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[G.R. No. L-27602. October 15, 1983]

VICENTE CAOILE, SANTOS CAOILE and FELIPE CAOILE, petitioners-appellees, *vs.* MARTINIANO P. VIVO, as Acting Commissioner of Immigration, the Board of Commissioners of the Bureau of Immigration, and FELIX ENDENCIA, as Deportation Officer of the Bureau of Immigration, respondents-appellants.

[G.R. No. L-27603. October 15, 1983]

JOSE CAOILE, petitioner-appellee, *vs.* MARTINIANO P. VIVO, as Acting Commissioner of Immigration, the Board of Commissioners of the Bureau of Immigration, and FELIX ENDENCIA, as Deportation Officer of the Bureau of Immigration, respondents-appellants.

[G.R. No. L-28082. October 15, 1983]

COMMISSIONER OF IMMIGRATION and CAPTAIN DELFIN MACALINAO, CIS, PC, petitioners, *vs.* JUAN GARCIA, respondent.

SYLLABUS

1. REMEDIAL LAW; CERTIORARI; FILING IN THE ABSENCE OF CAUSE OF ACTION; CASE AT BAR.— That disposition of Jose Caoile's case is erroneous. He had no cause of action for certiorari because the Board of Commissioners did not order his exclusion. His petition was filed on the erroneous assumption that the Board of Commissioners had issued a warrant for his exclusion. No such warrant had been issued. There was nothing which the courts could review or set aside in Jose Caoile's case. So, he cannot complain that respondent Commissioner acted with grave abuse of discretion in his case. Jose Caoile cannot say that he had sued the respondents for the redress or prevention of a wrong. If his petition were treated as one for declaratory relief as to his rights or duties under the Immigration Law, with the object of attaining curative or preventive justice, still it was premature and anticipatory because in his case there was as yet no controversy which was ripe for adjudication. His petition should be dismissed outright.

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2. ADMINISTRATIVE LAW; BOARD OF SPECIAL INQUIRY; DECISION; POWER OF BOARD OF COMMISSIONERS TO REVERSE IT *MOTU PROPRIO;* EFFECT OF FAILURE OF BOARD OF COMMISSIONERS TO CONVENE AS A BODY.— Section 27(b) contemplates that the Board of Commissioners should hold a meeting or session if that body desires to review the decision of the board of special inquiry. Of course, if the board's decision is not reversed by the Board of Commissioners acting as such within one year from its promulgation, it is deemed affirmed and becomes final. In this case, the Commissioners wanted to take action on the decision of the Board of special inquiry. Instead of holding a meeting, they took individual actions on it. That mode of review is procedurally wrong and, therefore, void (Arocha *vs.* Vivo and Vivo *vs.* Arca, 21 SCRA 532), quite apart from Memorandum Order No. 9 of the Secretary of Justice expressly setting it aside. The legislative intention is that, as members of a board, the Commissioners "should deliberate collectively in order that their views and ideas should be exchanged and examined before reaching a conclusion." The individual actions of the Commissioners on the decision of the board of special inquiry are invalid because such disparate actions are contrary to the purpose of constituting the Commissioners as a body to review the board's decisions. *(Ibid.)*

3. ID.; ID.; ID.; ID.; AMBIGUOUS ACTION ON THE DECISION OF BOARD OF SPECIAL INQUIRY STILL SUBJECT TO REVIEW BY THE BOARD OF COMMISSIONERS.— The ambiguous notation made by Commissioners De la Rosa and Talabis on the decision of the board of special inquiry cannot be considered for purposes of Section 27(b) as an affirmance of the board's decision. Notwithstanding that notation, the new Board of Commissioners could validly review, as it did review, the said decision within one year from its promulgation and set it aside. (See Wong Woo Yiu *vs.* Vivo, L-21076, March 31, 1965, 13 SCRA 552)

4. REMEDIAL LAW; COURT, LIKE THE PARTIES TO THE CASE, BOUND BY THE STIPULATED FACTS.— The trial court speculated that the resolution of Commissioners Vivo, Rañola and Gaston dated June 23, 1962, reversing the decision of the board of special inquiry was possibly antedated because a copy thereof was mailed to the petitioners only on July 30, 1962. That speculation of the trial court is baseless and is belied by the facts. It is a conjecture that contravenes the presumption that official duty was regularly

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performed. The trial court, like the parties, was bound by the stipulated facts. It could not substitute its conjectural surmises for those facts. Its judgment had to be based on those facts (Cabrera *vs.* Lacson, 71 Phil. 182).

5. ID.; BOARD OF COMMISSIONERS; ACTION WHEN THE RESOLUTION OF EXCLUSION WAS VOTED AND ADOPTED BY THEM AS A BOARD; RECKONED AS THE OPERATIVE DATE.— Moreover, this Court had already held that "the operative date of the Commissioners' action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision *in extenso* was prepared, written and signed" because "the decision *in extenso* must relate back to the day when the resolution to exclude was actually adopted. Necessarily, the extended opinion had to be posterior to the day when the Commissioners voted and resolved to reverse the findings of the board of special inquiry." (Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra,* cited in Neria *vs.* Commissioner of Immigration, L-24800, May 27, 1968, 23 SCRA 806, 815; Go Oh *vs.* Vivo, L-24898, March 31, 1971, 38 SCRA 228, 238)

6. ADMINISTRATIVE LAW; IMMIGRATION LAW; REVIEW BY THE BOARD OF COMMISSIONERS; NOTICE AND HEARING NOT REQUIRED.— The law does not require notice and hearing for such a review. The petitioners were already heard when they presented their evidence before the board of special inquiry. A review by the Commissioners of the board's decision is based on the evidence already presented before the board. Hence, the immigrants seeking entry are not entitled to another hearing.

7. ID.; ID.; EXCLUSION CASES; COURT POWERLESS TO OVERRULE FACTUAL FINDINGS OF THE IMMIGRATION AUTHORITIES.— In exclusion cases, like the instant case, the court has no power to overrule the factual findings of the immigration authorities, unless their findings are manifestly unfair or their conclusions are arbitrary. (Singh *vs.* Board of Commissioners of Immigration, 111 Phil. 143, 153)

8. ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE RESORT TO JUDICIAL INTERVENTION, A PRE-REQUISITE; CASE AT BAR.— And since the Commissioners of Immigration are under the Department of Justice and, in this case, they followed the Secretary's Order setting aside the individual actions of the former

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Commissioners, the aggrieved parties should have exhausted their administrative remedies by appealing to the Secretary before seeking judicial intervention (Board of Commissioners *vs.* Domingo, 118 Phil. 680, 684)

9. ID.; IMMIGRATION LAW; DICTUM IN *FERNANDEZ* CASE ABROGATED.— The dictum in the *Fernandez* case that Commissioners Vivo, Rañola and Gaston could no longer set aside the action taken by Commissioners De la Rosa and Talabis was abrogated in Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra,* wherein this Court *en banc* squarely held that the separate notations made by De la Rosa and Talabis were void and were rightfully set aside by the Secretary of Justice and by Commissioners Vivo, Rañola and Gaston. The Second Division merely followed that clarificatory ruling in Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra.* The dictum in the *Fernandez* case cannot be characterized as the law of the case (See 5B C.J.S. 199-200; 21 C.J.S. 334) especially considering that the *1964 motion for the reconsideration* of the decision in that case, which motion was filed by Solicitor General Arturo Alafriz, has not been resolved up to this time.

APPEARANCES OF COUNSEL

*The Solicitor General* for petitioners.
*J. Yuseco* for respondents.

DECISION

PLANA, *J.*:

These three related immigration cases - involving five aliens who have wrongfully managed to enter and remain in the Philippines since 1961 - exhibit the same factual background already delineated in Commissioner of Immigration *vs.* Fernandez, L-22696, May 29, 1964, 11 SCRA 184 and Commissioner of Immigration *vs.* Garcia, L-28082, decided on June 28, 1974, 57 SCRA 603. The decision in the latter case is the subject of a motion for reconsideration which will now be decided jointly with L-27602 and L-27603.

For convenience, a narration of the common background of these cases is in order.

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On May 30, 1961 Samson T. Sabalones, the Philippine Consul at Hongkong, issued five certificates of registration and identity containing the following data (Exhs. A to A-4):

(1) Teban Caoile, employee, born on November 4, 1932 in Amoy, Fukien, China.

(2) Jose Caoile, private tutor, born on June 25, 1934 in Amoy, Fukien, China.

(3) Felipe Caoile, private tutor, born on December 5, 1935 in Amoy, Fukien, China.

(4) Vicente Caoile, private tutor, born on August 20, 1937 in Amoy, Fukien, China.

(5) Santos Caoile, student, born on July 29, 1938 in Amoy, Fukien, China.

The certificates were issued to enable the above-named persons to travel directly to the Philippines from Hongkong allegedly as children of Antonio Caoile, a Philippine citizen.

The five persons arrived from Hongkong on board a Cathay Pacific Airways plane at the Manila International airport. Teban Caoile and Vicente Caoile arrived on June 7, 1961; Santos Caoile and Felipe Caoile arrived on June 11, 1961; and Jose Caoile arrived on June 20, 1961.

They sought admission as Filipino citizens on the basis of the said certificates. The airport immigration officer referred their admission to the board of special inquiry "to determine filiation and paternity to a Filipino citizen." He observed that the certificate "is not conclusive evidence to establish the claim to Philippine citizenship." (Exhs. B and B-2)

At the investigation conducted by the board, Teban, Santos, Jose, Vicente and Felipe, all surnamed Caoile, and their alleged father, Antonio Caoile, testified.

The board, composed of Edgardo R. Hojilla, Gerundio Umengan and Tomas G. Montesines, in its decisions of June 23 and 26, 1961, concluded that those five persons are Filipino citizens, being the children of Antonio Caoile, a Filipino.

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The board found that Antonio Caoile was born on July 3, 1913 in Urdaneta, Pangasinan as the illegitimate child of Maria Caoile and an unnamed Chinese father; that he is a Filipino citizen because he followed the citizenship of his Filipino mother; that his Chinese natural father brought him to China when he was four years old; that his Chinese father returned to the Philippines and died here in 1920; that Antonio returned to this country in 1929; that he returned to China in 1931 and married a Chinese woman named Ong Siu Ty; that he cohabited with her up to 1938, and that out of their union, five children, all boys, were born in Chi Bi, Amoy, China, namely: Teban, Jose, Felipe, Vicente and Santos.

The board allowed the admission into this country of the five alleged Caoile brothers on the assumption that they are Filipinos under the principle of *jus sanguinis* .

The two decisions were submitted to the individual members of the Board of Commissioners of Immigration. On July 7, 1961 Commissioner Emilio L. Galang wrote on the two decisions the word "Exclude" while Associate Commissioner Francisco de la Rosa wrote the word "Noted." Associate Commissioner Felix Talabis wrote on June 30, 1961 on the decision of June 23, 1961 the word "Noted." He wrote the same word on July 3, 1961 on the decision dated June 26, 1961.

Three days later, or on July 10, 1961, the alien registration supervisor of the Bureau of Immigration issued to the five alleged Caoile brothers identification certificates wherein it was stated that they were admitted as Filipino citizens on the basis of the decisions of the board of special inquiry "duly affirmed by the majority members of the Board of Commissioners."

On January 24, 1962 the Secretary of Justice, acting in the public interest, pursuant to Section 79(C) of the Revised Administrative Code, issued Memorandum Order No. 9. In that order, he directed that, in view of the fact that "for the past several years, the Board of Commissioners of Immigration *has not met collectively* to discuss and deliberate on the cases coming before

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it," "all decisions purporting to have been rendered by the Board of Commissioners on appeal from, or on review *motu proprio* of, decisions of the board of special inquiry" were "set aside."

The Secretary instructed the Board of Commissioners to review "all decisions of the board of special inquiry admitting entry of aliens into this country and give preference to all cases where entry has been permitted on the ground that the entrant is a citizen of the Philippines."

He advised the board to apply the rule that the alien has the *onus probandi* of establishing that he is not subject to exclusion and that, since "citizenship is a status of privilege, power and honor of inestimable value," any doubt concerning its grant "should be resolved in favor of the Government and against the claimant" (Arocha *vs.* Vivo, L-24844, October 26, 1967, 21 SCRA 532; Neria *vs.* Commissioner of Immigration, L-24800, May 27, 1968, 23 SCRA 806).

In compliance with the Secretary's directive, the Commissioner of Immigration ordered an immigration officer to study and review the proceeding and the evidence as to the admission of Teban, Felipe, Vicente and Santos, all surnamed Caoile.

The immigration officer conducted an *ex-parte* investigation without notice to the said immigrants and without hearing them. He recommended the reversal of the decision of the board of special inquiry dated June 23, 1961 (referring to Teban, Felipe, Santos and Vicente, all surnamed Caoile).

Another immigration officer, designated to review the case of Jose Caoile, failed to render a report. No further action was taken on Jose Caoile's case (covered by the decision of June 26, 1961).

At the meeting on June 21, 1962 (within one year from the rendition of the decisions of the board of special inquiry), a new Board of Immigration Commissioners (composed of Martiniano P. Vivo, Marcial O. Rañola and Virgilio N. Gaston) acted on the report of the investigating officer. The Commissioners resolved to exclude from this country Teban, Santos, Vicente and Felipe,

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all surnamed Caoile. Two days later, or on June 23, the Commissioners promulgated their decision, reversing the said decision of the board of special inquiry and ordering the deportation of the aforenamed four persons.

The Board of Commissioners found that the said persons were aliens not properly documented for admission pursuant to Section 29(a)(17) of the Immigration Law because they had not proven that they are the children of Antonio Caoile. The Commissioners, in refuting the conclusion of the board of special inquiry, said:

"Records of investigation show that although the claim to Philippine citizenship of Antonio Caoile, alleged father of applicants, is well-founded (his birth and baptismal certificates show that he is the illegitimate child of Maria Caoile, Filipino), there is nothing in the same records to indicate strongly and definitely that subjects are the real children of the former.

"The board of special inquiry relied so much on the blood tests of applicants and their alleged father; the income tax returns of the supposed father for the years 1953, 1958, 1959 and 1960; the statutory declaration of one Chan Wah Hing; and their own oral testimony.

"In cases of similar nature, it has been held that blood tests are not conclusive proof of relationship unless they are negative and derogatory; income tax returns are self-serving and unreliable; statutory declarations are in most cases biased and the declarant is not available to be tested for credibility; and oral testimonies of applicants are similarly biased and self-serving." (Exh. E-1)

On that same date, June 23, the Commissioner issued a warrant of exclusion against Teban, Felipe, Vicente and Santos, all allegedly surnamed Caoile (Exh. F). Felipe, Vicente and Santos were never served with the warrant of exclusion.

On July 30, 1962 a copy of the Commissioners' decision, attached to a covering letter, was sent by ordinary mail to the said persons at 2735 M. Hizon Street, Sta. Cruz, Manila, their address on record. The letter was returned unclaimed.

On March 10, 1964 the warrant of exclusion was served on Teban Caoile. He was arrested and detained at Camp Crame. Through Juan Garcia, Teban Caoile filed a petition for *habeas corpus* in the Court of First Instance of Quezon City.

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At the trial of that case, Antonio Caoile, the supposed father of Teban, Santos, Felipe, Vicente and Jose, *categorically tesified that "he does not know Teban Caoile"; that it "was only in the hearing of the case that he saw Teban Caoile," and that he (Antonio) was married only about five years prior to 1964*.

On March 24, 1964 the trial court dismissed the petition for *habeas corpus*. It found that Teban Caoile was legally detained.

Juan Garcia appealed to the Court of Appeals where he renewed his motion for Teban Caoile's release on bail which had been denied by the trial court. The Commissioner of Immigration opposed the motion. The Court of Appeals allowed Teban Caoile's release upon posting bail in the sum of ₱5,000.00.

The Commissioner filed in this Court a petition for certiorari and prohibition wherein he assailed the resolution allowing the release on bail of Teban Caoile. The petition was dismissed (Commissioner of Immigration *vs.* Fernandez, L-22696, May 29, 1964, 11 SCRA 184).

Later, the Court of Appeals in its decision on the merits nullified the warrant of exclusion, granted the writ of *habeas corpus* and made permanent the provisional liberty of Teban Caoile (Garcia *vs.* Vivo, CA-G.R. No. 33826-R, September 8, 1967).

The Commissioner appealed to this Court. The Second Division of this Court reversed the judgment of the Court of Appeals and affirmed that of the trial court sustaining the June 23, 1962 decision of the Board of Immigration Commissioners declaring the documentation in support of Teban's claim of Philippine citizenship (as well as those of his three brothers on the basis of *the same evidence*) to be inadequate, and ordering the expulsion of all four from the Philippines. (Commissioner of Immigration *vs.* Garcia, L-28082, June 28, 1974, 57 SCRA 603). As stated at the outset, that decision is pending reconsideration.

In the meanwhile, Santos Caoile, Vicente Caoile and Felipe Caoile, in order to avoid being arrested like Teban Caoile, filed

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on June 8, 1964 in the Court of First Instance of Manila a petition for certiorari, to enjoin the Commissioner of Immigration and the deportation officer from deporting them. They assailed the Commissioner's decision of June 23, 1962 and the warrant of exclusion.

On the following day, June 9, Jose Caoile filed in the same court a certiorari petition similar to the one filed by Felipe, Santos and Vicente. The trial of the two cases was held jointly.

The lower court in its decision of November 24, 1966 held that Vicente, Santos, Felipe and Jose, all surnamed Caoile, were entitled to remain in this country as Filipino citizens. It ruled that the Commissioner's decision was void because it was rendered beyond the statutory one-year period for reviewing the decision of the board of special inquiry and because the petitioners were denied due process of law. The Commissioners and the deportation officer appealed.

*Case of Jose Caoile (L-27603)* .— The trial court found that the decision of the board of special inquiry dated June 26, 1961, admitting Jose Caoile into the Philippines as a Filipino citizen had become final because it was not set aside by the Board of Commissioners of Immigration.

Hence, the trial court declared that Jose Caoile is a Filipino citizen entitled to remain in this country.

That disposition of Jose Caoile's case is erroneous. He had no cause of action for certiorari because the Board of Commissioners did not order his exclusion. His petition was filed on the erroneous assumption that the Board of Commissioners had issued a warrant for his exclusion. No such warrant had been issued. There was nothing which the courts could review or set aside in Jose Caoile's case.

So, he cannot complain that respondent Commissioner acted with grave abuse of discretion in his case. Jose Caoile cannot say that he had sued the respondents for the redress or prevention of a wrong. If his petition were treated as one for declaratory

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relief as to his rights or duties under the Immigration Law, with the object of attaining curative or preventive justice, still it was premature and anticipatory because in his case there was as yet no controversy which was ripe for adjudication. His petition should be dismissed outright.

As correctly pointed out by the then Solicitor General Antonio P. Barredo, until the government acts under Section 37 of the Immigration Law for the deportation of Jose Caoile (Chan Shu Lou *vs.* Vivo, L-22031, September 28, 1966, 18 SCRA 145), there is nothing to annul, set aside or enjoin in his case.

*The case of Santos, Felipe and Vicente, all surnamed Caoile, L-27602* .— The Commissioners contend that the trial court erred (1) in finding that the decision of the board of special inquiry dated June 23, 1961 was affirmed by Commissioners De la Rosa and Talabis, when they wrote the word "Noted" on the said decision; (2) in concluding that the decision of Commissioners Vivo, Rañola and Gaston was possibly prepared on July 30, 1962 or beyond the statutory one-year period for review; (3) in ruling that petitioners Vicente, Santos and Felipe, all surnamed Caoile, were not given due process of law; (4) in annulling the decision of Commissioners Vivo, Rañola and Gaston; (5) in holding that the petitioners are entitled to remain in this country as Filipino citizens; and (6) in not dismissing the petition.

The main issue is whether Commissioners Vivo, Rañola and Gaston properly set aside the decision of the board of special inquiry allowing Felipe Caoile, Santos Caoile and Vicente Caoile to enter the Philippines on the assumption that they are Filipino citizens, notwithstanding that Commissioners De la Rosa and Talabis had written the word "Noted" on the said decision in contrast with the word "Exclude" written by Commissioner Galang.

The ultimate issue is whether the said persons surnamed Caoile are Filipino citizens on the basis of their claim (just like the discredited claim of their brother, Teban) that they are the children of Antonio Caoile, a Philippine citizen.

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As to the finality of the decision of the board of special inquiry and the prerogative of the Board of Commissioners to reverse it *motu proprio*, the Immigration Law provides:

"SEC. 27. . . . . . . . . . . .

"(b) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in Section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue *subpoena* and/or *subpoena duces tecum*. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings *within one year from the promulgation of said decision*. . . . . . . . . . . .

. . . . . . . . . . . ."

The trial court opined that Associate Commissioners De la Rosa and Talabis, in placing the word "Noted" on the decision of the board of special inquiry dated June 23, 1961, affirmed that decision. That opinion is not correct. To "note" is not to approve. Moreover, the three Commissioners did not convene as a body to deliberate on what action should be taken on the decisions of June 23 and 26, 1961.

As already pointed out, Associate Commissioner Talabis noted the decision of June 23, 1961 on June 30, 1961 while Associate Commissioner De la Rosa noted it on July 7, 1961. The separate notations on different dates clearly imply that the Commissioners never held a meeting or session to resolve whether to affirm or reverse the board's decision. There were no minutes of any such session or meeting.

Section 27(b) contemplates that the Board of Commissioners should hold a meeting or session if that body desires to review

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the decision of the board of special inquiry. Of course, if the board's decision is not reversed by the Board of Commissioners acting as such within one year from its promulgation, it is deemed affirmed and becomes final.

In this case, the Commissioners wanted to take action on the decision of the board of special inquiry. Instead of holding a meeting, they took individual actions on it. That mode of review is procedurally wrong and, therefore, void (Arocha *vs.* Vivo and Vivo *vs.* Arca, 21 SCRA 532), quite apart from Memorandum Order No. 9 of the Secretary of Justice expressly setting it aside.

The legislative intention is that, as members of a board, the Commissioners "should deliberate collectively in order that their views and ideas should be exchanged and examined before reaching a conclusion." The individual actions of the Commissioners on the decision of the board of special inquiry are invalid because such disparate actions are contrary to the purpose of constituting the Commissioners as a body to review the board's decisions. ***(Ibid.)***

Consequently, the ambiguous notation made by Commissioners De la Rosa and Talabis on the decision of the board of special inquiry cannot be considered for purposes of Section 27(b) as an affirmance of the board's decision. Notwithstanding that notation, the new Board of Commissioners could validly review, as it did review, the said decision within one year from its promulgation and set it aside. (See Wong Woo Yiu *vs.* Vivo, L-21076, March 31, 1965, 13 SCRA 552).

The trial court speculated that the resolution of Commissioners Vivo, Rañola and Gaston dated June 23, 1962, reversing the decision of the board of special inquiry was possibly antedated because a copy thereof was mailed to the petitioners only on July 30, 1962.

That speculation of the trial court is baseless and is belied by the facts. It is a conjecture that contravenes the presumption that official duty was regularly performed. The parties stipulated that

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on June 21, 1962 or within one year from June 23, 1961 (the date of the decision of the board of special inquiry) Commissioners Vivo, Rañola and Gaston met and voted to exclude Teban, Felipe, Santos and Vicente, all surnamed Caoile (Exh. E, minutes of the meeting); that two days later, or on June 23, the Commissioners promulgated their written decision excluding the said persons and setting aside the oft-mentioned decision of the board of special inquiry (Exh. E-1); that, to implement that decision, a warrant of exclusion was issued on that same date, June 23, 1962 (Exh. F); and that a copy of the decision, with a covering letter, was mailed to the said persons on July 30, 1962.

The trial court, like the parties, was bound by the stipulated facts. It could not substitute its conjectural surmises for those facts. Its judgment had to be based on those facts (Cabrera *vs.* Lacson, 71 Phil. 182).

Moreover, this Court had already held that "the operative date of the Commissioners' action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision *in extenso* was prepared, written and signed" because "the decision *in extenso* must relate back to the day when the resolution to exclude was actually adopted. Necessarily, the extended opinion had to be posterior to the day when the Commissioners voted and resolved to reverse the findings of the board of special inquiry." (Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra,* cited in Neria *vs.* Commissioner of Immigration, L-24800, May 27, 1968, 23 SCRA 806, 815; Go Oh *vs.* Vivo, L-24898, March 31, 1971, 38 SCRA 228, 238).

The trial court's observation that petitioners Caoile were denied due process because Commissioners Vivo, Rañola and Gaston reviewed the decision of the board of special inquiry without notice to them and without hearing them is not well-taken.

The law does not require notice and hearing for such a review. The petitioners were already heard when they presented their evidence before the board of special inquiry. A review by the Commissioners of the board's decision is based on the evidence

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already presented before the board. Hence, the immigrants seeking entry are not entitled to another hearing. To quote Mr. Justice J. B. L. Reyes in Arocha *vs.* Vivo, *supra:*

". . . In reality, the right to representation by counsel before the Immigration Commissioners is only granted by the Immigration Law [Sec. 27(c) of C.A. 613] in cases of appeal by the alien from an adverse decision of the Board of Inquiry. The law is as follows:

"(c) An alien *excluded* by a board of special inquiry or a dissenting member thereof *may appeal* to the Board of Commissioners, whose decision in the case shall be final. The decision on appeal shall be put in writing and promulgated not less than seven days from the time the case is submitted for decision. *In appeal cases,* the alien shall have the *right to be represented* by an attorney or counsel who shall have access to the record of the board of special inquiry in the particular case on appeal." (Com. Act 613, as amended by Rep. Act 503) *(Italics supplied)*

"Plainly, the quoted provision does not by its terms apply to a review *motu proprio* by the Board of Immigration Commissioners of a decision admitting an alien, as in the case at bar, for in such cases, the reviewing Board only passes on the sufficiency of evidence already produced before the Board of Special Inquiry. The alien, having been already heard by the latter is not entitled to further hearing unless the law so provides. This is particularly true in administrative proceedings (Cornejo *vs.* Gabriel, 41 Phil. 193, quoted and followed in Bischop *vs.* Galang, L-18365, May 31, 1963)."

The trial court manifestly erred in nullifying the finding of Commissioners Vivo, Rañola and Gaston that the evidence presented before the board of special inquiry was not sufficient to establish the alleged Philippine citizenship of Teban, Santos, Felipe and Vicente, all surnamed Caoile. In arriving at that conclusion, the Commissioners did not act with grave abuse of discretion. There is no showing that it was a glaringly erroneous conclusion.

In exclusion cases, like the instant case, the court has no power to overrule the factual findings of the immigration authorities, unless their findings are manifestly unfair or their conclusions are arbitrary (Singh *vs.* Board of Commissioners of Immigration, 111 Phil. 143, 153).

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And since the Commissioners of Immigration are under the Department of Justice 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 (Board of Commissioners *vs.* Domingo, 118 Phil. 680, 684).

*L-28082 - Motion for reconsideration filed for Teban Caoile.*— The trial court found that Teban Caoile is not a Filipino citizen because his supposed father, Antonio Caoile (also the supposed father of Jose, Santos, Felipe and Vicente, all surnamed Caoile) testified that he (Antonio) is not the father of Teban. The Court of Appeals reversed that finding. The Second Division of this Court in turn reversed the Court of Appeals and affirmed the trial court's finding.

In the instant motion for reconsideration, filed by Juan Garcia for Teban Caoile, it is contended that the Second Division, in effect, reversed the ruling of this Court *en banc* in Commissioner of Immigration *vs.* Fernandez, L-22696, May 29, 1964, 11 SCRA 184. In that case, it was assumed without question that Commissioners De la Rosa and Talabis affirmed the decision of the board of special inquiry and that Commissioners Vivo, Gaston and Rañola could not nullify that approval given by De la Rosa and Talabis.

Movant Garcia invokes the constitutional provision that "that no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*" (Sec. 2[3], Art. X, 1973 Constitution).

As correctly pointed out by Solicitor General Barredo in his brief for appellant Commissioners and as stressed in the Second Division's decision, the *ratio decidendi* of the decision in Commissioner of Immigration *vs.* Fernandez, *supra,* is that the Court of Appeals did not gravely abuse its discretion in granting bail to Teban Caoile during the pendency of the *habeas corpus* case.

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The dictum in the *Fernandez* case that Commissioners Vivo, Rañola and Gaston could no longer set aside the action taken by Commissioners De la Rosa and Talabis was abrogated in Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra,* wherein this Court *en banc* squarely held that the separate notations made by De la Rosa and Talabis were void and were rightfully set aside by the Secretary of Justice and by Commissioners Vivo, Rañola and Gaston.

The Second Division merely followed that clarificatory ruling in Arocha *vs.* Vivo and Vivo *vs.* Arca, *supra.* The dictum in the *Fernandez* case cannot be characterized as the law of the case (See 5B C.J.S. 199-200; 21 C.J.S. 334) especially considering that the *1964 motion for the reconsideration* of the decision in that case, which motion was filed by Solicitor General Arturo Alafriz, has not been resolved up to this time.

WHEREFORE, in L-27602 and L-27603, the trial court's decision is reversed and set aside, the petitions are dismissed, and the decision of the Board of Commissioners dated June 23, 1962 is affirmed with costs against the petitioners.

In L-28082 the motion for reconsideration is denied for lack of merit. Costs against Juan Garcia.

SO ORDERED.

*Fernando, C.J., Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, Melencio-Herrera, Escolin, Relova* and *Gutierrez, Jr., JJ.,* concur.

*Teehankee, J.,* took no part.

*De Castro, J.,* on sick leave.

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SECOND DIVISION

[G.R. No. 60706. October 15, 1983]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* ANDRES GREFIEL, *alias* EDDIE GREFIEL, accused-appellant.