



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LIANG FUJI,
Complainant,

A.C. No. 11043

Present:

CARPIO, *J.*, Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
JARDELEZA, *JJ.*

-versus-

ATTY. GEMMA ARMI M. DELA
CRUZ,
Respondent.

Promulgated:
08 MAR 2017

X-----X

H.M. Cabalag Perforato

RESOLUTION

LEONEN, J.:

Failure to exercise utmost prudence in reviewing the immigration records of an alien, which resulted in the alien's wrongful detention, opens the special prosecutor in the Bureau of Immigration to administrative liability.

Before this Court is an administrative complaint¹ dated November 23, 2015 filed by Liang Fuji (Fuji) and his family, against Bureau of Immigration Special Prosecutor Gemma Armi M. Dela Cruz (Special Prosecutor Dela Cruz) for gross misconduct and gross ignorance of the law in relation to her issuance of a Charge Sheet against Fuji for overstaying.

¹ Rollo, p. 1.

Through a letter² dated December 8, 2015, Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa directed the complainants to file a verified complaint “with supporting documents duly authenticated and/or affidavits of persons having personal knowledge of the facts alleged”³ in the complaint.

Complainants replied⁴ by furnishing this Court with copies of the Verified Petition to Reopen S.D. O. No. BOC-2015-357 (B.L.O. No. SBM-15-420) and for Relief of Judgment with Urgent Prayer for Immediate Consideration, and Administrative Complaint (Verified Petition and Administrative Complaint),⁵ which Fuji filed with the Board of Commissioners of the Bureau of Immigration, and prayed that the same be treated as their verified complaint. Complainants further informed this Court that they had difficulty obtaining certified true copies of the November 21, 2013 Order of the Board of Commissioners, which granted Fuji’s Section 9(g) visa, Summary Deportation Order dated June 17, 2015, and Warrant of Deportation from the Bureau of Immigration personnel who just gave them the “run[-]around.”⁶ They alleged that the Bureau of Immigration personnel were not particularly helpful, and did not treat Fuji’s case with urgency.⁷

The facts of this case show that in a Summary Deportation Order⁸ dated June 17, 2015, Fuji, a Chinese national, was ordered deported for overstaying. From the Order, it appears that Special Prosecutor Dela Cruz was the special prosecutor who brought the formal charge against Fuji and another person upon her finding that Fuji’s work visa had expired on May 8, 2013, with extension expired on December 6, 2013.⁹ Special Prosecutor Dela Cruz found that Fuji had overstayed for one (1) year and six (6) months in violation of Commonwealth Act No. 613, Section 37(a)(7).¹⁰ Her investigation was triggered by a complaint-affidavit dated April 30, 2015 of a certain Virgilio Manalo alleging that Fuji and another person had defrauded him.¹¹

² Id. at 3.

³ Id.

⁴ Id. at 5–6.

⁵ Id. at 8–12.

⁶ Id. at 5.

⁷ Id.

⁸ Id. at 13–14. The Summary Deportation Order was signed by the Board of Commissioners Chairperson Siegfred B. Mison, and Members Abdullah S. Mangotara, and Gilberto U. Repizo.

⁹ Id.

¹⁰ Com. Act No. 613, sec. 37 provides:

Section 37. (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:

....

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant[.]

¹¹ Id. at 13.

On June 29, 2015, Fuji filed his Motion for Reconsideration.¹²

On July 28, 2015, the Bureau of Immigration Intelligence Division served Fuji's Warrant of Deportation, and thereafter arrested him at Brgy. Maloma, San Felipe, Zambales with the assistance from local police.¹³ Fuji was brought to and detained at the Bureau of Immigration Detention Facility, National Capital Region Police Office, Taguig City.¹⁴

On October 9, 2015, the Board of Commissioners denied Fuji's Motion for Reconsideration.¹⁵

On November 23, 2015, Fuji filed his Verified Petition and Administrative Complaint.¹⁶ Subsequently, on March 10, 2016, Fuji filed an Omnibus Motion to Reopen and Lift S.D.O. BOC-2015-357, and Release on Bail through counsel.¹⁷

On March 22, 2016, the Board of Commissioners issued a Resolution dismissing the deportation charge against Fuji on the ground that "[t]he records show that Liang has a working visa valid until 30 April 2016 under Jiang Tuo Mining Philippines, Inc. as Marketing Liason."¹⁸ Fuji was directed to be released from Bureau of Immigration-Warden's Facility on March 23, 2016.¹⁹

In his administrative complaint, Fuji alleged that his rights to due process were violated since he was not afforded any hearing or summary deportation proceedings before the deportation order was issued against him.²⁰ Fuji further alleged that Special Prosecutor Dela Cruz failed miserably in discharging her duties because a simple initial review of the Bureau of Immigration records would have revealed that he was not overstaying because his Section 9(g) work visa was valid until April 30, 2016.²¹

In her August 25, 2016 Comment,²² respondent Special Prosecutor Dela Cruz denied that she committed any grave misconduct.²³ She claimed that Fuji was accorded due process during the summary deportation

¹² Id. at 26.

¹³ Id.

¹⁴ Id. at 32.

¹⁵ Id. at 26.

¹⁶ Id. at 8–12.

¹⁷ Id. at 57.

¹⁸ Id.

¹⁹ Id. at 27.

²⁰ Id. at 9–10.

²¹ Id. at 9.

²² Id. at 25–31.

²³ Id. at 29.

proceedings.²⁴ He was directed, through an Order dated May 14, 2015 of the Legal Division, to submit his Counter-Affidavit/Memorandum, which he failed to do.²⁵ Fuji was also able to file his motion for reconsideration and verified petition to reopen the case.²⁶

Respondent further claimed that the Memorandum dated June 4, 2015 of the Bureau of Immigration – Management Information System (BI-MIS) constituted a substantial evidence of Fuji’s overstay in the country, hence, her formal charge had legal basis.²⁷

Respondent added that as a civil servant, she enjoyed the presumption of regularity in the performance of her duties.²⁸ She had no intention to violate any law and did not commit any flagrant disregard of the rules, or unlawfully used her station to procure some benefit for herself or for other persons.²⁹ Respondent pointed out that the Ombudsman had in fact dismissed the complainant’s charges against her.³⁰ She added that Fuji stated in his March 29, 2016 Affidavit of Desistance that he had mistakenly signed some documents including the administrative complaint.³¹

We find respondent administratively liable for her negligence in her failure to ascertain the facts before levying the formal charge against Fuji for overstaying.

I

Generally, this Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative duties, and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman.³²

For instance, in *Spouses Buffe v. Gonzales*,³³ this Court dismissed the

²⁴ Id. at 27–28.

²⁵ Id. at 28.

²⁶ Id.

²⁷ Id. at 29.

²⁸ Id. at 31.

²⁹ Id. at 30.

³⁰ Id. at 31.

³¹ Id. at 31–32.

³² *Spouses Buffe v. Gonzales*, A.C. No. 8168, October 12, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/8168.pdf>> [Per Acting C.J. Carpio, Second Division]; *Alicias, Jr. v. Macatangay*, A.C. No. 7478, January 11, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/7478.pdf>> [Per J. Carpio, Second Division].

³³ A.C. No. 8168, October 12, 2016

<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/8168.pdf>> [Per Acting C.J. Carpio, Second Division].

disbarment complaint against former Secretary of Justice Raul M. Gonzalez, former Undersecretary of Justice Fidel J. Exconde, Jr., and former Congressman Eleandro Jesus F. Madrona, holding that the respondents were public officials being charged for actions involving their official functions during their tenure, which should be resolved by the Office of the Ombudsman.³⁴ In that case, one (1) of the respondents sought to dismiss the complaint on the ground of forum-shopping because he allegedly received an order from the Office of the Ombudsman directing him to file a counter-affidavit based on the same administrative complaint filed before the Office of the Bar Confidant.³⁵

Again, in the fairly recent case of *Alicias, Jr. v. Macatangay*,³⁶ the Court dismissed the complaint against respondents – government lawyers in the Civil Service Commission. The Court held that the acts or omissions alleged in the complaint were “connected with their . . . official functions in the [Civil Service Commission] and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman.”³⁷ It would seem that the complainant directly instituted a disbarment complaint with this Court instead of filing an administrative complaint before the proper administrative body.

This case is an exception. Unlike the circumstances in *Spouses Buffe and Alicias, Jr.*, the records here show that the Office of the Ombudsman had previously dismissed Fuji’s administrative complaint due to the pendency of his Verified Petition and Administrative Complaint before the Bureau of Immigration, and considered the case closed.³⁸

The Bureau of Immigration subsequently granted Fuji’s petition to reopen his case and ordered his release. However, it was silent as to the culpability of respondent on the charges levelled by Fuji.

Thus, with the termination of the administrative proceedings before the Office of the Ombudsman and the apparent inaction of the Bureau of Immigration on complainant’s administrative complaint, this Court considers it proper to take cognizance of this case, and to determine whether there is sufficient ground to discipline respondent under its “plenary disciplinary authority”³⁹ over members of the legal profession.⁴⁰

³⁴ Id. at 6–7.

³⁵ Id. at 4.

³⁶ A.C. No. 7478, January 11, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/7478.pdf>> [Per J. Carpio, Second Division].

³⁷ Id. at 5.

³⁸ *Rollo*, pp. 53–54; Letter dated February 19, 2016 signed by Acting Director Julita M. Calderon of the Public Assistance Bureau and noted by Assistant Ombudsman Evelyn A. Baliton.

³⁹ *Bernardino v. Santos*, A.C. Nos. 10583 & 10584, February 18, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10583.pdf>> 13 [Per J. Leonen, Second Division] citing *Zaldivar v. Sandiganbayan*, 248 Phil. 542 (1988) [Per Curiam,

Contrary to respondent's stance, Fuji's purported Affidavit of Desistance is not sufficient cause to dismiss this administrative complaint. This Court has previously held that proceedings of this nature cannot be "interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same."⁴¹ The primary object of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted solely for the public welfare,⁴² and the desistance of the complainant is irrelevant. What will be decisive are the facts borne out by the evidence presented by the parties. In *Rayos-Ombac v. Rayos*:⁴³

A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.⁴⁴

II

Respondent Dela Cruz claimed that she issued the formal charge against Fuji for overstaying on the basis of the Memorandum dated June 4, 2015 of the BI-MIS.⁴⁵ A copy of the Memorandum with attachments was attached to respondent's Comment.⁴⁶

However, nowhere in the Memorandum was it stated that Fuji "overstayed" or that "Liang's working visa expired on 8 May 2013 and his

En Banc].

⁴⁰ *Bernardino v. Santos*, A.C. Nos. 10583 & 10584, February 18, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10583.pdf>> 13 [Per J. Leonen, Second Division].

⁴¹ *Ali v. Atty. Bubong*, 493 Phil. 172, 184 (2005) [Per Curiam, En Banc].

⁴² *Bautista v. Atty. Bernabe*, 517 Phil. 236, 241 (2006) [Per J. Ynares-Santiago, First Division]; *De Vera v. Commissioner Pineda*, 288 Phil. 318, 328 (1992) [Per J. Padilla, En Banc].

⁴³ 349 Phil. 7 (1998) [Per J. Puno, En Banc].

⁴⁴ *Id.* at 15.

⁴⁵ *Id.* at 29.

⁴⁶ *Id.* at 74–102.

TVV expired on 6 December 2013⁴⁷ as respondent claims. Relevant portions of the Memorandum read:

For : ATTY. GEMMA ARMI M. DELA CRUZ
 From : ACTING CHIEF, MIS DIVISION
 Re : REQUEST FOR IMMIGRATION STATUS; VISA
 EXTENSION PAYMENT, LATEST TRAVEL AND
 DEROGATORY OF THE FOLLOWING:
 1. MR./MS. LIANG FUJI
 2. MR./MS. CHEN XIANG HE
 3. MR./MS. JACKY CHANG HE
 Date : 04 June 2015

Further to your request for verification of Immigration Status; Visa Extension Payment and TRAVEL RECORD/S, please find the result/s as follows:

....
 Result/s : 1. LIANG FUJI
 - Derogatory Record Not Found
 - Latest Travel Record Found (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)
 - Immigration Status Found
 - Latest Payment Record Found in BI-Main (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)⁴⁸

....

The Memorandum merely transmitted copies of immigration records showing details of filing of applications, such as official receipts, - and travel record of Fuji. It was respondent Dela Cruz who made the determination that Fuji overstayed on the basis of the documents transmitted to her by the BI-MIS.

Among the documents transmitted by the BI-MIS were computer print-outs showing details of official receipts dated June 14, 2013, August 7, 2013, and November 19, 2013 for temporary visitor visa extension and official receipt dated July 15, 2013 for an application for change of immigration status. Also, the travel records of Fuji show the following details:

Date & Time : 4 June 2015 3:05 PM
 Verifier : DIMARUCOT J
 Database : TRAVEL – ARRIVAL

⁴⁷ Id. at 29.

⁴⁸ Id. at 74.

TRAVEL DATE	TRAVEL TIME	FLIGHT NO	IMMIG STATUS	PORT	OFFICER	ACTION	REMARKS
10-FEBRUARY-2014	11:34PM	CZ377	9G	NAIA1	MIJARES	ALLOWED	
06-JANUARY-2012	11:51PM	CZ377	9A	NAIA1	PARANGUE	ALLOWED	
22-SEPTEMBER-2011	11:25PM	CZ377	9A	NAIA1	NUNEZ	ALLOWED ⁴⁹	

Fuji's travel records as of June 4, 2015, show his arrival in the Philippines on February 10, 2014 under a work visa immigration status.⁵⁰ Simple prudence dictates that respondent Atty. Dela Cruz should have verified whether or not the July 15, 2013 application for change of status had been approved by the Bureau of Immigration Commissioners, especially since she had complete and easy access to the immigration records.

Respondent failed in the performance of her basic duties. Special prosecutors in the Bureau of Immigration should exercise such degree of vigilance and attention in reviewing the immigration records, whenever the legal status and documentation of an alien are at issue. For while a deportation proceeding does not partake of the nature of a criminal action, it is however, a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person.⁵¹

Respondent was expected to be reasonably thorough in her review of the documents transmitted to her by the BI-MIS, especially as it may ultimately result in the deprivation of liberty of the prospective deportee. She should not have simply relied on the handwritten note by a personnel from the BI-MIS at the bottom portion of the receipt dated November 19, 2013 for 9A visa extension stating "Valid until: 06-Dec-2013." Had she inquired further, she would have discovered that Fuji's application dated July 15, 2013 for conversion from temporary visitor visa (9A) to work visa (9G) was approved by the Board of Commissioners on November 21, 2013 – or one (1) year and seven (7) months earlier – with validity until April 30, 2016. Thus, even if Fuji's temporary visitor (9A) visa had expired on December 6, 2013 his stay in the country was still valid under the 9G work visa.

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of her duties as a government official.⁵² However, if said misconduct as a

⁴⁹ Id. at 83.

⁵⁰ Id.

⁵¹ *Domingo v. Scheer*, 466 Phil. 235, 271 (2004) [Per J. Callejo, Sr., Second Division] citing *Lao Gi v. Court of Appeals*, 259 Phil. 1247, 1254 (1989) [Per J. Gancayco, First Division].

⁵² *Facturan v. Barcelona, Jr.*, A.C. No. 11069, June 8, 2016,

government official also constitutes a violation of her oath as a lawyer and the Code of Professional Responsibility,⁵³ then she may be subject to disciplinary sanction by this Court.

Atty. Dela Cruz failed to observe Rule 18.03 of the Code of the Professional Responsibility, which mandates that “a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.” As a special prosecutor in the Bureau of Immigration, she is the representative, not of any private party, but of the State. Her task was to investigate and verify facts to determine whether a ground for deportation exists, and if further administrative action — in the form of a formal charge — should be taken against an alien.

Had respondent carefully reviewed the records of Fuji, she would have found out about the approval of Fuji’s application, which would negate her finding of overstaying. Because of her negligence, Fuji was deprived of his liberty for almost eight (8) months, until his release on March 23, 2016.

Simple neglect of duty is defined as a failure to give attention to a task due to carelessness or indifference.⁵⁴ In this case, respondent’s negligence shows her indifference to the fundamental right of every person, including aliens, to due process and to the consequences of her actions.

Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust.⁵⁵ The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service.⁵⁶ In this case, respondent’s negligence evinces a failure to cope with the strict demands and high standards of public service and the legal profession.

The appropriate sanction is discretionary upon this Court.⁵⁷ Under the Civil Service Rules,⁵⁸ the penalty for simple neglect of duty is suspension

<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/11069.pdf>> 4 [Per J. Perlas-Bernabe, First Division]; *Vitriolo v. Dasig*, A.C. No. 4984, April 1, 2003, 448 Phil.199, 207 (2003) [Per Curiam, En Banc].

⁵³ *Lim-Santiago v. Sagucio*, 520 Phil. 538, 551–552 (2006) [Per J. Carpio, En Banc].

⁵⁴ *Atty. Salumbides v. Office of the Ombudsman*, 633 Phil. 325, 339 (2010) [Per J. Carpio Morales, En Banc].

⁵⁵ *Ramos v. Imbang*, 557 Phil. 507, 513 (2007) [Per Curiam, En Banc].

⁵⁶ *Far Eastern Shipping Co. v. Court of Appeals*, 357 Phil. 703, 723 (1998) [Per J. Regalado, En Banc]; Rep. Act No. 6713 (1989) or Code of Conduct and Ethical Standards for Public Officials and Employees, sec.4.

⁵⁷ *Uy v. Tansinsin*, 610 Phil. 709, 716 (2009) [Per J. Nachura, Third Division].

⁵⁸ CSC Res. No. 1101502 (2011) or the Revised Rules on Administrative Cases in the Civil Service, Rule 10, sec. 46(D) provides:

Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are


for one (1) month and one (1) day to six (6) months. In previous cases,⁵⁹ this Court imposed the penalty of suspension of three (3) months to six (6) months for erring lawyers, who were negligent in handling cases for their clients. We find appropriate the penalty of suspension of three (3) months considering the consequence of respondent's negligence. This suspension includes her desistance from performing her functions as a special prosecutor in the Bureau of Immigration.

WHEREFORE, respondent Atty. Gemma Armi M. Dela Cruz is **SUSPENDED** from the practice of law for three (3) months.

The respondent, upon receipt of this Resolution, shall immediately serve her suspension. She shall formally manifest to this Court that her suspension has started, and copy furnish all courts and quasi-judicial bodies where she has entered her appearance, within five (5) days upon receipt of this Resolution. Respondent shall also serve copies of her manifestation on all adverse parties in all the cases she entered her formal appearance.

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be attached to Atty. Gemma Armi M. Dela Cruz's personal record. Copies of this Resolution should also be served on the Integrated Bar of the Philippines for its proper disposition, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

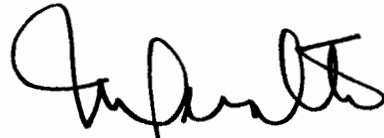
classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

....

D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

1. Simple Neglect of Duty[.]

⁵⁹ See *Layos v. Villanueva*, A.C. No. 8085, December 1, 2014, 743 SCRA 334 [Per J. Perlas-Bernabe, First Division]; *Penilla v. Alcid, Jr.*, 717 Phil. 210 (2013) [Per J. Villarama, Jr., First Division]; *Baldado v. Mejica*, 706 Phil. 1 (2013) [Per J. Villarama, Jr., First Division]; *Vda. de Enriquez v. San Jose*, 545 Phil. 379 (2007) [Per J. Quisumbing, Second Division]; *Perla Compania de Seguros, Inc. v. Saquilabon*, 337 Phil. 555 (1997) [Per J. Vitug, First Division].



DIOSDADO M. PERALTA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice