



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

LML-R-30F15- 126

OFFICE OF THE SECRETARY

Deportation Case Against –

DC No. SBM/LD-15-02/11-106
CA 613, Sec. 37(a)(7) & Act No.
2711, Sec. 69
SDO No. SBM/BOC-15-154
BLO-SBM/BOC 15-184
WLO-SBM/BOC 15-102

WANG BO

Sex: Male

DOB: 02 November 1984

Nationality: Chinese

Passport No. G28622643

X-----X

RESOLUTION

For resolution is the Motion for Reconsideration *Ex Abundanti Cautela* of the undersigned's Resolution dated 08 June 2015 in the case of Mr. Wang Bo, a Chinese national. The 08 June 2015 Resolution granted the Appeal, made by the Bureau of Immigration (BI) through the 26 May 2015 Indorsement from the Commissioner of Immigration, with accompanying Memorandum from the BI's Legal Division, and set aside the 21 May 2015 Resolution of the BI Board of Commissioners (BOC) and reinstated the 05 March 2015 Summary Deportation Order likewise issued by the BOC against the Movant, among others.

The facts as stated in the 08 June 2015 Resolution of the Secretary of Justice are no longer in dispute and the Movant prays that this Department reconsider and reverse its 08 June 2015 Resolution and affirm the 21 May 2015 Resolution of the BOC.

In support of his Motion, the Movant cites the following grounds:

1. With due respect, the [Secretary of Justice] has no appellate jurisdiction over deportation cases decided by the [BOC]. Under the law and the BI 1997 Deportation Rules of Procedure, it is the Office of the President that has appellate jurisdiction over decisions of the BOC.

2. The BI Commissioner and the BI Legal Division have no personality, much less authority, to appeal the 21 May 2015 Resolution of the BOC.

3. x x x The appeal was filed, pursued and decided *ex parte*, without affording [the movant] an opportunity to be heard.

4. [The movant's] deportation was determined based on inadmissible evidence i.e. mere representations of the Chinese Police Attaché that [the movant] is a fugitive from China and a holder of a cancelled passport

x x x

5. The suspicion on the alleged motivation behind the 21 May 2015 Resolution and the celebrated media coverage of the [case is] unfounded and irrelevant to the issues on [the movant's] deportation case.

After a careful consideration of the grounds stated by the Movant, as well as the discussions proffered, this Office is unconvinced and finds no reason to reverse its 08 June 2015 Resolution.

The Movant puts forth a number of procedural issues.

First, the Movant claims that the Secretary of Justice holds no appellate jurisdiction over the decision over deportation cases handed down by the BOC.

Indeed, the pertinent provision of the Administrative Code of 1987 states that "the decision of the [BOC] x x x shall become final and executor after thirty (30) days from promulgation unless within such period the President shall order the contrary". This must be read in light of the clear mandate of the Secretary of Justice with regard to the BI, over which she holds the power of control and supervision. This is in

pursuit of the Department's mandate under the said Code to "implement the laws on the admission and stay of aliens"¹.

The Supreme Court has already recognized this authority in the case of *Kiani v. Bureau of Immigration*² when it discussed the proper appellate procedure against a Summary Deportation Order of the BI:

In case such motion for reconsideration is denied by the BOC, the aggrieved party may appeal to the Secretary of Justice and, if the latter denies the appeal, to the Office of the President of the Philippines. The party may also choose to file a petition for *certiorari* with the CA under Rule 65 of the Rules of Court, on the ground that the Secretary of Justice acted with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the appeal, the remedy of appeal not being adequate and speedy remedy. In case the Secretary of Justice dismisses the appeal, the aggrieved party may resort to filing a petition for review under Rule 43 of the Rules of Court, as amended.

At any rate, it should be remembered that all executive power is vested in the President of the Philippines³, who acts vicariously through his Secretaries. Thus, it is as if the appeal had been considered by the President himself.

Second, the Movant alleges that neither the BI Commissioner nor its Legal Division possesses the personality nor authority to appeal the BOC's 21 May 2015 Resolution.

We cannot agree with this proposition as well.

The authority of the BI Legal Division to appeal the decision of the BOC emanates from no less than the BI's core function as the country's principal gatekeeper or, in the words of the Administrative Code, administer and enforce immigration, citizenship, and alien admission and registration laws in accordance with the Philippine Immigration Act of 1940⁴.

As the head of the BI, the Commissioner merely indorsed the Memorandum of the Legal Division, the latter, for all intents and purposes, being the prosecutor for the case against the movant. As the

¹ Book IV, Title III, Chapter I, Section 1

² G.R. No. 160922, 27 February 2006

³ 1987 Constitution, Article VII, Section 1

⁴ Commonwealth Act No. 613, as amended

prosecutor, the Legal Division was acting well within its authority to represent the State in seeking the removal of undesirable aliens like the Movant within its territory. In the words of our remedial laws, the BI Legal Division is the "party adversely affected" for purposes of an appeal to this Department. This is no different from the prosecutor in a criminal case who files a petition for review from the decision of acquittal by the trial court.

Lastly, on procedural matters, the Movant states that the 08 June 2015 Resolution of this Office should be voided on the ground that the Appeal was filed, pursued, and decided *ex parte* without affording him an opportunity to be heard.

In resolving this issue, the query that must be resolved is whether the Movant has been heard. He has and sufficiently so. In the words of a long line of cases decided by the Supreme Court as invoked by the BI Legal Division:

Deportation proceedings are administrative in character, summary in nature, and need not be conducted strictly in accordance with the rules of ordinary court proceedings. It is well-settled that, applied to administrative proceedings, a fair and reasonable opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of suffices to meet the requirements of due process; and any seeming defect in its observance is cured by the filing of a motion for reconsideration.

In this case, not only has the Movant filed this instant Motion for Reconsideration (with an attached Sworn Statement manifesting a plethora of matters, at that), but he has filed other pleadings and motions here and before the BI. Apart from this, this Department and the BI have been copy furnished with the pleadings *filed* before the Court of Appeals in connection with Movant's Petition for *habeas corpus* thereat. We likewise take note of the complaints for *estafa* filed against the Movant before the National Prosecution Service in Manila, which have since been dismissed. These intricate and interconnected cases, the various pleadings and motions, and their cumulative effect militate against any allegation on the part of the Movant that he has not been sufficiently heard as to constitute a revolt against any sense of fairness. The Movant has been heard and has been heard amply.

Having dispensed of these procedural matters, we now turn to the main contention of the Movant, which, while divided and discussed in a

number of sub-issues, can be distilled into the main thesis of whether or not the evidence made bases of the adverse decision against the foreign national is admissible in the proceedings here and before the Bureau *a quo*, primarily since the deportation was ordered merely on representations from the Police Attaché that the Movant is a fugitive and a holder of a cancelled passport.

In support of this contention, the Movant adverts to the fact that he has been travelling to and from China (including the Hong Kong and Macau Special Administrative Regions)⁵ nary an arrest or investigation.

This is irrelevant to the case for being a matter internal to the People's Republic of China.

This Department would be remiss to speculate on the reason why he was not ordered arrested or even allowed to exit albeit his passport had been cancelled by the Kenqu Public Security Bureau of Heilongjiang province as far back as 21 January 2015. What matters to this Department is that upon his arrival in the Philippines on 10 February 2015, there was already previous notice from the Chinese Embassy that the Movant's passport had already been cancelled by the Chinese government and whether, as a consequence, the movant may be deported.

While these circumstances, as alleged in the next sub-issue put forth by the Movant, may be taken as evidence in favor of the movant, it is simply not enough to overturn the presumption of regularity attached to the People's Republic of China not on the basis of local laws or evidentiary rules, but internationally recognized principles based on comity and respect between nations and their respective rights of legation. For, in the words of the BI, China's statements about the status of its nationals should enjoy the presumption of truth and accuracy. There is no better authority in the Philippines to determine and attest to the status of the Movant and his intentions herein other than China herself through its Embassy.

Besides, assuming for the sake of argument that the presumption of regularity does not indeed apply to officials of a foreign government, to say that it does not apply to cases where it is directly attacked is not entirely true. The presumption would be rendered meaningless if the person questioning the official act was not required to produce the required quantum of evidence to dispute the said presumption.

⁵ Movant's Sworn Statement, Annex "A" of his Motion for Reconsideration

Neither can we agree that Operations Order No. SBM-2015-003 merely establishes *prima facie* evidence to deport the Movant. A perusal of the Operations Order reveals no such intention to deem the representation of the foreign embassy as a *prima facie* proof. Section 1 of the Operations Order defines **who** is a foreign fugitive based on jurisprudence⁶, as opposed to who may be deemed or presumed as one, and it includes a foreigner who:

- (1) Flees after conviction to avoid punishment;
- (2) Flees after being charged to avoid prosecution;
- (3) After commission of a crime, flees from the jurisdiction of the court where the crime was committed; and
- (4) Declared as a Fugitive from Justice by an authorized representative of the embassy.**

In such case, notably in (4) of Section 1, the BI is mandated to require the requesting embassy to attach a copy of the warrant of arrest, which the Embassy definitely complied with when on 27 February 2015, it furnished the BI, upon the 16 February 2015 request of the Acting Chief of its Legal Division.

Note as we did under our original Resolution that under Section 1 of the Operations Order, as well as Section 2 regarding the Cancellation of the Foreign Passport, that there is no requirement of authentication of submitted documents on the part of the requesting embassy for to do so would unduly fetter and delay the proceedings which, by the clear provision of Section 4, is subject to **summary** deportation. Time is, thus, of the very essence.

This temporal element in deportations of this nature is underscored by no less than the unequivocal words of the Supreme Court in *Shonemann v. Santiago*⁷. There, the Court stated that:

x x x if the foreign embassy cancels the passport of the alien, he loses the privilege to enter or remain in the country. **The automatic loss of the privilege obviates deportation proceedings** x x x

In this instance, **the Board of Commissioners may issue summary judgment of deportation, which shall be immediately executory.** (Emphasis supplied)

⁶Rodriguez v. Commission on Elections, G.R. No. 120099, 24 July 1996

⁷G.R. No. 86461, 30 May 1989

Consequently, it can be understood, given the summary nature of proceedings under Operations Order No. SBM-2015-003, that the same has superseded Office Memorandum No. 49 insofar as the summary deportation of foreign fugitives is concerned. The Movant's reliance on the Office Memorandum is, thus, misplaced.

This Office is hard-pressed to agree with the position that *Domingo v. Scheer*⁸ applies instead of *Tung Chin Hui v. Rodriguez*⁹, for, as stated by the BI in *Domingo*, the case against the foreign national in his country was dismissed, while in the instant case, the Chinese government did indeed cancel the Movant's passport and, as already discussed, presented sufficient evidence to that effect.

Therefore, applying the ruling in *Tung Chin Hui*, the documents presented by the Chinese Embassy are sufficient basis to order the deportation of the Movant.

Still on the subject of *Scheer*, the Movant claims that this Office "misquoted if not misapplied" the pronouncements therein. The Movant states that "[t]he *Scheer* ruling does not say that the Rules of Court may 'only' be applied to deportation proceedings. It says that the Rules of Court may be applied in a suppletory manner", in effect creating a misimpression.

This Department takes exception to this allegation. As we said in our 08 June 2015 Resolution:

The dissenters' inclination to a strict adherence to the Rules of Court, in this case, the Rules on Evidence, is without basis. In [*Scheer*], it was stated that **the Rules of Court may only be applied suppletorily to deportation proceedings**. Given the said ruling, it is clear that no such compulsion exists in this instance especially in this case where all other matters considered would point to the reality that the foreign national subject of this instant case is indeed deportable. We cannot allow this country, on mere documentary technicalities alone, to be a safe haven for fugitives from justice¹⁰. (Emphasis supplied)

⁸G.R. No. 154745, 29 January 2004

⁹G.R. No. 141938, 02 April 2001

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The use of the word "only" was done not to change the meaning of any statement of the Supreme Court but to emphasize this Department's point. Anyway, the important word in the statement is not "only" but the word "may" which implies mere discretionary or permissive¹¹, and not a mandatory act such as, for the purpose of this case, applying the Rules of Court.

The foregoing having been said, this Office reiterates that it finds no reason to reverse its 08 June 2015 Resolution. As already discussed, this Office is imbued with authority to take cognizance of the case, and the evidence received to prove that deportation is warranted, is not, as the Movant would have us believe, inadmissible.

The media circus surrounding, and other issues connected to, this highly controversial case were, as they should be, never relevant to the decision reached by this Office regarding the BI's Appeal nor the Movant's Motion for Reconsideration.

What was considered here is the fact that the People's Republic of China had cancelled the Movant's passport and that he was, as well, declared a fugitive from justice from the said country. The circumstance that he is a "successful businessman in China" who suddenly came to the Philippines to work as a Technical Assistant for a Makati company that pays him a rather measly gross basic monthly salary of Twenty Five Thousand Pesos (PhP 25,000.00), but somehow managed to engage the services of his esteemed counsel, certainly did not help his cause. Put on top of this the intricate web of chicanery spun in order to frustrate Movant's deportation, when his previous counsel filed a bogus criminal case for estafa against his own client that, under normal circumstances, would have constituted a clear case of conflict of interest. The point here being that Movant apparently is not exactly the ordinary office employee in dearth of resources to engage the necessary professional services to prevent his deportation. This puts into doubt claims of pauper employment, and instead gives more credence to official Chinese State representations that Movant is indeed a wanted criminal, with sufficient resources to enable him to move around and evade capture by Chinese authorities.

The basic question that this Office had to contend with from the very beginning was this: between the official embassy representations of a foreign state such as China, on the one hand, and the mostly barefaced

¹¹*Ombudsman v. Andutan*, G.R. No. 164679, 27 July 2011

allegations of a wanted criminal evading capture from his country of nationality, on the other, what version of the narrative is to be believed?


Under no circumstances of the present case and under no provision of the Rules of Evidence can the answer to this question ever be favorable to Movant.

WHEREFORE, premises considered, the 08 June 2015 Resolution of this Office is hereby **AFFIRMED** and the Motion for Reconsideration is **DENIED** with finality.

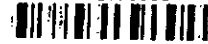
The 05 March 2015 Summary Deportation Order against Movant Wang Bo shall henceforth be **IMMEDIATELY IMPLEMENTED** without any further delay whatsoever.

Manila, Philippines.

04 August 2015


LEILA M. DE LIMA
Secretary

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