

CHAN SHU LOU ALIAS TAN WEE CHANG, PETITIONER AND APPELLEE, VS. MARTINIANO P. VIVO, IN HIS CAPACITY AS ACTING COMMISSIONER OF IMMIGRATION AND AS CHAIRMAN OF THE BOARD OF COMMISSI...

G.R. No. 22031. September 28, 1966

Ponente: BENGZON, J.

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BENGZON, J.:

Chan Shu Lou alias Tan Wee Chang, a Chinese national, was admitted to the Philippines in 1932 as a permanent resident. He was issued on July 12, 1950 alien certificate of registration No. A-17127 and on January 20, 1948 an immigration certificate of registration No. 28010. During his sojourn in the Philippines he visited his family three times: in 1939, 1949 and 1953. This case relates to his last visit.

On said last visit Chan left the Philippines for Hongkong, carrying with him Re-entry Permit No. 71014 issued in Manila on October 29, 1953 which was valid up to December 29, 1953. Chan however did not return to the Philippines within the period stated in his re-entry permit.

Sometime in 1961 Chan applied for re-entry to the Philippines as a returning resident, alleging that he could not make use of his re-entry permit for the reason that after arrival in Hongkong he suffered from swollen feet and stomach trouble; that later his wife and children also got sick, leaving him financially destitute; and that he entered employment for the purpose of raising money for his transportation back to the Philippines. His application was granted and he arrived in the Philippines on October 29, 1961 as a returning resident pursuant to Section 13(e) of the Philippine Immigration Act of 1940.

Immediately after his arrival the Board of Special Inquiry conducted a formal investigation of Chan's case. On September 20, 1961, said Board admitted him as a properly documented returning resident. The decision of the Board of Special Inquiry was passed around among the members of the Board of Commissioners, who wrote the word "noted" together with their initials signifying approval of said decision. Copy of the decision was transmitted to Chan by the Secretary of the Board of Commissioners informing him of the affirmance of said decision by the Commissioners.

On October 6, 1962 Chan received a letter dated October 4, 1962 signed by Acting Associate Commissioner Virgilio N. Gaston stating:

"It will be appreciated if you could call at this Office in connection with a pending case (I.C. No. 61-3337-C) concerning you within three days from your receipt hereof." (Underscoring supplied)

Chan complied with the request by reporting, together with his lawyer, to the office of Associate Commissioner Gaston who wanted to be clarified about his means of support.

On November 17, 1962 Chan received another letter dated September 4, 1962, this time from the Secretary of the

Board of Commissioners transmitting to him a copy of a decision dated September 4, 1962 of the Board of Commissioners reversing the decision of the Board of Special Inquiry dated September 20, 1961.

This decision, which considered Chan's stay in Hongkong from 1953 to 1961 where he entered employment to be an abandonment of his residence in the Philippines, was received in the records section of the Bureau of Immigration on November 14, 1962 and mailed to Chan on November 16, 1962.

On September 4, 1962, the same date appearing on the decision, Acting Commissioner Martiniano P. Vivo, issued an order for Chan's exclusion and deportation from the Philippines. Whereupon, Chan filed on November 26, 1962 in the Court of First Instance of Manila a petition for certiorari with injunction seeking to declare null and void the decision of the Board of Commissioners dated September 4, 1962 and to enjoin Commissioner Vivo from enforcing his order of exclusion and deportation.

The court granted preliminary injunction and on October 16, 1963 rendered the following judgment:

"WHEREFORE, judgment is hereby rendered declaring null and void the decision of the respondent board of commissioners dated September 4, 1962 in I.C. No. 61-3337-C, and all proceedings taken thereunder and pursuant thereto, with costs against the respondents. The writ of preliminary injunction issued in this case is hereby made permanent."

declaring the decision of the Board of Commissioners dated September 4, 1962 null and void for having been issued beyond the one-year period provided for in Section 27(b) of the Philippine Immigration Act of 1940.

Martiniano P. Vivo, et al., appealed to this Court.

The issue is whether or not the decision dated September 4, 1962 is valid.

Section 27(b) of Commonwealth Act 613 as amended by Republic Act 503, otherwise known as the Philippine Immigration Act of 1940, provides:

"(b) xxx The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision. xxx"

The lower court found as a fact that the decision of the Board of Commissioners dated September 4, 1962 was not really rendered and issued on said date but on a later date; and that said antedating was made for the purpose of complying with the one-year limitation provided for in Section 27(b) of Commonwealth Act 613. Considering that the decision in question was received only on November 14, 1962 in the records section of the same office where the Board of Commissioners holds office and mailed to Chan only on November 16, 1962, more than two months after the date appearing thereon; and, considering further that one month after September 4, 1962 Commissioner Gaston summoned Chan to his office in connection with his pending case thereby implying that on October 4, 1962 the case had not yet been finally decided, this Court is not inclined to disturb the aforesaid factual findings of the court a quo.

Appellants however maintain that assuming for purposes of argument that the decision was rendered after the lapse of the one-year period provided for in Section 27(b) of Commonwealth Act 613, it would still be valid because (1) the period of limitation in Section 27(b) is merely directory; and (2) there is no res judicata in immigration cases, citing *Ong Se Lun v. Board of Immigration Commissioners*, 95 Phil. 785.

The view that the one-year period in Section 27(b) within which the decision of the Board of Special Inquiry can be reversed by the Board of Commissioners is merely directory would tend to give no meaning to such a

provision - as if it were not there at all. Such a result could not have been intended by the National Assembly. For, why provide for a period of limitation if it were not supposed to be binding? Moreover, the law expressly states that the decision of the Board of Special Inquiry shall be final unless reversed by the Board of Commissioners within one year from promulgation of the same. Such decision is stamped with the seal of finality from the moment of its promulgation, subject only to the power of reversal of the Board of Commissioners to be exercised within a specified time. Beyond said time, without a reversal seasonably intervening, the decision remains final. However, the Government is not left without a remedy if an alien admitted by the Board of Special Inquiry turns out to be undesirable. It could still resort to deportation proceedings provided for by existing laws.

Furthermore, a contrary interpretation of the provision in question would not only work an injustice to aliens who take pains and spend considerable time, effort and money presenting their case before the Board of Special Inquiry, but also would keep the power of reversal of the Board of Commissioners hanging, like the sword of Damocles, over the heads of said aliens thereby opening the way to blackmail and graft and corruption, not to mention the consequent undermining of the stability of the decisions of administrative bodies like the Board of Special Inquiry.

Our ruling in *Ong Se Lun v. Board of Immigration Commissioners*, 95 Phil. 785, cited by appellants, has no application in this case. There, the Board of Special Inquiry was declared to have acted beyond its power when it changed the status of some aliens from "temporary visitor" to "permanent resident", hence its decision was null and void. Logically, being null and void, a decision could not become final nor could it bind the Government. In this case, the authority of the Board of Special Inquiry under Section 27(b) of Commonwealth Act 613 to determine whether or not Chan would be admitted as a properly documented alien with the status of "permanent resident" has not been questioned.

WHEREFORE, the decision appealed from is affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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