

[ADMINISTRATIVE ORDER NO. 155, January 22, 1990]

SUSPENDING AMBASSADOR ROMEO O. FERNANDEZ FOR ONE (1) YEAR AND SUSTAINING THE ORDER OF THE SECRETARY OF FOREIGN AFFAIRS RECALLING HIM TO THE HOME OFFICE FROM HIS POST AS AMBASSADOR-DESIGNATE TO PERU

This refers to the administrative charges, dated July 15, 1988, filed by the Secretary of Foreign Affairs through the Acting Director General of the Office of Personnel and Administrative Services, against Ambassador Romeo O. Fernandez for "insubordination, dishonesty, and grave misconduct and conduct prejudicial to the best interest of the service."

Antecedent facts show that, on November 3, 1987, respondent was extended an appointment by the President of the Philippines, as Ambassador Extraordinary and Plenipotentiary to the Republic of Peru upon the recall of Ambassador Ernesto Garrido on September 1, 1987. Pursuant thereto, the Secretary of Foreign Affairs (SFA) issued Assignment Order No. 17-88 and Travel Order No. 88-26, both dated February 15, 1988.

Before respondent could assume his new assignment, the SFA instructed respondent not to proceed to Lima, Peru, on account of an alleged adverse report purportedly submitted by the National Intelligence and Coordinating Agency (NICA) identifying respondent as a probable security risk, in view of his reported intimate association with a Chilean-born Russian national named Tatiana V. Iachina. It appears that the verbal instructions of the SFA are conveyed earlier to the respondent by Undersecretary of Foreign Affairs Manuel T. Yan.

The above instructions notwithstanding, respondent departed for Peru on April 16, 1988. Thereafter, he assumed office as ambassador to Peru and made arrangements with the receiving state (Peru) for the presentation of his credentials.

On April 22, 1988, the Department of Foreign Affairs (DFA), in cable No. L1-02-88-S, directed respondent to return to Manila immediately. Department cable No. L1-03-88-S reiterated the recall order; additionally, respondent was directed not to present his credentials or otherwise to cancel the arrangements for that purpose, if already made.

Not long thereafter, or on April 30, 1988, respondent, by way of reply, requested reconsideration of his recall order and cautioned the DFA that his recall on the eve of presentation of his credentials might be viewed as an unfriendly act. There were other cables from respondent. Nonetheless, respondent's requests for reconsideration and deferment of his recall order were all rejected by the DFA. He then returned to Manila on June 26, 1988.

Respondent was likewise charged with dishonesty thru misrepresentation in that Maria Romina L. Fernandez, who is listed as respondent's 3-year old daughter in Travel Order No. 88-26, was averred to be his daughter by Liza L. Fernandez in the child's passport application when in Birth Certificate D13 I-M10 No. 010124 legalized at the Consular Department of the Ministry of Foreign Affairs of the U.S.S.R. on June 2, 1986, Maria Romina Fernandez, the child, is declared to be the daughter of Romeo Fernandez and Tatiana Vladimirovna Yashina and in the Application For Immigrant Status (September 11, 1987) of one Tatiana V. Iashina a.k.a. Gina Alvarez, respondent declared Maria Romina Fernandez to be the child of Tatiana V. Iashina. In Note Verbale No. 88-1210, dated March 14, 1988, addressed to the U.S. Embassy and in Note Verbale No. 88-1268, dated March 17, 1988, addressed to the Canadian Embassy, applying for entry visas for Tatiana Iachina, she was described as a landed immigrant when the truth of the matter is that Tatiana entered the Philippines as a temporary visitor (tourist) with a 9(a) visa on November 29, 1986, and was granted a change in status to non-preference quota immigrant under Section 13 of the Philippine Immigration Act only on November 22, 1987. There is a third specification in that "Ambassador Fernandez figured prominently as the spokesman, guarantor and overall protector of Miss Tatiana Iachina from her exit from the USSR, her admission in the Philippines under a tourist visa, her change of status from tourist to quota immigrant, her application for transit visa from the U.S. Embassy and finally, her departure for Lima, Peru."

The change of grave misconduct and conduct prejudicial to the interest of the service is based on respondent's public criticisms addressed to the media, his non-reporting to the Department, as Charge d' Affaires of the Philippine Embassy in Moscow, of activities of employees under him who were close associates of an entrapment group, and the use of threats and intemperate/irresponsible language in official and other communications.

Acting on the administrative complaint, the Board of Foreign Service Administration (BFSA) referred the case for investigation and report to an Investigating Committee. Thereafter, on February 27, 1989, the Board rendered the following findings, as follows:

"The Investigating Committee is fully aware of the previous meritorious service of the respondent who rose from the ranks in the career service until he reached the position of Chief of Mission Class I. He was favorably recommended by Secretary Manglapus to be assigned as Ambassador to Peru and the President signed his letters of credence.

"He openly defied an order of the Secretary not to proceed to Lima, Peru, in view of an adverse information against him and his illicit relations with a Russian citizen. He also refused to return to Manila despite the repeated orders from the Department. It is admitted by the Respondent that Tatiana Iachina was born in Chile. When she became orphaned, she was brought to Russia where she was raised and educated by Russian government authorities."

The same Board went further to recommend:

"The offenses of insubordination, dishonesty, grave misconduct and conduct prejudicial to the best interest of the service are all grave

offenses which call for the imposition of a maximum grave penalty. However, the Board considered his length of service and that it is his first offense as mitigating circumstances. Wherefore, the Board recommends that the proper imposable penalty in this case against respondent is suspension for one year."

From this resolution, respondent appealed to this Office manifesting his non-conformity to the BFSA resolution of February 27, 1989. The pertinent portion of his letter-memorandum, dated September 22, 1989, reads:

"It may be noted that the Resolution signed by Manuel T. Yaw (sic) as Acting Chairman does not indicate that this was the handiwork of the Board of Foreign Service Administration. Please note that no signatures of the members present and concurring appear in the documents. It may be noted further that on page 11 of the Resolution the findings is attributed to an Investigating Committee and therefore is not the deliberation of the Board en banc. This committee was chaired by the Ex-Justice Jorge Coquia, Assistant Secretary for Legal Affairs, with Ambassador Rosalinda Tirona, Ambassador Ernesto Garrido, Assistant Secretary for Legislative Affairs Vicente de Vera and Deputy Civil Service Commissioner Mario Yangco as members. x x x" [Emphasis by itself]

At the outset, it must be stressed that the Resolution of the BFSA is only recommendatory in nature. Regardless of any error committed by the BFSA during the investigation, it does not preclude the President from exercising her administrative disciplinary authority over respondent who is a presidential appointee. On the other hand, the DFA regulations on administrative disciplinary proceedings against DFA personnel, particularly Sections 441 to 450 of the Foreign Service Code of 1983 and Ministry Order No. 12-85, dated June 5, 1985, being departmental regulations are, by their very nature, subject to the superior administrative disciplinary authority of the President over presidential appointees so much so that, whatever defect, it there be any, in the assailed BFSA resolution, it does not diminish nor supplant the disciplinary authority of the President over presidential appointees, as in the instant case.

This brings to the fore the core issue of whether or not respondent is administratively liable for "insubordination, dishonesty, and grave misconduct and conduct prejudicial to the best interest of the service."

After going over the records of the case, I concur with the BFSA finding respondent guilty of insubordination, dishonesty and conduct prejudicial to the best interest of the service.

On the charge of insubordination, the evidence incontrovertibly shows that respondent failed to return to the Philippines, despite the recall order of April 22, 1988, prompting the SFA to dispatch several cables reiterating his recall order. This fact alone constitutes insubordination, as respondent's conduct evinced a willful disregard of an express direction and refusal to obey reasonable orders of his superior. Unless countermanded by the President, the order of recall made by the SFA stands. In the instant case, I find the recall order of April 22, 1988, valid and effective. Respondent's contention that the recall order has no basis is not well taken. While it may be true that what prompted the SFA to issue the recall was the alleged NICA report tagging respondent as a possible security risk, which allegation