

FIRST DIVISION

[G.R. No. 180364, December 03, 2014]

TZE SUN WONG, PETITIONER, VS. KENNY WONG, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated May 15, 2007 and the Resolution^[3] dated October 23, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92607, affirming the deportation of petitioner Tze Sun Wong (petitioner).

The Facts

Petitioner is a Chinese citizen who immigrated to the Philippines in 1975 and subsequently acquired a permanent resident status in 1982. As the records would show, he studied, married, and continued to reside in the country, and even owned a company called Happy Sun Travel and Tours.^[4]

On September 12, 2000, respondent Kenny Wong (respondent), owner and proprietor of San Andres Construction Supply, filed a Complaint-Affidavit^[5] against petitioner before the Bureau of Immigration (BOI), alleging that the latter had misrepresented, in his driver's license application, that he was a Filipino citizen. Respondent also averred that petitioner and his business partner, Tina Yu, issued post-dated checks in the amount of p886,922.00 which, however, bounced to his damage and prejudice. Thus, taking cue from the foregoing acts, respondent prayed that petitioner be investigated by the BOI for violation of immigration laws.^[6]

In his Counter-Affidavit^[7] dated September 28, 2000, petitioner denied respondent's claim of misrepresentation, stating that when he applied for a driver's license, it was another person who filled up the application form for him. However, said person entered the wrong information, particularly, on his name, birth year, and nationality.^[8]

Finding probable cause, the Special Prosecutor filed with the BOI the applicable deportation charges^[9] against petitioner, docketed as BSI-D.C. No. ADD-02-280.^[10] Thereafter, the BOI Commissioner issued a Mission Order^[11] to verify petitioner's immigration status. The Mission Order was later recalled^[12] and the Law and Investigation Division endorsed the records to the Board of Special Inquiry which directed the parties to submit their respective memoranda.^[13]

The BOI Ruling

In a Judgment^[14] dated October 2, 2002, the BOI Board of Commissioners ordered the deportation of petitioner on the grounds of: (a) illegal use of alias, *i.e.*, Joseph Wong, which was the name appearing in his driver's license application; and (b) misrepresenting himself as a Filipino citizen in the same application, in violation of Section 37 (a) (7) and (9)^[15] of Commonwealth Act No. 613,^[16] otherwise known as "The Philippine Immigration Act of 1940" (Immigration Act), in relation to Sections 1, 2, and 3^[17] of Republic Act No. (RA) 6085.^[18] Aside from pointing out the misrepresentations made by petitioner, the BOI took judicial notice of the fact that driver's license applications require the personal appearance of the applicant in order to prevent fraud. Thus, by allowing someone to apply for him, he actively involved himself in the preparation and issuance of a fraudulent driver's license. By the same account, he cannot then aver that he was without any participation in the entry of his supposed Philippine citizenship in his driver's license.^[19]

Petitioner filed a motion for reconsideration^[20] which was eventually denied by the BOI in a Resolution^[21] dated December 4, 2002. As such, petitioner filed an appeal before the Secretary of Justice.

The Secretary of Justice Ruling

In a Resolution^[22] dated March 22, 2004, Acting Secretary of Justice Ma. Merceditas N. Gutierrez affirmed the ruling of the BOI, holding that since it undisputedly appears on the face of petitioner's driver's license that he is a Filipino citizen under the name of Joseph Wong, he cannot then raise the defense that it was not his doing but that of a stranger who merely helped him.^[23] It was further pointed out that petitioner's use of the alias "Joseph Wong" was illegal since said name is not registered in the BOI and does not fall under the recognized exceptions where use of alias may be allowed.^[24]

Petitioner moved for reconsideration^[25] and raised the argument that the Judgment of the BOI was null and void since only two commissioners^[26] participated in the decision-making process. Secretary of Justice Raul M. Gonzalez rendered a Resolution^[27] dated September 9, 2005, rejecting petitioner's argument on the basis of Section 8 of the Immigration Act which simply requires that "[i]n any case coming before the [BOI] Board of Commissioners, the decision of any two members shall prevail[,]" as in this case. It was added that when petitioner sought to reconsider said Judgment, all four (4) commissioners^[28] decided in favor of his deportation.^[29]

Dissatisfied, petitioner filed a petition for *certiorari*^[30] before the CA.

The CA Ruling

In a Decision^[31] dated May 15, 2007, the CA denied^[32] the *certiorari* petition. Preliminarily, it found that petitioner chose the wrong remedy considering that the decisions of the BOI Board of Commissioners are directly appealable to the CA under Rule 43 of the Rules of Court.^[33] The CA also observed that even on the assumption

that the Secretary of Justice was given the authority to countermand the BOI Judgment under the Administrative Code, no countermand was made, and hence, the same should have already attained finality.^[34] On the substantive aspects, the CA affirmed the ruling of the Secretary of Justice that petitioner should be deported for violating the abovementioned rules.^[35]

Petitioner sought reconsideration^[36] but was denied in a Resolution^[37] dated October 23, 2007, hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly denied petitioner's petition for *certiorari*.

The Court's Ruling

The petition is without merit.

The Court first discusses the propriety of petitioner's recourse before the CA.

Section 1, Rule 43 of the Rules of Court clearly states that decisions of **any quasi-judicial agency in the exercise of its quasi-judicial functions** (except to judgments or final orders issued under the Labor Code of the Philippines) shall be appealed to the CA under this rule.

RULE 43

Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals

Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied)

The statutory basis of the CA's appellate jurisdiction over decisions rendered by quasi-judicial agencies (except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442) in the abovementioned respect is

Section 9 (3) of Batas Pambansa Bilang 129,^[38] as amended:^[39]

Section 9. *Jurisdiction*. – The Court of Appeals shall exercise:

x x x x

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission**, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

x x x x

Notably, in *Cayao-Lasam v. Spouses Ramolete*,^[40] it was clarified that the enumeration of the quasi-judicial agencies under Section 1, Rule 43 is not exclusive:

The Rule expressly provides that it should be applied to appeals from awards, judgments, final orders or resolutions **of any** quasi-judicial agency in the exercise of its quasi-judicial functions. The phrase “among these agencies” confirms that the enumeration made in the Rule is not exclusive to the agencies therein listed.^[41]

Thus, although unmentioned in the enumeration, the Court, in the case of *Dwikarna v. Hon. Domingo*^[42] (*Dwikarna*), held that the decisions rendered by the BOI Board of Commissioners may be appealable to the CA via Rule 43 in the event that a motion for reconsideration therefrom is denied:

If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. **If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.**^[43] (Emphasis supplied)

It bears elucidation that the availability of a Rule 43 appeal to the CA from the BOI Board of Commissioners as ruled in *Dwikarna* presupposes the presence of any of the exceptions to the doctrine of exhaustion of administrative remedies,^[44] considering that the Secretary of Justice may still review the decisions of the

aforesaid body. In *Caoile v. Vivo*^[45] (Caoile), it was held:

[S]ince the Commissioners of Immigration are under the Department of Justice^[46] and, in this case, they followed the Secretary's Order setting aside the individual actions of the former Commissioners, the aggrieved parties should have exhausted their administrative remedies by appealing to the Secretary before seeking judicial intervention.^[47]

Citing *Caoile*, the Court, in the more recent case of *Kiani v. The Bureau of Immigration and Deportation*,^[48] expounded on the procedure:

Under Section 8, Chapter 3, Title I, Book III of Executive Order No. 292, the power to deport aliens is vested on the President of the Philippines, subject to the requirements of due process. The Immigration Commissioner is vested with authority to deport aliens under Section 37 of the Philippine Immigration Act of 1940, as amended.^[49] Thus, a party aggrieved by a Deportation Order issued by the [Board of Commissioner (BOC)] is proscribed from assailing said Order in the RTC even via a petition for a writ of *habeas corpus*. Conformably with [the] ruling of the Court in [*Commissioner*] *Domingo v. Scheer* (see 466 Phil. 235, 264-284 ^[2004]), such party may file a motion for the reconsideration thereof before the BOC. The Court ruled therein that "there is no law or 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, or that the aggrieved party is barred from filing a motion for a reconsideration of any order or decision of the BOC." The Court, likewise, declared that in deportation proceedings, the Rules of Court may be applied in a suppletory manner and that the aggrieved party may file a motion for reconsideration of a decision or final order under Rule 37 of said Rules.

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 [(OP)]. 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.^[50]

Thus, to recap, from the denial of the BOI Board of Commissioners' motion for reconsideration, the aggrieved party has three (3) options: (a) he may file an appeal directly to the CA via Rule 43 provided that he shows that any of the exceptions to the exhaustion doctrine attend; (b) absent any of the exceptions, he may exhaust the available administrative remedies within the executive machinery, namely, an