

**DJUMANTAN, PETITIONER, VS. HON. ANDREA D. DOMINGO,
COMMISSIONER OF THE BOARD OF IMMIGRATION, HON. REGINO R.
SANTIAGO AND HON. JORGE V. SARMIENTO, COMMISSIONERS
BUREAU OF IMMIGRA...**

G.R. No. 99358. January 30, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court with preliminary injunction, to reverse and set aside the Decision dated September 27, 1990 of the Commission on Immigration and Deportation (CID), ordering the deportation of petitioner and its Resolution dated January 29, 1991, denying the motion for reconsideration.

I

Bernard Banez, the husband of Marina Cabaal, went to Indonesia as a contract worker.

On April 3, 1974, he embraced and was converted to Islam. On May 17, 1974, he married petitioner in accordance with Islamic rites. He returned to the Philippines in January 1979.

On January 13, 1979, petitioner and her two children with Banez, (two-year old Marina and nine-month old Nikulas) arrived in Manila as the "guests" of Banez. The latter made it appear that he was just a friend of the family of petitioner and was merely repaying the hospitality extended to him during his stay in Indonesia.

When petitioner and her two children arrived at the Ninoy Aquino International Airport on January 13, 1979, Banez, together with Marina Cabaal, met them.

Banez executed an "Affidavit of Guaranty and Support," for his "guests," stating inter alia, that:

"That I am the guarantor for the entry into the Philippines of Mrs. Djumantan, 42 years old, and her two minor children, MARINA, 2 years old, and NIKULAS, 9 months old, all Indonesian citizens, who are coming as temporary visitors.

That I am willing to guaranty them out of gratitude to their family for the hospitality they have accorded me during the few years that I have stayed in Indonesia in connection with my employment thereat.

That I guaranty they are law abiding citizens and I guaranty their behavior while they are in the Philippines; I also guaranty their support and that they will not become a public charge.

That I guaranty their voluntary departure upon the termination of the authorized stay granted them by the Government" (Rollo , p. 41).

As "guests," petitioner and her two children lived in the house of Banez.

Petitioner and her children were admitted to the Philippines as temporary visitors under Section 9(a) of the Immigration Act of 1940.

In 1981, Marina Cabaal discovered the true relationship of her husband and petitioner. She filed a complaint for "concubinage" with the Municipal Trial Court of Urdaneta, Pangasinan against the two. This case was, however, dismissed for lack of merit.

On March 25, 1982, the immigration status of petitioner was changed from temporary visitor to that of permanent resident under Section 13(a) of the same law. On April 14, 1982, petitioner was issued an alien certificate of registration.

Not accepting the set-back, Banez' eldest son, Leonardo, filed a letter complaint with the Ombudsman, who subsequently referred the letter to the CID. On the basis of the said letter, petitioner was detained at the CID detention cell. She was later released pending the deportation proceedings (DEP Case No. 90-400) after posting a cash bond (Rollo , pp. 15-16). Thereafter, she manifested to the CID that she be allowed to depart voluntarily from the Philippines and asked for time to purchase her airline ticket (Rollo , p. 10). However, she had a change of heart and moved for the dismissal of the deportation case on the ground that she was validly married to a Filipino citizen (Rollo , pp. 11-12).

In the Decision dated September 27, 1990, the CID, through public respondents, disposed as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, the Board of Commissioners finds the second marriage of Bernardo Banes to respondent Djumantan irregular and not in accordance with the laws of the Philippines. We revoke the Section 13(a) visa previously granted to her" (Rollo , p. 23).

Public respondents denied petitioner's motion for reconsideration in their Resolution dated January 29, 1991 (Rollo , pp. 31-33).

Hence, this petition.

We issued a temporary restraining order, directing public respondents to cease and desist from executing or implementing the Decision dated September 27, 1990 and the Resolution dated January 29, 1991 (Rollo , pp. 34-36).

On September 20, 1994, Leonardo C. Banez manifested that his father died on August 14, 1994 and that he and his mother were withdrawing their objection to the granting of a permanent resident visa to petitioner (Rollo , pp. 173-175).

II

Petitioner claims that her marriage to Banez was valid under Article 27 of P.D. No. 1085, the Muslim Code, which recognizes the practice of polyandry by Muslim males. From that premise, she argues that under Articles 109 of the Civil Code of the Philippines, Article 68 of the Family Code and Article 34 of the Muslim Code, the husband and wife are obliged to live together and under Article 110 of the Civil Code of the Philippines, the husband is given the right to fix the conjugal residence. She claims that public respondents have no right to order the couple to live separately (Rollo , pp. 5-7).

When asked to comment on the petition, the Solicitor General took the position that the CID could not order petitioner's deportation because its power to do so had prescribed under Section 37 (b) of the Immigration Act of 1940 (Rollo , pp. 57-74).

III

We need not resolve the validity of petitioner's marriage to Banez, if under the law the CID can validly deport petitioner as an "undesirable alien" regardless of her marriage to a Filipino citizen. Therefore, to be first resolved is the question on petitioner's immigration status, particularly the legality of her admission into the country and the change of her status from temporary visitor to permanent resident. Upon a finding that she was not lawfully admitted into the country and she did not lawfully acquire permanent residency, the next question is whether the power to deport her has prescribed.

There was a blatant abuse of our immigration laws in effecting petitioner's entry into the country and the change of her immigration status from temporary visitor to permanent resident. All such privileges were obtained through misrepresentation.

Never was the marriage of petitioner to Banez disclosed to the immigration authorities in her applications for temporary visitor's visa and for permanent residency.

The civil status of an alien applicant for admission as a temporary visitor is a matter that could influence the exercise of discretion on the part of the immigration authorities. The immigration authorities would be less inclined to allow the entry of a woman who claims to have entered into a marriage with a Filipino citizen, who is married to another woman (Cf. *Shiu Shin Man v. Galang*, 3 SCRA 871 [1961]).

Generally, the right of the President to expel or deport aliens whose presence is deemed inimical to the public interest is as absolute and unqualified as the right to prohibit and prevent their entry into the country (Annotations, 8 ALR 1286). This right is based on the fact that since the aliens are not part of the nation, their admission into the territory is a matter of pure permission and simple tolerance which creates no obligation on the part of the government to permit them to stay (3 Am. Jur. 2d. 72).

The interest, which an alien has in being admitted into or allowed to continue to reside in the country, is protected only so far as Congress may choose to protect it (*United States ex rel. Kaloudis v. Shaughnessy* 180 F. 2d. 489).

There is no law guaranteeing aliens married to Filipino citizens the right to be admitted, much less to be given permanent residency, in the Philippines.

The fact of marriage by an alien to a citizen does not withdraw her from the operation of the immigration laws governing the admission and exclusion of aliens (*United States ex rel. Knauff v. Shaughnessy*, 338 US 537 94 L. Ed. 317, 70 S. Ct. 309 [1950]; *Low Wah Suey v. Backus*, 225 US 460 56 L. Ed. 1165, 32 S. Ct. 734 [1912]; Annotations, 71 ALR 1213). Marriage of an alien woman to a Filipino husband does not ipso facto make her a Filipino citizen and does not excuse her from her failure to depart from the country upon the expiration of her extended stay here as an alien (*Joaquin v. Galang*, 33 SCRA 362 [1970]).

Under Section 9 of the Immigration Act of 1940, it is not mandatory for the CID to admit any alien who applies for a visitor's visa. Once admitted into the country, the alien has no right to an indefinite stay. Under Section 13 of the law, an alien allowed to stay temporarily may apply for a change of status and "may be admitted" as a permanent resident. Among those considered qualified to apply for permanent residency is the wife or husband of a Philippine citizen (Immigration Act of 1940, Sec. 13[a]). The entry of aliens into the country and their admission as immigrants is not a matter of right, even if they are legally married to Filipino citizens.

III

We now address the issue raised by the Solicitor General that the right of public respondents to deport petitioner has prescribed, citing Section 37(b) of the Immigration Act of 1940.

Said Section 37(b) provides:

"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 the court, or judge thereof, when sentencing the alien, shall recommend to the Commissioner of Immigration that the alien be not deported" (As amended by Rep. Act No. 503).

Section 37(a) of the said law mentioned in Section 37(b) thereof provides:

"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;

"3) Any alien who, after the effective date of 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;

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

"5) 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;

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

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

"8) 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 teaching such doctrines, or who on any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;

"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 (as amended by R.A. No. 144);

"10) Any alien who, at any time within five years after 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 (now Republic Act No. 562), or who, at any time after entry,

shall have been convicted more than once of violating the provisions of the same Act;

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

"12) 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;

"13) Any alien who defrauds his creditor by absconding or alienating properties, to prevent them from being attached or executed."

Under clause 1 of Section 37(a), an "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" is subject to deportation.

The deportation of an alien under said clause of Section 37(a) has a prescriptive period and "shall not be effected xxx unless the arrest in the deportation proceedings is made within five years after the cause for deportation arises" (Immigration Act of 1940, Sec. 37[b]).

Congress may impose a limitation of time for the deportation of alien from the country (*Costanzo v. Tillinghast*, 287 US 341 77 L. Ed. 350, 53 S. Ct. 152 [1932]; *Guiney v. Bonham* [CA 9] 261 F. 582, 8 ALR 1282).

In *Board of Commissioners (CID) v. Dela Rosa*, 197 SCRA 853 (1991), we held that under Section 37(b) of the Immigration Act of 1940, the deportation of an alien may be barred after the lapse of five years after the cause of deportation arises. Justice Feliciano, in his dissenting opinion, qualified the broad statement of the law as follows:

"Examination of the above quoted Section 37 (b) shows that the five (5) year-limitation is applicable only where deportation is sought to be effected under clauses of Section 37 (a) other than clauses 2, 7, 8, 11 and 12; that where deportation or exclusion is sought to be effected under clauses 2, 7, 8, 11 and 12 of Section 37 (a), no period of limitation is applicable; and that to the contrary, deportation or exclusion may be effected 'at any time after entry.'"

Justice Davide, in his dissenting opinion, clarified:

"Note that the five-year period applies only to clauses other than 2, 7, 8, 11 and 12 of paragraph (a) of the Section. In respect to clauses 2, 7, 8, 11 and 12, the limitation does not apply."

In *Lam Shee v. Bengzon*, 93 Phil. 1065 (1953), the alien admitted that she had gained entrance into the Philippines fraudulently by making use of the name of a Chinese resident-merchant other than that of her lawful husband. The Court, however, held that she could no longer be deported "for the simple reason that more than 5 years had elapsed from the date of her admission."

The right of public respondents to deport petitioner has prescribed.

Petitioner was admitted and allowed entry into the Philippines on January 13, 1979 on the basis of false and misleading statements in her application and in the other supporting documents submitted to the immigration authorities. Leonardo C. Banez first complained with the CID on November 19, 1980 about the manner petitioner was admitted into the country and asked for her deportation (Rollo , pp. 77-78). After the EDSA Revolution, he sent a follow-up letter to the CID requesting action on his 1980 letter-complaint (Rollo , p. 78).

Tolling the prescriptive period from November 19, 1980, when Leonardo C. Banez informed the CID of the illegal entry of petitioner into the country, more than five years had elapsed before the issuance of the order of her

deportation on September 27, 1990.

In their Comment, public respondents urged that what is barred under Section 37(b) is the deportation of an alien and claimed that what they ordered was not the deportation of petitioner but merely the revocation of Section 13(a) which refers to the visa previously granted her (Rollo , p. 102).

The "arrest" contemplated by Section 37(b) refers to the arrest for the purpose of carrying out an order for deportation and not the arrest prior to proceedings to determine the right of the alien to stay in the country. When public respondents revoked the permanent residence visa issued to petitioner, they, in effect, ordered her arrest and deportation as an overstaying alien.

WHEREFORE, the petition is GRANTED and the temporary restraining order issued on June 4, 1991 is MADE PERMANENT.

The Decision of the Board of Commissioners dated September 27, 1990 revoking the issuance of the permanent resident visa to petitioner and the Resolution dated January 29, 1991 are REVERSED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Francisco, J., no part.

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