

THE MINOR CHIAO LIN, AS REPRESENTED BY NGO KEH, FATHER OF THE MINOR, PETITIONER AND APPELLANT, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. 21523, February 28, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

On June 24, 1961, petitioner herein, a minor of 11 years old, arrived in the Philippines as a temporary visitor for vacation and pleasure trip. At that time there was pending in the Court of First Instance of Manila a petition for naturalization of the minor's father Ngo Keh.

On August 28, 1961, the Court of First Instance of Manila rendered judgment in the naturalization case, admitting petitioner's father as citizen of the Philippines.

Subsequently or on October 16, 1961 and October 20, 1961, the Secretary of Foreign Affairs and the Secretary of Justice, respectively, in accordance with the resolution of the Cabinet dated February 29, 1956, authorized the change of status of herein petitioner from temporary visitor to that of a special non-immigrant under Section 47(a) (2) of the Philippine Immigration Act of 1940, as amended, and extended the stay of petitioner up to August 28, 1963 upon condition that the corresponding extension fee shall be paid. Accordingly, the fee was paid by petitioner up to March 23, 1962.

On March 12, 1962, petitioner applied for indefinite extension of his stay, but the Commissioner of Immigration denied the petition and advised petitioner to leave after March 23, 1962 upon the expiration of his visa. Petitioner's reliance on the extension to August 28, 1963 granted in October, 1961 by the Secretaries of Foreign Affairs and Justice was not heeded by the Commissioner of Immigration in view of the opinion of the then Secretary of Justice that the 1956 cabinet resolution granting the Secretaries of Foreign Affairs and Justice concurrent jurisdiction to act on petitions for extension of stay of temporary visitors has no force and effect since the law vests that power in the Commissioner of Immigration.

Thereupon, petitioner filed in the court a quo, the present action for prohibition with preliminary injunction to prevent the respondent Commissioner of Immigration from carrying out his order directing the petitioner to leave the country on March 23, 1962 and from confiscating his bond upon failure to do so, and to declare petitioner entitled to stay until August 28, 1963.

The trial court dismissed the petition, sustaining the contention of the Commissioner of Immigration and on the further ground that petitioner had not exhausted his administrative remedies before coming to the court. It likewise dissolved the writ of preliminary injunction previously issued. Hence, the present appeal.

The gist of appellant's contention is that, having been granted extension up to August 23, 1963, by the Secretaries of Foreign Affairs and of Justice pursuant to the Cabinet resolution of February 29, 1956, the Commissioner of Immigration has no power to deport him before that date, as the action of the two department secretaries, under

our Presidential system of government, is tantamount to an act of the President himself who, under Section 47 of the Immigration Act, is authorized

"(a) When the public interest so warrants—

"(2) To admit, as non-immigrants, aliens not otherwise provided for by this Act, who are coming for temporary periods only, under such conditions as he may prescribe."

Granting, without specifically deciding, that appellant's contention is valid, yet there are reasons extant in the records why prohibition will not lie on this case.

In the first place, the condition laid down in the authority for the extension was not complied with. In the 2nd indorsement of the Secretary of Justice dated October 20, 1961 (Annex C to the petition for prohibition) relied upon by petitioner, it is specifically provided that

"This approval is also subject to the condition that the corresponding fees shall be paid to the said Bureau."

As stated, the extension was up to August 28, 1963. However, the fees paid were only up to March 23, 1962. (See Annex D of the same petition).

Secondly, petitioner's visa expired on March 23, 1962 for which reason petitioner himself had to ask on March 12, 1962, for an indefinite extension from the Commissioner of Immigration, notwithstanding the previous grant by the Secretaries of Foreign Affairs and of Justice. (See Annex E of the petition).

Thirdly, when the respondent Commissioner denied the extension, he did so pursuant to the combined opinion of the then Secretaries of Foreign Affairs and of Justice, respectively dated January 15 and January 24, 1962, quoted in respondent's answer in the court a quo, wherein these two department heads ruled that "the cabinet resolution of February 29, 1956, granting to the Secretary of Foreign Affairs and the Secretary of Justice concurrent jurisdiction to act on petition for extension of stay of temporary visitors, has no force and effect since the law vests the power to extend the stay of aliens in the Philippines in the Commissioner of Immigration."

If, as contended by appellant, the 1961 action of the two Secretaries granting him extension of his stay, was a Presidential act, for the same token, the subsequent action in 1962 of the new department secretaries concerned, in effect recalling the extension, is a Presidential act, and consequently of equal validity.

But it is argued that the extension can not be rescinded to the prejudice of the petitioner. This reasoning ignores the fact that temporary stay of aliens in the Philippines is but a privilege, not a right, subject to dictates of public policy and the appropriate determination by the authorities vested with that power under our Immigration Law.

The fact that petitioner's father has obtained a judgment granting his application for naturalization, does not change the result of this case as at the time of the filing of the petition for prohibition, said father has not yet been permitted to take his oath of allegiance as the period of two years for further inquiry by the Government has not yet expired. It is already well settled that until the alien has taken his oath, he does not become a citizen of the Philippines. And numerous cases there have been where an applicant has been refused his oath taking because of disqualification subsequently proven at the hearing for that purpose.

Under the circumstances of the case, we find no error committed by the trial court in dismissing the petition for prohibition and in lifting the writ of preliminary injunction previously issued.

Judgment affirmed, with costs. So ordered.

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

Judgment affirmed.

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