

**PEPITO LAO ALFONSO AND JUANITO LAO ALFONSO, PETITIONERS
AND APPELLEES, VS. HON. MARTINIANO P. VIVO, IN HIS CAPACITY
AS ACTING COMMISSION OF IMMIGRATION, RESPONDENT AND
APPELLANT.**

G.R. No. 20801. March 31, 1966

Ponente: REGALA, J.

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REGALA, J.:

Appeal from a decision of the Court of First Instance of Manila.

In March, 1961, the petitioners-appellees Pepito Lao Alfonso and Juanito Lao Alfonso, both born in China, applied for admission into the Philippines as sons of one Sofronio Lao Alfonso, a resident of this country who elected Philippine citizenship on September 27, 1946. The application was heard by the Board of Special Inquiry No. 1 of the Bureau of Immigration which, on August 7, 1961, rendered a decision declaring that "the Board is satisfied that the herein applicants are really children of Sofronio Lao Alfonso and, therefore, are entitled to Philippine citizenship pursuant to paragraph (3), Section 1, Article IV, of the Constitution," and are 'admitted' under that status." The petitioners were accordingly issued identification certificates. On November 1, 1961, Pepito Lao Alfonso was issued Philippine Passport No. 49253. It does not appear, however, that he ever used the passport in going abroad.

The decision of the said Board of Special Inquiry was passed upon by the Board of Commissioners on April 28, 1961, with then Commissioner Galang voting for exclusion and both the First and Second Deputy Commissioner voting for admission.

On July 14, 1962, respondent Acting Commissioner of Immigration issued a "Warrant of Arrest" reading as follows:

"WHEREAS, it has been shown to the undersigned and the undersigned is satisfied that 1. PEPITO LAO ALFONSO, male, 20 years old; 2. JUANITO LAO ALFONSO, male, 18 years old, are citizens or subjects of the Republic of China who are now in the Philippines:

"WHEREAS, it has also been shown to the undersigned and the undersigned is satisfied that the above-named alien is subject to deportation under Sections 37(a)(1) and 37(a)(2) in relation to Sec. 29(a)(17) of the Philippine Immigration Act of 1940, as amended, in view of the following facts and circumstances:

"The above-named persons, being aliens who were not admissible at the time of entry and are not admissible now, falsely represented themselves as Philippine citizens, to wit, through the use of fraudulently and/or illegally obtained certificates of registration and identity and, by such artifice and fraud, secured admission into the Philippines aboard a Cathay Pacific Airways plane which landed at the Manila International Airport on March 26, 1961.

"NOW, THEREFORE, by virtue of the authority vested in the undersigned by law, you are hereby commanded

to apprehend the above-named alien said to be residing at 640 Ronquillo, Manila, or wherever found and to bring him before the undersigned for the said alien to show cause, if any there be, why he should not be deported from the Philippines under the provisions of the Philippine Immigration Act of 1940, as amended."

On August 6, 1962, Pepito Lao Alfonso and Juanito Lao Alfonso filed with the court below a petition captioned "Mandamus with Preliminary Injunction," with the prayer—

"x x x that pending the final determination of this case and the filing of the necessary bond, a writ of preliminary injunction be issued directing respondent herein and all persons acting on his behalf to desist from enforcing the warrant of arrest (Annex 'C') and from ordering, at any time before final judgment herein, the deportation of petitioners from the Philippines, and after due hearing, judgment be rendered declaring the petitioners herein to be citizens of the Philippines and commanding the respondent herein to cause the records of his office to show that petitioners herein are citizens of the Philippines."

It is alleged in the petition that petitioners were born in China, their parents being Sofronio Lao Alfonso, a Filipino citizen by election, and Sy Yat Tee; that upon securing certificates of Registration and Identity by the Consulate General in Hongkong in March, 1961, they sought admission into this country as sons of a Filipino citizen; that after due hearing a decision was rendered by the Board of Special Inquiry No. 1 of the Bureau of Immigration to the effect that petitioners are children of said Sofronio Lao Alfonso; that said decision was affirmed upon review by the Board of Commissioners; that one Benjamin de Mesa of the Commission of Immigration submitted to the respondent Acting Commissioner a report finding that petitioners are not Filipino but Chinese citizens who entered the country illegally and fraudulently; that by virtue of said report, herein respondent issued a warrant for the arrest of petitioners preparatory to their deportation thereby excluding them from the use and enjoyment of the right to be admitted into and stay in this country as citizens; that because of the summary nature of the action, it would be futile to ask for a reconsideration of the order; that respondent acted without or in excess of jurisdiction; and that there is no other plain, speedy and adequate remedy available to them in the ordinary course of law.

Against the opposition of the respondent Acting Commissioner, the lower court issued on September 4, 1962 a writ of preliminary injunction enjoining the respondent and all persons acting on his behalf from enforcing the warrant dated July 14, 1962.

Answering the petition, the respondent alleged, by way of special and affirmative defenses, that petitioners entered this country fraudulently and illegally; that the decision of the Special Board of Inquiry, dated April 28, 1961, admitting petitioners into the Philippines had been revoked by respondent and petitioners were declared aliens subject to deportation; that such revocation is valid and legal because the revoked decision did not constitute *res judicata* and the evidence on record was insufficient to establish the Philippine citizenship of petitioners; that petitioners' stay in this country was a mere privilege and their continued stay here made them liable to deportation; that the petition stated no cause of action; that the petition could not be availed of to have petitioners declared Filipino citizens or to control respondent's exercise of discretion; and that respondent is the official in charge of administering and enforcing all immigration laws. Respondent then prayed for the dismissal of the petition.

During trial, no testimonial evidence was presented and the parties merely submitted documentary exhibits which were admitted without any objection manifested by either side. Upon the submission of this evidence, the trial court rendered judgment enjoining respondent from arresting and deporting petitioners under the order of arrest of July 14, 1962, without prejudice, however, to respondent's right to carry out the deportation of petitioners in accordance with Section 37, in relation to Section 29 of the Philippine Immigration Act, as amended.

Upon a motion for reconsideration, however, the lower court issued an order modifying the dispositive part of its

decision, as follows:

"WHEREFORE, judgment is hereby rendered making permanent the writ of preliminary injunction issued in this case, insofar as it enjoins the respondent from enforcing the order deporting the petitioners, without prejudice to the right of the respondent to proceed against the petitioners with a view to their deportation in accordance with the provisions of Section 37, in relation to Section 29, of the Philippine Immigration Act of 1940, as amended, in the manner adverted to in this decision. No costs."

Not satisfied, the respondent has interposed this appeal maintaining the propriety of the warrant.

The appeal is meritorious.

Portions of the Philippine Immigration Act of 1940, under which the Acting Commissioner of Immigration had issued the warrant in question, read:

"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:

(1) 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;

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

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

(17) Persons not properly documented for admission as may be required under the provisions of this Act."

Clearly, the abovequoted section 37(a) speaks of two warrants — one for the arrest and the other for the deportation of the alien. The warrant of arrest is issued by the Commissioner of Immigration "upon a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien." Note that the concurrence or approval by the Board of Immigration Commissioners is not required for the issuance of a warrant of arrest. For in stating that the Commissioner of Immigration or any officer designated by him may thus issue such a warrant, section 37(a) authorizes the said Commissioner to apprehend undesirable aliens and initiate for their expulsion on any of the grounds enumerated thereunder.

While the warrant in question charges the petitioners for having falsely represented themselves as Philippine citizens through the use of fraudulently or illegally obtained certificates of registration and identity, it is not at the same time an order to deport, since under the last paragraph thereof the respondents are to be given a chance to show cause why they should not be deported. Bearing this in mind, it would be unfair to state, as petitioners do, that the respondent Acting Commissioner has arrogated unto himself alone the power to deport. In the absence of any indication to the contrary, it is to be presumed that the proceedings contemplated in the warrant in question would be in accordance with the Rules adopted by the Commission pertinent portions of which read:

"103. At the conclusion of the hearing a complete record of the proceedings together with the findings and recommendation of the examining officer or board of special inquiry shall be forwarded to the Commissioner of Immigration for consideration by the Board of Commissioners. Counsel desiring to file a brief to accompany the record shall be given by the investigating officer or board of special inquiry not more than 10 days within which to submit the same. Counsel shall also be permitted to appear in person before the Board of Commissioners on behalf of their clients.

"104. If a warrant of deportation is issued, an alien shall be deported, unless the Commissioner of Immigration in his discretion, grants the alien an opportunity to depart voluntarily within a stated period and the alien so departs. In the event that the Board of Commissioners finds that the alien is not subject to deportation, the proceedings shall be dismissed."

Under the above rules, the Board of Commissioners, acting as a body, and not the Commissioner of Immigration alone, has to determine and the final say on whether or not the aliens are to be expelled from the country.

Again, petitioners-appellees contend that since the Board of Immigration had already decided or affirmed the finding that they are citizens of the Philippines and had admitted them into the country as such, the respondent Acting Commissioner may no longer review the decision of the Board. In support of this argument, the petitioners-appellees cite our decision in *Commissioner of Immigration v. Fernandez, et al.*, G. R. No. L-22696, May 29, 1964. In that case a new set of Board of Commissioners reviewed and reversed a decision of its predecessor Board and we there made a statement that "the actuation of the new Board of Commissioners in reviewing a decision already passed upon by its predecessor Board, may breed chaos in the Bureau of Immigration." We also held that "the review, if authorized, should be made in accordance with the processes established by law, with a view to protecting the rights of the individuals." The circumstances of this case, however, are different in that the respondent herein has merely issued a warrant of arrest but, at the same time, giving the petitioners a chance to show cause why they should not be deported.

In this connection, it may appear that the object of inquiry in the deportation proceedings being instituted by the respondent Commissioner would be the same as that already passed upon by the Special Board of Inquiry and the Board of Commissioners in admitting petitioners into the country, but this should be no reason to stop the proceedings. It has already been established that decisions of immigration officials do not constitute *res judicata* so as to bar reexamination of the aliens' right to stay (*Ong Se Lun v. Board of Immigration Commissioners*, G. R. No. L-6017, September 16, 1954, cited in *Sy Hong vs. Commissioner of Immigration*, G. R. No. L-10224, May 11, 1957).

Lastly, we find this occasion to repeat our holding in the case of *Bisschop v. Galang*, G. R. No. L-18365, May 31, 1963, that—

"* * * the use of habeas corpus to test the legality of aliens' confinement and proposed expulsion from the Philippines is now a settled practice (*Lao Tang Bun vs. Fabre*, 81 Phil. 682, 683). This is because habeas corpus, aside from being thorough and complete, affords prompt relief from unlawful imprisonment of any kind, and under all circumstances. It reaches the facts affecting jurisdiction, or want of power, by the most direct method, and at once releases the applicant from restraint when it is shown to be unauthorized (cf. *People ex rel Livingston vs. Wyatt*, 186 N.Y. 383; 79 N.E. 330)."

Under the circumstances, the petition entitled "mandamus with preliminary injunction" would not be the proper action to file in this case.

In view whereof, the judgment appealed from is reversed. The petition is hereby dismissed and the preliminary Injunctive writ dissolved, without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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