



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TZE SUN WONG,

Petitioner,

G.R. No. 180364

- versus -

Present:

KENNY WONG,

Respondent.

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

DEC 03 2014

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated May 15, 2007 and the Resolution³ dated October 23, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92607, affirming the deportation of petitioner Tze Sun Wong (petitioner).

The Facts

Petitioner is a Chinese citizen who immigrated to the Philippines in 1975 and subsequently acquired a permanent resident status in 1982. As the

¹ Rollo, pp. 22-51.

² Id. at 10-17. Penned by Associate Justice Lucenito N. Tagle with Associate Justices Amelita G. Tolentino and Mariflor Punzalan-Castillo, concurring.

³ Id. at 19.

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records would show, he studied, married, and continued to reside in the country, and even owned a company called Happy Sun Travel and Tours.⁴

On September 12, 2000, respondent Kenny Wong (respondent), owner and proprietor of San Andres Construction Supply, filed a Complaint-Affidavit⁵ against petitioner before the Bureau of Immigration (BOI), alleging that the latter had misrepresented, in his driver's license application, that he was a Filipino citizen. Respondent also averred that petitioner and his business partner, Tina Yu, issued post-dated checks in the amount of ₱886,922.00 which, however, bounced to his damage and prejudice. Thus, taking cue from the foregoing acts, respondent prayed that petitioner be investigated by the BOI for violation of immigration laws.⁶

In his Counter-Affidavit⁷ dated September 28, 2000, petitioner denied respondent's claim of misrepresentation, stating that when he applied for a driver's license, it was another person who filled up the application form for him. However, said person entered the wrong information, particularly, on his name, birth year, and nationality.⁸

Finding probable cause, the Special Prosecutor filed with the BOI the applicable deportation charges⁹ against petitioner, docketed as BSI-D.C. No. ADD-02-280.¹⁰ Thereafter, the BOI Commissioner issued a Mission Order¹¹ to verify petitioner's immigration status. The Mission Order was later recalled¹² and the Law and Investigation Division endorsed the records to the Board of Special Inquiry which directed the parties to submit their respective memoranda.¹³

The BOI Ruling

In a Judgment¹⁴ dated October 2, 2002, the BOI Board of Commissioners ordered the deportation of petitioner on the grounds of: (a) illegal use of alias, *i.e.*, Joseph Wong, which was the name appearing in his driver's license application; and (b) misrepresenting himself as a Filipino citizen in the same application, in violation of Section 37 (a) (7) and (9)¹⁵ of

⁴ Id. at 11.

⁵ Id. at 127-128.

⁶ Id. at 69 and 170.

⁷ Id. at 152-153.

⁸ Id. at 11.

⁹ See Charge Sheet dated February 14, 2002, docketed as D.C. No. ADD-02-983 issued by Acting Special Prosecutor Antonio M. Carolino; id. at 163-164.

¹⁰ Id. at 170.

¹¹ Pertaining to Mission Order No. ADD-02-157 dated April 17, 2002 (not attached to the records of this case).

¹² See Order dated July 16, 2002. (See *rollo*, p. 165.)

¹³ Id. at 171.

¹⁴ Id. at 170-173. Signed by Commissioner Andrea D. Domingo and Associate Commissioner Daniel C. Cueto.

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Commonwealth Act No. 613,¹⁶ otherwise known as “The Philippine Immigration Act of 1940” (Immigration Act), in relation to Sections 1, 2, and 3¹⁷ of Republic Act No. (RA) 6085.¹⁸ Aside from pointing out the misrepresentations made by petitioner, the BOI took judicial notice of the fact that driver’s license applications require the personal appearance of the applicant in order to prevent fraud. Thus, by allowing someone to apply for him, he actively involved himself in the preparation and issuance of a fraudulent driver’s license. By the same account, he cannot then aver that he was without any participation in the entry of his supposed Philippine citizenship in his driver’s license.¹⁹

(a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

x x x x

7. Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a nonimmigrant;

x x x x

9. Any alien who commits any of the acts described in sections forty-five and forty-six of this Act, independent of criminal action which may be brought against him: Provided, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: Provided however, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head;

x x x x

¹⁶ Entitled “AN ACT TO CONTROL AND REGULATE THE IMMIGRATION OF ALIENS INTO THE PHILIPPINES” (August 26, 1940).

¹⁷ Section 1. Section one of Commonwealth Act Numbered One hundred forty-two is hereby amended to read as follows:

“Sec. 1. Except as a pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice, no person shall use any name different from the one with which he was registered at birth in the office of the local civil registry, or with which he was baptized for the first time, or, in case of an alien, with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court: *Provided*, That persons, whose births have not been registered in any local civil registry and who have not been baptized, have one year from the approval of this act within which to register their names in the civil registry of their residence. The name shall comprise the patronymic name and one or two surnames.”

Section 2. Section Two of Commonwealth Act Numbered One hundred forty-two is hereby amended to read as follows:

“Sec. 2. Any person desiring to use an alias shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name, and no person shall be allowed to secure such judicial authority for more than one alias. The petition for an alias shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for the use of the desired alias. The judicial authority for the use of alias the Christian name and the alien immigrant's name shall be recorded in the proper local civil registry, and no person shall use any name or names other, than his original or real name unless the same is or are duly recorded in the proper local civil registry.”

Section 3. Section three of Commonwealth Act Numbered One hundred forty-two, is hereby amended to read as Follows:

“Sec. 3. No person having been baptized with a name different from that with which he was registered at birth in the local civil registry, or in case of an alien, registered in the bureau of immigration upon entry, or any person who obtained judicial authority to use an alias, or who uses a pseudonym, shall represent himself in any public or private transaction or shall sign or execute any public or private document without stating or affixing his real or original name and all names or aliases or pseudonym he is or may have been authorized to use.”

¹⁸ Entitled “AN ACT AMENDING COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-TWO REGULATING THE USE OF ALIASES” (August 4, 1969).

¹⁹ *Rollo*, p. 172.

Petitioner filed a motion for reconsideration²⁰ which was eventually denied by the BOI in a Resolution²¹ dated December 4, 2002. As such, petitioner filed an appeal before the Secretary of Justice.

The Secretary of Justice Ruling

In a Resolution²² dated March 22, 2004, Acting Secretary of Justice Ma. Merceditas N. Gutierrez affirmed the ruling of the BOI, holding that since it undisputedly appears on the face of petitioner's driver's license that he is a Filipino citizen under the name of Joseph Wong, he cannot then raise the defense that it was not his doing but that of a stranger who merely helped him.²³ It was further pointed out that petitioner's use of the alias "Joseph Wong" was illegal since said name is not registered in the BOI and does not fall under the recognized exceptions where use of alias may be allowed.²⁴

Petitioner moved for reconsideration²⁵ and raised the argument that the Judgment of the BOI was null and void since only two commissioners²⁶ participated in the decision-making process. Secretary of Justice Raul M. Gonzalez rendered a Resolution²⁷ dated September 9, 2005, rejecting petitioner's argument on the basis of Section 8 of the Immigration Act which simply requires that "[i]n any case coming before the [BOI] Board of Commissioners, the decision of any two members shall prevail[.]" as in this case. It was added that when petitioner sought to reconsider said Judgment, all four (4) commissioners²⁸ decided in favor of his deportation.²⁹

Dissatisfied, petitioner filed a petition for *certiorari*³⁰ before the CA.

The CA Ruling

In a Decision³¹ dated May 15, 2007, the CA denied³² the *certiorari* petition. Preliminarily, it found that petitioner chose the wrong remedy considering that the decisions of the BOI Board of Commissioners are directly appealable to the CA under Rule 43 of the Rules of Court.³³ The CA

²⁰ Dated October 17, 2002. (Id. at 174-177.)

²¹ Id. at 189-190. Signed by Commissioner Andrea D. Domingo and Associate Commissioners Arthel B. Caronoñgan, Daniel C. Cueto, and Orlando V. Dizon.

²² Id. at 92-94.

²³ Id. at 93.

²⁴ Id. at 94.

²⁵ See Motion for Reconsideration dated May 13, 2005; id. at 199-213.

²⁶ Referring to Commissioner Andrea D. Domingo and Associate Commissioner Daniel C. Cueto.

²⁷ *Rollo*, pp. 97-98.

²⁸ Referring to Commissioner Andrea D. Domingo and Associate Commissioners Arthel B. Caronoñgan, Daniel C. Cueto and Orlando V. Dizon.

²⁹ *Rollo*, p. 98.

³⁰ Dated January 5, 2005. (Id. at 65-91.)

³¹ Id. at 10-17.

³² See id. at 17.

³³ Id. at 13.

also observed that even on the assumption that the Secretary of Justice was given the authority to countermand the BOI Judgment under the Administrative Code, no countermand was made, and hence, the same should have already attained finality.³⁴ On the substantive aspects, the CA affirmed the ruling of the Secretary of Justice that petitioner should be deported for violating the abovementioned rules.³⁵

Petitioner sought reconsideration³⁶ but was denied in a Resolution³⁷ dated October 23, 2007, hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly denied petitioner's petition for *certiorari*.

The Court's Ruling

The petition is without merit.

The Court first discusses the propriety of petitioner's recourse before the CA.

Section 1, Rule 43 of the Rules of Court clearly states that decisions of **any quasi-judicial agency in the exercise of its quasi-judicial functions** (except to judgments or final orders issued under the Labor Code of the Philippines) shall be appealed to the CA under this rule.

RULE 43

Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals

Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service

³⁴ Id. at 14.

³⁵ Id. at 15-16.

³⁶ See Motion for Reconsideration dated June 4, 2007; id at 299-316.

³⁷ Id. at 19.

Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied)

The statutory basis of the CA's appellate jurisdiction over decisions rendered by quasi-judicial agencies (except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442) in the abovementioned respect is Section 9 (3) of Batas Pambansa Bilang 129,³⁸ as amended:³⁹

Section 9. *Jurisdiction.* – The Court of Appeals shall exercise:

X X X X

(3) Exclusive appellate jurisdiction over all final judgments, decisions resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies, instrumentalities, boards or commissions**, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

X X X X

Notably, in *Cayao-Lasam v. Spouses Ramolete*,⁴⁰ it was clarified that the enumeration of the quasi-judicial agencies under Section 1, Rule 43 is not exclusive:

The Rule expressly provides that it should be applied to appeals from awards, judgments, final orders or resolutions **of any** quasi-judicial agency in the exercise of its quasi-judicial functions. The phrase “among these agencies” confirms that the enumeration made in the Rule is not exclusive to the agencies therein listed.⁴¹

Thus, although unmentioned in the enumeration, the Court, in the case of *Dwikarna v. Hon. Domingo*⁴² (*Dwikarna*), held that the decisions rendered by the BOI Board of Commissioners may be appealable to the CA

³⁸ Entitled “AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES” (August 14, 1981).

³⁹ Amended by RA 7902 entitled “AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980” (March 18, 1995).

⁴⁰ 595 Phil. 56 (2008).

⁴¹ Id. at 71.

⁴² 477 Phil. 891 (2004).

via Rule 43 in the event that a motion for reconsideration therefrom is denied:

If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. **If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.**⁴³ (Emphasis supplied)

It bears elucidation that the availability of a Rule 43 appeal to the CA from the BOI Board of Commissioners as ruled in *Dwikarna* presupposes the presence of any of the exceptions to the doctrine of exhaustion of administrative remedies,⁴⁴ considering that the Secretary of Justice may still review the decisions of the aforesaid body. In *Caoile v. Vivo*⁴⁵ (*Caoile*), it was held:

[S]ince the Commissioners of Immigration are under the Department of Justice⁴⁶ 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.⁴⁷

Citing *Caoile*, the Court, in the more recent case of *Kiani v. The Bureau of Immigration and Deportation*,⁴⁸ expounded on the procedure:

Under Section 8, Chapter 3, Title I, Book III of Executive Order No. 292, the power to deport aliens is vested on the President of the Philippines, subject to the requirements of due process. The Immigration Commissioner is vested with authority to deport aliens under Section 37 of the Philippine Immigration Act of 1940, as amended.⁴⁹ Thus, a party

⁴³ Id. at 901.

⁴⁴ The doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit:

“(a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.” (*Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 777, citing *Rep. of the Phils. v. Lacap*, 546 Phil. 87, 97-98 [2007]).

⁴⁵ 210 Phil. 67 (1983).

⁴⁶ See Chapter 10, Title III, Book IV, Executive Order No. (EO) 292.

⁴⁷ *Caoile v. Vivo*, supra note 45, at 82 citing *Board of Commissioners v. Hon. Domingo*, 118 Phil. 680, 684 (1963).

⁴⁸ 518 Phil. 501 (2006).

⁴⁹ See also Section 10, Chapter 3, Title I, Book III, EO 292, which provides:

Section 10. *Power to Countermand Decisions of the Board of Commissioners of the Bureau of Immigration.* - The decision of the Board of Commissioners which has jurisdiction over all deportation cases shall become final and executory after thirty (30) days from promulgation, unless within such period the President shall order the contrary.

aggrieved by a Deportation Order issued by the [Board of Commissioner (BOC)] is proscribed from assailing said Order in the RTC even via a petition for a writ of *habeas corpus*. Conformably with [the] ruling of the Court in [*Commissioner*] *Domingo v. Scheer* (see 466 Phil. 235, 264-284 [2004]), such party may file a motion for the reconsideration thereof before the BOC. The Court ruled therein that “there is no law or rule which provides that a Summary Deportation Order issued by the BOC in the exercise of its authority becomes final after one year from its issuance, or that the aggrieved party is barred from filing a motion for a reconsideration of any order or decision of the BOC.” The Court, likewise, declared that in deportation proceedings, the Rules of Court may be applied in a suppletory manner and that the aggrieved party may file a motion for reconsideration of a decision or final order under Rule 37 of said Rules.

In case such motion for reconsideration is denied by the BOC, the aggrieved party may appeal to the Secretary of Justice and, if the latter denies the appeal, to the Office of the President of the Philippines [(OP)]. The party may also choose to file a petition for *certiorari* with the CA under Rule 65 of the Rules of Court, on the ground that the Secretary of Justice acted with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the appeal, the remedy of appeal not being adequate and speedy remedy. In case the Secretary of Justice dismisses the appeal, the aggrieved party may resort to filing a petition for review under Rule 43 of the Rules of Court, as amended.⁵⁰

Thus, to recap, from the denial of the BOI Board of Commissioners’ motion for reconsideration, the aggrieved party has three (3) options: (a) he may file an appeal directly to the CA via Rule 43 provided that he shows that any of the exceptions to the exhaustion doctrine attend; (b) absent any of the exceptions, he may exhaust the available administrative remedies within the executive machinery, namely, an appeal to the Secretary of Justice and then to the OP, and thereafter, appeal the OP’s decisions via Rule 43;⁵¹ or (c) he may directly resort to *certiorari* before the CA strictly on jurisdictional grounds, provided that he explains why any of the aforementioned remedies cannot be taken as “adequate and speedy.” Anent the last of these options, the Court, in *Rigor v. CA*,⁵² had this to say:

For a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction. **He must also show that he has no plain, speedy and adequate remedy in the ordinary course of law against what he perceives to be a legitimate grievance.** A recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered “plain, speedy and adequate” remedy.⁵³

⁵⁰ *Kiani v. The Bureau of Immigration and Deportation*, supra note 48, at 515-516.

⁵¹ The OP is one of the quasi-judicial agencies specifically mentioned in Section 1, Rule 43 of the Rules of Court.

⁵² 526 Phil 852 (2006).

⁵³ *Id.* at 855.

Case law explains that “[a] remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency.”⁵⁴ In this relation, it has been recognized that the extraordinary remedy of *certiorari* may be deemed proper “when it is necessary to prevent irreparable damages and injury to a party, x x x where an appeal would be slow, inadequate, and insufficient, x x x and x x x in case of urgency.”⁵⁵

In this case, petitioner instituted an administrative appeal before the Secretary of Justice and thereafter sought direct recourse to the CA via *certiorari*, thereby leap-frogging other available remedies, the first being a subsequent administrative appeal to the OP and, eventually, an appeal of the OP decision to the CA via Rule 43. While these remedies remained available to him, the Court deems that they would not afford him speedy and adequate relief in view of the plain imminence of his deportation, by virtue of the issuance of a warrant of deportation.⁵⁶ The urgency of such circumstance therefore justified his direct resort to *certiorari*.

This notwithstanding, the Court nonetheless denies the petition on substantive grounds.

It must be highlighted that the case under consideration essentially calls for the Court to determine whether the CA’s dismissal of petitioner’s *certiorari* petition before it was correct.

“In a special civil action for *certiorari* brought against a court with jurisdiction over a case, the petitioner carries the burden to prove that the respondent tribunal committed not merely a reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order. Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.”⁵⁷

⁵⁴ *Bordomeo v. CA*, G.R. No. 161596, February 20, 2013, 691 SCRA 269, 286.

⁵⁵ *Francisco Motors Corp. v. CA*, 535 Phil. 736, 748 (2006).

⁵⁶ See dispositive portion of the October 2, 2002 Judgment of BOI Board of Commissioners; *rollo*, pp. 172-173.

⁵⁷ *Bordomeo v. CA*, *supra* note 54, at 289, citing *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

Petitioner's *certiorari* petition before the CA basically revolves on his denial of the acts of misrepresentation imputed against him, claiming that the same do not warrant his deportation. However, the commission of said acts involves factual matters that have already been established during the proceedings before the BOI Board of Commissioners. In this regard, it is crucial to point out that "[t]he Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies." By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts."⁵⁸ As petitioner has not sufficiently demonstrated any cogent reason to deviate from the BOI Board of Commissioners' findings, courts are wont to defer to its judgment.

Besides, petitioner's defenses anent what had actually transpired during the relevant incidents surrounding his driver's license application apparently constitute mere self-serving allegations barren of any independent proof. While he blamed the unnamed fixer filling up the erroneous details in his application, his version of the story remained uncorroborated. The lack of testimony on the part of the fixer leaves much to be desired from petitioner's theory.

Moreover, the Court's review of the present case is via a petition for review under Rule 45 of the Rules of Court, which generally bars any question pertaining to the factual issues raised. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions, among them, the lack of sufficient support in evidence of the trial court's judgment or the appellate court's misapprehension of the adduced facts.⁵⁹ None of these exceptions was, however, convincingly shown to attend in this case.

Now, on the matter of the alleged nullity of the BOI Board of Commissioners' Judgment due to the fact that it had been signed only by two (2) commissioners, suffice it to state that Section 8 of the Immigration Act simply requires that in any case coming before the BOI Board of Commissioners, the decision of any two (2) members shall prevail:

BOARD OF COMMISSIONERS

Sec. 8. Decision of the Board. - The board of Commissioners, hereinafter

⁵⁸ *Dwikarna v. Hon. Domingo*, supra note 42, at 901; emphasis and underscoring supplied.

⁵⁹ *Guevarra v. People*, G.R. No. 170462, February 5, 2014.

referred to in this Act, shall be composed of the Commissioner of Immigration and the two Deputy Commissioners. In the absence of a member of the Board, the Department Head shall designate an officer or employee in the Bureau of Immigration to serve as a member thereof. In any case coming before the Board of Commissioners, the decision of any two members shall prevail.

Petitioner argues that the foregoing rule only refers to the number of votes necessary to constitute the decision of the Board, insisting that deliberation should still be made by all commissioners as a collegial body.⁶⁰

Petitioner's argument is correct in theory since deliberation by all members of the collegial body is evidently what the rule contemplates, with the votes of only two (2) members being sufficient for a decision to prevail. Unfortunately, however, petitioner has not shown any proof that deliberations were not conducted by all commissioners before the questioned Judgment was made. The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.⁶¹ Thus, once more, his self-serving assertion cannot be given credence. This is especially so in light of the presumption of regularity, which herein ought to prevail due to the absence of any clear and convincing evidence to the contrary. *Bustillo v. People*⁶² states:

The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.⁶³

In particular, the presumption that the Judgment had been deliberated by the BOI Board of Commissioners as a collegial body stands. In any event, the lack of any concurrence or dissension from the two (2) other commissioners missing on the face of the October 2, 2002 Judgment has already been placated by their eventual signing of full concurrence in the subsequent Resolution dated December 4, 2002 denying petitioner's motion for reconsideration.

WHEREFORE, the petition is **DENIED**. The Decision dated May 15, 2007 and the Resolution dated October 23, 2007 of the Court of Appeals in CA-G.R. SP No. 92607 are hereby **AFFIRMED**.


⁶⁰ *Rollo*, pp. 43-44.

⁶¹ *Alcazar v. Arante*, G.R. No. 177042, December 10, 2012, 687 SCRA 507, 517.

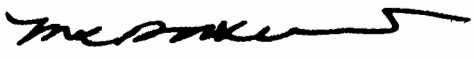
⁶² G.R. No. 160718, May 12, 2010, 620 SCRA 483.

⁶³ *Id.* at 492.

SO ORDERED.

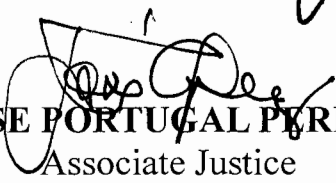

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

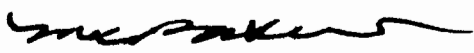

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice