

## **ELEVENTH DIVISION**

**[ CA-G.R. SP No. 137115, March 05, 2015 ]**

**BUREAU OF IMMIGRATION, PETITIONER, VS. RENNE BEN A. PAMINTUAN, RESPONDENT.**

### **DECISION**

**LIBREA-LEAGOGO, C.C., J.:**

Before this Court is a Petition for Review<sup>[1]</sup> dated 07 September 2014 under Rule 43 of the Rules of Court seeking the reversal of Decision No. 140247<sup>[2]</sup> dated 01 April 2014 and Resolution No. 1401223<sup>[3]</sup> dated 20 August 2014 of the Civil Service Commission ("CSC," for brevity), which granted respondent's appeal and reversed the Decision<sup>[4]</sup> dated 25 March 2013 and Resolution<sup>[5]</sup> dated 15 May 2013 of the Bureau of Immigration ("BI," for brevity), and denied petitioner's Motion for Reconsideration, respectively.

Respondent filed his Comment<sup>[6]</sup> dated 03 December 2014, to which petitioner filed its Reply<sup>[7]</sup> dated 20 January 2015. Thus, the third paragraph of the Resolution<sup>[8]</sup> dated 11 November 2014 is reiterated, and the case is submitted for decision.

### **FACTUAL ANTECEDENTS**

In a Memorandum<sup>[9]</sup> dated 04 June 2012, Diosdado Macapagal International Airport Officer-In-Charge Maria Rhodora T. Abrazaldo directed the following BI personnel: Geronimo Santos ("Santos," for brevity), Gerald Matibag, Michael Vincent Dizon, Domingo Dominic Chicano ("Chicano," for brevity), Andrew Richard Ngo and herein respondent Renne Ben Pamintuan ("Pamintuan," for brevity) to comment within 72 hours regarding the admission of certain Chinese passengers on board turnaround Cebu Pacific Flight Nos. 5J367/368, which computer records show were processed under their Border Control Information System (BCIS) accounts, despite their using unsigned Philippine visas. It was shown that Pamintuan processed one of the Chinese nationals named Xie Keke with Visa No. MAC-MRRV-417-2012.<sup>[10]</sup>

On 05 June 2012, Pamintuan and the other four (4) immigration officers submitted their compliance<sup>[11]</sup> stating, *inter alia*, that: the passengers all had stamped visas on their passports which were not unusual for Chinese nationals traveling from Macau; the visas were presumed to be valid since they were within the sequence of issued visas for the particular flight which were all issued on the same day; the numbers were chronological and belong to a batch; their passports may have been grouped together for signing at the Philippine Consulate of Macau; it was not impossible that this particular batch may have been overlooked during such time because of the chaotic nature of the Chinese passengers arriving and the fact that it was a turnaround flight required a certain degree of haste in processing time; the arrival coincided with two (2) Korean flights, Jin Air and Asiana Airlines, and the

passports were processed based on the presumption of regularity; and a communication with the Philippine Consulate in Macau was sent to verify the visas in question and they are still waiting for its response.

On 08 July 2012, Pamintuan also filed a compliance<sup>[12]</sup> which averred, *inter alia*, that: the Philippine Consulate General of Macau confirmed the issuance of 9(a) visa dated 01 June 2012 to the applicant named Xie Keke; and the Chinese national Xie Keke was among the passengers of the turnaround Cebu Pacific Flight Nos. 5J367 and 5J368, who arrived on 02 June 2012 and departed on 04 June 2012; and the passengers all had stamped visas on their passports, which are not unusual for Chinese nationals traveling from Macau.

On 09 October 2012, after a preliminary investigation was conducted, Pamintuan was formally charged by Commissioner of Immigration Ricardo A. David, Jr. ("David, Jr.," for brevity) with simple neglect of duty pursuant to Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), under Admin. Case No. 2012-189.<sup>[13]</sup>

In his Affidavit<sup>[14]</sup> sworn on 21 January 2013, Pamintuan stated, *inter alia*, that: he is an Immigration Officer of the Bureau of Immigration located at the Clark Freeport Zone, Angeles City, Pampanga; on 02 June 2012, while he was on duty at the Diosdado Macapagal International Airport, he admitted into the country one Xie Keke, a Chinese national who was a passenger of turnaround Chartered Flight No. 5J367, upon her presentation of a valid Philippine visa; he denies that the Philippine visa shown by Xie Keke was unsigned; as part of immigration procedure, he asked her to produce the original of her Philippine visa, which she did and upon examination thereof, he saw that it bore the required initial and was therefore signed; in charging him with simple neglect of duty, the BI never examined the original visa of Xie Keke; the charge against him was made on the basis of a mere photocopy of her alleged unsigned visa; no evidence was ever presented to show that the said photocopy was a faithful reproduction of the original visa; a photocopy of her visa may not be accurate considering that the authentic signature which he saw in its original was quite small and light; the Philippine Consulate General of Macau confirmed the visa's authenticity and validity; no harm was caused to the Republic because Xie Keke immediately left the Philippines after arriving; it will be incongruous to find him guilty of simple neglect of duty when his actions have caused no harm; and no proper evidence was presented against him.

On 25 March 2013, BI Commissioner David, Jr. rendered a Decision<sup>[15]</sup> in BOD No. 2013-004 (BI-ADM No. 2012-189) finding Pamintuan guilty of simple neglect of duty, the dispositive portion of which reads:

*"In view of clear, convincing and unequivocal evidence, we find Renee (sic) Ben A. Pamintuan, Immigration Officer I, GUILTY of the first offense of Simple Neglect of Duty. And consistent with RRACCS, Rule 10, Sec. 46 (D)(1), we impose the penalty of SIX MONTHS SUSPENSION WITHOUT PAY AND DISQUALIFICATION FROM PROMOTION CORRESPONDING TO THE PERIOD OF SUSPENSION.*

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*IT IS SO ORDERED.*"<sup>[16]</sup>

Pamintuan filed a Motion for Reconsideration<sup>[17]</sup> dated 15 April 2013, which was denied by BI Commissioner David, Jr. in the Resolution<sup>[18]</sup> dated 15 May 2013.

Pamintuan filed a Memorandum of Appeal<sup>[19]</sup> dated 10 December 2013 before the CSC, to which the BI filed its Comment<sup>[20]</sup> dated 19 February 2014.

The CSC rendered the assailed Decision No. 140247<sup>[21]</sup> dated 01 April 2014, the dispositive portion of which reads:

*"**WHEREFORE**, the appeal of Renne Ben A. Pamintuan, Immigration Officer I, Bureau of Immigration (BI), is hereby **GRANTED**. Consequently, the Decision dated March 25, 2013 and the Resolution dated May 15, 2013 of the BI Commissioner, finding Pamintuan guilty of Simple Neglect of Duty and imposing upon him the penalty of six (6) months suspension without pay and disqualification from promotion corresponding to the period of suspension, and denying his motion for reconsideration, respectively, are hereby **REVERSED and SET ASIDE**. Further, Pamintuan is entitled to receive full backwages from the time he served his suspension until his actual return to work."*<sup>[22]</sup>

The BI filed a Motion for Reconsideration etc.<sup>[23]</sup> dated 09 May 2014 before the CSC NCR. It also filed a Motion to Admit (The Motion for Reconsideration dated 09 May 2014)<sup>[24]</sup> dated 26 June 2014 before the CSC Central Office. On 27 June 2014, the BI filed before the CSC NCR Office a Manifestation & Motion to Endorse Motion for Reconsideration to CSC Central Office.<sup>[25]</sup>

The CSC issued the assailed Resolution No. 1401223<sup>[26]</sup> dated 20 August 2014 denying the BI's Motion for Reconsideration.

Hence, this Petition.

## **RULING**

Petitioner raises a lone ground for allowance of its Petition, viz:

*"WHETHER THERE IS SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT LIABLE FOR SIMPLE NEGLIGENCE OF DUTY FOR ADMITTING KEKE INTO THE PHILIPPINES EVEN WITH AN UNSIGNED VISA."*<sup>[27]</sup>

Petitioner contends, *inter alia*, that: there is substantial evidence to hold respondent liable for simple neglect of duty for admitting Xie Keke into the Philippines even with an unsigned visa; he failed to comply with his duties and obligations at the port of entry as required under Commonwealth Act (C.A.) No. 613; the passport of Xie Keke shows on its face that the 9(a) visa was unsigned; respondent only alleged otherwise in his Affidavit dated 21 January 2013, or more than seven (7) months after he was first asked to explain; he previously hid behind the presumption of regularity and alleged that the Philippine Consul General of Macau must have forgotten to sign the visa; Xie Keke has not shown clearly that she is entitled to stay

in the Philippines; this should have put respondent on guard and subjected her to removal proceedings instead of admitting her and clearing her for departure; the fact that Xie Keke left hours after arrival because the plane was sent immediately back to China does not alter the carelessness committed by respondent and the fact that he failed to comply with his duties; the CSC was incorrect when it held that the photocopy of Xie Keke's passport is inadmissible as evidence; technical rules of procedure are not strictly applied in administrative cases; that only a photocopy of the unsigned visa was submitted should not affect the veracity of respondent's act of carelessness considering the extreme difficulty, nay, impossibility of procuring the original; Xie Keke is a foreign national outside the jurisdiction of this government and a strict application of the rules on evidence could render nugatory similar administrative proceedings; the factual findings of petitioner should be respected; the CSC's mandate in cases of this nature is constrained by the rule on substantial evidence; the BI found respondent guilty of simple neglect of duty on the basis of the formal investigation report and the record from the petitioner's Internal Affairs Unit; his argument that Xie Keke possesses a valid visa, and is therefore not an undesirable alien by virtue of a certification stating that a 9(a) visa was issued in her favor deserves scant consideration; the said certification was obtained after respondent had already neglected the faithful performance of his duties; the factual milieu of this case is separate and distinct from the cases of the other officials who were acquitted of the charge of simple neglect of duty; petitioner is not guilty of violating Section 1, Article III, of the Constitution, particularly the equal protection clause; any transgression committed by an immigration officer in the admission of an alien passenger is dealt with based on his individual assessment and must not rely on the separate assessment of other immigration officers; the CSC failed to note the differences of the instant case and those involving Santos and Chicano; respondent relied only on the subsequent confirmation by the Philippine Consulate General of Macau; petitioner found merit in Santos' claim that, among others, he admitted said passenger in compliance with a lawful order and based on a clear assessment that the visa had been regularly issued since the visa numbers were in chronological order and appeared to be part of a batch of visas all processed at the same time by the Philippine Consulate of Macau; Chicano was able to show that at the moment of the Chinese individual's entry, he immediately referred the matter to his superiors/persons-in-charge; the certification issued by the Consul General of the Philippines in Macau cannot cure the negligence of respondent, as it was his duty to make sure, at the moment of a passenger's entry to the Philippines that it was a valid visa; his act of verifying with the Consul, after the fact, does not rectify his failure to perform his duty; and his act constitutes an undue precedent to other BI officials.

Respondent ripostes, *inter alia*, that: petitioner's allegations in the Petition have no factual or legal merit; respondent had not been careless in the performance of his functions; a mere photocopy of the subject visa in this case is inadmissible as evidence and has no probative value in administrative proceedings; considering that one of the vital issues of the instant case revolves on whether the visa was in fact signed, he cannot be administratively liable unless the original of the visa is presented as evidence; the fact that there has been failure to furnish him the original copy of the visa is uncontested by petitioner; there was failure on the part of petitioner to substantiate the claim that he was careless in the performance of his functions and satisfy its burden of evidence; petitioner merely relied on its mistaken interpretation of Section 3 of the RRACS which provides that administrative investigations shall be conducted without strict recourse to the technical rules of

procedure and evidence applicable to judicial proceedings; the visa of Xie Keke, at the time of her entry, was signed; he requested for the production of the original document which petitioner refused to do; there was willful suppression of evidence when petitioner denied respondent's persistent requests for a certified true copy of the visa; there is a presumption that producing the same would be adverse to the position of petitioner; he was not negligent; there was a certification issued by the Philippine Consulate General of Macau that the visa of Xie Keke is authentic and valid, thus showing that her admission was valid; petitioner does not contest the certification; Xie Keke's admission was proper as proven by the Philippine Consul General of Macau himself through the certification issued; in the decisions issued by petitioner in the administrative cases of Santos and Chicano, which are identical to the case at bar, it made a conclusion that such certification negates the conclusion that an unsigned visa is invalid; petitioner is bound by the conclusiveness of its prior judgment in the Santos and Chicano cases considering that such ruling affects policy; it would be absurd if petitioner will adopt the policy of permitting consul certifications to validate unsigned visas in some cases but refusing the application of the same to other cases; such rule would be contrary to due process; had the cases of Santos, Chicano and respondent been consolidated or jointly heard and decided, it would have been absolutely unjustifiable, if not outright suspect and malicious, for a single hearing officer to have decided as arbitrarily and discriminatory as to dismiss the case to favor the apparently negligent persons and penalize the least guilty of them with six (6) months suspension; the malicious discrimination employed by petitioner is apparent, taking into account that one of the other officers was exonerated when he admitted not just one (1) but three (3) Chinese nationals to enter despite knowing that their Philippine visas were unsigned; respondent, who admitted only one (1) Chinese national, who to the best of his knowledge, had a signed Philippine visa, was found guilty of simple neglect of duty; petitioner violated the equal protection clause; as held by the CSC, the exoneration of Chicano and Santos must necessarily absolve respondent; the charge against him is not based on substantial evidence; during the proceedings before the CSC and petitioner, respondent requested the latter to furnish him with certified true copies of the documentary evidence and sworn statements of the witnesses who testified against him, if any, pursuant to Section 20, Rule 5 of the Rules; the refusal to grant such motion is tantamount to a denial of opportunity to authenticate the evidence against him; while respondent was furnished with photocopies of the evidence which formed the basis for the formal charge against him, such photocopies are insufficient; since it is claimed that the original of the said visa was in fact signed, the burden then shifts to the other party to adduce evidence that it was otherwise; not even a photocopy of the visa was provided to respondent for his authentication despite repeated requests; petitioner based its decision on the unauthenticated photocopy of the subject visa, which does not satisfy the best evidence rule; respondent presented a duly authenticated act of the Philippine Consulate General of Macau, whose authenticity had not been assailed but even confirmed by no less than petitioner in the decision on the complaints against Chicano and Santos and on its decision against the charge against respondent; unsubstantiated non-original documents cannot stand against duly authenticated and certified government documents; petitioner's decision is not supported by substantial evidence; and the complaint against him must be dismissed.

Stripped of verbiage, the issue in this case is whether or not the CSC erred in finding that respondent is not guilty of simple neglect of duty in its assailed Decision No.140247 and Resolution No. 1401223.