

SECOND DIVISION

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

**COMMISSIONER ANDREA D. DOMINGO, BUREAU OF
IMMIGRATION, PETITIONER, VS. HERBERT MARKUS EMIL
SCHEER, RESPONDENT.**

DECISION

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 P100,000.00.^[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