



DEPARTMENT OF EDUCATION
Region X- Northern Mindanao
DIVISION OF MALAYBALAY CITY

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DIVISION ADVISORY

2016-12-15
Deped-MALAYBALAY CITY DIVISION
RELEASED

Date: DEC 09 2016 Time: 2:10
By: [Signature]

TO : Chief Education Supervisor and Staff, CID and SOCD
Public Schools District Supervisors
School Heads (Elementary and Secondary)
Section/Unit Heads and Staff
All others Concerned

FROM : *[Signature]*
EDILBERTO L. OPLENARIA, CESO VI
OIC-Schools Division Superintendent # 9

DATE : November 29, 2016

SUBJECT : Dissemination of CSC NOTICE OF DECISION promulgated on
January 20, 2016 Decision No. 16-0154 on NGO, Marc Andrew
Richard B re Grave Misconduct; Conduct Prejudicial to the Best
Interest of the Service (Appeal) (D-2015-07048)

For the information and guidance of all concerned, this Office hereby disseminates the herein letter from the Office of Civil Service Commission, Regional Office No. 10 re: CSC NOTICE OF DECISION promulgated on January 20, 2016 Decision No. 16-0154 on NGO, Marc Andrew Richard B re Grave Misconduct; Conduct Prejudicial to the Best Interest of the Service (Appeal) (D-2015-07048).

For widest dissemination.

Encl:

As stated

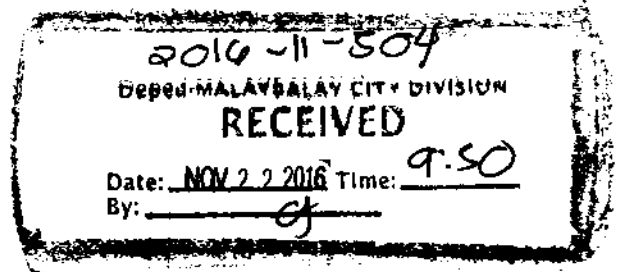
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Personnel Unit
Records Unit

TO BE POSTED ON THE WEBSITE



REGIONAL OFFICE NO. 10



October 28, 2016

Dr. EDILBERTO L. OPLENARIA, CESO VI
Schools Division Superintendent
Department of Education, Division of Malaybalay City
Malaybalay City, Bukidnon

Dear **Superintendent Oplenaria**:

We are providing that office a machine copy of the CSC NOTICE OF DECISION promulgated on January 20, 2016 Decision No. 16-0154 on NGO, Marc Andrew Richard B re Grave Misconduct; Conduct Prejudicial to the Best Interest of the Service (Appeal) (D-2015-07048).

For information dissemination to the employees under your authority.

Thank you.

Very truly yours,

ADAMS D. TORRES
Director IV

NGO, Marc Andrew Richard B.
Re: Grave Misconduct;
Conduct Prejudicial to the
Best Interest of the Service
(Appeal)
(D-2015-07048)

Number: 160154

Promulgated: 20 JAN 2016

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DECISION

Marc Andrew Richard B. Ngo, Immigration Officer I, Bureau of Immigration (BI), Intramuros, Manila, through counsel, files an appeal from the Resolution dated February 27, 2015 of the Bureau of Immigration (BI), Manila, denying his Motion for Reconsideration of its Decision dated December 12, 2013 finding him guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from the service together with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking Civil Service examinations.

Pertinent portions of Decision dated December 12, 2013 of the BI read, as follows:

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"Under the guise of efficient and expedient service, Ngo cleared departure (sic) 17 Chinese passengers without requiring their physical appearance. Nothing on record exempted the physical presence of the 17 Chinese passengers, for, Ngo's mandatory inspection. As a result, Ngo prematurely cleared 17 Chinese passengers without complying with: (i) Emigration Clearance Certificate requirements; and (ii) Hold-departure, watch-list and blacklist requirements.

"By prematurely clearing 17 Chinese passengers, Ngo failed to: (i) Examine and verify the passenger's identity, travel documents and pre-departure documentation requirements; (ii) Notify appropriate government or law enforcement agencies concerned of the departure of the passengers; (iii) Disallow departure to passengers with military and/or civilian law-enforcement issues.

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SEYMOUR R. PAJARES
Chief Personnel Specialist
Commission Secretary & Liaison Office

In a R. A. C. E. to Serve: Responsive, Accessible, Courteous and Effective Public Service



NGO, Marc Andrew Richard B.
Re: Grave Misconduct;
Conduct Prejudicial to the
Best Interest of the Service
(Appeal)
(D-2015-07048)

X-----X

NOTICE OF DECISION

Sir/Madam:

The Commission promulgated on January 20, 2016 Decision 16-0154 on the above-cited case, copy attached. Its original is on file with this Commission.

January 22, 2016

Very truly yours,

DOLORES B. BONIFACIO

Director IV

Commission Secretariat and Liaison Office

Copy furnished

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1120 Quezon City

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Bureau of Immigration
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Secretary Alfredo Benjamin Caguina
Department of Justice
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Civil Service Commission-National Capital Region
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Atty. Donn Rico G. Kapunan

RELEASED

Date:

JAN 29 2016

In a R. A. C. I. to Serve: Responsive, Accessible, Courteous and Effective Public Service

"We view with serious concern Ngo's transgressions and willful, manifest disregard to established immigration departure formalities. Significantly, we find unacceptable Ngo's exempting without any lawful basis 17 Chinese passengers from mandatory departure requirements.

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"The unmindful actions of Ngo to discharge without legal authority 17 Chinese passengers from mandatory departure formalities effectively: (i) Erodes public faith on the image and integrity of this Bureau and (ii) Poses unnecessary risks to public interest.

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"In view, of clear, convincing and unequivocal evidence, we find Atty. Marc Andrew Richard B. Ngo, Immigration Officer 1, GUILTY of the first offense of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. And consistent with RRACCS, Rule 10, Secs. 43(A) (3), 51(A) and 52(A), we impose the penalty of DISMISSAL FROM THE SERVICE including PERMANENT SEPARATION FROM THE SERVICE, CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, PERPETUAL DISQUALIFICATION FROM HOLDING PUBLIC OFFICE AND BAR FROM TAKING CIVIL SERVICE EXAMINATIONS, without prejudice to criminal or civil liability."

In his appeal, Ngo represents, thus:

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"1. THE ISSUED DECISION AND THE RESOLUTION WERE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

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"On the allegation that appellant did not require the presence of passengers of Dragon Air flight No. KA376 bound for Hongkong:

"It is reiterated that during the said incident, the subject passengers are in the departure area and within the view of the appellant. The said passengers, who cannot understand and speak the English language, were already busy and hastily paying the required fees and taxes and filling up information on their embarkation cards as Dragon Air flight KA376 is about to close its counter. These facts were not contravened by the Prosecution.


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"Hence, the allegation that appellant did not require the presence of the passengers was NOT TRUE. It also bears stressing that on that fateful day of June 24, 2012 when the incident happened: (1) three (3) overlapping flights were simultaneously being processed for departures; (2) there were only few Immigration Officers on duty and; (3) the airline requested the Immigration to extend necessary assistance to the passengers as they are the last to board and their flight is already on final boarding call.

"The assailed BID Decision stated: 'It is undisputed that they cleared the subject passengers without conducting the prescribed departure formalities. It was specifically pointed out that Ngo and Limjap processed the documents given by former Confidential Agent Macdon even without the presence of passengers. Appellant was charged for failure to conduct primary inspection to the subject Passengers.

"The Decision, however, failed to define 'primary inspection'. In Administrative Order No. 1, Immigration Rules and Regulations of January 1, 1947, it was specified what constitutes 'primary inspection', to wit 'Subdivision B-Primary Inspection Immigrant inspectors shall perform the examination of aliens concerning their right to enter or remain in the Philippines, with the advice of medical authorities in appropriate cases. They shall require all incoming aliens to present proper travel documents. A passport or other travel document must be valid for the alien's entry into some country other than the Philippines for a period of at least 60 days beyond the length of time during which he desires to remain in the Philippines unless he is in possession of some additional official documents which is so valid.'

"Clearly, under the governing rules, 'primary inspection' refers to the examination of the alien and their travel documents at the time of their entry into the Philippines. The rule did not mention that 'primary inspection' covered departure of the aliens or foreign nationals from the country. Since, the subject passengers departed from the Philippines, the rule on primary inspection will not apply. The Bureau of Immigration, probably finding that failure to conduct 'primary inspection' cannot be imputed to appellant thus it attributed to appellant the failure to conduct the 'prescribed departure formalities' on the subject passengers and denominated the same as constituting the administrative offense of 'grave misconduct'.

"Appellant humbly submits that in order to charge appellant of violating the prescribed departure formalities, it must first establish the 'prescribed departure formalities' and the basis for stating so.

"A careful scrutiny of the Decision will reveal that the Decision failed to state these 'prescribed departure formalities' nor provide for the basis for the same. Appellant was not confronted with any rules or administrative memorandum circulars or orders from BID prescribing what constitutes departure formalities. Nonetheless, even assuming that the same is a misconduct or a transgression of office rules, the offense imputed to appellant is not that grave so as to constitute grave misconduct.


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"However, notwithstanding the failure of the Honorable Commissioner to provide the 'prescribed departure formalities', it is likewise uncontroverted that the appellant performed the following actions before clearing the subject passengers for departure:

'(1) examination of passengers' passports; (2) check the profile and the names of the passengers for derogatory records; and (3) examination of the passengers authorized stay, visa extensions as stamped in their passports and ECC's.'

"Furthermore, the fact that the immigration officer-in-charge was able to identify the passengers processed by appellant clearly proves that the latter examined the passports of the subject passengers and entered their information in the BCIS. Otherwise, there will be no basis who among the on-duty immigration officers processed the departure of the 73 passengers. The decision failed to controvert these facts.


"On the allegation that five (5) of the said passengers, who are nationals of China, had no record of extension of stay:

"The principal evidence of the prosecution, as appreciated by the Honorable Commissioner against the appellant is the certification by Mr. Jesus Bunag Alien Control Officer of Clark District Office certifying that the above-named nationals have no record of extension. But the BID failed to take into consideration that Mr. Bunag only certified that the only said passengers did not apply for visa extensions in CLARK DISTRICT OFFICE.

"The Certification from Mr. Bunag is not sufficient to prove that the passengers did not apply for visa extensions because the said passengers could have applied for visa extensions in any of the District Offices, satellite offices or even in the main office of the Bureau of Immigration. It cannot be disputed that foreign nationals may extend their stay with the main office of the Bureau of Immigration, its district offices and satellite offices. However, there was no certification from the main office as well as from OTHER of the district offices and satellite offices of the Bureau of Immigration that the subject passengers did not apply for visa extensions.

"With all due respect, it is wrong of the BID to automatically assume that a foreign national will extend his authorized stay in the Bureau's Immigration office which is nearest to the office where he will depart. It is hereby pointed out that the said Chinese nationals may have departed from the DMIA because of the low fares the airlines using the DMIA are offering but they may have stayed in one of the hotels in Metro Manila. Thus, it is not beyond the realm of possibilities that they may have extended their stay in the Bureau of Immigration main office or the satellite offices located in Metro Manila. Considering this, the said certification is insufficient to prove the five passengers did not apply for visa extensions.

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"On the allegation that the above-named passengers did not show the proof that corresponding receipts were issued to them and were not required to pay the appropriate fees:

"It is reiterated that it is not within the mandate to the immigration officer to demand for a receipt of the extension fees if the visa extensions is apparently regular on its face. In case of doubt on the visa stamped on the passport page, the duty of the Immigration Officer is to refer the matter to the immediate supervisor and thereafter to the anti-fraud division and not to demand for a receipt. Further, the BID failed to specify any memorandum, rule or regulation which states that official receipt should be exhibited to the immigration officer upon the foreign national's departure.

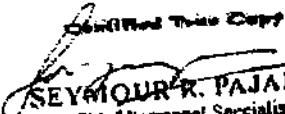
"On the allegation that the passengers Zhang Changzeng and Shi Hongmiao passed through the immigration area without their travel being encoded in the computer

"This is utterly false. Appellant has already emphasized that he was not the one who processed the departure of passengers Zhang Changzeng and Shi Hongmiao. There was nothing on record that appellant processed the departure of those two passengers. It was alleged by the BID that among the 73 passengers on board, 2 passengers had no departure record on CQSS and BCIS. As stated in the Abrazuldo's report, there are 73 passengers and only 16 passengers were processed by Respondent-appellant and Limjap. Thus, the 57 passengers have been processed by the other Immigration Officers on duty at that time. Hence, it is wrong to assume such that appellant and Limjap processed the 16 passengers from the total of 73 passengers. They are the one liable for processing the other two passengers whose departure records were not entered in the CQSS and BCIS.

"Half of the passengers were not even processed by the appellant. Hence, this is another unsupported conclusion that, with due respect, the BID made against appellant.

"On the allegation of lack of ECC, it is clear that this was not even alleged in the Formal Charge, hence with due respect it was a grave mistake to even discuss the same in the assailed Decision of appreciate the same as evidence against appellant.

"IL. EVEN ASSUMING THAT APPELLANT IS GUILTY OF AN ASCRIBED OFFENSE, THE SAME DOES NOT CONSTITUTE GRAVE MISCONDUCT AS THE PENALTY IMPOSED IS CLEARLY NOT COMMENSURATE TO THE

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**ALLEGED WRONGFUL
ACTS.**

"A long line of cases has defined misconduct as a transgression of some established and definite rule of action more particularly unlawful behavior or gross negligence by the public office. Jurisprudence has likewise firmly established that the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard established rules, which must be proved by substantial evidence.

"In the case at bar, the element of corruption is conspicuously absent that would qualify appellant's offense as grave in character, thus warranting dismissal from the service.

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"Examined from the parameters laid down by the Supreme Court, appellant did not commit grave misconduct. Further, the BID failed to allege and establish that appellant was motivated by corruption or that there was willful intent to violate the law or to disregard established rules.

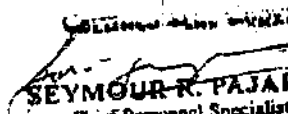
"On the contrary, appellant performed his duties and responsibilities by examining the passports of the said passengers and checking their names for derogatory records. Moreover, through the passenger's passports, appellant was also able to determine that the subject passengers have proper visa extensions.

"A careful scrutiny of the assailed decision would show that the same was principally based on conjectures and surmises. No substantial evidence was adduced to prove the elements of 'corruption,' 'clear intent to violate the law' or 'flagrant disregard of established rule' that must be present to characterize the misconduct as grave. Neither was there any evidence that appellant used his position to procure benefit for himself to another or that the same constitutes a crime.

"To be sure, the assailed decision did not simply take away the opportunity from the appellant to work in the Bureau of Immigration but the said decision also took away from the appellant the opportunity to work in any government institutions by disqualifying appellant from taking future civil service examinations, cancelling his civil service eligibility and perpetually barring him from holding public office. To say that such consequence is very harsh is an understatement

"Hence, at the very least, a Decision with grave consequences like this should be supported by substantial evidence, which sadly was not present at all in the case at bar.

"Moreover, prescinding from the acts and omissions cited by the High Court as constituting conduct prejudicial to the best interest of the service, it is clear that the willfulness or deliberate intention to commit a wrong was not present in the instant case, the actions of appellant were motivated by lack of malice.


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"In the case at bar, the assailed decision failed to prove any aggravating circumstances that would qualify appellant's offense to grave misconduct.

"It is likewise noteworthy to emphasize that in appellant's more than ten (10) years of service as an employee of the Bureau of Immigration, he has never been charged criminally or administratively. Neither has appellant been implicated in any corruption-related issues or offenses including bribery or malversation, or worse, human-trafficking. Thus, even assuming arguendo that appellant is guilty of misconduct, the penalty of dismissal is harsh and is not commensurate to the transgression allegedly committed considering that appellant's actions did not cause any damage or injury to the State or to any third persons and more importantly it is the first time that appellant had ever been charged of a particular transgression."

The facts of the case as borne by the records shows that:

Ngo is an immigration Officer (IO) assigned at the Diosdado Macapagal International Airport (DMIA), Clark Freeport Zone, Pampanga. On July 1, 2012, there were seventeen (17) passengers who boarded Dragon Air Flight No. KA 376 bound for Hong Kong. The ground crew of said airline company requested immigration officials to extend them assistance as they are the last to board and their flight was already on final call. Thus, Rolando Macdon, Confidential Agent, B1, collected the passport and travel documents of some of the Chinese national passengers and requested the immigration supervisor on-duty to assist in processing/clearing them. The supervisor on-duty acceded to the request. Thereafter, Macdon transmitted said documents for processing to Immigration Officer Ngo. The plane departed but B1 found some discrepancies and irregularities in the departure of some of the passengers of said flight. Two (2) of the passengers have similar Emigration Clearance Certificate (ECC). Preliminary investigation was conducted, and on August 10, 2012, Ngo was formally charged, as follows:

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"After a preliminary investigation, this Office finds a prima facie case against you, Andrew B. Richard Ngo, Immigration Officer I, for the administrative charges of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service pursuant to Sections 46 A 3 and B 8, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service committed as follows:

"On or about July 1, 2012, you processed a number of passports of passengers of Dragon Air flight number KA376 bound for Hongkong. You did not require the presence of the said passengers. You did not conduct the necessary primary inspection.

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Handwritten signature: Seymour R. Pajares
SEYMOUR R. PAJARES
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Commission Secretariat & Liaison Office

'On or about July 1, 2012, you allowed certain Chinese passengers to leave the country without conducting any departure formalities. Their names are, as follows:

- '1. Wu Shi Yu Chen*
- '2. Liu Quichoo*
- '3. Wu Di*
- '4. Fan Yancong*
- '5. Coi Shonshon*
- '6. Jin Jionyu*
- '7. Huang Tooton*
- '8. Chen Jiqohuo*
- '9. Wu We' rjie*
- '10. Tong Yontoo*
- '11. Chen Xioohuo*
- '12. Chen Kunqion*
- '13. Zhong Jionli*
- '14. Coi Dongyong*
- '15. Lion Huoon*
- '16. Coi Aqing*
- '17. Chen Pingping*

'You did not require their presence or personal appearances when you processed their passports which were just handed to you by former Confidential Agent Rolando L. Macdon. They just stayed at the departure lobby of the DMIA and were on stand-by while their passports were being processed. Afterwards, they were ushered to the departure immigration area with the assistance of Macdon and an airline representative. They passed through the Immigration counters and went straight to the preboarding area without having been subjected to the usual primary inspection.'

In his answer, Ngo represented that there were overlapping flights that day, and they were burdened by a number of passengers. Considering that their supervisor-on-duty agreed to extend assistance to the passengers of said flight, he thought that it was a collective effort of the immigration officers-on-duty that time to facilitate immediate processing of the passengers travel documents. He further stated that the incident took place few minutes before the last boarding call and while he did not require the passengers to present themselves in front of him, they were in his clear view and he was able to check their profiles, derogatory records, and payment of travel fees and taxes. That upon checking the passports of subject passengers, all of them have visa extensions stamped thereon which are regular on their face. As regards the alleged non-encoding of entries for the two (2) passengers, Ngo represents he is not to be blamed for that, as there were other BI personnel who are also assigned during that period.

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On December 12, 2013, BI issued the herein above-quoted assailed Decision. Thereafter, Ngo moved for its reconsideration. On January 28, 2014, the same was denied. The same was confirmed by former DOJ Secretary Leila M. De Lima on February 27, 2015.

Hence, this appeal.

The issue for resolution is whether the findings of the BI that Ngo is guilty of Grave Misconduct is in order.

It may be recalled that Ngo was also previously charged with the offense of Conduct Prejudicial to the Best Interest of the Service and Grave Misconduct and was found guilty by BI. The factual circumstance of said case is similar to the case at bar, but the incident transpired on different dates. He appealed the same before the Commission and in the Decision dated 150266 dated May 6, 2015, the Commission partly granted his appeal finding him guilty of the lower offense of Simple Misconduct which downgraded the penalty from dismissal to one (1) year suspension from the service, to wit:

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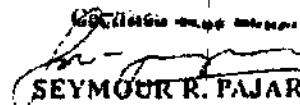
"WHEREFORE, the appeal of Andrew Richard B. Ngo, Immigration Officer I, Bureau of Immigration (BI), Intramuros, Manila, is PARTLY GRANTED. Accordingly, the Decision dated October 8, 2013 of the Bureau of Immigration finding him guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service is MODIFIED. Ngo is hereby found guilty of Conduct Prejudicial to the Best Interest of the Service and Simple Misconduct and the penalty one (1) year suspension is imposed upon him. The BI is hereby directed to reinstate Ngo the moment he has fully served the one (1) year suspension."

Inasmuch as the factual circumstance of this case is similar with the case which Ngo was previously charged with and found liable of, the Commission will dispose the same accordingly.

At the outset, it must be emphasized that substantial evidence is the required quantum of proof for an administrative disciplinary action to be sustained. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. While substantial evidence does not require that the evidence be overwhelming it must, however, be more than a mere scintilla of evidence. This is so because findings in administrative disciplinary cases must be supported by relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.²

¹ Section 5, Rule 133 of the Rules of Court

² Dadulo vs. C.A., G.R. No. 175451, April 13, 2007


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Misconduct has been defined as a transgression of an established and definite rule of action, which is the essence of misconduct³. However, in order to qualify the acts as grave and thus warrant dismissal from the service, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest⁴.

After a review of the arguments raised and the evidence proffered, the Commission finds that elements of corruption, clear intent to violate the law or flagrant disregard of an established rule were not substantially established in this case. There is nothing in the records nor has the prosecution proven that the incident was tainted with corruption. It is likewise not manifested that Ngo flagrantly disregarded any established rule of action in performing his task. In fact, BI from the inception of the case, failed to apprise the respondent what specific BI rules have been transgressed. The formal charge simply states, without defining what rules have been violated, that Ngo allowed certain Chinese passengers to leave the country without conducting any departure formalities. In the same manner, the decision just stated that Ngo prematurely cleared seventeen (17) Chinese passengers. On how the circumstances attended the commission of misconduct, warranting its modification into grave one, the record and the Decision is silent. In the case of **MANUEL, Elizabeth C. Re: Grave Misconduct; Serious Dishonesty (Appeal)**⁵ the Commission ratiocinated, as follows:

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"It must be emphasized at this point that for an act to constitute the administrative offense of Grave Misconduct, it must be shown that the public servant intentionally committed a wrongdoing or deliberately violated a rule of law or standard of behavior. It must be shown too, however, that the law, rule, or standard of behavior violated must have been crafted and made known in an unambiguous manner. Under the circumstances present in the case at bar, the Commission is convinced that there was no transgression on the part of Manuel when she allowed Robotech students to attend discussions and trainings at AVRC-I." (Underscoring supplied)

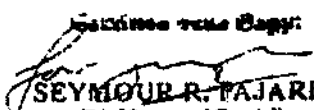
Conversely, appellant pointed out that inspection of departing passengers is not part of "primary inspection" functions of IO as defined under Administrative Order No. 1, Immigration Rules and Regulations of January 1, 1947. Apparently, the only infraction which Ngo committed is his act of not requiring departing aliens to be physically close in his front before departure, which, based on the records, appears to be customary and was not supported by any rule or regulation for the purpose. The departure of said aliens, nevertheless, was not shown to have caused any threat on the country's security nor any adverse effect to the public.

As the circumstances to make the misconduct grave were not duly proven, the Commission finds that Ngo is guilty of Simple Misconduct only.

³ Arcenio vs. Pagorogun, 224 SCRA 246

⁴ Landrito vs. CSC, 223 SCRA 564

⁵ CSC Decision No. 140156 dated March 10, 2014


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As the circumstances to make the misconduct grave were not duly proven, the Commission finds that Ngo is guilty of Simple Misconduct only.

As regard the offense of Conduct Prejudicial to the Best Interest of the Service, the same refers to such unwarranted act of the respondent, which resulted in an undue prejudice to the best interest of the service where the government was denied of a committed service.⁶ Said offense covers a wide range of acts or omissions, through which a government employee, either deliberately or by mere ignorance or negligence, effectively compromises the integrity and efficiency of the government service.⁷ As stated above, the actions of Ngo effectively compromised the efficiency of the government service when he failed to require some aliens to present themselves to him for inspection and the others do not. The same creates an impression of double-standard in inspecting departing aliens.

Anent the imposition of penalty, Sections 46 D (2), B (8), 49 and 50, Rule 10, Revised Rules on the Administrative Cases in the Civil Service (RRACCS), provide that:

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"PENALTIES

"Rule 10

"SCHEDULE OF PENALTIES

"Section 46. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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"B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

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8. Conduct prejudicial to the best interest of the service;

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"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:

⁶ CLANZON, Geraldine A., CSC Resolution No. 08-0853 dated May 3, 2007
⁷ VILLAVIZA, Dimah C., et al., CSC Resolution No. 062177 dated December 5, 2006.

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2. Simple Misconduct;

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"Section 49. Manner of Imposition. - When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

- a. *The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.*
- b. *The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.*
- c. *The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.*

"Section 50. Penalty for the Most Serious Offense. - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." (Underscoring supplied)

The above-quoted sections of RRACCS provide that the offense of Conduct Prejudicial to the Best Interest of the Service is punishable by six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense while Simple Misconduct is 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. If the respondent is found guilty of two (2) or more offenses, the penalty for the most serious offense should be applied and the other/s will be considered aggravating circumstance/s. Considering that Ngo was found guilty of the offenses of Conduct Prejudicial to the Best Interest of the Service and Simple Misconduct without appreciating any mitigating circumstance, the penalty for the most serious offense in its maximum period (the other offense treated as aggravating circumstance), which is one (1) year suspension, should be applied.

Considering, however, that this is Ngo's second conviction for Conduct Prejudicial to the Best Interest of the Service and Simple Misconduct, as he was found guilty thereof in CSC Decision No. 150266 dated May 6, 2015, the penalty of dismissal from the service with its corresponding accessory penalties should now be imposed upon him.

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In fine, the Commission finds herein appeal partly meritorious.

WHEREFORE, the appeal of Marc Andrew Richard B. Ngo, Immigration Officer I, Bureau of Immigration (BI), Intramuros, Manila, is **PARTLY GRANTED**. Accordingly, the Decision dated December 12, 2013 of the Bureau of Immigration finding him guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service is **MODIFIED**. Ngo is found guilty of Conduct Prejudicial to the Best Interest of the Service and Simple Misconduct. However, considering that this is already Ngo's second conviction for Conduct Prejudicial to the Best Interest of the Service and Simple Misconduct, the penalty of dismissal from the service should be imposed upon him. The accessory penalties of cancellation of Civil Service eligibility, forfeiture of retirement benefits, except terminal/accrued leave benefits and personal contributions to the GSIS, if any, perpetual disqualification from holding public office and bar from taking Civil Service examinations are likewise imposed upon him.

Copies of this Decision shall be furnished the Commission on Audit-BI and the Government Service Insurance System (GSIS) for their reference and appropriate action.

Quezon City.


NIEVES L. OSORIO
Commissioner



ALICIA dela ROSA-BALA
Chairperson


ROBERT S. MARTINEZ
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office

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Ngo, A.R. (Appeal)

Certified True Copy:

SEYMOUR R. PAJARES
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