANIAN NATIONALS NOTWITHSTANDING THE OVERWHELMING EVIDENCES THAT WOULD SHOW THAT PETITIONER ROSAS HAS NO INVOLVEMENT AND PARTICIPATION IN RENDERING THE SAID EXCLUSION ORDER AND NOTWITHSTANDING THAT THE SAID EXCLUSION ORDER WAS VALIDLY AND PROPERLY ISSUED BY THE IMMIGRATION OFFICERS UNDER THE PREVAILING CIRCUMSTANCES;

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WHETHER OR NOT PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL SANS ANY SPECK OF EVIDENCE THAT HE GAVE UNWARRANTED BENEFIT TO THE IRANIAN NATIONALS AND THAT HE WAS MOTIVATED BY CORRUPT MOTIVES WHEN HE SUBMITTED AN INCIDENT/RECOMMENDATORY REPORT TO THE COMMISSIONER OF IMMIGRATION AFFIRMING THE EXCLUSION ORDER OF THE ASSIGNED IMMIGRATION OFFICERS AGAINST THE IRANIAN NATIONALS;

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WHETHER OR NOT PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL FOR NOT INITIATING THE DEPORTATION AND CRIMINAL PROCEEDINGS AGAINST THE IRANIAN NATIONALS WHICH UNDER THE LAW CAN ONLY BE EXERCISED BY THE IMMIGRATION COMMISSIONER WHO WAS FULLY INFORMED OF THE CIRCUMSTANCES PERTAINING TO THE INCIDENT INVOLVING THE IRANIAN NATIONALS;

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WHETHER THE COURT OF APPEALS HAS SUBSTANTIAL BASIS TO CONCLUDE THAT THE DELAY IN THE EXCLUSION OF THE IRANIAN NATIONALS APPEARED TO BE IRREGULAR AND DEVIATED FROM THE NORM NOTWITHSTANDING THE OVERWHELMING EVIDENCES ON RECORD THAT WOULD SHOW THAT THE SAME HAS FACTUAL AND LEGAL BASIS; AND

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WHETHER OR NOT THE, COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE SETTLED FACTS AND EVIDENCES THAT WOULD SHOW THAT PETITIONER ROSAS HAS NOT DONE ANY MISCONDUCT IN RELATION TO THE INCIDENT INVOLVING THE IRANIAN NATIONALS.[22]

Essentially, the issue before us is whether there is substantial evidence to sustain the finding of gross misconduct warranting petitioner's removal from the service. Otherwise stated, does petitioner's act of releasing the two Iranian nationals without initiating any case for violation of immigration laws despite the results of the investigation undertaken constitute gross misconduct?

We rule in the affirmative.

It is well-settled that findings of fact and conclusions by the Office of the Ombudsman are conclusive when supported by substantial evidence.[23] Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[24] The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[25]

We agree with the CA that there was sufficient basis to initiate deportation proceedings under Section 37(a)(9) in

relation to Section 45 of the PIA of 1940. We find no cogent reason to overturn the CA's findings the question of whether substantial evidence being a question of fact which is beyond this Court's power of review for it is not a trier of facts.[26]

PETITIONER HAD THE DUTY TO INITIATE CRIMINAL PROCEEDINGS AND DEPORTATION PROCEEDINGS UNDER SECTION 45 OF THE PIA OF 1940

Every sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for its self-preservation or public interest. In the Philippines, aliens may be expelled or deported from the Philippines on grounds and in the manner provided for by the Constitution, the PIA of 1940, as amended, and administrative issuances pursuant thereto.[27]

Section 10[28] of the PIA of 1940 requires non-immigrants to present their unexpired passports and valid passport visas to immigration officers. Pursuant to their powers as outlined in Section 6[29] of the PIA of 1940, the examining immigration officer determines whether the non-immigrant is qualified to enter the Philippines based on Section 29(a).[30] If the alien holds none of the disqualifications as stated in Section 29, he may be admitted entry barring other circumstances that might affect his entry. If, however, the immigration officer determines that an alien possesses any of the disqualifications under Section 29, the immigration officer is authorized to issue an exclusion order.

Exclusion and deportation are formal removal procedures which ultimately results to an alien's removal from the territory provided for separately under Section 29 and 37 of the PIA, respectively. The United States in Ex Parte Domingo Corypus,[31] the Washington District Court in 1925 differentiated exclusion from deportation in the following manner:

> x x x Deporting a person who is already in the country, and therefore enlarged, is depriving him of a privilege which he, at least at the time, is enjoying in the United States; whereas a person being denied the privilege to enter is not deprived of any liberties which he had theretofore enjoyed. The gate is simply closed and he may not enter.

Under Philippine immigration laws, exclusion is the authorized removal of an alien by immigration officers, performing primary inspection, or by the immigration boards of special inquiry, by secondary inspection, of any foreigner arriving in the Philippines who, upon inspection and prior to entry or admission, is barred by immigration laws, rules and regulations from entering or being admitted to the Philippines.[32] When an alien is excluded he is immediately sent back to the country where he came from on the same vessel which transported him, unless in the opinion of the Commissioner of Immigration such immediate return is not practicable or proper.[33] Under certain circumstances, when an alien is excluded, Section 25[34] of the PIA of 1940 authorizes the alien's detention until such time it is determined that he is qualified for entry and/or admission.

Deportation proceedings, on the other hand, are governed by Sections 37[35] to 39 of the PIA. We have stated that the power to deport aliens is an act of State, an act done by or under the authority of the sovereign power.[36] It is a police measure against undesirable aliens whose continued presence in the country is found to be injurious to the public good and the domestic tranquility of the people.[37]

Pertinently, Section 37(a)(9) provides:

> Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of

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> 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 "round for deportation as charged against the alien:
>
> x x x x
>
> 9. Any alien who commits any of the acts described in sections forty-five and forty-six of this Act, independent of criminal action which may be brought against him: Provided, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: Provided however, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head;
>
> x x x x (Emphasis supplied)

The relevant provisions of Sections 45 and 46 state:

> Sec. 45. Any individual who:
>
> x x x x
>
> (c) Obtains, accepts or uses any immigration document, knowing it to be false; or
>
> x x x x
>
> Sec. 46. Any individual who shall bring into or land in the Philippines or conceal, harbor, employ, or give comfort to any alien not duly admitted by any immigration officer or not lawfully entitled to enter or reside within the Philippines under the terms of the immigration laws, or attempts, conspire with, or aids another to commit any such act, and any alien who enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by willful, false, or misleading representation or willful concealment of a material fact, shall be guilty of an offense, and upon conviction thereof, shall be fined not less than five thousand pesos but not more than ten thousand pesos, imprisoned for not less than five years but not more than ten years, and deported if he is an alien. Dismissal by the employer before or after apprehension does not relieve the employer of the offense.
>
> x x x x (Emphasis supplied)

The two Iranian nationals, Taromsari and Ziveh, confessed to have knowingly used falsified passports and obtained entry into the Philippines by using the said fraudulent immigration documents, both of which are grounds for deportation proceedings. Upon being questioned why they were sent back from Japan, they admitted that they entered the Philippines previously using fraudulent passports, to wit:

> Q
>
> Do you understand why you were sent back to [MCIA] from Narita, Japan?
>
> A.
>
> Yes sir, we were caught using fake Italian and Mexican passports by Japanese Immigration officers at Narita International Airport, Japan.
>
> Q.
>
> What fake passports are you referring to?
>
> A.

We were using fake Italian and Mexican passports in entering the Philippines at [MCIA].

x x x x

Q.

Where are these Italian and Mexican passports, you mentioned?

A.

The Japanese Immigration authorities confiscated them.

Q.

What was your purpose in going to Japan with fake passports?

A.

Our only purpose is to find jobs there, so that we can support financially our family in Tehran, Iran but Iranians are required to secure entry visas and it is very difficult to get entry visas from their embassy. Italians and Mexicans are not required entry visas to Japan.

Q.

Can you narrate to us how did you and your friend able to reach our country?

A.

First, we applied entry visas at the Thailand Embassy in Tehran, Iran using our Iranian passports, which visa application was granted to us on October 26, 2004. W[e] went to Bangkok, Thailand via Dubai and stayed there for one (1) month and came back to Iran. The last time we left Tehran, Iran again via Dubai on December 02, 2004 to Bangkok, Thailand. Our destination this time [was] to reach Japan via Malaysia & Cebu, Philippines. We arrived Malaysia in December 06, 2004.

Q.

What travel documents were you using from Bangkok to Malaysia?

A.

We were using our Iranian passports, sir.

Q.

From Malaysia to Mactan-Cebu, what travel documents were you using?

A.

From Malaysia, we left on December 06, 2004 and passed by Singapore where we spent about ten (10) hours at the airport, we were using our Iranian passports, we finally boarded Silk Air to [MCIA] and upon arrival in [MCIA], we were using Italian and Mexican passports.

x x x x

Q.

Are you aware that you are violating our Immigration laws in the country?

A.

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Yes, sir, but we have to use fake travel documents because of our desire to work and earn a living.

x x x x

Q.

Have you been to Japan?

A.

Yes, sir. I was there for three (3) years, 1999 to 2002 and I earned a lot of money but I was caught and departed back to Iran.[38]

Having admitted that they knowingly entered the country with the use of fraudulent passports and false representations when they arrived on December 7 , 2004, Taromsari and Ziveh should have been ordered arrested and formally charged with violation of Section 37(a)(9) in relation to Section 45(c) and (d). Deportation proceedings should have been initiated forthwith against these aliens.

While the two Iranian nationals were initially held due to lack of entry visas, after their admission that they used fraudulent passports in entering the country, the filing of a criminal action pursuant to Section 45 is proper, together with the initiation of deportation proceedings. While both exclusion and deportation ultimately removes a person from our territory, Section 45 imposes an additional penalty - deportation has an additional penalty in that it imposes a fine. Indeed, that these aliens were released without undergoing deportation proceedings as required by law is highly irregular.

Misconduct is defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[39] It becomes grave misconduct when it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."[40] A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.[41] The charge of gross misconduct is a serious charge that warrants the removal or dismissal of a public officer or employee from service together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service.[42]

In this case, petitioner had the duty under the law to oversee the filing of criminal actions and deportation proceedings against Taromsari and Ziveh and not merely excluding them. The facts on record established that at the time petitioner recommended their exclusion on December 17, 2004, he was already aware that said Iranian nationals used the falsified Mexican and Italian passports in entering and leaving the Philippines on December 7 and 14, 2004. Such use of counterfeit passports by aliens entering our country is a criminal offense under Sec. 45 of the PIA, as amended.

Instead of filing the appropriate criminal charge as mandated by law, petitioner allowed Taromsari and Ziveh to depart and return to Tehran via Malaysia. While claiming that it was only on December 17, 2004 that he came to know of the Iranian nationals' detention for illegal entry into the Philippines, official log book records[43] show that petitioner, along with security guards Napilot and Ugarte, brought the two Iranian nationals to their detention cell on the same night of their arrival from Japan on December 16, 2004 and detained them there for three days. Custody over the two Iranian nationals caught violating our immigration laws was simply handed over by petitioner to the two security guards whom he later instructed to escort the said offenders to the airport to depart for Malaysia. In failing to initiate the proper proceedings against the Iranian nationals and allowing them to escape criminal charges and thorough investigation for possible terrorist activities or human trafficking, petitioner

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displayed a blatant disregard of established immigration rules making him liable for grave misconduct that warrants his removal from the service.

WHEREFORE, the appeal is DENIED for lack of merit and AFFIRM the March 9, 2012 Decision and October 16, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 05497.

With costs against the petitioner.

SO ORDERED.

Peralta, (Acting Chairperson), Perez,[*] Mendoza,[**] and Leonen,[***] JJ., concur.

October 22, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___October 14, 2015___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 22, 2015 at 10:17 a.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Designated additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated September 30, 2015.

[**]Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[***] Designated additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 22, 2014.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 36-46. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Edgardo L. Delos Santos and Gabriel T. Ingles concurring.

[3] Id. at 47-48. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

[4] Id. at 87-100. Penned by Graft Investigation and Prosecution Officer Nelia C. Lagura.

[5] Id. at 119-123. Penned by Graft Investigation and Prosecution Officer II Nelia C. Lagura.

[6] OMB Records, p. 6.

[7] Rollo, p. 341.

[8] Id. at 203.

[9] OMB Records, p. 26.

[10] Id.at 7.

[11] TSN, April 3, 2008, p. 5 I (OMB Clarificatory Hearing), rollo, p. 319.

[12] Id. at 49-52.

[13] RA No. 3019, Section 3(e) provides:

SEC. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[14] Rollo, pp. 53-65.

[15] Petitioner initially stated Section 29(a)(14) as (he basis for exclusion but explained that there had been a clerical error and said that it should have read as Section 29(a)(17). Rollo, p. 57.

[16] Rollo, pp. 99-100.

[17] Id. at 101-103.

[18] Supra note 5.

[19] Under Rule 43 of the Rules of Court.

[20] Rollo, p. 45.

[21] Supra note 3.

[22] Id. at 14-15.

[23] Office of the Ombudsman v. Amalio A. Mallari, G.R. No. 183 161, December 3, 2014, p. 16.

[24] Gupilan-Aguilar v. Office of the Ombudsman, G.R. No. 197307, February 26, 2014, 7 17 SCRA 503, 532.

[25] Office of the Ombudsman v. Amalio A. Mallari, supra note 23.

[26] Secretary of Justice v. Koruga, 604 Phil. 405 (2009).

[27] Id. at 419.

[28] PHILIPPINE IMMIGRATION ACT of 1940, Section 10 provides:

Sec. 10. Presentation of unexpired passport. - Nonimmigrants 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 origin and identity as prescribed by regulations, and valid passport visas granted by diplomatic or consular officers, except that such documents shall

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not be required of the following aliens:

(a) A child qualifying as a nonimmigrant, born subsequent to the issuance of the passport visa of an accompanying parent, the visa not having expired; and

(b) A seaman qualifying as such under Section 9 (c) of this Act.

[29] PHILIPPINE IMMIGRATION ACT of 1940, Section 6 provides:

Sec. 6. Powers of Immigration Officer. - The examination of aliens concerning their right to enter or remain in the Philippines shall be performed by Immigrant Inspectors with the advice of medical authorities in appropriate cases. Immigrant Inspectors are authorized to exclude any alien not properly documented as required by this Act, admit any alien complying with the applicable provisions of the immigration laws and to enforce the immigration laws and regulations prescribed thereunder. Immigrant Inspectors are also empowered to administer oaths, to take and consider evidence concerning the right of any alien to enter or reside in the Philippines, and to go aboard and search for aliens on any vessel or other conveyance in which they believe aliens are being brought into the Philippines. Immigrant Inspectors shall have the power to arrest, without warrant, any alien who in their presence or view is entering or is still in the course of entering the Philippines in violation of immigration laws or regulations prescribed thereunder.

[30] PHILIPPINE IMMIGRATION ACT of 1940, Section 29 provides:

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

- Idiots or insane persons and persons who have been insane;

- Persons afflicted with a loathsome or dangerous contagious disease, or epilepsy:

- Persons who have been convicted of a crime involving moral turpitude;

- Prostitutes, or procurers, or persons coming for any immoral purposes;

- Persons likely to become, public charge;

- Paupers, vagrants, and beggars;

- Persons who practice polygamy or who believe in or advocate the practice of polygamy;

- Persons who believe in or advocate the overthrow by force and violence of the Government of the Philippines, or of constituted lawful authority, or who disbelieve in or are opposed to organized government, or who advocate the assault or assassination of public officials because of their office, or who advocate or leach principles, theories, or ideas contrary to the Constitution of the Philippines or advocate or teach the unlawful destruction of property, or who are members of or affiliated with any organization entertaining or teaching such doctrines;

- Persons over fifteen years of age, physically capable of reading, who cannot read printed matter in ordinary use in any language selected by the alien, but this provision shall not apply to the grandfather, grandmother, father, mother, wife, husband or child of a Philippine citizen or of an alien lawfully resident in the Philippines;

- Persons who are members of a family accompanying an excluded alien, unless in the opinion of the Commissioner of Immigration no hardship would result from their admission;

- Persons accompanying an excluded person who is helpless from mental or physical disability or infancy, when the protection or guardianship of such accompanying person or persons is required by the excluded person, as shall be determined by the Commissioner of Immigration;

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- Children under fifteen years of age, unaccompanied by or not coming to a parent, except that any such children may be admitted in the discretion of the Commissioner of Immigration, if otherwise admissible;

- Stowaways, except that any stowaway may lie admitted in the discretion of the Commissioner of Immigration, if otherwise admissible;

- Persons coming to perform unskilled manual labor in pursuance of a promise or offer of employment, express or implied, but this provision shall not apply to persons bearing passport visas authorized by Section Twenty of this Act;

- 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 often years or more or are married to native Filipino women;

- Persons who have been removed from the Philippines at the expense of the Government of the Philippines, as indigent aliens, under the provisions of section forty-three of this Act, and who have not obtained the consent of the Board of Commissioners to apply for readmission; and

- Persons not properly documented for admission as may be required under the provisions of this Act.

x x x x

[31] 6 F.2d 336 (W.D. Wash. 1925). Based on the U.S. Citizenship and Immigration Services, the United States, in April 1997 eliminated the distinction between exclusion and deportation and consolidated both under a process called Removal, (last accessed August 20, 2015).

[32] Ledesma, Ronaldo. AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS, Rex Printing Company; Quezon City, Manila, 1999. p. 169.

[33] Ledesma, Ronaldo. AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS, Rex Printing Company; Quezon City, Manila, 1999. p. 171.

[34] PHILIPPINE IMMIGRATION ACT of 1940, Section 25 provides:

Sec. 25. Period of detention of aliens. - For the purpose of determining whether aliens arriving in the Philippines belong to any of the classes excluded by the immigration laws, the Period examining immigration officers may order such aliens detained on board the vessel bringing them or in such other place as the officers may designate, such detention to be for a sufficient length of time to enable the officers to determine whether they belong to an excluded class and their removal to such other place to be at the expense of the vessel bringing them.

[35] PHILIPPINE IMMIGRATION ACT of 1940, Sections 37 provides:

Sec. 37. (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:

- Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at

any place other than at a designated port of entry;

- Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry;

- Any alien who, alter the effective date ol this Act, is convicted in the Philippines and sentenced for a term of one year or more for a crime involving moral turpitude committed within five years after his entry to the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;

- Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs;

- Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution, or is a procurer;

- Any alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen subsequent to entry;

- Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a nonimmigrant;

- Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government or who advises, advocates, or teaches the assault or assassination of public officials because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or leaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, lo the dissemination of such doctrines;

- Any alien who commits any of the acts described in sections forty-five and forty-six of this Act, independent of criminal action which may be brought against him: Provided, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: Provided however, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as (he Commissioner may fix and approved by the Department Head;

- Any alien who, at any time within five years alter entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act Numbered Six Hundred and Fifty-Three, otherwise known as the Philippine Alien Registration Act of 1941, or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same Act;

- Any alien who engages in profiteering, hoarding, or black-marketing, independent of any criminal action which may be brought against him;

- Any alien who is convicted of any offense penalized under Commonwealth Act Numbered Four hundred and seventy-three, otherwise known as the Revised Naturalization Laws of the Philippines, or any law relating to acquisition of Philippine citizenship;

- Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed;

(b) Deportation may be effected under clauses 2, 7, 8, 11 and 12 of paragraph (a) of this Section at any time after entry, but shall not be effected under any other clause unless the arrest in the deportation proceedings is made within five years after the cause for deportation arises. Deportation under clauses 3 and 4 shall not be effected if

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the court, or judge thereof, when sentencing the alien, shall recommend to the Commissioner of Immigration that the alien be not deported.

(c) 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.

(d) In any deportation proceeding involving the entry of an alien the burden of proof shall be upon the alien to show that he entered the Philippines lawfully, and the time, place, and manner of such entry, and for this purpose he shall be entitled lo a statement of the facts in connection with his arrival as shown by any record in the custody of the Bureau of Immigration.

(e) Any alien under arrest in a deportation proceeding may lie released under bond or under such other conditions as may be imposed by the Commissioner of Immigration.

[36] Secretary of Justice v. Koruga, supra note 26, at 419.

[37] Id.

[38] Rollo, pp. 342-344.

[39] Office of the Ombudsman v. Apolonio, 683 Phil. 553, 571 (2012).

[40] Id. at 571-572.

[41] Civil Service Commission v. Ledesma, 508 Phil. 569, 579-580 (2005).

[42] Pleyto v. PNP-CIDG, 563 Phil. 842, 911 (2007).

[43] OMB Records, p. 6.

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