SECOND DIVISION

[G.R. No. 154745. January 29, 2004]

COMMISSIONER ANDREA D. DOMINGO, BUREAU OF IMMIGRATION, *petitioner, vs.* HERBERT MARKUS EMIL SCHEER, *respondent.*

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review under Rule 45 of the Rules of Court, as amended, of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 71094 granting the respondent's petition for *certiorari* and prohibition annulling the order of arrest issued by the petitioner, and permanently enjoining her from deporting the respondent from the Philippines. Through its decision, the CA virtually reversed the Summary Deportation Order[2] of the Board of Commissioners (BOC) and its Omnibus Resolution[3] denying the respondent's Urgent Motion for Reconsideration of said Order, and enjoining the petitioner from deporting the respondent.

The facts as culled from the records are as follows:

Respondent Herbert Markus Emil Scheer, a native of Ochsenfurt, Germany, was a frequent visitor of the Philippines. On July 18, 1986, his application for permanent resident status was granted.[4] The Bureau of Immigration and Deportation (BID) issued in favor of the respondent Alien Certificate of Registration No. B-396907 dated September 16, 1987[5] and Immigration Certificate of Residence No. 256789 dated February 24, 1988.[6] The Commissioner stated that the granting of the petition would redound to the benefit of the Filipino people.[7] During his sojourn in the Philippines, the respondent married widowed Edith delos Reyes[8] with whom he had two daughters. They had a son, Herbert Scheer, Jr., but he passed away on November 13, 1995.[9] They resided in Puerto Princesa City, Palawan, where the respondent established and managed the Bavaria Restaurant. On May 21, 1991, he was appointed Confidential Agent by then NBI Director Alfredo S. Lim.[10]

In a Letter dated June 29, 1995, Vice Consul Jutta Hippelein informed the Philippine Ambassador to Bonn, Germany, that the respondent had police records and financial liabilities in Germany.[11]

The Department of Foreign Affairs received from the German Embassy in Manila Note *Verbale* No. 369/95 dated July 26, 1995, informing it that the respondent was wanted by the German Federal Police; that a warrant of arrest had been issued against him; and that the respondent will be served with an official document requesting him to turn over his German passport to the Embassy which was invalidated on July 2, 1995.[12] The Embassy requested the Department of Foreign Affairs to inform the competent Philippine authorities of the matter. The BOC thereafter issued a Summary Deportation Order dated September 27, 1997. The penultimate paragraph of the Order reads:

WHEREFORE, the foregoing considered, the Board of Commissioners hereby orders the following:

1. Cancellation of respondent's permanent residence visa;
2. Respondent's summary deportation and permanent exclusion from the Philippines; and
3. Inclusion of his name on the Bureau's Blacklist.

PROVIDED, however that said summary deportation should be held in abeyance in case said alien has a pending final and executory criminal conviction where the imposed penalty is imprisonment, in which case, he has to serve first such imposed penalty, and/or has a pending criminal, civil or administrative action and a Hold Departure Order has been issued or that his presence in said action is indispensable. In such instances, the alien should remain in the custody of the Bureau until his

turnover to the proper authorities in case he has to serve imprisonment or in case of pendency of civil or criminal administrative action, he shall remain in the custody of the Bureau until such time that his pending cases shall have been decided, terminated or settled, as the case may be, unless circumstances demand the immediate implementation of this summary deportation.

. . .

SO ORDERED.[13]

In issuing the said order, the BOC relied on the correspondence from the German Vice Consul on its speculation that it was unlikely that the German Embassy will issue a new passport to the respondent; on the warrant of arrest issued by the District Court of Germany against the respondent for insurance fraud; and on the alleged illegal activities of the respondent in Palawan.[14] The BOC concluded that the respondent was not only an undocumented but an undesirable alien as well.

When the respondent was apprised of the deportation order, he forthwith aired his side to then BID Commissioner Leandro T. Verceles. The Commissioner allowed the respondent to remain in the Philippines, giving the latter time to secure a clearance and a new passport from the German Embassy.[15] Then Presidential Assistant Teodorico K. Imperial wrote a Testimonial dated November 24, 1995, in behalf of the respondent addressed to Commissioner Verceles. Nonetheless, the respondent, through counsel, filed on December 5, 1995 an Urgent Motion for Reconsideration of the Summary Deportation Order of the BOC.[16] In his motion, the respondent alleged, *inter alia*, that:

1. The elementary rules of due process require notice and opportunity to be heard before a person can be lawfully deprived of his right (Ute Paterok vs. Bureau of Customs, 193 SCRA 132). In the instant case, although it is acknowledged that the Honorable Office may conduct summary deportation proceedings, respondent was not given notice and opportunity to be heard before said Summary Deportation Order was issued. Respondent's right to procedural due process was therefore violated. Consequently, the Summary Deportation Order is invalid.

2. In issuing, the Summary Deportation Order, this Honorable Office relied on Note Verbal No. 369/95 issued by the Embassy of the Federal Republic of Germany, Manila, notifying the Department of Foreign Affairs and this Honorable Office about the warrant of arrest against respondent for alleged illegal insurance fraud and illegal activities. However, a close scrutiny of said note verbal shows that nowhere therein does it state that respondent was involved in insurance fraud or in any kind of illegal activities in Germany or anywhere else in the world, such as in Palawan. Therefore, the main basis of the Summary Deportation Order is incompetent as evidence against respondent who is, like every Filipino, presumed to be innocent until his guilt is proven beyond reasonable doubt.

3. The power to deport alien is a police power measure necessary against undesirable alien whose presence in the country is injurious to the public good and domestic tranquility of the country (Board of Commissioner Commission on Immigration vs. De la Rosa, 197 SCRA 853). It is respectfully submitted that respondent is not an undesirable alien. He has stayed in the Philippines for more or less than (10) years. He has married a Filipina and has three (3) minor children. He has established his business in Palawan and he has no police record whatsoever. Respondent has considered the Philippines his second home and he has nowhere else to go back to in Germany. Under the circumstances and for humanitarian considerations, respondent is not an undesirable alien whose deportation is warranted. Likewise, the mere fact that his passport was not renewed by the German Embassy does not also automatically justify the deportation of respondent.[17]

However, the BOC did not resolve the respondent's motion. The respondent was neither arrested nor deported.

Meanwhile, on February 15, 1996, the District Court of Straubing rendered a Decision dismissing the criminal case against the respondent for physical injuries.[18] The German Embassy in Manila, thereafter, issued a temporary passport to the respondent.

In a Letter dated March 1, 1996, the respondent informed Commissioner Verceles that his passport had been renewed following the dismissal of the said criminal case. He reiterated his request for the cancellation of the Summary Deportation Order dated September 27, 1995 and the restoration of his permanent resident status.[19] Subsequently, on March 12, 1996, the German Embassy issued to the respondent a regular passport, to expire on March 11, 2006.

The BOC still failed to resolve the respondent's Urgent Motion for Reconsideration. Commissioner Verceles did not respond to the respondent's March 1, 1996 Letter. The respondent remained in the Philippines and

maintained his business in Palawan. On March 20, 1997, the Department of Labor and Employment approved his application for Alien Employment Registration Certificate as manager of the Bavaria Restaurant in Puerto Princesa City.

In the meantime, petitioner Immigration Commissioner Andrea T. Domingo assumed office. She wrote the German Embassy and inquired if the respondent was wanted by the German police. On April 12, 2002, the German Embassy replied that the respondent was not so wanted.[20] At about midnight on June 6, 2002, Marine operatives and BID agents apprehended the respondent in his residence on orders of the petitioner. He was whisked to the BID Manila Office and there held in custody while awaiting his deportation. Despite entreaties from the respondent's wife[21] and his employees, the petitioner refused to release the respondent.[22]

Shocked at the sudden turn of events, the respondent promptly communicated with his lawyer. The latter filed with the BID a motion for bail to secure the respondent's temporary liberty. On June 11, 2002, the respondent's counsel filed with the Court of Appeals a petition for *certiorari*, prohibition and *mandamus* with a prayer for temporary restraining order and writ of preliminary injunction, to enjoin the petitioner from proceeding with the respondent's deportation.[23] The respondent (petitioner therein) alleged, *inter alia*, that his arrest and detention were premature, unjust, wrongful, illegal and unconstitutional, effected without sufficient cause and without jurisdiction or with grave abuse of discretion. He asserted that there was no speedy remedy open to him in the ordinary course of law[24] and that his Urgent Motion for Reconsideration of the Summary Deportation Order of the BOC had not yet been resolved despite the lapse of more than six years. The respondent averred that he was a fully documented alien, a permanent resident and a law-abiding citizen. He, thus, prayed as follows:

PRAYER

WHEREFORE, it is most respectfully prayed of this Honorable Court that:

1. Upon the filing of this Petition, this Honorable Court issue a Temporary Restraining Order to enjoin respondent Commissioner from enforcing any order to deport petitioner;

2. After due hearing, a writ of preliminary and mandatory injunction be correspondingly issued to maintain the status quo pending resolution of the Petition on the merits.

3. After hearing, judgment be rendered:

a) Directing and mandating respondent Commissioner and the body she heads to resolve the Motion for Reconsideration filed in 1995, in his favor, and nullifying or suspending the implementation of any order, oral or written, she may have issued or issue to deport petitioner; and

b) Making the injunction in petitioner's favor permanent.

Petitioner likewise prays for such other and further relief as may be deemed just and equitable in the premises, such as directing respondent, if Herbert Scheer is deported before the matter is heard on notice, to authorize his return.[25]

The BOC ruled that its September 27, 1995 Order had become final and executory after the lapse of one year, citing our rulings in *Sy vs. Vivo*,[26] and *Lou vs. Vivo*.[27] The BOC also held that it was not competent to reverse the September 27, 1995 Order, citing our ruling in *Immigration Commissioner vs. Fernandez*.[28] It declared that the respondent may seek the waiver of his exclusion via deportation proceedings through the exceptions provided by Commonwealth Act No. 613,[29] Section 29 (a)(15), but that his application for the waiver presupposes his prior removal from the Philippines.

In a parallel development, the respondent procured a letter from the National Bureau of Investigation (NBI) in Puerto Princesa City certifying that he had no pending criminal record.[30] The Puerto Princesa City Philippine National Police (PNP) also issued a certification that the respondent had no pending criminal or derogatory records in the said office.[31]

Meanwhile, on June 26, 2002, the Court of Appeals issued a *status quo* order restraining the petitioner from deporting the respondent on a bond of ₱100,000.00.[32] On July 18, 2002, the BOC issued an Omnibus Resolution dated June 14, 2002, *pendente lite* denying the respondent's Urgent Motion for Reconsideration, Motion for Bail/Recognizance, and the Letter dated June 11, 2002. The decretal portion of the resolution reads:

Wherefore, in view of the foregoing circumstances, we deny the prayers of the Urgent Motion for Reconsideration of 5 December 1995, the Motion for Bail/Recognizance dated 7 June 2002 and the Letter of 11 June 2002. Further, we hereby order the following:

1. Subject to the submission of appropriate clearances, the summary deportation order the respondent Herbert Scheer, German, under BI Office Memorandum Order No. 34 (series of 1989) and the BOC Summary Deportation Order of 27 September 1995;

2. Permanent exclusion of Herbert Scheer from the Philippines under C.A. No. 613, Section 40 (a)(15).

3. Inclusion of the name of Herbert Scheer in the Immigration Black List; and

4. Forfeiture of the bail bond, if any, of Herbert Scheer under C.A. No. 613, Section 40 (a)(15).

. . .

IT IS SO ORDERED.[33]

During the hearing of the respondent's plea for a writ of preliminary mandatory injunction before the CA on July 22, 2002, the Office of the Solicitor General (OSG) manifested that the State had no opposition to the respondent's re-entry and stay in the Philippines, provided that he leave the country first and re-apply for admission and residency status with the assurance that he would be re-admitted.[34] The respondent's counsel manifested to the appellate court that he had just been informed by the OSG of the Omnibus Resolution of the BOC dated June 14, 2002.

In her Comment on the Petition, the petitioner (the respondent therein) alleged, *inter alia*, the following:

1) that the BOC was an indispensable party to the petition;

2) the petitioner's failure to implead the BOC warranted the denial of the petition;

3) the allowance by then Immigration Commissioner Leandro Verceles for the petitioner therein to renew his passport and secure clearances, even if proved, was not binding on the BOC;

4) the September 27, 1995 Order of the BOC was already executory when the respondent filed her petition in the CA;

5) the German Embassy's issuance of a new passport did not legalize the respondent's stay in this country, which became illegal on July 2, 1995 when his passport expired;

6) the respondent therein did not act with abuse of discretion in causing the arrest and detention of the respondent based on the BOC's Summary Deportation Order; and

7) the BOC did not act with grave abuse of discretion in issuing its Summary Deportation Order and Omnibus Resolution and such order and resolution were not mooted by the German Embassy's issuance of a new passport in favor of the respondent.

In view of the Omnibus Resolution of the BOC, the respondent (petitioner therein) in his Memorandum prayed for the nullification of the BOC's Order, as well as its Omnibus Resolution denying his Urgent Motion for Reconsideration considering that with the issuance of a new passport, there was no more basis for his deportation, thus:

R E L I E F

WHEREFORE, it is most respectfully prayed of this Honorable Court that:

1. Upon the filing of this Memorandum, this Honorable Court forthwith direct and authorize the immediate release of petitioner, even on undersigned's recognizance, until further orders from this Honorable Court;

2. The Summary Deportation Order of September 27, 19[9]5, affirmed by respondent allegedly on June 14, 2002 and made known only yesterday, be nullified to the extent that it directs the deportation of petitioner, who has removed the very

basis of said Order of not having a valid passport, and that the Resolution of June 14, 2002 be nullified *in toto*; and,

3. The Temporary Restraining Order of June 26, 2002 be converted into a permanent injunction or writ of prohibition.

Petitioner likewise prays for such other and further relief as may be deemed just and equitable in the premises.[35]

Surprisingly, the respondent's counsel received on July 24, 2003 a Letter from the petitioner dated July 16, 2002 stating that, "the BOC was in the course of reviewing the deportation case against Mr. Scheer, and that its findings would be given in due time."[36]

On August 20, 2002, the Court of Appeals rendered a Decision in favor of the respondent granting his petition for certiorari and prohibition and permanently enjoining the petitioner from deporting the respondent. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the petitions for certiorari and prohibition are hereby GRANTED. Accordingly, any order, oral or written, issued by respondent Commissioner Domingo against petitioner, in relation to his deportation, is hereby ANNULLED, and respondent Commissioner Domingo is hereby permanently enjoined/prohibited from deporting petitioner, in so far as this case is concerned.

It is likewise ordered that petitioner be released from his confinement/detention in the Bureau of Immigration UNLESS there is/are fresh new grounds/cases that will warrant his continued detention.

SO ORDERED.[37]

The Court of Appeals ruled that the German Embassy's subsequent issuance of passport to the respondent before the BOC's issuance of its Omnibus Resolution had mooted the September 27, 1995 Summary Deportation Order, as well as the arrest and detention of the respondent. According to the court, it made no sense to require the respondent to leave the country and thereafter re-apply for admission with the BOC. Furthermore, since the grounds cited by the BOC in its Summary Deportation Order no longer existed, there was no factual and legal basis to disqualify the respondent from staying in the country.

On the issue of whether the members of the BOC were indispensable parties, the CA ruled as follows:

a) There are quite a number of cases in relevant jurisprudence wherein only the Immigration Commissioner was impleaded to decide whether an alien may stay or be deported, such as in the case of Vivo vs. Arca (19 SCRA 878) and Vivo vs. Cloribel (22 SCRA 159).

b) In the case of Caruncho III vs. COMELEC (315 SCRA 693), it was pronounced that: "Ordinarily, the nonjoinder of an indispensable party or the real party interest is not by itself a ground for the dismissal of the petition. The court before which the petition is filed must first require the joinder of such party. It is the noncompliance with said order that would be a ground for the dismissal of the petition."

thus, c) respondent may be estopped for not raising such issue earlier.[38]

Aggrieved, the respondent therein, now the petitioner, through the Office of the Solicitor General, appealed to us for relief. The petitioner contends that the Court of Appeals erred on a question of law in granting the respondent's petition in CA-G.R. SP No. 71094.[39]

In support of his contention, the Solicitor General has submitted the following arguments:

I. THE WRIT OF MANDAMUS DOES NOT LIE AGAINST THE COMMISSIONER OF THE BUREAU OF IMMIGRATION TO RESOLVE RESPONDENT'S URGENT MOTION FOR RECONSIDERATION OF THE SUMMARY DEPORTATION ORDER, CONSIDERING THAT IT IS THE BOARD OF COMMISSIONERS, AND NOT THE COMMISSIONER ALONE, WHICH HAS AUTHORITY TO MAKE SAID RESOLUTION.

II. THE WRIT OF CERTIORARI DOES NOT LIE AGAINST THE COMMISSIONER OF THE BUREAU OF IMMIGRATION, CONSIDERING THAT IT IS THE BOARD OF COMMISSIONERS, AND NOT THE COMMISSIONER ALONE, WHICH ISSUED THE SUMMARY DEPORTATION ORDER AND THE OMNIBUS RESOLUTION.

III. THE WRIT OF PROHIBITION DOES NOT LIE AGAINST THE COMMISSIONER OF THE BUREAU OF IMMIGRATION, PROHIBITING THE IMPLEMENTATION OF THE SUMMARY DEPORTATION ORDER AND THE

OMNIBUS RESOLUTION, CONSIDERING THAT THE BOARD OF COMMISSIONERS WAS NOT IMPLEADED AS PARTY-RESPONDENT IN THE PETITION IN CA-G.R. SP NO. 71094.

IV. ASSUMING BUT WITHOUT ADMITTING THAT THE BOARD OF COMMISSIONERS WAS PROPERLY IMPLEADED AS PARTY-RESPONDENT IN THE PETITION IN CA-G.R. SP NO. 71094, NEVERTHELESS, THE SUMMARY DEPORTATION ORDER AND THE OMNIBUS RESOLUTION WERE NOT ISSUED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (*SIC*) EXCESS OF JURISDICTION.

V. FURTHER ASSUMING BUT WITHOUT ADMITTING THAT THE BOARD OF COMMISSIONERS WAS PROPERLY IMPLEADED AS PARTY-RESPONDENT IN THE PETITION IN CA-G.R. SP NO. 71094, THE COMMISSIONER OF THE BUREAU OF IMMIGRATION DID NOT ACT WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN IMPLEMENTING THE SUMMARY DEPORTATION ORDER AND THE OMNIBUS RESOLUTION.[40]

Elucidating on his first three arguments, the petitioner maintains that the respondent's petition for *certiorari*, prohibition and *mandamus* before the Court of Appeals should have been dismissed because he failed to implead the real party-in-interest as mandated by Rule 3, Section 7 of the Rules of Court, as amended; in this case, the BOC. According to the Solicitor General, this was a fatal procedural error. The inclusion of the BOC as respondent in the case was necessary in order that its actions could be directly attacked and for the court to acquire jurisdiction over it. The fact that Immigration Commissioner Andrea T. Domingo was impleaded as the sole respondent was not enough, as she is only one of the four Commissioners. Furthermore, the assailed Orders were issued by the Board, and not by the Immigration Commissioner alone.

The respondent counters that the petitioner is already estopped from raising this issue. He argues that -

In quite a number of jurisprudence, only the Immigration Commissioner is impleaded to decide whether an alien may stay here or not. The bottom line is petitioner, head of the Bureau of Immigration, was more than fully heard on its institutional position, a Bureau which speaks with a single voice in this case. She is in estoppel for not raising the issue earlier, either in a timely Comment or during the oral argument…[41]

In Caruncho III v. Comelec, it was held that-

[O]rdinarily, the nonjoinder of an indispensable party or real party in interest is not by itself a ground for the dismissal of the petition. The court before which the petition is filed must first require the joinder of such party. It is the noncompliance with said order that would be a ground for the dismissal of the petition.

But even as the Court of Appeals did not require respondent of such joinder of parties, the respondent, in fact, begged leave, ad cautelam, in its Reply Memorandum dated July 31, 2002 to implead the Board which speaks with a single voice anyway in this case, and therefore, no claim can be made that a valid point of view has not been heard…[42]

Moreover, according to the respondent, the petitioner is clearly the BID's chosen instrumentality for the relevant purpose. What the respondent ultimately questioned are the acts or orders of the petitioner for the arrest and immediate deportation of the respondent by way of implementing the BOC's Summary Deportation Order.

By way of reply, the Office of the Solicitor General asserted that the Summary Deportation Order and Omnibus Resolution were collegial actions of the BOC and not of the petitioner alone. Although its Chairperson, the petitioner, is merely a member thereof, her decisions and actions are still subject to the collective will of the majority.[43]

The Ruling of the Court

The BOC is an Indispensable Party

We agree with the petitioner's contention that the BOC was an indispensable party to the respondent's petition for *certiorari*, prohibition and *mandamus* in the Court of Appeals. The respondent was arrested and

detained on the basis of the Summary Deportation Order of the BOC. The petitioner caused the arrest of the respondent in obedience to the said Deportation Order. The respondent, in his Memorandum, prayed that the CA annul not only the Summary Deportation Order of the BOC but also the latter's Omnibus Resolution, and, thus, order the respondent's immediate release. The respondent also prayed that the CA issue a writ of mandamus for the immediate resolution of his Urgent Motion for Reconsideration. The said motion had to be resolved by the BOC as the order sought to be resolved and reconsidered was issued by it and not by the petitioner alone. The powers and duties of the BOC may not be exercised by the individual members of the Commission.[44]

Section 7, Rule 3 of the Rules of Court, as amended, requires indispensable parties to be joined as plaintiffs or defendants. The joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality.[45] Strangers to a case are not bound by the judgment rendered by the court.[46] The absence of an indispensable party renders all subsequent actions of the court null and void. Lack of authority to act not only of the absent party but also as to those present.[47] The responsibility of impleading all the indispensable parties rests on the petitioner/plaintiff.[48]

However, the non-joinder of indispensable parties is not a ground for the dismissal of an action. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just.[49] If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner/plaintiff's failure to comply therefor.[50] The remedy is to implead the non-party claimed to be indispensable.[51] In this case, the CA did not require the respondent (petitioner therein) to implead the BOC as respondent, but merely relied on the rulings of the Court in *Vivo v. Arca*,[52] and *Vivo v. Cloribel.*[53] The CA's reliance on the said rulings is, however, misplaced. The acts subject of the petition in the two cases were those of the Immigration Commissioner and not those of the BOC; hence, the BOC was not a necessary nor even an indispensable party in the aforecited cases.

The Non-joinder of an Indispensable Party is not a Ground for the Dismissal of the Petition

The Court may be curing the defect in this case by adding the BOC as party-petitioner. The petition should not be dismissed because the second action would only be a repetition of the first.[54] In Salvador, et al., v. Court of Appeals, et al.,[55] we held that this Court has full powers, apart from that power and authority which is inherent, to amend the processes, pleadings, proceedings and decisions by substituting as party-plaintiff the real party-in-interest. The Court has the power to avoid delay in the disposition of this case, to order its amendment as to implead the BOC as party-respondent. Indeed, it may no longer be necessary to do so taking into account the unique backdrop in this case, involving as it does an issue of public interest.[56] After all, the Office of the Solicitor General has represented the petitioner in the instant proceedings, as well as in the appellate court, and maintained the validity of the deportation order and of the BOC's Omnibus Resolution. It cannot, thus, be claimed by the State that the BOC was not afforded its day in court, simply because only the petitioner, the Chairperson of the BOC,[57] was the respondent in the CA, and the petitioner in the instant recourse. In *Alonso v. Villamor*,[58] we had the occasion to state:

> There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.

The CA had Jurisdiction Over the Petition for Certiorari, Prohibition and Mandamus

We do not agree with the petitioner's contention that the issue before the CA, as to the power of the President to determine whether an alien may remain or be deported from the Philippines, is beyond the appellate court's competence to delve into and resolve. The contention of the petitioner is based on a wrong premise.

The settled rule is that the authority to exclude or expel aliens by a power affecting international relation is vested in the political department of the government, and is to be regulated by treaty or by an act of Congress, and to be executed by the executive authority according to the regulations so established, except in so far as the judicial department has been authorized by treaty or by statute, or is required by the Constitution to intervene.[59] The judicial department cannot properly express an opinion upon the wisdom or the justice of the measures executed by Congress in the exercise of the power conferred on it,[60] by statute or as required by the Constitution. Congress may, by statute, allow the decision or order of the Immigration Commissioner or the BOC to be reviewed by the President of the Philippines or by the courts, on the grounds and in the manner prescribed by law.

Article VIII, Section 1 of the Constitution has vested judicial power in the Supreme Court and the lower courts such as the Court of Appeals, as established by law. Although the courts are without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government and are not empowered to execute absolutely their own judgment from that of Congress or of the President,[61] the Court may look into and resolve questions of whether or not such judgment has been made with grave abuse of discretion, when the act of the legislative or executive department violates the law or the Constitution. In *Harvy Bridges v. I.F. Wixon*,[62] the United States Federal Supreme Court reversed an Order of Deportation made by the Attorney General for insufficiency of evidence and for "improper admission of evidence." In *Nging v. Nagh*,[63] the United States Court of Appeals (9th Circuit Court) held that conclusions of administrative offices on the issues of facts are invulnerable in courts unless when they are not rendered by fair-minded men; hence, are arbitrary. In *Toon v. Stump*,[64] the Court ruled that courts may supervise the actions of the administrative offices authorized to deport aliens and reverse their rulings when there is no evidence to sustain them. When acts or omissions of a quasi-judicial agency are involved, a petition for certiorari or prohibition may be filed in the Court of Appeals as provided by law or by the Rules of Court, as amended.[65]

In this case, the respondent alleges that the petitioner acted arbitrarily, contrary to law and with grave abuse of discretion in causing his arrest and detention at a time when his Urgent Motion for Reconsideration of the BOC's Summary Deportation Order had yet to be resolved. There was no factual or legal basis for his deportation considering that he was a documented alien and a law-abiding citizen; the respondent, thus, prayed for a writ of mandamus to compel the petitioner, the Chairperson of the BOC, to resolve the said motion. The petition before the CA did not involve the act or power of the President of the Philippines to deport or exclude an alien from the country. This being so, the petition necessarily did not call for a substitution of the President's discretion on the matter of the deportation of the respondent with that of the judgment of the CA.

Irrefragably, the CA had jurisdiction over the petition of the respondent.

The BOC Committed a Grave Abuse of Discretion Amounting To Lack or Excess of Jurisdiction In Issuing its Summary Deportation Order and Omnibus Resolution; The Petitioner Committed a Grave Abuse Of Her Discretion Amounting to Lack or Excess of Jurisdiction in Causing the Arrest and Detention Of The Private Respondent

On the Solicitor General's fourth and fifth arguments, we are convinced that the BOC committed a grave abuse of discretion amounting to excess or lack of jurisdiction in issuing its Summary Deportation Order and Omnibus Resolution, and that the petitioner committed grave abuse of discretion amounting to excess or lack of jurisdiction in causing the arrest and detention of the private respondent.

The settled rule is that the entry or stay of aliens in the Philippines is merely a privilege and a matter of grace; such privilege is not absolute nor permanent and may be revoked. However, aliens may be expelled or deported from the Philippines only on grounds and in the manner provided for by the Constitution, the Immigration Act of 1940, as amended, and administrative issuances pursuant thereto. In *Mejoff v. Director of Prisons*,[66] we held, thus:

Moreover, by its Constitution (Art. II, Sec. 3) the Philippines "adopts the generally accepted principles of international law a part of the law of Nation." And in a resolution entitled "Universal Declaration of Human Rights" and approved by the General Assembly of the United Nations of which the Philippines is a member, at its plenary meeting on December 10,

1948, the right to life and liberty and all other fundamental rights as applied to all human beings were proclaimed. It was there resolved that "All human beings are born free and equal in degree and rights" (Art. 1); that "Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, nationality or social origin, property, birth, or other status" (Art. 2); that "Every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law" (Art. 8); that "No one shall be subjected to arbitrary arrest, detention or exile" (Art. 9); etc.

In this case, the BOC ordered the private respondent's deportation on September 27, 1995 without even conducting summary deportation proceedings. The BOC merely relied on the June 29, 1995 Letter of the German Vice Consul and of the German Embassy's Note *Verbale* No. 369/95 dated July 26, 1995. It issued the Summary Deportation Order on September 27, 1995 allegedly under paragraph 3 of Office Memorandum Order No. 34 dated August 21, 1989 which reads:

3. If a foreign embassy cancels the passport of the alien or does not reissue a valid passport to him, the alien loses the privilege to remain in the country, under the Immigration Act, Sections 10 and 15 (Schonemann vs. Santiago, et al., G.R. No. 81461, 30 May 1989). The automatic loss of the privilege obviates deportation proceedings. In such instance, the Board of Commissioners may issue summary judgment of deportation which shall be immediately executory.

However, as gleaned from the Summary Deportation Order, the respondent was ordered deported not only because his passport had already expired; the BOC speculated that the respondent committed insurance fraud and illegal activities in the Philippines and would not, thus, be issued a new passport. This, in turn, caused the BOC to conclude that the respondent was an undesirable alien. Section 37(c) of Commonwealth Act No. 613, as amended, provides that:

No alien shall be deported without being informed of the specific grounds for deportation or without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.

Under paragraphs 4 and 5 of Office Memorandum Order No. 34, an alien cannot be deported unless he is given a chance to be heard in a full deportation hearing, with the right to adduce evidence in his behalf, thus:

4. All other cases shall be tried in full deportation hearing, with due observance of the pertinent provisions of Law Instruction No. 39.

5. In all cases, the right of the alien to be informed of the charges against him, to be notified of the time and place of hearing, when necessary, to examine the evidence against him, and to present evidence in his own behalf, where appropriate, shall be observed.

The respondent was not afforded any hearing at all. The BOC simply concluded that the respondent committed insurance fraud and illegal activities in Palawan without any evidence. The respondent was not afforded a chance to refute the charges. He cannot, thus, be arrested and deported without due process of law as required by the Bill of Rights of the Constitution. In *Lao Gi v. Court of Appeals*,[67] we held that:

Although a deportation proceeding does not partake of the nature of a criminal action, however, considering that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process should not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings.

It must be noted that the respondent was a permanent resident before his passport expired on July 2, 1995. In *Chew v. Colding*,[68] the United States Federal Supreme Court ruled:

It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the Fifth Amendment. He may not be deprived of his life, liberty or property without due process of law. Although it later may be established, as respondents contend, that petitioner can be expelled and deported, yet before his expulsion, he is entitled to notice of the nature of the charge and a hearing at least before an executive or administrative tribunal. Although Congress may prescribe conditions for his expulsion and deportation, not even Congress may expel him without allowing him a fair opportunity to be heard.

As Mr. Justice Murphy said in his concurring opinion in *Bridges v. Wixon*:[69]

The Bill of Rights belongs to them as well as to all citizens. It protects them as long as they reside within the boundaries of

our land. It protects them in the exercise of the great individual rights necessary to a sound political and economic democracy.

According to Vattal,[70] an alien who is a permanent resident in a country is a member of the new society, at least as a permanent inhabitant, and is a kind of citizen of inferior order from the native citizens; but is, nevertheless, limited and subject to the society, without participating in all its advantages. Sir Robert Philconse called them "*de facto,*" though not *de jure* citizens of the country of their domicile.[71]

Such permanent resident[72] may be classified as a "*denizen*," a kind of middle state between alien and a

Boyd v. United States:[73]

> Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*

In sum, the arrest and detention of the respondent and his deportation under the Summary Deportation Order of the BOC for insurance fraud and illegal activities in Palawan violated his constitutional and statutory rights to due process.

The Respondent's Arrest and Detention was Premature, Unwarranted and Arbitrary

We agree that the Immigration Commissioner is mandated to implement a legal and valid Summary Deportation Order within a reasonable time. But in this case, the arrest of the respondent in his house, at near midnight, and his subsequent detention was premature, unwarranted and arbitrary. Like a thunderbolt in the sky, the BID agents and marines arrested the respondent on June 6, 2002, on orders of the petitioner based on the September 27, 1995 Summary Deportation Order. Under the basic rudiments of fair play and due process, the petitioner was required to first resolve the respondent's Urgent Motion for Reconsideration of the said Order, which was filed more than six years before or on December 5, 1995.

It may be argued that respondent's filing of an Urgent Motion for Reconsideration did not *ipso facto* suspend the efficacy of the BOC's deportation order. However, such an argument cannot be sustained in this case because of the extant and peculiar factual milieu. It bears stressing that more than six years had elapsed, from the time the Summary Deportation Order was issued, until the respondent was finally arrested. Supervening facts and circumstances rendered the respondent's arrest and detention unjust, unreasonable, barren of factual and legal basis. The BOC should have set the respondent's motion for hearing to afford him a chance to be heard and adduce evidence in support thereon. It was bad enough that the BOC issued its Summary Deportation Order without a hearing; the BOC dealt the respondent a more severe blow when it refused to resolve his motion for reconsideration before causing his arrest on June 6, 2002.

As aforestated, the BOC ordered the deportation of the respondent after a summary proceeding without prior notice on the following grounds: (a) the respondent's German passport had expired; (b) there was a pending criminal case for physical injuries against him in Germany; (c) the respondent indulged in illegal activities in Palawan; (d) that in all likelihood, the respondent's passport will not be renewed by the German Embassy as he was wanted for insurance fraud in Germany; and, (e) he was an undesirable alien. But then, in response to the written query of no less than the petitioner herself, the German Embassy declared that the respondent was not wanted by the German police for any crime, including insurance fraud. This could only mean that the warrant of arrest issued by the German Federal police mentioned in Note *Verbale* No. 369/95 had been lifted, and that the respondent was not involved in any illegal activities in Germany. The criminal case against the respondent for physical injuries, which does not involve moral turpitude, was dismissed by the German District Court. Furthermore, there was no evidence of insurance fraud against the respondent.

The BOC issued its Summary Deportation Order without affording the respondent the right to be heard on his motion and adduce evidence thereon. It merely concluded that the respondent was involved in "illegal activities in Palawan." What made matters worse was that the BOC indulged in sheer speculation, that the German Embassy

is unlikely to issue a new passport to the respondent. The deportation of aliens should not be based on mere speculation or a mere product of procrastinations as in this case. As it turned out, the German Embassy re-issued the respondent's passport; he was issued a temporary passport, and, thereafter, a regular passport, yet to expire on March 12, 2006. The petitioner cannot feign ignorance of this matter because the respondent himself, six years before he was arrested, informed then Immigration Commissioner Verceles in a Letter dated March 1, 1996. The respondent's letter forms part of the records of the BOC. There is no evidence on record that the respondent committed any illegal activities in Palawan. He was even designated as special agent of the NBI, and was, in fact, issued clearances by the PNP and the NBI no less. Despite all the foregoing, the petitioner ordered and caused the arrest and detention of the respondent.

What is most nettlesome is the apparent antedating of the BOC Omnibus Resolution. The records show that the petitioner sought to assuage the respondent's concern on the belated resolution of his pending urgent motion for reconsideration in a Letter to the latter's counsel dated July 18, 2002 in which the petitioner assured the respondent that the BOC will provide him of its action on the said motion:

Dear Atty. Sagisag,

We respond to your letter of 17 June 2002 by informing you that the case of Mr. Herbert Scheer is being evaluated by the Board of Commissioners (BOC). The BOC will provide you of the results of its collegial action in due time.

Very truly yours,
(Sgd.) ANDREA D. DOMINGO
Commissioner[75]

However, the Omnibus Resolution of the BOC was dated June 14, 2002, although on its face it was filed with the Records Division of the BID only on July 18, 2002.

The foregoing gave reason for the CA to suspect that the Omnibus Resolution of the BOC was antedated.[76] The petition of the respondent in the CA must have jolted the petitioner and the BOC from its stupor because it came out with its Omnibus Resolution on July 18, 2002, which was, however, dated as early as June 14, 2002. The respondent had to wait in anxiety for the BOC to quench his quest for justice. The BOC's wanton acts amounted to an abdication of its duty to act and/or resolve cases/incidents with reasonable dispatch. To recall our ruling in *Board of Commissioners v. De la Rosa*,[77] citing *Sheor v. Bengson*,[78] thus:

This inaction or oversight on the part of the immigration officials has created an anomalous situation which, for reasons of equity, should be resolved in favor of the minor herein involved.

The petitioner and the BOC should have taken to heart the following pronouncement in *Commissioner of Immigration v. Fernandez*:[79]

In the face of the disclosure that Teban Caoili had been all along working in the Avenue Electrical Supply Co. (Avesco), located at No. 653 Rizal Avenue, Manila, until his arrest, and the documentary evidence showing that he had been issued a Philippine Passport; had regularly paid his Residence Tax Certificates (A & B), and filed Income Tax Returns, a finding of fact is necessary whether the Commissioner really had intended to notify Teban Caoili of the exclusion proceedings the Board had conducted in his absence. While it may be true that the proceedings is purely administrative in nature, such a circumstance did not excuse the serving of notice. There are cardinal primary rights which must be respected even in proceedings of administrative character, the first of which is the right of the party interested or affected to present his own case and submit evidence in support thereof.[80]

. . .

Since the proceedings affected Caoili's status and liberty, notice should have been given. And in the light of the actuations of the new Board of Commissioners, there is a necessity of determining whether the findings of the Board of Special Inquiry and the old Board of Commissioners are correct or not. This calls for an *examination of the evidence*, and, the law on the matter.[81]

Apparently, the BOC did not bother to review its own records in resolving the respondent's Urgent Motion for Reconsideration. It anchored its Omnibus Resolution only on the following: the membership of the BOC had changed when it issued its September 27, 1995 Summary Deportation Order and under Commonwealth Act No. 613, Section 27(b); the BOC is precluded from reversing a previous order issued by it;[82] and, the September 27, 1995 Order of the BOC had become final and could no longer be reviewed and reversed by it after the lapse of

one year.[83] However, the rulings cited by the petitioner are not applicable in the instant case, as the said cases cited involve appeals to the BOC from the decisions of the Board of Special Inquiry (BSI). In *Sy v. Vivo*[84] and *Lou v. Vivo*,[85] we ruled that under Section 27(b) of Commonwealth Act No. 613, as amended, the Decision of the BOC on appeal from the decision of the BSI becomes final and executory after one year:

> (b) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue *subpoena* and/or subpoena *duces tecum*. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. 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 propio*, of the entire proceedings within one year from the promulgation of the decision.

In *Commissioner of Immigration v. Fernandez*,[86] we held that the BOC composed of new members is precluded from reversing, *motu proprio*, the decision of the BOC on appeal from a BSI decision. But not to be ignored was our ruling that "at any rate, the issue of authority should be made in accordance with the procedure established by law, with a view to protecting the rights of individuals."[87]

In this case, the Summary Deportation Order was issued by the BOC in the exercise of its authority under Office Memorandum Order No. 34, and not in the exercise of its appellate jurisdiction of BSI decisions. There is no law nor rule which provides that a Summary Deportation Order issued by the BOC in the exercise of its authority becomes final after one year from its issuance,[88] or that the aggrieved party is barred from filing a motion for a reconsideration of any order or decision of the BOC. The Rules of Court may be applied in a suppletory manner to deportation proceedings[89] and under Rule 37, a motion for reconsideration of a decision or final order may be filed by the aggrieved party.

Neither is there any law nor rule providing that the BOC, composed of new members, cannot revise a Summary Deportation Order previously issued by a different body of Commissioners. The BOC that issued the Summary Deportation Order and the BOC which resolved the respondent's Urgent Motion for Reconsideration are one and the same government entity, with the same powers and duties regardless of its membership. Similarly, an RTC judge who replaces another judge who presided over a case may review the judgment or order of his predecessor as long as the said judgment or order has not as yet become final or executory. The act subject of review is not the act of the judge but the act of the court.

The petitioner's contention that it failed to resolve the respondent's motion for reconsideration because of the change of administration in the BOC was branded by the CA as flimsy, if not bordering on the absurd:

> Firstly, it was issued three days (June 14, 2002) after petitioner filed this instant petition on June 11, 2002 or almost seven years from the time the motion for reconsideration was filed;
>
> Secondly, respondent's counsel's excuse that it took such time to resolve it because it was only later that the motion for reconsideration was discovered because of change of administration, is flimsy, if not bordering on the absurd;[90]

The Issuance of a New and Regular Passport to the Respondent Rendered the Summary Deportation Order Moot and Academic, and the Omnibus Resolution of the BOC Lacking in Legal Basis

We agree with the petitioner that a foreign embassy's cancellation of the passport it had issued to its citizens, or its refusal to issue a new one in lieu of a passport that has expired, will result in the loss of the alien's privilege to stay in this country and his subsequent deportation therefrom. But even the BOC asserted in its Summary Deportation Order that an embassy's issuance of a new passport to any of its citizens may bar the latter's deportation, citing the resolution of this Court in Schonemann v. Commissioner Santiago.[91]

Irrefragably, Commissioner Verceles was mandated to cause the arrest of the respondent preparatory to his deportation from the Philippines. However, there was no fixed period in the Order within which to comply with

the same. The Commissioner is not mandated to deport an alien immediately upon receipt of the BOC's deportation order. It is enough that the Commissioner complies with the Order within a "reasonable time," which, in *Mejoff v. Director of Prisons,*[92] we held to connote as follows:

> The meaning of "reasonable time" depends upon the circumstances, specially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the governments concerned and the efforts displayed to send the deportee away; but the Court warned that "under established precedents, too long a detention may justify the issuance of a writ of *habeas corpus*.

In this case, the BOC had yet to act on the respondent's Urgent Motion for Reconsideration. The respondent was also given a chance to secure a clearance and a new passport with the German Embassy. After all, the possibility that the German Embassy would renew the respondent's passport could not be ruled out. This was exactly what happened: the German Embassy issued a new passport to the respondent on March 12, 1996 after the German District Court dismissed the case for physical injuries. Thus, the respondent was no longer an undocumented alien; nor was he an undesirable one for that matter.

The petitioner even admits that there is no longer a legal or factual basis to disqualify the respondent from remaining in the country as a permanent resident. Yet, the OSG insists that he has to be deported first so that the BOC's Summary Deportation Order could be implemented. This contention was rejected by the CA, thus:

> During the hearing of petitioner's prayer for issuance of a writ of preliminary injunction before Us, respondent's counsel from the Office of the Solicitor General had the occasion to manifest in open court that the State has no opposition to petitioner's stay in the country provided he first leave and re-enter and re-apply for residency if only to comply with the Summary Deportation Order of 1995. That, to Our mind, seems preposterous, if not ridiculous. An individual's human rights and rights to freedom, liberty and self-determination recognize no boundaries in the democratic, free and civilized world. Such rights follow him wherever he may be. If presently, there is no factual or legal impediment to disqualify petitioner in his stay in the country, other than allegedly those relied upon in the Summary Deportation Order of 1995 (as hereinbefore discussed, had ceased to exist), requiring petitioner to leave the country and re-enter and re-apply for residency makes little sense or no sense at all, more so, in the case of petitioner who, for many years past, had lived herein and nurtured a family that is Filipino.
>
> Thus, opined, We, therefore, believe and hereby rule, that there is presently every reason to enjoin/prohibit the Bureau of Immigration, respondent Commissioner Domingo in particular, from presently deporting petitioner.[93]

We agree with the Court of Appeals. The Summary Deportation Order had been rendered moot and academic upon the German Embassy's issuance of a new passport to the respondent. The respondent had been in the Philippines as a permanent resident since July 18, 1986, and had married a Filipino citizen, with whom he has two children. He is not a burden to the country nor to the people of Palawan. He put up, and has been managing, the Bavaria Restaurant with about 30 employees. He has no pending criminal case; nor does he have any derogatory record. The respondent was allowed by then Immigration Commissioner Verceles to renew his passport and was given time to secure a clearance from the German Embassy. The respondent was able to do so. The case against him for physical injuries was dismissed by the German District Court. Thus, the inceptual basis for the respondent's deportation had ceased to exist.

The power to deport is a police matter against undesirable aliens, whose presence in the country is found to be injurious to the public good. We believe that the deportation of the respondent late in the day did not achieve the said purpose. The petitioner admitted that there is no longer a factual and legal basis to disqualify the respondent from staying in the country. He is not an undesirable alien; nor is his presence in the country injurious to public good. He is even an entrepreneur and a productive member of society.

Arrest, detention and deportation orders of aliens should not be enforced blindly and indiscriminately, without regard to facts and circumstances that will render the same unjust, unfair or illegal.[94] To direct the respondent to leave the country first before allowing him re-entry is downright iniquitous.[95] If the respondent does leave the country, he would thereby be accepting the force and effect of the BOC's Summary Deportation Order with its attendant infirmities. He will thereby lose his permanent resident status and admit the efficacy of the cancellation of his permanent resident visa. Moreover, his entry into the country will be subject to such conditions as the petitioner may impose.

The deportation of an alien is not intended as a punishment or penalty. But in a real sense, it is. In *Bridges v. Wixon*,[96] Mr. Justice Murphy declared that the impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence. In dealing with deportation, there is no justifiable reason

for disregarding the democratic and human tenets of our legal system and descending to the practices of despotism. As Justice Brewer opined in *Fong Yue Ting v. United States*,[97] deportation is a punishment because it requires first, an arrest, a deprivation of liberty and second, a removal from home, from family, from business, from property. To be forcibly taken away from home, family, business and property and sent across the ocean to a distant land is punishment; and that oftentimes is most severe and cruel. It would be putting salt on the respondent's woes occasioned by the BOC's ineptitude. Considering the peculiar backdrop and the equities in this case, the respondent's deportation and the cancellation of his permanent resident visa as a precondition to his re-entry into this country is severe and cruel; it is a form of punishment.

Our ruling in *Vivo v. Cloribel*,[98] has no application in this case, precisely because the factual milieu here is entirely different. In that case, the Commissioner of Immigration required the respondents to leave the country on or before September 12, 1962, because their stay in the country as approved by the Secretary of Justice had been cancelled. Our ruling in *Bing v. Commission on Immigration*,[99] even buttresses the case for the respondent since we ruled therein that an alien entitled to a permanent stay cannot be deported without being accorded due notice and hearing.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.,* concur.

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[1] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion concurring.

[2] Immigration Commissioner Leandro T. Verceles, Deputy Commissioner Joseph Lopez and Deputy Commissioner Edgar L. Mendoza.

[3] Commissioner Andrea D. Domingo, Associate Commissioners Arthel B. Caronongan, Daniel C. Cueto and Orlando V. Dizon.

[4] *Rollo*, p. 167.

[5] *Id.* at 150.

[6] *Id.* at 151.

[7] *Id.* at 94.

[8] *Id.* at 95.

[9] *Id.* at 88, 171.

[10] *Id.* at 173.

[11] *Id.* at 60.

[12] *Id.* at 59.

[13] *Id.* at 60-61.

[14] *Id.* at 60.

[15] *Id.* at 163.

[16] *Id.* at 83-86.

[17] *Id.* at 84-85.

[18] *Id.* at 164-165.

[19] *Id.* at 163.

[20] *Id.* at 93.

[21] *Id.* at 88.

[22] *Id.* at 89.

[23] Docketed as CA-G.R. SP No. 71094.

[24] *Rollo*, p. 292.

[25] *Id.* at 294.

[26] 95 SCRA 876 (1980).

[27] 18 SCRA 145 (1969).

[28] 11 SCRA 184 (1966).

[29] An Act to Control and Regulate the Immigration of Aliens into the Philippines, also known as the Philippine Immigration Act.

[30] *Rollo*, p. 113.

[31] *Id.* at 114.

[32] *Id.* at 340.

[33] *Id.* at 62.

[34] *Id.* at 56 and 363.

[35] *Id.* at 367.

[36] *Id.* at 401.

[37] *Id.* at 280-281.

[38] *Id.* at 53.

[39] *Id.* at 20.

[40] *Id.* at 21-22.

[41] *Id.* at 458-459.

[42] *Id.* at 458-460.

[43] *Id.* at 496.

[44] *Arocha vs. Vivo*, 21 SCRA 538 (1967).

[45] *Servicewide Specialists, Inc. v. Court of Appeals*, 251 SCRA 70 (1995).

[46] *Manliquin Integrated Food Products, Inc. v. Court of Appeals, et al.*, 203 SCRA 490 (1996).

[47] *Lim Tanhu v. Ramolete*, 66 SCRA 425 (1975); *Alabang Development Corporation v. Valenzuela*, 116 SCRA 261 (1982).

[48] *Arcelona v. Court of Appeals*, 280 SCRA 80 (1997).

[49] Rule 3, Section 11, Rules of Court, as amended.

[50] *Caruncho v. COMELEC*, 315 SCRA 693 (1999).

[51] *Vesagas, et al. v. Court of Appeals, et al.*, 371 SCRA 508 (2001).

[52] 19 SCRA 878 (1963).

[53] 22 SCRA 159 (1968).

[54] *Cuyugan v. Dizon*, 79 Phil. 80 (1947).

[55] 243 SCRA 239 (1995).

[56] *Caruncho v. Comelec*, 315 SCRA 693 (1996).

[57] *Balquied v. CA, et al.*, 80 SCRA 123 (1977).

[58] 16 Phil. 315 (1910).

[59] *Fong Yue Ting v. United States*, 149 U.S. 905 (1893).

[60] *Sing v. Court of Appeals*, 180 U.S. 634 (1901).

[61] *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 (1997); *Ledesma v. Court of Appeals*, 278 SCRA 656 (1997); *Tañada v. Angara*, 272 SCRA 18 (1997); *Republic v. Sandiganbayan* (First Division), 258 SCRA 685 (1996).

[62] 89 L. ed. 2103 (1945).

[63] 27 Federal Reporter 2d. 848 (1928).

[64] Article, United States Court of Appeals, 232 Federal Reporter 194 (1946).

[65] Section 4, Rule 65, Rules of Court, as amended.

[66] 90 Phil. 71 (1951).

[67] 180 SCRA 762 (1989).

[68] 344 U.S. 571 (1953).

[69] *Supra,* note 58.

[70] Quoted in "The Venue," 12 U.S. 8 Crunch 253.

[71] 1 Phillin International Law, Chapter 18, p. 347.

[72] 149 U.S. 905 (1893).

[73] *Supra.*

[74] 116 U.S. 616 (1886).

[75] *Rollo*, p. 177.

[76] *Id*. at 56.

[77] 197 SCRA 883 (1991).

[78] 93 Phil. 1065 (1953).

[79] 11 SCRA 184 (1964).

[80] *Id*. at 191.

[81] *Id*. at 193.

[82] *Id*.

[83] *Sy v. Vivo*, *supra*; *Lou v. Vivo, supra*.

[84] *Supra.*

[85] *Supra.*

[86] *Supra.*

[87] *Supra* note 71, at 191.

[88] SEC. 10. *Power to Countermand Decisions of the Board of Commissioners of the Bureau of Immigration*.—The decision of the Board of Commissioners which has jurisdiction over all deportation cases shall become final and executory after thirty (30) days from promulgation, unless within such period the President shall order the contrary.

[89] *Board of Commissioners v. De la Rosa*, *supra*.

[90] *Rollo*, p. 55.

[91] *Rollo*, p. 60.

[92] *Supra*.

[93] *Rollo*, p. 56.

[94] *Bing v. Commissioner of Immigration*, 52 O.G. 6551 (1956)

[95] *BOC v. De la Rosa, supra*.

[96] *Supra*.

[97] *Supra*.

[98] *Supra*.

[99] *Supra*.