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# THIRD DIVISION

# [ G.R. No. 204105, October 14, 2015 ]

## GERONIMO S. ROSAS, PETITIONER, VS. DILAUSAN MONTOR AND IMRA-ALI M. SABDULLAH, RESPONDENTS.

## D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari[1] assailing the March 9, 2012 Decision[2] and October 16, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 05497 which affirmed the Office of the Ombudsman's (OMB's) March 2, 2007 Decision[4] and July 4, 2008 Order[5] in OMB-V-A-05-0036-A finding petitioner Geronimo S. Rosas, Regional Director of the Bureau of Immigration Mactan International Airport Station, guilty of grave misconduct.

The facts follow:

On December 7, 2004, Jafar Saketi Taromsari (Taromsari) and Jalal Shokr Pour Ziveh (Ziveh), both Iranian nationals, arrived in the Philippines at the Mactan-Cebu International Airport (MCIA). After staying in a hotel in Cebu City for a few days, they left for Narita, Japan on December 14, 2004.

On December 16, 2004, Japanese immigration authorities discovered that Taromsari and Ziveh had counterfeit or tampered Mexican and Italian passports and used falsified names: "Jaime Humberto Nenciares Garcia" for Ziveh and "Marco Rabitti" for Taromsari. For using these fraudulent passports and lack of entry visa, the Japanese immigration authorities denied entry to Taromsari and Ziveh and sent them back to the Philippines. Taromsari and Ziveh arrived at MCIA on the same day at 6:45 p.m. and admitted at the detention cell of the Bureau of Immigration (BI) Cebu Detention Center.[6]

In a Memorandum[7] dated December 15, 2004 addressed to BI Commissioner Alipio F. Fernandez, petitioner Geronimo S. Rosas, Senior Immigration Officer and Alien Control Officer of Cebu Immigration District Office, who was then also designated as Regional Director, gave the following report:

> On flight PR 433 from Narita International Airport, Japan on Thursday, 16th of December 2004 at 18:45 Hours, passengers JAFAR SAKETI TAROMSARI @ Marco Rabitti (Italian) and JALAL SHOKR POUR ZIVEH @ Jaime Humberto Nenciares Garcia (Mexican), both Iranian nationals, were boarded back to Mactan-Cebu International Airport after caught by the Japanese Immigration authorities thereat for using fake and fraudulent Italian and Mexican passports, respectively.

> During the investigation conducted by Atty. Serafin A. Abellon, Special Prosecutor in the presence of Regional Director Geronimo S. Rosas, subjects admitted that they bought the Italian and Mexican passports from a certain "KURAM" in Tehran, Iran, whom they allegedly attached their respective pictures substituting the pictures of the real owners and paid US$3,000 at US$1,500.00 each, for the purpose of traveling in comfort without the requirement of entry visa to Japan and finally, to work thereat, considering that JAFAR SAKETI TAROMSARI had worked there before for three (3) years from 1999 to 2002 and earned a lot of money until he was caught and deported by Japanese Immigration authorities, that they both arrived in the Philippines for the first time at MCIA on December 07, 2004 on board MI 566 from Singapore using Italian and Mexican passports under the names of MARCO RABITTI and JAIME HUMBERTO NECIARES GARCIA, respectively. Subsequently, they left for Narita, Japan on December 14, 2004 and were sent back to MCAI on December 16, 2004.
>
> That the acts committed by the subjects are plain violations of our PIA of 1940 as amended under Section 29 (a) (14) and therefore, they are excludable. Recommend inclusion of their names in the Blacklist.

Thereupon, an Exclusion Order[8] was issued against Taromsari and Ziveh on grounds of "Not Properly Documented" and "No Entry Visa."

On December 17, 2004, security guards Elmer Napilot (Napilot) and Jose Ramon Ugarte (Ugarte) received a written order from petitioner directing them to escort Taromsari and Ziveh from Bi Detention, Mandaue City to MCIA pursuant to the aforementioned exclusion order for violation of Sec. 29 (a) (17) of Commonwealth No. 613 or the Philippine Immigration Act(PIA)of 1940.[9]

On December 19, 2004, Taromsari and Ziveh were released from detention and brought by Napilot and Ugarte to the MCIA for deportation.[10] They were allowed to leave for Tehran, Iran via Kuala Lumpur, Malaysia on board Malaysian Air Lines.[11]

On January 18, 2005, respondents Imra-Ali Sabdullah and Dilausan S. Montor, employees of the Bureau of Immigration (BI), Cebu, filed a Complaint-Affidavit[12] before the OMB against petitioner, Napilot and Ugarte for grave misconduct, violation of Section 3(e)[13] of Republic Act (RA) No. 3019 and conduct prejudicial to the interest of public service. Respondents alleged that petitioner irregularly and anomalously handled and disposed of the case involving two restricted Iranian nationals by allowing them to leave the country without initiating any proceeding for violation of immigration laws considering that said aliens were potential threats to the country's national interest and security. It was further contended that the Iranian nationals should have been charged for deportation because they violated Section 37(a)(9), in relation to Sections 45 and 46 of PI A.

In his Counter-Affidavit,[14] petitioner denied the allegations against him and asserted that he should not be made liable for acts that do not fall within his area of responsibility. He pointed out that it is the immigration officers who are incharge of

primary inspection of incoming and outgoing passengers as well as the determination of whether a passenger should be excluded, and the management, control and supervision of such duties pertain to the Head Supervisor, Mr. Casimiro P. Madarang III. He also averred that he did not have prior knowledge of the two Iranian nationals' previous entry to the country as he was, in fact, not at the MCIA on that particular date and time of their first arrival in the Philippines.

Petitioner, nonetheless, contended that the two Iranian nationals were proper subjects for exclusion under Section 29(a)(17)[15] since they used Iranian passports without the requisite Philippine entry visas when they arrived on December 16, 2004. He explained that the counterfeit Italian and Mexican passports were confiscated by the Japanese Immigration authorities when Japan excluded the Iranian nationals. Such use of Iranian passports without entry visas served as the basis for their exclusion from our country. He likewise denied giving preferential treatment to the detained Iranian nationals, citing his Memorandum dated December 17, 2004 where he reported to the BI Commissioner that two Iranian nationals violated Section 29(a)(17) of the PIA of 1940 and recommended placing them both in the Blacklist.

On March 2, 2007, the OMB rendered its Decision finding substantial evidence of petitioner's grave misconduct. It held that in unduly releasing the two Iranian nationals, petitioner showed manifest partiality, evident bad faith and gross inexcusable negligence. It also stated that petitioner's claim that he had no prior knowledge of the unlawful entry was belied by his December 17, 2004 Memorandum. Napilot and Ugarte were acquitted from the charges as they merely acted on petitioner's orders and no evidence was presented to suggest that they were in conspiracy with the petitioner.

The OMB thus ruled:

> In view of the foregoing, this Office finds [petitioner] Rosas guilty of Grave Misconduct. Considering the gravity of the offense and the fact that this is not the first time [petitioner] Rosas is administratively sanctioned, the penalty of DISMISSAL is hereby imposed pursuant to Rule XIV, Section 23 of the Omnibus Rules Implementing Book V of Executive Order No. 292.
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> However, finding no conspiracy between [petitioner] Rosas and respondents Elmer Napilot and Ramon Ugarte, the case against Napilot and Ugarte is hereby dismissed for want of substantial evidence.
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> SO DECIDED.[16]

On December 27, 2007, the OMB issued an Order[17] for the immediate implementation of the March 2, 2007 Decision. Petitioner's motion for reconsideration was likewise denied.[18]

Via a petition for review,[19] petitioner assailed the OMB's ruling in the CA, arguing that he should not be held administratively liable for the release of the two Iranian

nationals pursuant to a validly issued exclusion order.

In its March 9, 2012 decision, the CA affirmed the OMB's ruling. The CA held that there was sufficient evidence on record for the OMB's conclusion that the release of the two Iranian nationals was irregular and not in accord with existing immigration laws. It stressed that the matter was not one that merely involved the lack of entry visas but that petitioner had knowledge that the two Iranian nationals were excluded from Japan for using fraudulent passports. Plainly, the results of the investigation provide sufficient basis for deportation proceedings. The CA concurred with the OMB that petitioner had the duty to initiate deportation and criminal proceedings against the Iranian nationals for violation of Section 37(a)(9) of the PIA in relation to Sections 45 and 46. Thus:

> WHEREFORE, in view of the foregoing premises, the Petition for Review dated November 2, 2010 is hereby DISMISSED.
>
> SO ORDERED.[20]

Petitioner moved for reconsideration but it was denied.[21]

Hence, this petition.

Petitioner reiterates that he cannot be held administratively liable for a validly issued exclusion order which is an examining immigration officer's function under the PIA of 1940. He asserts that there was lack of substantial evidence to hold him liable for giving unwarranted benefit to the Iranian nationals.

On his part, the Solicitor General argues that Section 37 of the PIA of 1940 mandates the BI to arrest aliens who enter the Philippines by false means and misleading statements. He explains that the two Iranian nationals were held in detention not for the lack of entry visas but for using falsified documents when they entered the Philippines on December 7, 2004 and when they left for Japan on December 14, 2004. Such was evident from the investigation conducted by the BI on the two Iranian nationals.

Petitioner submits the following assignment of errors:

I. WHETHER PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL FOR THE PURELY DISCRETIONARY ACTS OF THE ASSIGNED IMMIGRATION OFFICERS IN ORDERING THE EXCLUSION OF THE IRANIAN NATIONALS NOTWITHSTANDING THE OVERWHELMING EVIDENCES THAT WOULD SHOW THAT PETITIONER ROSAS HAS NO INVOLVEMENT AND PARTICIPATION IN RENDERING THE SAID EXCLUSION ORDER AND NOTWITHSTANDING THAT THE SAID EXCLUSION ORDER WAS VALIDLY AND PROPERLY ISSUED BY THE IMMIGRATION OFFICERS UNDER THE PREVAILING CIRCUMSTANCES;

II. WHETHER OR NOT PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL SANS ANY SPECK OF EVIDENCE THAT HE GAVE UNWARRANTED BENEFIT TO THE IRANIAN NATIONALS AND THAT HE WAS MOTIVATED BY CORRUPT MOTIVES WHEN HE SUBMITTED AN INCIDENT/RECOMMENDATORY REPORT TO THE COMMISSIONER OF IMMIGRATION AFFIRMING THE EXCLUSION ORDER OF THE ASSIGNED IMMIGRATION OFFICERS AGAINST THE IRANIAN NATIONALS;

III. WHETHER OR NOT PETITIONER ROSAS CAN BE VALIDLY SANCTIONED WITH THE SEVEREST ADMINISTRATIVE PENALTY OF DISMISSAL FOR NOT INITIATING THE DEPORTATION AND CRIMINAL PROCEEDINGS AGAINST THE IRANIAN NATIONALS WHICH UNDER THE LAW CAN ONLY BE EXERCISED BY THE IMMIGRATION COMMISSIONER WHO WAS FULLY INFORMED OF THE CIRCUMSTANCES PERTAINING TO THE INCIDENT INVOLVING THE IRANIAN NATIONALS;

IV. WHETHER THE COURT OF APPEALS HAS SUBSTANTIAL BASIS TO CONCLUDE THAT THE DELAY IN THE EXCLUSION OF THE IRANIAN NATIONALS APPEARED TO BE IRREGULAR AND DEVIATED FROM THE NORM NOTWITHSTANDING THE OVERWHELMING EVIDENCES ON RECORD THAT WOULD SHOW THAT THE SAME HAS FACTUAL AND LEGAL BASIS; AND

V. WHETHER OR NOT THE, COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE SETTLED FACTS AND EVIDENCES THAT WOULD SHOW THAT PETITIONER ROSAS HAS NOT DONE ANY MISCONDUCT IN RELATION TO THE INCIDENT INVOLVING THE IRANIAN NATIONALS.[22]

Essentially, the issue before us is whether there is substantial evidence to sustain the finding of gross misconduct warranting petitioner's removal from the service. Otherwise stated, does petitioner's act of releasing the two Iranian nationals without initiating any case for violation of immigration laws despite the results of the investigation undertaken constitute gross misconduct?

We rule in the affirmative.

It is well-settled that findings of fact and conclusions by the Office of the Ombudsman are conclusive when supported by substantial evidence.[23] Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[24] The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[25]

We agree with the CA that there was sufficient basis to initiate deportation proceedings under Section 37(a)(9) in relation to Section 45 of the PIA of 1940. We