

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
EN BANC**

**GO UAN, ONG ANA and ONG BUN JUA,  
*Petitioners-Appellees,***

***-versus-***

**G.R. No. L-20413  
December 23, 1964**

**EMILIO L. GALANG, in his capacity as  
Commissioner of Immigration,  
*Respondent-Appellant.***

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**DECISION**

**CONCEPCION, J.:**

Respondent Commissioner of Immigration, seeks the reversal of a decision of the Court of First Instance of Manila, setting aside an order of the former, dated December 8, 1960, for the deportation of petitioners Go Uan, Ong Ana and Ong Bun Jua, and making permanent a writ of preliminary injunction issued by said court of December 13, 1960, restraining respondent from enforcing his aforementioned order.

The facts are set forth in a stipulation, submitted by the parties, to the effect:

“1. . . .

- “2. That the petitioners were former permanent residents of the Philippines, who in 1941, left for China on a vacation and failed to return to the Philippines before the expiration of their reentry permits due to World War II;
- “3. That in 1948, petitioners returned to the Philippines on a temporary visitor’s visa, and, thereafter, petitioned for their admission as returning residents which petition was granted in a decision of the Board of Special Inquiry, Bureau of Immigration, dated October 26, 1948;
- “4. That two (2) years thereafter, the petitioners were charged of having overstayed as temporary visitors and the Board of Special Inquiry recommended the deportation of the petitioners as overstaying temporary visitors and a warrant of deportation was issued against them;
- “5. That the petitioners on the honest belief and relying on the said order of the Board of Special Inquiry dated October 26, 1948, admitting them as returning residents, filed a petition for a writ of Prohibition in the Court of First Instance of Manila, and on appeal, the Supreme Court in Case No. G.R. No. L-6017 entitled ‘Ong Se Lun, et al. vs. Commissioner of Immigration’ while upholding the deportation of the petitioners, ruled in effect that the petitioners ‘must depart voluntarily to some foreign country and procure from the appropriate consul, the proper visa, and, thereafter undergo examination by officers of the Bureau of Immigration at a Philippine port of entry for determination of their admissibility according to the requirements of the law’;
- “6. That in compliance with the above mentioned decision, the petitioners left for Taipeh voluntarily on February 20, 1960 and returned properly documented as returning residents in the Philippines on March 11, 1960 and were admitted on Primary inspection by the officers of the Bureau of Immigration as returning residents at the Manila port of entry;

- “7. That the petitioners have never been questioned either in the Philippine Embassy at Taipei and by the immigration officers at the port of entry as to their status as former deportees and in fact copies of the decision of the Supreme Court in 95 Phil., 785 have been attached to their papers and presented to the authorities concerned;
- “8. That on April 11, 1960, the deportation charges were filed against the petitioners under the provisions of Sec. 37 (a), clause (2), of the Philippine Immigration Act of 1940, as amended, on the ground stated under Sec. 29 (a), clause (15) of the same Act that previous warrants of deportation against them as overstaying temporary visitors were previously issued;
- “9. That the Board of Commissioners on August 5, 1960, ordered the dismissal of the deportation charges against them (petitioners) declaring that (a) the admission of the petitioners on primary inspection, and, (b) the institution of deportation proceedings against them were in excess of jurisdiction and not in accordance with law, and further ordered that due course be given to the application for admission of the petitioners herein requiring that the case be referred to the Board of Special Inquiry, which, after due hearing, was enjoined to submit its findings and recommendations to the respondent Commissioner for exercise of his discretionary authority on the matter;
- “10. That pursuant to the order of the Board of Commissioners, and in accordance with Sec. 27 (b) of the Philippine Immigration Act of 1940, as amended, the Board of Special Inquiry submitted its findings and recommendations dated November 17, 1960; recommended that the petitioners ‘be granted admission as returning residents by the exercise of the (respondent) Commissioner of his discretionary authority under Sec. 29 (b), paragraph (1) of the Philippine Immigration Act of 1940, as amended’;

“11. That in spite of the said findings and recommendations of the Board of Special Inquiry, the respondent Commissioner refused to admit the said petitioners and instead ordered their exclusion in his order dated December 8, 1960:”

Thereupon, or on December 13, 1960, petitioners instituted, in the Court of First Instance of Manila, the present special civil action of prohibition, with preliminary injunction, to forestall pendente lite the enforcement of respondent’s order of exclusion of December 8, 1960, and then to set aside this order. Forthwith, said court issued the writ of preliminary injunction prayed for, and, in due course, thereafter, rendered the above mentioned decision. Hence, this appeal by the respondent.

This case hinges on Section 29, (a) (15) of the Philippine Immigration Act of 1940, as amended, pursuant to which:

“(a) The following classes of aliens shall be excluded from entry into the Philippines:

X X X

“(15) Persons who within one year prior to the date of application for admission have been excluded or deported from the Philippines, but this provision may be waived in the discretion of the Commissioner of Immigration.”

The issue is whether respondent had gravely abused his discretion in not heeding the recommendation of the Board of Special Inquiry that the operation of said provision be waived. Respondent acted as he did for two (2) reasons, namely: (1) that, despite the previous order of deportation of the appellees issued in 1950, and upheld by the Supreme Court, in G.R. No. L-6017, on September 16, 1954, petitioners remained in the Philippines up to February 20, 1960; and (2) that petitioners had succeeded in securing visas from the Philippine Consulate in Taipeh by concealing the fact that they had been previously deported from the Philippines. The lower court found these reasons untenable and that appellant had “acted with grave abuse of discretion”, upon the ground that copy of our decision in

G.R. No. L-6017 sustaining said order of deportation had been attached by petitioners “to their papers and presented to the authorities concerned” and that petitioners “had been allowed to stay as returning residents on October 26, 1948”, and “having relied in good faith in this decision of a duly authorized body, they cannot be deemed to have willfully violated the law.”

We find ourselves unable to agree with the foregoing conclusion. To begin with, the “recommendation” of the Board of Special Inquiry was not binding upon respondent. Secondly, “discretion” is “a faculty conferred upon a court or other official by which he may decide a question either way and still is right” (Asuncion vs. De Yriarte, 28 Phil. 67, 71; Yao Yeng vs. Secretary of Foreign Affairs, G.R. No. L-12342, April 30, 1959). Hence, in choosing, in the exercise of his discretion, not to waive the provision of subdivision (15) of paragraph (a) of Section 29 of the Philippine Immigration Law of 1940, as amended, respondent could not be wrong, much less could he have committed a grave abuse of discretion. Thirdly, petitioners returned to the Philippines from China in 1948 on “temporary visitors” visa and were admitted here as “temporary visitors” according to our decision in G.R. No. L-6017. Still, they remained in these Islands despite the expiration of the period and the extensions of time granted them to leave the Philippines, thus prompting the immigration authorities to issue warrants for their arrest and conduct hearings for their deportation, which, in due course, was ordered in 1950. Pending availability of transportation to China, petitioners were required to increase their respective cash bonds and to file additional surety bonds, and, having failed to comply with these requirements, their arrest was ordered. To prevent their arrest and deportation they instituted Civil Case No. 11644 of the Court of First Instance of Manila against the Board of Commissioners of Immigration and the then Acting Commissioner of Immigration. Said court having decided the case in petitioners’ favor, the respondents therein appealed to the Supreme Court (in G.R. No. L-6017 thereof), which, on September 17, 1954, reversed the decision appealed from and denied the writ prayed for by herein petitioners. Two motions for reconsideration filed by the latter were denied by this Court. Petitioners sought permission to file a third motion for reconsideration, which was denied on October 22, 1954. Yet they did not leave the Philippines until February 20, 1960, or about five (5) years and four (4) months

later. Thus petitioners have shown little respect or regard, if any, for the lawful orders of our duly constituted authorities, as well as high degree of contumacy, which amply justified respondent's refusal to waive the operation of the aforementioned provision of the Philippine Immigration Act.

**WHEREFORE**, the decision appealed should be as it is hereby reversed, and the writ of preliminary injunction issued by the lower court is, accordingly, dissolved, with costs against the petitioners. It is so ordered.

**Bengzon, C.J., Bautista Angelo, Reyes, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, and Zaldivar, JJ., concur.**