

Michigan Journal of International Law

Volume 10 | Issue 1

1989

Some Issues of Immigration Law in a Developing State

Miriam Defensor Santiago
Republic of the Philippines

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [Comparative and Foreign Law Commons](#), and the [Immigration Law Commons](#)

Recommended Citation

Miriam D. Santiago, *Some Issues of Immigration Law in a Developing State*, 10 MICH. J. INT'L L. 251 (1989).

Available at: <https://repository.law.umich.edu/mjil/vol10/iss1/23>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mLaw.repository@umich.edu.

SOME ISSUES OF IMMIGRATION LAW IN A DEVELOPING STATE

*Miriam Defensor Santiago**

I. INTRODUCTION

The administration of Ferdinand Marcos did not enact any major changes in Philippine immigration law except for a policy of extending visas to restricted nationals, principally those from Chinese territory. Chinese nationals had traditionally received preferential treatment by the Philippine government, mostly because of their dominance in local business and industry. The Marcos administration sought to solve the problem of Chinese nationals overstaying their visas with a program that allowed the Office of the Solicitor General, by administrative proceedings, to grant citizenship to qualified applicants. During the Marcos administration, the Commissioner of Immigration and Deportation ("CID"), through this and other proceedings, unfortunately fortified public perception that the agency was riddled with graft and corruption.

The main thrust of the Aquino administration has been to spotlight the CID in the campaign against graft and corruption. As part of this campaign to stop the extortion of illegal aliens, the CID, by authority of an executive order, launched an alien legalization program on August 1, 1988. Subsequently, the Senate passed a resolution to suspend the program, pending a Senate hearing to determine whether the President's order was issued pursuant to a valid delegation of legislative authority.

The Aquino administration will propose long overdue reforms in immigration law to Congress, by means of a proposed bill to abolish the CID and create the Commission on Immigration and Naturalization, and a proposed Immigration and Naturalization Code to replace the existing law.

This article outlines some basic issues of immigration law that will be discussed during this process of reform. These issues, each of which constitutes a separate section, include the legal basis for deportation under Philippine jurisprudence; the power to issue a warrant of

* Commissioner on Immigration and Deportation, Republic of the Philippines. A.B. 1965, *magna cum laude*, LL.B. 1969, *cum laude*, University of the Philippines; LL.M. 1975, S.J.D. 1976, University of Michigan.

arrest against an alien; the power to grant bail to an alien under detention; and the power of judicial review over deportation cases.

II. LEGAL BASIS FOR DEPORTATION

The Philippine Immigration Act¹ antedates Philippine independence in 1945.² Yet, jurisprudence is scanty, particularly on the power of the Immigration Commissioner to cause the arrest and search of suspected aliens. Fortunately, the more serious questions of constitutional law were settled by the Supreme Court in the recent landmark case of *Harvey v. Commissioner Santiago*, promulgated on June 28, 1988, and written by Justice Ameurfina Melencio Herrera.³

The Philippine Supreme Court, in one of its earliest decided cases, had based the power to deport aliens on the right of the state to existence and to development. Further, the Court said that the power to deport rests on the right of every state to "the integrity of its territory and exclusive and peaceful possession of its dominions which it may guard and defend by all possible means against any attack." The Court explained:

The power of the President to deport undesirable aliens is plenary and is free from interference on the part of the judicial power. He is the sole judge of the facts and circumstances which require the deportation of the aliens and cannot be required to show reasonable grounds for his belief to a court of justice.⁴

The deportation of aliens is a police measure; its objective is the purging of obnoxious foreigners. It is a preventive, not a penal process, and it cannot be substituted for criminal prosecution and punishment by judicial procedure. The enforcement of this power to deport aliens belongs peculiarly to the political departments of the government. Since the power belongs to the political departments of the government, it need not be defined by express legislation, although in Philippine jurisdiction, Congress has prescribed the conditions and the methods under which and by which the power should be exercised.⁵ Its exercise is a function of the civil and political departments of the government, unless taken over by the military commander by the assumption of civil as well as of military power in the territory under his command.⁶

1. Commonwealth Act, No. 613 (Phil. 1940).

2. The Immigration Act was approved by the U.S. President on August 26, 1940 and proclaimed by the Philippine President on September 3, 1940.

3. *Harvey v. Commissioner Santiago*, G.R. No. 82544, slip op. (June 28, 1988).

4. *In re Patterson*, 1 Phil. 93 (1902).

5. *Forbes v. Chuoco Tiaco*, 16 Phil. 543 (1910).

6. *In re McCulloch Dick*, 38 Phil. 41, 97 (1918).

A sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for the public interest.⁷ Such power is based on the accepted maxim of international law that every sovereign nation has the inherent power, essential to self-preservation, to forbid entrance of foreigners within its dominions.⁸

In *Harvey*, the Supreme Court reiterated these legal bases for the exercise of the power to deport undesirable aliens by the state. The court, noting that immigration agents had arrested the petitioners on the suspicion that they practiced pederasty with Filipino child prostitutes in the resort town of Pagsanjan, affirmed the right to deport undesirable aliens whose presence is found to be injurious to the public good. The court emphasized that the state particularly has this right where it

has expressly committed itself to defend the right of the children to assistance and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development (Art. XV, Sec. 3[2]). Respondent Commissioner of Immigration and Deportation, in instituting deportation proceedings against petitioners, acted in the interest of the state.⁹

Philippine Immigration Law provides for deportation by either one of two ways.¹⁰ The first way is provided for by the Immigration Act, section 37, which provides for the arrest and deportation of an enumerated class of aliens, "after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien."¹¹ The second way is provided for by the Administrative Code, section 69, which provides for the power of the President to deport an alien upon prior investigation.¹²

Under the Immigration Act, the power to deport is exercised by the Commissioner, after a determination of deportability is made by the Board of Commissioners. Under the Administrative Code, the power to deport is exercised by the President. However, by a series of

7. *Lao Tan Bun v. Fabre*, 81 Phil. 682 (1948).

8. *Morano v. Vivo*, 20 SCRA 562 (1967).

9. *Harvey*, slip op. at 13-14.

10. *Qua Chee Gan v. Deportation Board*, 9 SCRA 27 (1963).

11. Immigration Act, § 37, para. (a) (1940).

12. Admin. Code § 69: *Deportation of subject of a foreign power*. A subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said islands or repatriated to his own country by the President except upon prior investigation, conducted by said executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses.

executive orders, the President eventually delegated his power to the Board of Commissioners.¹³ The result is that the power to deport is now exercised fully by the Commissioner.

III. POWER TO ISSUE WARRANT OF ARREST

Whether the Commissioner has the power to issue a warrant of arrest has been an emotionally-charged issue in Philippine jurisprudence. The answer to the issue hinges on the interpretation of the constitutional provisions for this power. The 1935 Constitution provided:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.¹⁴

Under the 1935 Constitution, the Supreme Court ruled that only a judge could issue a warrant of arrest, if the purpose was to determine the existence of probable cause. But apparently, the Commissioner could issue a warrant to carry out a final order of deportation. The Court said:

As observed by the late Justice Laurel in his concurring opinion in the case of *Rodriguez v. Villamiel*, (65 Phil. 230, 239), this provision is not the same as that contained in the Jones Law wherein this guarantee is placed among the rights of the accused. Under our constitution, the same is declared a popular right of the people and, of course, indisputably it equally applies to both citizens and foreigners in this country. Furthermore, a notable innovation in this guarantee is found in our Constitution in that it specifically provides that the probable cause upon which a warrant of arrest may be issued, must be determined by the judge after examination under oath, etc., of the complainant and the witnesses he may produce. This requirement — “to be determined by the judge” — is not found in the Fourth Amendment of the U.S. Constitution, in the Philippine Bill or in the Jones Act, all of which do not specify who will determine the existence of a probable cause. Hence, under their provisions, any public officer may be authorized by the legislature to make such a determination and thereafter issue the warrant of arrest. Under the express terms of our Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And, if one sus-

13. Exec. Order No. 398 (1947); Exec order No. 455 (1951).

14. Phil. Const. art. III, § 1, para. 3 (1935, repealed 1945).

pected of having committed a crime is entitled to a determination of the probable cause against him by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.

The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas. Be that as it may, it is not imperative for us to rule, in this proceeding — and nothing herein said is intended to so decide — on whether or not the President himself can order the arrest of a foreigner for purposes of investigation only, and before a definitive order of deportation has been issued. We are merely called upon to resolve herein whether, conceding without deciding that the President can personally order the arrest of the alien complained of, such power can be delegated by him to the Deportation Board.

Unquestionably, the exercise of the power to order the arrest of an individual demands the exercise of discretion by the one issuing the same, to determine whether under specific circumstances, the curtailment of the liberty of such person is warranted. The fact that the Constitution itself, as well as the statute relied upon, prescribes the manner by which the warrant may be issued, conveys the intent to make the issuance of such warrant dependent upon conditions the determination of the existence of which requires the use of discretion by the person issuing the same. In other words, the discretion of whether a warrant of arrest shall issue or not is personal to the one upon whom the authority devolves. And authorities are to the effect that while ministerial duties may be delegated, official functions requiring the exercise of discretion and judgment, may not be so delegated. Indeed, an implied grant of power, considering that no express authority was granted by the law on the matter under discussion, that would serve as a curtailment or limitation on the fundamental rights of a person, such as his security to life and liberty, must be viewed with caution, if we are to give meaning to the guarantee contained in the Constitution. If this is so, then a delegation of that implied power, nebulous as it is, must be rejected as inimical to the liberties of the people. The guarantees of human rights and freedom can not be made to rest precariously on such a shaky foundation.

We are not unaware of the statements made by this Court in the case of *Tan Sin v. Deportation Board* (G.R. No. L-1151, Nov. 28, 1958) It may be stated, however, that the power of arrest was not squarely raised

in that proceeding, but only as a consequence of therein petitioner's proposition that the President had no inherent power to deport and that the charges filed against him did not constitute ground for deportation.¹⁵

In the next case, *Dalamal v. Deportation Board*, the Supreme Court again placed a strict interpretation on the constitutional provision, and ruled that nothing in the Administrative Code authorized the President to issue a warrant of arrest against an alien in the course of his investigation, with a view to determining if he was liable for deportation. The court quoted the constitutional provision, and noted that the court was divided on whether a warrant could be issued by a person other than a judge. The court confessed:

On this point, there is a difference of opinion on the part of the members of the court; some expressed the view that the pertinent provision of our constitution only refers to criminal proceedings where a judge is the sole arbiter, while the other members opined that it involves both criminal as well as administrative proceedings. We will not, however, elaborate on this point, it being unnecessary for the decision of this case.¹⁶

The court said that when the President exercised his power of deportation, he did so not only as an act of state, but also "under the combined powers of the President and the Legislature."¹⁷ The President had the power to issue a warrant of arrest, but this power could not be delegated. The court continued:

As an act of state, the President has the inherent power to order the deportation of an alien and as incident thereof, his arrest, while at the same time that power may be deemed vested in him through delegation by the legislature through the enactment of an appropriate statute (Section 69, Revised Administrative Code). But insofar as his power to order the arrest of an alien is concerned, either as a measure to insure his appearance at the investigation proceedings to determine if he is liable to deportation, or an incident of his inherent power to deport to make effective his deportation order, assuming only *arguendo* that he has such incidental power, that power cannot be delegated either under the principle of *delegata potesta non potest delegare*, or upon the theory that it is non-delegable because it involves the exercise of judgment or discretion.¹⁸

However, the Commissioner has the power to issue a warrant of arrest, in connection with the provision of the Immigration Act that the Commissioner has the power to exact bonds to insure the appearance of aliens released from custody during the course of deportation proceedings.¹⁹

15. *Qua Chee Gan v. Deportation Board*, 9 SCRA at 35-38.

16. *Dalamal v. Deportation Board*, 9 SCRA 385 (1963).

17. *Id.* at 386.

18. *Id.* (citation omitted).

19. Immigration Act, § 40, para (a).

In one 1964 case, an overstaying Chinese temporary visitor filed a cash bond, undertaking that he would not be employed or engaged in any business enterprise incompatible with his status without the written consent previously granted by the Commissioner. Contrary to the stipulation of his bond, the alien was employed as manager of a shop. Consequently, the Commissioner ordered his bond confiscated in favor of the government, and directed the alien to file a new cash bond and a surety bond, on pain of arrest and detention. Petitioners disputed the Commissioner's authority to order such arrest, on the theory that the power was vested only in a judge. This gave the court an opportunity to affirm that the Commissioner has the power to issue a warrant of arrest against an alien who has violated the condition of his bond. The court ruled:

This argument overlooks the fact that the stay of appellant Ng Hua To as a temporary visitor is subject to certain contractual stipulations as contained in the cash bond put up by him, among them, that in case of breach the Commissioner may require the recommitment of the person in whose favor the bond has been filed. The Commissioner did nothing but to enforce such condition. Such a step is necessary to enable the Commissioner to prepare the ground for deportation under section 37(a) of Commonwealth Act No. 613. A contrary interpretation would render such power nugatory to the detriment of the State.²⁰

The Immigration Act, section 37, paragraph (a), explicitly gives to the Commissioner the power to issue a warrant of arrest. In the later *Lao Alfonso v. Vivo*,²¹ the Supreme Court upheld this provision and clarified that it authorizes two kinds of warrants. Thus:

Clearly, the above-quoted section 3(a) speaks of two warrants — one for the arrest and the other for the deportation of the alien. The warrant of arrest is issued by the Commissioner of Immigration 'upon a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien.' Note that the concurrence or approval by the Board of Immigration Commissioners is not required for the issuance of a warrant of arrest. For in stating that the Commissioner of Immigration or any officer designated by him may thus issue such a warrant, section 37(a) authorizes the said Commissioner to apprehend undesirable aliens and initiate their expulsion on any of the grounds enumerated thereunder.²²

Even so, the petitioners in the 1967 case of *Morano v. Vivo* squarely put in issue the constitutionality of the Commissioner's power to issue a warrant of arrest. Petitioners argued that the constitution limits to judges the authority to issue an arrest warrant, and that the legislative

20. Ng Hua To v. Galang, 10 SCRA 411 (1964).

21. Lao Alfonso v. Vivo, 16 SCRA 510 (1966).

22. *Id.* at 515.

delegation of this power to the Commissioner violated the Bill of Rights. The Supreme Court categorically upheld the Commissioner's power to issue a warrant of arrest. It ruled:

Section 1(3), Article III of the Constitution, we perceive, does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation. . . . In consequence, the constitutional guarantee set forth in section 1(3), Article III of the Constitution aforesaid, requiring that the issue of probable cause be determined by a judge, does not extend to deportation proceedings. The view we here express finds support in the discussions during the Constitutional Convention. The convention recognized, as sanctioned by due process, possibilities of and cases of deprivation of liberty, other than by order of a competent court. . . . It is in this context that we rule that section 37(a) of the Immigration Act of 1940 is not constitutionally proscribed.²³

However, the broad view taken by the *Morano* court was subsequently restricted in a succeeding case, where the court said "that the issuance of warrants of arrest by the Commissioner of Immigration, solely for purposes of investigation, and before a final order of deportation is issued," conflicted with the Constitution.²⁴ The Court concluded that the power to determine probable cause for warrants of arrest was limited by the Philippine Constitution to judges exclusively. The court, citing *Morano*, emphasized the distinction between administrative arrest in the execution of a final deportation order, and arrest as preliminary to further administrative proceedings. Accordingly, the court voided the Commissioner's warrants of arrest, but said that the Commissioner could require the aliens to furnish bonds to guarantee their appearance at the hearings and to other proceedings.²⁵

Following this strict view, the Supreme Court in 1969 ruled that no warrant of arrest could be issued by immigration authorities before a final order of deportation was made. "For until it is established that an alien lawfully admitted gained entry into the country through illegal means and the expulsion is finally decreed, the arrest cannot be ordered."²⁶

In 1970, the strict interpretation in *Neria v. Vivo* of the Commis-

23. *Morano v. Vivo*, 20 SCRA 562, 568-570 (1967).

24. *Vivo v. Montesa*, 24 SCRA 155 (1968).

25. *Id.* at 155, 156 (1968).

26. *Neria v. Vivo*, 29 SCRA 701, 708 (1969).

sioner's power was reiterated in *Contemprate v. Acting Commissioner*,²⁷ where the court characterized the rule to be firmly established:

The rule now established in this jurisdiction circumscribes the authority to issue the same only to judges, where the purpose of the warrant is merely the determination of the existence of probable cause in a given case, with the power of the Immigration Commissioner to issue similar warrants being confined to those necessary for the execution of a final deportation order.²⁸

This period was followed by the promulgation of the 1973 Constitution during the administration of President Ferdinand Marcos, and the eventual promulgation of the 1987 Constitution during the administration of President Corazon Aquino. The present provision of the 1987 Constitution approximates the provision of the 1935 Constitution, under which the prior rulings were made.²⁹

Under the 1987 Constitution, the present Supreme Court in *Harvey* upheld the Commissioner's power to issue a warrant of arrest. The court said that the provision of the Immigration Act giving this power to the Commissioner "should be construed in its entirety in view of the summary and not indivisible nature of a deportation proceeding, otherwise, the very purpose of deportation proceedings would be defeated."³⁰

The court, pointedly quoting a passage from *Morano*, said that the Immigration Act provision granting to the Commissioner the power to issue warrant of arrest, is not constitutionally proscribed:

The specific constraints in both the 1935 and 1987 Constitutions, which are substantially identical, contemplate prosecutions essentially criminal in nature. Deportation proceedings, on the other hand, are administrative in character. An order of deportation is never construed as a punishment. It is a preventive, not a penal process. It need not be conducted strictly in accordance with ordinary Court proceedings.³¹

In the earlier case of *Vivo v. Montesa*,³² the Supreme Court had ruled that the Commissioner could not issue a warrant of arrest solely

27. *Contemprate v. Acting Comm'r of Immigration*, 35 SCRA 623 (1970).

28. *Id.* at 631.

29. Phil. Const. of 1987, art. III, § 2. provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

30. *Harvey*, slip op. at 8.

31. *Id.* at 9 (citations omitted).

32. *Vivo v. Montesa*, 24 SCRA 155 (1968).

for purposes of investigation and before a final order of deportation was issued. In *Harvey*, the court said that the *Montesa* statement could not be invoked, because the Commissioner's warrant of arrest did not order petitioners to appear and show cause, but instead a warrant was issued after probable cause had already been determined during the preliminary investigation. Since deportation proceedings had already been commenced with the filing of a charge sheet, the arrest, as a step preliminary to deportation, was valid. For to rule otherwise would be to render nugatory the authority given to the Commissioner, to the detriment of the state.³³

In *Harvey*, the court underscored the *Morano* statement that the requirements of probable cause, to be determined by a judge, do not extend to deportation proceedings. "There need be no 'truncated' recourse to both judicial and administrative warrants in a single deportation proceeding."³⁴

In its *ratio decidendi*, the *Harvey* Court emphasized that its ruling did not deviate from the ruling in the prior case of *Qua Chee Gan*,³⁵ which had been reiterated in *Montesa*, that under the express terms of the 1935 Constitution, "it is therefore even doubtful whether the arrest of an individual may be ordered by any authority other than a judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation."³⁶ The court emphasized that the warrants were valid, because probable cause had already been shown to exist before the warrants were issued.³⁷

IV. POWER TO GRANT BAIL

The Immigration Act provides that the Commissioner shall have the power to determine release on bail: "Any alien under arrest in a deportation proceeding may be released under bond or under such other conditions as may be imposed by the Commissioner."³⁸

This power has been upheld by the courts.³⁹ In a landmark case, the Supreme Court categorically ruled that the discretionary power to grant bail lies with the Commissioner, for the alien does not have a constitutional right to bail:

Aliens in deportation proceedings, as a rule, have no inherent right to

33. *Harvey*, slip op. at 11.

34. *Harvey*, slip op. at 11.

35. *Qua Chee Gan v. Deportation Board*, 9 SCRA 27 (1963).

36. *Harvey*, slip op. at 12 (*quoting Qua Chee Gan*).

37. *Id.* at 12.

38. Immigration Act, section 37, para. (e).

39. *E.g. Tiu v. Commissioner*, G.R. No. L-10009, (1958).

bail; and it has been held that a person arrested or detained cannot be released on bail, unless that right is granted expressly by law. . . .

Note that this provision confers upon the Commissioner of Immigration the power and discretion to grant bail in deportation proceedings, but does not grant to aliens the right to be released on bail. The use of the word "may" in said provision indicates that the grant of bail is merely permissive and not mandatory or obligatory on the part of the Commissioner. The exercise of the power is wholly discretionary.

The determination as to the propriety of allowing an alien, subject to deportation under the Immigration Act, to be released temporarily on bail, as well as the conditions thereof, is solely within the exclusive jurisdiction of the Commissioner, and not in the courts of justice. The reason for this is that the courts do not administer immigration laws.

Even so, the power to grant bail, it seems, has to be exercised by the Commissioner while the alien is still under investigation, for there is no provision of law expressly authorizing such release after the order of deportation has been issued by the Board of Immigration.

The right to bail granted by the constitution may not be invoked in favor of petitioners-appellees, considering that deportation proceedings do not constitute a criminal action, it being merely for the return to the country of an alien who has broken the conditions upon which he could continue to reside within our borders. . . . The case at bar is a deportation proceeding under the Philippine Immigration Act of 1940, which expressly vests in the Commissioner of Immigration the exclusive and full discretion to determine whether an alien subject to deportation should or should not be granted bail. And the fact that petitioners-appellees herein instituted the present habeas corpus proceedings before the Court of First Instance of Manila does not place them in the custody of said court, so as to deprive the Commissioner of Immigration of the supervision over them and over the discretionary power to grant bail.⁴⁰

In the same way, the Supreme Court has held that when an alien is detained by the Commissioner, the regular court of justice has no power to release the alien on bail even in habeas corpus proceedings, because there is no law authorizing it. That case involved an alien held for deportation upon orders of the President. The court said that the alien may not be released on bail.⁴¹ However, in the prevailing case of *Harvey*, the Supreme Court once again explicitly ruled: "[I]n deportation proceedings, the right to bail is not a matter of right but a matter of discretion on the part of the Commissioner. . . ."⁴²

The *Harvey* court recited the provision of the Immigration Act governing the alien's release "under bond or under such other conditions as may be imposed by the Commissioner," emphasizing that the

40. *Ong See Hang v. Commissioner of Immigration*, 4 SCRA 442, 446-48 (1962) (citations omitted).

41. *Republic v. Cloribel*, 9 SCRA 453 (1963).

42. *Harvey*, slip op. at 12.

use of the word "may" indicates that grant of bail is merely permissive and not mandatory on the part of the Commissioner.⁴³

V. JUDICIAL REVIEW OVER DEPORTATION

Deportation cases are heard by a three-person court called the Board of Special Inquiry ("BSI"). There are three such boards. After a hearing, the BSI makes a recommendation and attaches a draft decision to the Board of Immigration Commissioners, which consist of the Commissioner and the two Associate Commissioners.⁴⁴

The factual findings of the Board of Special Inquiry are not final and conclusive upon the Board of Commissioners. The Immigration Act provides that the Commissioner exercises general supervision and control over the staff services and operating branches and units of the Commission.⁴⁵ Hence, the Board of Commissioners may review, on appeal, the decision — including the findings of fact — of the BSI.⁴⁶ In exclusion cases, the regular court of justice has no power to overrule the findings of fact of the immigration authorities, unless such findings are manifestly unfair or the conclusions of the immigration authorities are arbitrary.⁴⁷

If a deportation proceeding is pending before the Board of Commissioners, and it does not appear that the Board is guilty of undue delay, the court will dismiss the appeal as being a premature petition for certiorari. The court will not interfere, "unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it cannot deport him or unless the detainee is being held for too long a period."⁴⁸

In one case, an Associate Commissioner issued an order declaring petitioners to be citizens of the Philippines. Subsequently, the Commissioner reversed, exercising his authority to re-examine and re-evaluate the evidence then available in his office, as submitted in an administrative investigation. Petitioners then filed a petition for mandamus, to compel the Commissioner to recognize the validity of the order of the Associate Commissioner, and to restore their Identifica-

43. *Id.* at 12-13.

44. The deportation Rules of Procedure are prescribed by the Commissioner, per Immigration Act, section 37, para (c).

45. *Id.* at 2b.

46. *Singh v. Board of Commissioners*, 1 SCRA 544 (1961).

47. *Id.*

48. *Bayer v. Board of Commissioners*, 3 SCRA 160, 161 (1961).

tion Certifications as Filipino citizens. The Supreme Court dismissed the petition for mandamus, holding that:

It was unfair and improvident for the Court *a quo* to grant the petitioner's motion for new trial on certain alleged newly-discovered evidence without giving respondent an opportunity to examine and evaluate the evidence on which it predicated its amended decision. It was tantamount to overruling the decision of respondent on a matter which was never submitted to him for consideration.⁴⁹

In *Commissioner v. Fernandez*, the Court clarified that a new Board of Commissioners does not have authority to review the decisions of its predecessor board, but only that of the BSI. The review of the Board of Commissioners, if authorized, should be made in accordance with the process established by law, with a view to protecting the rights of individuals.⁵⁰

The case involved a petition for habeas corpus presented by a person who had already been declared to be a Filipino citizen, but who was being deported as an alien. The trial court dismissed the petition for habeas corpus. The petitioner then filed an appeal from the decision of the trial court with the Court of Appeals. The Supreme Court held that the Court of Appeals had jurisdiction to entertain the appeal and ordered the release on bail pending such appeal.⁵¹

A petition for mandamus or for a writ of certiorari will not lie against the Commissioner in order to obtain a visa extension. The Supreme Court ruled that the Commissioner has no ministerial duty to grant a petition for extension of the period of an alien's stay in the Philippines. If the Commissioner denies the extension, then it is the Commissioner's duty to proceed against the temporary visitor and his bond upon the expiration of his right to stay in the country.⁵²

In the landmark case of *Vivo v. Arca*,⁵³ respondent aliens were able to obtain an extension of their temporary stay. Subsequently, the Commissioner required them to leave, but the trial judge issued a preliminary injunction against the enforcement of the Commissioner's order. The Commissioner filed a petition for certiorari.

The Supreme Court held that the refusal of the trial court to dissolve a preliminary injunction after the expiration of the alien visitor's authorized stay in the country constituted a grave abuse of discretion. The court granted the writ of certiorari and annulled and set aside the

49. *Sy Ha v. Galang*, 7 SCRA 797 (1963).

50. *Commissioner v. Fernandez*, 11 SCRA 184 (1964).

51. *Id.*

52. *Guan v. Commissioner*, 15 SCRA 451 (1965).

53. *Vivo v. Arca*, 22 SCRA 805 (1968). This ruling was a reiteration of *Vivo v. Cloribel*, 18 SCRA 713 (1966).

preliminary injunction issued by the respondent judge.⁵⁴

In a similar case, petitioners obtained an extension of temporary stay. After the deadline, the Commissioner required the aliens to leave the country. Instead of departing, respondents filed a petition for prohibition with preliminary injunction with a trial court, in order to prevent their arrest and deportation. The judge gave due course to the petition and issued the preliminary injunction. The Commissioner moved for dismissal, but the judge denied the motion. Subsequently, the Commissioner filed a petition for certiorari with the Supreme Court and prohibition with preliminary injunction. The Supreme Court, citing the previous ruling in *Vivo v. Arca*, ruled that the judge acted with grave abuse of discretion. The Supreme Court granted the petition, and set aside the orders of the trial judge.⁵⁵

To stop the practice of trial judges issuing preliminary injunctions against the Commissioner's orders of deportation against overstaying aliens, the Supreme Court, in *Commissioner v. Arca*, seized the opportunity to make a categorical ruling:

Extensions of stay of aliens are discretionary on the part of immigration authorities, and neither a petition for *mandamus* nor one for *certiorari* can compel the Commissioner of Immigration to extend the stay of an alien whose period of stay has expired. Should the actuations of the Commissioner be unsatisfactory, the parties concerned should address themselves to the President of the Philippines who by law has the final authority on such questions of deportation. Applicable jurisprudence, therefore, plainly shows the lower court to have erred in entertaining the case and enjoining further actions which the Commissioner was duty bound to carry out.⁵⁶

The Supreme Court continued to support the Commissioner against efforts to limit his deportation powers. In the landmark case of *Vivo v. Montesa*,⁵⁷ the court explained:

The Court below is without jurisdiction to restrain the deportation proceedings of respondents Calacdays. These proceedings are within the jurisdiction of the immigration authorities under sections 29 and 37 of the Philippine Immigration Act. That jurisdiction is not tolled by a claim of Filipino citizenship, where the Commissioner or Commissioners have reliable evidence to the contrary, and said officers should be given opportunity to determine the issue of citizenship before the courts interfere in the exercise of the power of judicial review of administrative decisions.

It is well to note that when the petition for certiorari and prohibition

54. 22 SCRA at 805.

55. *Vivo v. Cloribel*, 22 SCRA 159, 164-65 (1968).

56. *Commissioner v. Arca*, 22 SCRA 805, 808 (1968).

57. *Vivo v. Montesa*, 24 SCRA 155 (1968). See *supra* note 32 and accompanying text.

was filed, deportation proceedings had been started against the respondents but had not been implemented. In view of the non-completion of the proceedings, the Board of Commissioners has not rendered as yet any decision. The respondents Calacdays, therefore, are not being deported. Before the Board reaches a decision, it has to conduct a hearing where the main issue will be the citizenship or alienage of the respondents. Therefore, there is nothing so far for the courts to review.⁵⁸

Finally, the Supreme Court has clarified when an alien can go to court. If the alien claims to be a citizen and therefore not subject to deportation, the alien has the right to have citizenship reviewed by the court. However, where the deportation proceedings have not yet been completed, the alien cannot yet avail himself of judicial remedies.⁵⁹

58. *Id.* at 155-56.

59. *Calacday v. Vivo*, 33 SCRA 413 (1970).