

COMMENTS

PASSPORTS AND THE RIGHT TO TRAVEL *

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INTRODUCTION

Man in his long history has placed a great premium on his mobility for he found out that it was essential to his physical existence. This was most evident during the pastoral stage of his life. But even when he became sedentary and began building great towns and cities, man discovered the value of unhindered movement from town to town, from city to city in the transaction of his business be it to sell his produce in another place or to trade his merchandise for those of other peoples. It was not long after did he discover the pleasures of cultural exchange in the person of itinerant scholars and teachers bringing with them new ideas and strange customs.

With the growth of nation-states, however, and the concomitant upsurge of nationalist feelings, this freedom of movement, heretofore unimpeded by man-made barriers met restrictions erected by the emerging states who were jealous of any intrusion in their national frontiers. The conditions probably became so restrictive that the barons who met in the meadow of Runnymede in 1215 had to include in the Charter that they drew up a guarantee of free passage in and out of England.¹

* The Supreme Court of the Philippines has before it as of this writing two cases involving, on the one hand, the refusal by the Secretary of Foreign Affairs to issue a passport to an applicant going to Communist countries (*Picardo v. the Secretary of Foreign Affairs*) and, on the other hand, the revocation by the Department of Foreign Affairs of the passports of several newspapermen (*Tayag, et al. v. the Secretary of Foreign Affairs*). No attempt will be made here to discuss the respective merits of the particular cases. The author's intention is merely to probe the various constitutional and legal points involved in the general problem of passports and travel, particularly, compliance with the requisites of due process in the denial or revocation of passports.

** Chairman, Student Editorial Board, *Philippine Law Journal*, 1964-65.

¹ Magna Charta, 1215

"Chapter 41—All merchants may safely and securely go away from England, stay in and go through England, by land or by water, for buying and selling under right and ancient customs and without any evil exactions, except in time of war if they are from the land at war with us . . .

"Chapter 42—It shall be lawful in future for any one (excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as is above provided) to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, or grounds of public policy reserving always the allegiance due to us."

[In the reissues of the Magna Charta, this boon was withdrawn from all classes for fear it might be abused by ecclesiastics who had particularly welcomed chapter 42 as enabling them to go to Rome without royal permit, in order to prosecute appeals from church courts or work for their own preferment.]

In the modern world, the latest expression of this aspiration for freedom of movement can be found in article 13 of the Universal Declaration of Human Rights² which states that:

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) *Everyone has the right to leave any country, including his own, and to return to his country.*

Immediately we observe from the above-stated assertion that the right to travel has three aspects: first, the right to travel within the territorial confines of one's state; second, the right to leave one's country, and; third, the right to return to or enter one's own country. We are concerned only with the second aspect.

PASSPORTS

Nature of Passports

A passport is a document of identity and nationality issued to persons owning allegiance to the issuing country and intending to travel or sojourn in foreign countries. It indicates that it is the right of the bearer to receive the protection and good offices of the diplomatic and consular officers of the issuing country abroad and requests on the part of the government of the issuing country that the officials of foreign governments permit the bearer to travel or sojourn in their territories and in case of need to give him all lawful aid and protection.³ It is not issued for use as a certificate of citizenship.⁴ Thus, the revocation of a passport does not result in loss of citizenship nor does it imply doubt as to one's citizenship. It simply means that the individual whose passport was revoked is no longer entitled to the protection of the issuing country while abroad.⁵

Documents on Fundamental Human Rights (Pamphlet 1), compiled and edited by Zechariah Chafee, Jr., Harvard University Press, 1954.

² It was adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948, "as a common standard of achievement for all peoples and all nations."

³ Hackworth, G. H., *Digest of International Law* III, ch. 10 (U.S. Government Printing Office, 1942), p. 435.

⁴ *Ibid.*, p. 436. The Revised Regulations of the Foreign Service of the Philippines (1962) defines a Philippine passport as "a document certifying to the Philippine citizenship of the holder and used for travel purposes." (Chapter XV, part B, section 1).

⁵ *Ibid.*, p. 470. This should not be construed to mean, however, that one's right to the protection of his government stems from the possession of a passport. Rather, such right to protection flows from his citizenship of which the passport, in most cases, is the handiest document of identity. (*The Constitutional Right to Travel*, Leonard B. Boudin, Columbia Law Review, vol. 56, No. 1, p. 74).

For local identification in foreign countries a certificate of identity and registration is prescribed by Philippine consular offices, although certificates of identification are usually issued by local governments for foreign residents. (Revised Regulations of the Foreign Service of the Philippines [1962], Ch. XV, part B, sec. 1).

Without a passport, departure would be illegal and entry to other countries difficult or impossible.⁶

Passports in the Philippines before 1946

Passports as prerequisite for egress out of the country was not known in the Philippines prior to the coming of the Americans.

Under the Cooper Act of July 1, 1902,⁷ and the Philippine Autonomy Act of August 22, 1916 (commonly known as the Jones Law)⁸ the power to conduct foreign relations although not specifically provided for under these acts, was vested exclusively in the United States. The President of the United States through the department of state wielded that absolute power over the foreign relations of the Philippines. Locally, the Governor General handled all matters involving travels abroad, immigration, passports, visas, naturalization, citizenship, and extradition.⁹ By an executive order,¹⁰ the President of the United States extended authority to the clerks of Courts of First Instance in the Philippines to execute passport applications. However, passports issued to Philippine citizens did not include permission for entry into the United States.¹¹

Even with the enactment of the Philippine Independence Act (otherwise known as the Tydings-McDuffie Law) on March 24, 1934 the foreign affairs of the Philippines continued to be under the direct supervision and control of the United States.¹² Passports were issued by the United States High Commissioner and applications for passports were made to him.¹³

Executive Order No. 1 (July 4, 1946)

Within a year from his assumption of office, President Manuel Roxas issued Executive Order No. 1¹⁴ which, up to the present, regulates the application, issuance, and amendment of passports.

⁶ For Filipino citizens who are proceeding directly to the Philippines, passports are not absolutely necessary. They are expected, nevertheless, to present documentary evidence of Filipino citizenship upon arrival at a port of entry in the Philippines. Certificates of identity, birth or baptismal certificates wherein Philippine citizenship is indicated, or expired passports are usually considered by the Philippine immigration authorities as sufficient documentary evidence. (Revised Regulations of the Foreign Service of the Philippines [1962], Ch. XV, part B, sec. 1).

⁷ 32 Stat. 386; 22 U.S.C. 212.

⁸ 1 Philippine Annotated Laws 103.

⁹ Zoilo M. Galang, ed., *Encyclopedia of the Philippines*, vol. XII, p. 352.

¹⁰ Executive Order 3604-A of December 31, 1921.

¹¹ Hackworth, *op. cit.*, p. 475. At that time, if the bearer desires to enter the United States, he must comply with the then existing laws relating to immigration.

¹² Section 2, subsection 10 of the Philippine Independence Act.

¹³ Executive Order 7856, par. 1, No. 2, of March 31, 1938.

¹⁴ 42 O.G. 1400.

Who can issue passports? Only the Secretary of Foreign Affairs may grant and issue passports in the Philippines.¹⁵ He is authorized to cause passports to be issued and verified abroad by such diplomatic or consular officers of the Philippines as he shall designate under Executive Order No. 1 and such additional rules and regulations as may subsequently be issued relative thereto.¹⁶

To whom may passports be issued? Passports may be granted and issued only to citizens of the Philippines. A minor may, upon his own application, be issued a passport, unless his natural or legal guardian requests that the application be denied.¹⁷

Before a passport is issued to any person, he is required to subscribe to and submit a written application duly verified by his oath before an official of the Department of Foreign Affairs or a Filipino diplomatic or consular officer abroad authorized by the Secretary of Foreign Affairs to receive and/or act on applications for passports, of before a person in the Philippines authorized by law to administer oaths.¹⁸ It must be executed in person by the applicant and must include an oath or affirmation of allegiance to the Republic of the Philippines.¹⁹

¹⁵ *Ibid.*, par. 1.

¹⁶ *Ibid.*, par. 2.

¹⁷ *Ibid.*, par. 3.

¹⁸ *Ibid.*, par. 5. Each application (F.A. Form No. 1, 1960) is required to contain the following: (a) the name of the applicant; (b) his place and date of birth; (c) his occupation; (d) his permanent residence; (e) his present citizenship and citizenship at birth; (f) name and nationality of father and mother; (g) whether the applicant has been naturalized as a citizen of a foreign state or has taken an oath of allegiance to a foreign state; (h) whether the applicant has accepted a commission in the military, naval, or civil service of a foreign country and, if so, state what country and date of commission; (i) if the applicant's father was naturalized as a citizen of the Philippines, the date of such naturalization; (j) if the applicant is a woman, whether she has ever been married, if so, the date of her marriage, name, date, and place of birth of her husband, nationality of husband and place of his residence, her maiden name, whether she was previously married and, if so, the name and place of birth and nationality of her former husband, and the date and place of her former marriage, and whether the former marriage was terminated by death or divorce and, if so, the date thereof; (k) if the present or former husband was naturalized as a citizen of the Philippines, the date and place of his naturalization, or if naturalized through his father, the father's name and date and place of his naturalization; (l) the name of the port from which, the name and date of sailing of the vessel upon which, the applicant intends to depart from the Philippines; (m) names of the countries the applicant intends to visit and the object of the visit of each [the Secretary of Foreign Affairs may, in his discretion, require an applicant to submit satisfactory documentary evidence of the object of his visit to each country named in his application]; (n) the period within which applicant intends to return to the Philippines; (o) description of the applicant; (p) the names and dates and places of birth of other persons to be included in the passport; and (q) such other pertinent information as the Secretary of Foreign Affairs may require. (par. 6).

¹⁹ *Ibid.*, par. 7.

Since only citizens of the Philippines may be granted passports, every applicant must submit documentary proof of Philippine citizenship as well as evidence of Philippine citizenship of any person included in the application.²⁰ The application should also be accompanied by the affidavit of a supporting witness.²¹ However, lawyers or any other person who expects to receive a fee in connection with the application for passport cannot be accepted as supporting witness.²²

What are the kinds of passports? There are four types of Philippine passports in general use: the diplomatic, the special, the regular and the service.

The first kind refers to those passports issued by the Secretary of Foreign Affairs to ambassadors, ministers, foreign affairs officers, military, naval, air and other attaches, provided such attaches are assigned to diplomatic establishments, and to the members of the different branches of the government.²³ Special passports are those granted to government officials going abroad on official busi-

²⁰ *Ibid.*, par. 9. Birth certificates should be submitted when one is obtainable otherwise a baptismal certificate will do. Both must bear the name, date and place of birth of the applicant, legitimacy, names and places of birth of his parents and their citizenship. If neither is available, an affidavit by some reputable person, preferably a close blood relative, should be submitted. (pars. 10, 11, and 12).

A naturalized citizen must submit his naturalization certificate or a certified copy thereof. (par. 13).

²¹ *Ibid.*, par. 18. The supporting witness must give a statement to the effect that he is a citizen of the Philippines; that he knows the applicant to be a citizen of the Philippines; that the allegations contained in the application are true to his knowledge and belief; and that he has known the applicant for a definite period of time. If no Filipino citizen is available as witness, an alien known to the issuing office may act as witness.

²² *Ibid.*, par. 19.

²³ Section 4, part B, Ch. XV, Revised Regulations of the Foreign Service of the Philippines (1962). Those members of the different branches of the government to whom diplomatic passports are issued include the following:

- (a) President of the Philippines
- (b) Vice-President of the Philippines
- (c) President and Vice-President-elect
- (d) President of the Senate and Speaker of the House of Representatives
- (e) Chief Justice of the Supreme Court
- (f) Members of the President's Cabinet
- (g) Senators and Representatives, when authorized by the Senate President or Speaker of the House, or by resolution of the legislative body concerned to proceed abroad on official business.
- (h) Associate Justices of the Supreme Court
- (i) Persons having diplomatic status—
 - 1. Delegates to international or regional conferences with full powers
 - 2. Ranking officers of the Department of Foreign Affairs
 - 3. Philippine citizens appointed to positions with the rank of Director General, or higher, in specialized agencies of the United Nations.
- (j) By courtesy to—
 - 1. Former Presidents and Vice-Presidents
 - 2. Former Secretaries of Foreign Affairs and Ambassadors and Ministers (Extraordinary and Plenipotentiary)

ness not of a diplomatic nature. With respect to officials of the legislative branch of the Government, their travel abroad shall be considered official if accordingly endorsed to be of this nature by the Senate President or the Speaker of the House of Representatives. Officials of the judiciary need the endorsement of the Chief Justice and those of the executive department, by the Office of the President.²⁴

Those persons not entitled to diplomatic or special passports are issued regular passports. Included in this category are the passports given to the wife and minor children of a person entitled to a diplomatic or special passport who are not accompanying or following to join him.²⁵ Filipino citizens who apply for passports while abroad are issued service passports which for all practical purposes are the same as regular passports.²⁶

3. Former Presidents of the Senate and Speakers of the House of Representatives

4. Former Chief Justices of the Supreme Court

5. Wife and children of the incumbent President

6. Wife or widow and children of former Presidents

7. Senators and Representatives-elect.

²⁴ Section 5, *ibid.* Special passports are also issued to the following:

(a) Undersecretaries of Departments

(b) Advisers and technical assistants going abroad with persons of diplomatic status

(c) Government pensionados, trainees, or official students, who include the following:

1. Government employees going abroad as pensionados, trainees, and scholars of the Philippine Government;

2. Government employees going abroad on fellowships, scholarships, or traineeships sponsored by foreign entities which were secured on a government to government basis;

3. Government employees going abroad on privately secured fellowships, scholarships and traineeships which are sponsored by foreign entities; if they are on leave with pay; provided however, that if they are on leave without pay, they may be issued special passports when in the opinion of the Secretary of Foreign Affairs and upon recommendation of the head of the Department or Office in which they are employed, the course of study is cognate and important to their work; and

4. Government employees undertaking study abroad through their own private means, if they are on leave with pay. Otherwise, the provision of no. 3 on leave without pay applies.

(d) Employees in Philippine diplomatic and consular establishments and other Philippine government officials stationed abroad and members of their households

(e) Persons in the domestic service of officials having a diplomatic status

(f) By courtesy to Philippine citizens appointed to positions of considerable importance in the United Nations and its specialized agencies . . . , the SEATO and its instrumentalities, and the Boy Scouts International Bureau and similar international bodies.

(g) Non-government officials designated by proper authority to proceed abroad on official business for the Philippine Government, provided all expenses pertinent to their mission shall be borne by the Government.

²⁵ Section 6, *ibid.*

²⁶ Section 7, *ibid.*

What is the period of validity of a regular or service passport? Their original period of validity is limited to not more than two years, renewable only once and for not more than two years.²⁷ When a passport is renewed before the termination of the original period, the extended period shall begin from the expiry date of the original and not on the actual date of renewal.²⁸ However, a passport whose original period had expired is no longer valid and renewable. It may only be renewed upon proper explanation for the failure to renew it on time and for a period of not more than two years from the expiry date of the original period.²⁹

REFUSAL, REVOCATION, CANCELLATION, OR CONFISCATION OF PASSPORTS

Powers of the Secretary of Foreign Affairs relative to passports

The Secretary of Foreign Affairs, under Executive Order No. 1 (1946), has been charged with broad powers relative to passports. He is the only one authorized to grant and issue passports as well as to cause passports to be issued and verified abroad by such diplomatic or consular officers of the Philippines as he shall designate under Executive Order No. 1 and such additional rules and regulations as may subsequently be issued relative thereto.³⁰ He may amend passports already issued or authorize the diplomatic or consular officers of the Philippines abroad to perform the task.³¹

The Secretary or any diplomatic or consular officer duly authorized by him, may, in his discretion, refuse to issue a passport, restrict a passport for use only in certain countries, restrict it against use in certain countries, withdraw or cancel a passport already issued, and withdraw a passport for the purpose of restricting its validity or use in certain countries.³² Furthermore, he may, in his discretion, require an applicant for a passport or for the renewal or amendment thereof, to submit satisfactory evidence of the object of his journey abroad.³³ Finally, he is authorized to prescribe regulations on the subject of issuing, renewing, extending, amending, restricting, or withdrawing a passport, additional to and not inconsis-

²⁷ Section 22, *ibid.* See also par. 21 of Executive Order No. 1.

²⁸ Department Order No. 4-64, dated February 14, 1964, amending the second paragraph of sec. 22, part B, ch. XV of the Revised Foreign Service Regulations (1962).

²⁹ See note 27.

³⁰ Pars. 1-2, Executive Order No. 1 (1946).

³¹ *Ibid.*, par. 20.

³² *Ibid.*, par. 25. This is similar to sec. 124 of Executive Order 7856 (see note 13) issued by President Franklin D. Roosevelt which remains to be the basic presidential regulation concerning American passports (22 C.F.R. 51.75).

³³ *Ibid.*, par. 27.

ent with the rules contained in Executive Order No. 1 (1946).³⁴ These additional regulations are embodied in Part B, Chapter XV of the Revised Regulations of the Foreign Service of the Philippines (1962).

Grounds for refusal to issue a passport

No statute, executive order, or departmental regulation expressly provides for the basis for the non-issuance of a passport. Such grounds may, however, be gathered from the provisions of Executive Order No. 1 (1946), the enumeration contained in the Sworn Statement which a passport applicant must accomplish, and the generally accepted principles of international law.

Under Executive Order No. 1 (1946), a passport will not be issued if the applicant fails to comply with any of the indispensable prerequisites. These include failure to subscribe to and submit a written application duly verified by the applicant's oath;³⁵ failure or refusal to make an oath or affirmation of allegiance to the Republic of the Philippines;³⁶ failure to submit documentary evidence of Philippine citizenship;³⁷ and; failure to submit affidavit of supporting witness.³⁸

Pursuant to Department Order No. 37-62³⁹ issued by then Secretary of Foreign Affairs Emmanuel Pelaez, the National Bureau of Investigation (NBI) clearance theretofore required of passport applicants was dispensed with and in lieu thereof, a Sworn Statement for passport application duly notarized and executed in duplicate was (and still is) required of all applicants before a passport is issued. In said Statement, the applicant swears that there is no administrative, civil or criminal case pending against him in any agency, national or local, or court of justice in the Philippines; that there is no decision or judgment ensuing or which has ensued from any said agency or court of justice in the Philippines against his person or property; that he is not a communist or member of any organization or society whose purpose is to overthrow the Philippine government or any of its instrumentalities; that he has no derogatory record in any office, bureau or agency of the Philippine Government; that he has no pending or outstanding cash advances or obligation due to any of the agencies of the Philippine Government; that while abroad, he shall not go to countries where the travel of Filipinos is banned by the Philippine Government, as indicated on

³⁴ *Ibid.*, par. 28. This is similar to sec. 126 of Executive Order 7856 (22 C.F.R. 51.75).

³⁵ See note 18.

³⁶ See note 19.

³⁷ See note 20.

³⁸ See note 21.

³⁹ Effective December 1, 1962.

the passport issued or to be issued to him; and that in connection with his travel in the places to be visited by him, he shall not attend any Communist or Communist-sponsored conference, convention, or meeting and/or any conference, convention, or meeting, the purpose of which is to overthrow the Philippine Government or any of its instrumentalities, and in case of any doubt on his part as to the nature and purpose of said conference, convention, or meeting, he shall not attend or be present without previous communication with the nearest Philippine diplomatic post abroad.⁴⁰

From the foregoing, we can infer that the existence of any of the situations therein enumerated is ground for refusal to issue a passport since no Sworn Statement can be properly accomplished if any of said conditions is present. However, the existence of these situations does not constitute an absolute ban. They can be surmounted in cases where to allow the issuance of a passport to an applicant despite the existence of one or more of the situations enumerated in the Sworn Statement will not prejudice third persons or the interest of the public. In the words of Department Order No. 37-62:⁴¹

. . . in cases, however, where the Department is informed of serious complaints or charges in courts or administrative bodies against passport applicants, the NBI or other clearances, including a court resolution granting said individuals permission to leave the country, may be required.

The standard procedure in the Department of Foreign Affairs in case of receipt of any derogatory or incriminating information regarding any applicant is to require him to secure a clearance from the government office, bureau or agency of the Philippine Government from which said information issued. No passport is granted until a clearance is obtained.

A passport may also be refused to an applicant who intends to travel to a country or region temporarily declared by the Secretary of Foreign Affairs to be a restricted area because of certain condi-

⁴⁰ In swearing to these statements, the applicant binds himself to observe them and any violation of his declaration will subject his passport to immediate cancellation or confiscation. Furthermore, he shall be liable to immediate repatriation at his expense and to such other action which the Philippine authorities concerned may determine and take in the promises. This is contained in the last paragraph of the Sworn Statement.

Moreover, under par. 26 of Executive Order No. 1, should a person to whom a passport has been issued knowingly use or attempt to use it in violation of the conditions or restrictions contained therein, or of the rules and regulations set forth in Executive Order No. 1, the protection of the Philippines may be withdrawn from him while he continues to reside or travel abroad. (This is similar to sec. 125 of Executive Order 7856 [22 C.F.R. 51.76]).

⁴¹ See note 39.

tions obtaining therein. This is based on the power of the Secretary to restrict a passport against use in certain countries.⁴² Thus, in July 1958, then Secretary of Foreign Affairs Felixberto M. Serrano issued a department order prohibiting the issuance of passports for travel to any country in the Middle East and countries contiguous thereto and discouraging travel to any European country.⁴³ This was in view of the Lebanon crisis. Later in August, another department order was issued revoking Department Order No. 261 and lifting the restriction on travel to Iran, Iraq, Israel, Jordan, Lebanon, Saudi Arabia, Turkey, and the United Arab Republic, and the countries contiguous thereto.⁴⁴

Minors may be denied passports if their natural or legal guardians so request.⁴⁵ Paroled criminals⁴⁶ as well as those who intend to use the passport for a criminal purpose⁴⁷ may be refused passports.

Revocation, cancellation, or confiscation of passport

Violation of the conditions or restrictions contained in the passport as well as of the passport holder's Sworn Statement is a ground for the revocation, cancellation, or confiscation of the passport. This is clearly stated in the last paragraph of the Sworn Statement required to be accomplished by the applicant.⁴⁸

THE RIGHT TO TRAVEL

As early as the year 1899, the freedom of movement has been recognized by Filipinos as one of their cherished rights. In the Constitution of the Malolos Republic is a statement of this right:

No Filipino who is in the full enjoyment of his political and civil rights shall be hindered from going freely from the territory, nor from removing his residence or property to a foreign country, except the obligations of contributing to the military service and the maintenance of the public taxes.⁴⁹

In the present Constitution, there is no provision as specific as that found in the Malolos Constitution. However, instead of one there are two provisions guaranteeing the individual's freedom to travel and

⁴² See note 32.

⁴³ Department Order No. 261 of July 21, 1958.

⁴⁴ Department Order No. 264 of August 28, 1958.

⁴⁵ See note 17. See also Hackworth, *op. cit.*, p. 512.

⁴⁶ Hackworth, *op. cit.*, p. 504.

⁴⁷ *Ibid.*, p. 512.

⁴⁸ See note 40.

⁴⁹ Article 25, title IV, Malolos Constitution (January 21, 1899).

move from place to place: the due process clause⁵⁰ and the provision on liberty of abode.⁵¹ Of the two, the due process clause is more comprehensive since the "liberty" therein guaranteed and protected encompasses the freedom to select one's residence and to move from one place to another.⁵² The right to travel has been rightly said to be a part of that "liberty" of which a citizen cannot be deprived without due process of law.⁵³

Although it is generally accepted that the powers of government cannot be exercised in an arbitrary, capricious, or whimsical manner nor in violation of the individual's rights guaranteed by the Constitution yet it is also admitted that rights are inherently restricted things, their exercise curbed by other rights and restrictions imposed for the general good. How far then can the citizen's right to travel be restricted without infringing upon his constitutional rights? How much "right" can the citizen exercise? As previously mentioned, we are dealing here with the right to travel in only one of its three aspects, i.e., the right to leave the country. This explains the reference to passports which in this country have become necessary and, in most states, indispensable for travel outside the country.⁵⁴

⁵⁰ "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Philippine Constitution, Article III, Section 1 [1]).

⁵¹ "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired." (*Ibid.*, section 1 [4]).

⁵² *Allgeyer v. Louisiana*, 165 U.S. 578. "Liberty includes the right of the citizen to, among others, live and work where he will. . . ." (*Rubi v. Provincial Board of Mindoro*, 39 Phil. 660).

⁵³ *Kent v. Dulles*, 357 U.S. 116; 2 L. ed. 2d 1204; 78 S. Ct. 1113. See also *Dayton v. Dulles*, 254 F. 2d 71.

⁵⁴ "A British passport does not confer upon its holder any legal right to enter or leave the realm. Since the writ of *ne exeat regno* became obsolete, if he is a British subject he is entitled at common law to do so, whether he has a passport or not, except in so far as his rights may have been taken away temporarily by statutory regulation." (*Freedom to Travel*, Report of the Special Committee to Study Passport Procedures of the Association of the Bar of the City of New York, 1958, p. 96).

"A passport is required of all Canadians seeking to go abroad except those who are traveling to the United States." (*Freedom to Travel*, p. 93).

"A French passport is defined as the official document issued by the French Government to its nationals to permit them to travel beyond the frontiers of France under the surveillance of the police and the protection of the consulates established abroad." (*Freedom to Travel*, p. 94).

"Everyone has the right to enter and leave the Republic, to travel through its territory, and to change his residence without the necessity of a letter of security, passport, safe conduct, or other similar requirements. The exercise of this right shall be subordinated to the powers of the judiciary, in cases of criminal or civil responsibility, and the executive, with respect to the limitations which may be imposed by the laws in regard to emigration, immigration, the public health or in regard to undesirable aliens resident in the country." (Article II of the Constitution of the United States of Mexico, January 31, 1917, as amended on November 5, 1942).

Present laws and regulations of the United States make it a crime for a

In the denial or revocation of a passport, due process must be observed. This means that there must be notice to the parties, opportunity to be heard, an impartial and competent tribunal, board or officer, and an orderly procedure adapted to the nature of the case.⁵⁵ In the only Philippine case involving the cancellation of a passport, the Supreme Court citing section 25 of Executive Order No. 1 (1946),⁵⁶ declared that "the discretion granted to the Secretary of Foreign Affairs to withdraw or cancel a passport already issued may not be exercised at whim."⁵⁷ Considering the particular facts of the case, the Court held that:

. . . a hearing would have been proper and necessary if the withdrawal or cancellation of the passport were not clear but doubtful. But where the holder of the passport is facing a criminal charge in our courts and left the country to evade criminal prosecution, the Secretary of Foreign Affairs in the exercise of his discretion to revoke a passport already issued, cannot be held to have acted whimsically or capriciously in withdrawing and cancelling such passport. Due process does not necessarily mean or require a hearing.⁵⁸

Observance of procedure is not only on the government's part but also on the part of the applicant's and where the rules are reasonable and just, they must be followed. Thus, where plaintiff was tentatively refused a passport because of receipt of information that he was a communist under regulations barring, among others, issuance of passports to members of the Communist Party and plaintiff failed to file an affidavit in response to such suggestion, he did not qualify himself for a passport under such regulations, and will not entitle him to a court order directing the Secretary of State to issue the same.⁵⁹

United States citizen to travel outside the Western Hemisphere or to Cuba without a passport. (*Aptheker, et al. v. Secretary of State*, 84 S. Ct. 1659 [1964]).

⁵⁵ In the case of *Ang Tibay v. The Court of Industrial Relations*, 69 Phil. 645 (1940), the Supreme Court enumerated the "cardinal primary rights" which must be respected in administrative proceedings. Among them are the following: (1) the right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (2) the tribunal, board, or officer must consider the evidence presented; (3) while the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision; (4) not only must there be some evidence to support a finding or conclusion but the evidence must be substantial; (5) the decision must be rendered on the evidence presented at the hearing, or at last contained in the record and disclosed to the parties affected; and, (6) the tribunal, board, or officer should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered.

⁵⁶ See note 32.

⁵⁷ *Suntay v. People*, 54 O.G. No. 6, 1796.

⁵⁸ *Ibid.*

⁵⁹ *Briehl v. Dulles*, 248 F. 2d 561.

Under Philippine passport regulations, the passport applicant is required, *inter alia*, to swear to the fact that he is not a communist or a member of any organization or society whose purpose is to overthrow the Philippine government or any of its instrumentalities. Failure to make the required Sworn Statement is a ground for refusal to issue a passport. If the Department of Foreign Affairs receives information concerning the alleged communist membership of an applicant, he is referred to the particular government agency, office or bureau for clearance. This is in view of the provisions of the Anti-Subversion Act ⁶⁰ which outlaws the Communist Party and similar associations and penalizing membership therein.

In order to give the applicant a chance to answer and rebut adverse information against him, he should be granted the opportunity to examine the evidence against him. This may involve the disclosure of confidential reports of investigation by the security agencies of the government. However, as a general proposition, the applicant is entitled to a revelation of the factual findings on the basis of which he is being denied a passport or for which reason his passport is being cancelled or revoked.⁶¹ To hold otherwise is to violate the guarantees of due process.⁶² As was held by the court in the case of *Boudin v. Dulles*:

To facilitate tasks of courts in dealing with question of Secretary's use of confidential information, the Secretary of State, upon refusing a passport, should state whether his findings are based on evidence openly produced or, in whole or in material part, on secret information, and, in the latter case, should explain with such particularity as circumstances permit the nature of reasons why such information may not be disclosed.⁶³

It is here implied that for reasons which the court may deem just and reasonable, some information may not be revealed. What these reasons are depends on the facts of each case. Perhaps one justifiable ground would be a case where presentation of the evidence would lead to the disclosure of the information-gathering process thereby endangering the life or putting to naught the efforts of the security agent of the government. In cases like this, the court has to strike a balance between the need of safeguarding the constitu-

⁶⁰ Republic Act 1700 (June 20, 1957).

⁶¹ *Boudin v. Dulles*, 235 F. 2d 532.

⁶² The purpose of requiring reasons for action by administrative agencies to be given "has to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review, and keeping agencies within their jurisdiction." (Davis, *Administrative Law* 527 (1951) cited in *Passport Administration and the Courts* by James D. Barnett, *Oregon Law Review*, vol. 32, no. 3, April 1953, p. 207).

⁶³ *Ibid.*, p. 533.

tional rights of the individual and the necessity of preserving the secrecy of the operations of the anti-subversive agencies of the government.

Relevant to the question of disclosure or non-disclosure, in whole or in part, of derogatory reports is the sufficiency or substantiality of the grounds for denial or revocation. A denial on the ground that the issuance of a passport would be contrary to the "best interests" of the issuing country has been held to be insufficient.⁶⁴ The authority to issue passports necessarily implies authority also to regulate their use and to withdraw them but these can only be done within constitutional limits. While it is true that the conduct of foreign affairs is a political matter within the discretion of the executive and legislative branches of the government, and that the courts recognize the plenary power of the President and of Congress, singly or in combination, to perform acts peculiarly within the realm of political affairs without judicial interference, there is, however, the recognized limitation on the power of the political departments of the government that their act must be within the Constitution and not in conflict with any provision thereof.⁶⁵ As was held by the Court in *Shactman v. Dulles*:

. . . a passport is not merely a political document and its issuance is not a purely political matter within rule that purely political matters are non-justiciable.⁶⁶

The requirement of sufficiency or substantiality is imposed by the comprehensive scope of the due process clause to the end that the applicant may be informed of the particular grounds for the non-issuance or revocation of passport. The nebulous nature of a denial or cancellation based on the "best interests" of the issuing country detracts from the applicant's right to contest the decision of the issuing officer. With the requisite that the basis for any decision with respect to the non-issuance or revocation of a passport be specified or stated with particularity, the possibility of arbitrary action on the part of passport officials may be obviated.

Restriction of passport against use in certain countries

Travel by Filipinos to fifteen countries is banned by the Philippine Government. Stamped on the passport of the Filipino traveller is a statement which reads:

This passport is not valid for travel to the following countries: Russia, Poland, Estonia, Latvia, Lithuania, Czechoslovakia, Rumania, Hungary,

⁶⁴ *Bauer v. Acheson*, 106 F. Supp. 445; *Shactman v. Dulles*, 225 F. 2d 938.

⁶⁵ *Bauer v. Acheson*, *supra*, p. 449.

⁶⁶ *Shactman v. Dulles*, *supra*, *loc. cit.*

Yugoslavia, Albania, Bulgaria, and the Communist-controlled territories of China, Germany, Korea and Vietnam.

The American passport contains a similar restriction against use of the passport for travel to five named areas under control of authorities with which the United States does not have diplomatic relations including the portions of China, Korea, and Vietnam under communist control, and also a restriction against travel in Hungary.⁶⁷

This restriction on the Filipino's right to travel has been justified by passport officials on the ground that they are merely implementing the Government's staunch anti-Communist posture, and until that policy is changed there appears to be no possibility of relaxing or even totally eliminating these restrictions. As a consequence of our Government's policy, there has been established what one writer has termed a "paper curtain",⁶⁸ a comparatively minor but nonetheless significant barrier to freedom of movement, communication, and commerce.

Our Supreme Court has made no pronouncements as yet on this matter and neither has the American Supreme Court. However, the United States Appellate District Court, in the case of *Worthy v. Herter*,⁶⁹ decided this point in favor of the government's policy. The case involved William Worthy, Jr., a newspaperman. In 1957, he applied for renewal of a passport originally issued to him in 1955. The passport contains the restrictions which have been mentioned before. After various proceedings, Worthy was asked whether he would make a commitment to abide the restrictions. He declined to do so and the renewal was refused. The background for the refusal was that when the passport was originally issued it contained the same restrictions but Worthy nevertheless travelled extensively in both Communist China and Hungary. The refusal of the passport rested in no part upon Worthy's personal beliefs, writings or character. "It was an application of the Secretary of State's general policy of refusing government sanction to travel by United States citizens in certain areas of the world presently under Communist control and deemed by him to be troubled spots."⁷⁰ In reaching this finding, the Court declared that this is not a case in which the Secretary has proposed a restriction upon a passport for reasons of internal security, i.e., protection against internal subversion, but a case

⁶⁷ *Worthy v. Herter*, 270 F. 2d 905, 907.

⁶⁸ Pacifico Agabin, *The Paper Curtain*, Philippine Law Journal, vol. 34, September 1959, pp. 500-513.

⁶⁹ *Worthy v. Herter*, *supra*, 260 F. 2d 905 (1959) cert. den.; 361 U.S. 918; 80 S. Ct. 255; 4 L. ed. 2d 186.

⁷⁰ *Ibid.*, p. 907.

involving political and military conditions in certain areas of the globe. The designation of certain areas of the world as forbidden to American travellers falls within the power of the Chief Executive to conduct foreign affairs with respect to which he has power of action being "the nation's organ in and for foreign affairs."⁷¹

The Court admitted that the right to travel is part of the right to liberty, and a newspaperman's right to travel is a part of the freedom of the press. However, merely because a newsman has a right to travel does not mean he can go wherever he wishes. "A newsman's freedom to travel about is a restricted thing, subject to myriad limitations."⁷² Neither can the prohibition on travel to certain designated areas be construed as tantamount to wrongful imprisonment of the citizen.⁷³ He can still enter and leave the country for whatever place he wants to go except those where travel is prohibited.

In this case, the Court refused to review the merits of the government's policy, in effect considering it a political question within the exclusive cognizance of the political organs of the government and beyond the ambit of judicial review. A more definitive holding could have been had if the United States Supreme Court accepted the case for review but, unfortunately, for those who want the question settled, it did not.

CONCLUSION

A citizen's right to travel is a constitutionally protected right. But it is a right to be exercised within the context of a social organization and, therefore, it may be subjected to reasonable regulations and prohibitions imposed in the interest of the community. While the Constitution protects against invasions of individual rights, it is not a "suicide pact."⁷⁴ Whether the restrictions imposed by the government on this right are consistent with the liberty guaranteed in the due process clause is for the courts to decide considering the circumstances of each particular case.⁷⁵ When a person is denied a passport the most desirable remedy is, of course, mandamus but it will not issue to compel the performance of discretionary acts. The frustrated applicant may have recourse to the administrative reme-

⁷¹ *Ibid.*, p. 911.

⁷² *Ibid.*, p. 908.

⁷³ *Ibid.*, p. 913.

⁷⁴ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160.

⁷⁵ "In English municipal law, the right to issue passports is part of the prerogative of the Crown. No person, whether subject or alien is entitled as of right to demand a passport; and no subject has any remedy if a passport is refused to him." (*Freedom to Travel*, see note 54, p. 96).

dies that may be provided⁷⁶ but when, as in the Philippines, there is none then the courts are his only refuge from what may appear to him unjustifiable and unreasonable acts of passport officials.

The American Supreme Court has enunciated certain principles which our courts may profitably use in the resolution of questions involving this particular form of Government restriction. In one case it stated:

. . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.⁷⁷

This was reiterated in a later case when the Court declared:

. . . a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.⁷⁸

Keeping these principles in mind and considering that constitutional guarantees of the rights of citizens are to be literally construed to prevent selfish encroachment upon, or a gradual depreciation of, the rights secured by them,⁷⁹ it may validly be asked whether our Government's restrictions on the right to travel, particularly the prohibition against use of the passport for travel in certain countries of a different ideology, do not "sweep unnecessarily broadly." Adjudication of the matter may involve passing judgment on the Government's policy and our courts face a formidable but not necessarily impenetrable obstacle in the doctrine of political questions.⁸⁰ An

"In Canada, the issuance or denial of a passport is a royal prerogative, within the sole discretion of the Minister for External Affairs. In case of an adverse decision, there remains for the applicant no appeal to a board of passport appeals and to the federal courts, as in the United States. The only recourse of a claimant is to appeal to a member of the Canadian legislature who may, if he sees fit, intercede for him." (*Freedom to Travel*, p. 93).

"In France, absolute power over the issuance and denial of passports is reposed in the police prefectures, without possibility of appeal to any court. No law or regulation obliges the administration to issue a passport. A prefect, by virtue of his police power, can always reject an application or withdraw a passport without interference from the judiciary." (*Freedom to Travel*, p. 95).

"In Mexico, in rare cases when a passport is denied, an appeal is provided for to the High Court in the Federal District." (*Freedom to Travel*, p. 98).

⁷⁶ In the United States, a Board of Passport Appeals is provided to which the applicant may appeal the denial. Appeal to the Secretary of State is also available.

⁷⁷ *Shelton v. Tucker*, 364 U.S. 479, 488; 81 S. Ct. 247, 252.

⁷⁸ *NAACP v. Alabama*, 84 S. Ct. 1302, 1314.

⁷⁹ *Alvarez v. CFI of Tayabas*, 64 Phil. 33.

⁸⁰ In *Tañada, et al. v. Cuenco, et al.* (G.R. No. L-10520, February 28, 1957), the Philippine Supreme Court defined the term "political question" in these words: "In short, the term political question' connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words,

opening in the wall is needed and this might be provided by the fact that there is no definitive statutory basis for most of the grounds for non-issuance or revocation of a passport. Those found in the Sworn Statement are not provided for by statute or even by an executive order. It may be observed, too, that our laws do not provide for penal sanctions for violations of passport conditions.

Whatever course our courts may take, it is well to remember that the powers of government must be so exercised as not, in attaining a permissible end, unduly to infringe a constitutionally protected freedom. As Justice William O. Douglas stated in his concurring opinion in the case of *Aptheker, et al. v. The Secretary of State*:⁸¹

Freedom of movement, home and abroad, is important for job and business opportunities—for all the commingling which gregarious man enjoys. Those with the right of free movement use it at times for mischievous purposes. But that is true of many liberties we enjoy. We nevertheless place our faith in them, and against restraint, knowing that the risk of abusing liberty so as to give rise to punishable conduct is part of the price we pay for this free society.

. . . it refers to 'those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government.' It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."

⁸¹ 84 S. Ct. 1659, 1671.