

[ G. R. No. L-10760. May 17, 1957 ]

**LY GIOK HA ALIAS WY GIOK HA, RESTITUTO LACASTA, WY HONG ENG AND NGO IN, PETITIONERS AND APPELLEES, VS. EMILIO L. GALANG, ENRIQUE ZAPANTA, MANUEL AGREGADO AND VICENTE GELLA, RESPONDENTS AND APPELLANTS.**

**D E C I S I O N**

**CONCEPCION, J.:**

This is an appeal taken by the Government from a decision of the Court of First Instance of Manila, ordering the respondents to refund and deliver to the petitioners the sum of P10,000 deposited with the Government for the temporary stay of petitioner Ly Giok Ha alias Wy Giok Ha, as well as to pay the costs. There is no dispute about the facts, the case having been submitted for decision upon a stipulation of facts.

Ly Giok Ha, et al. vs. GcUa,ng, et al. On May 14, 1955, petitioner Ly Giok Ha, alias Wy Giok Ha, entered the Philippines as a citizen of the Nationalist Republic of China and a temporary visitor for a period of three (3) months, expiring on August 24, 1955, which was extended up to March 14, 1956. In order to make said entry feasible, her sister, and co-petitioner Wy Hong Bng, had, on March 28, 1955, made with the Bureau of Immigration, a cash deposit of P10,000, pursuant to the terms and conditions set forth in an instrument, entitled "Cash Bond for Temporary Stay", copy of which has been marked as Annex B. On March 8, 1956, Ly Giok Ha, *alias* Wy Giok Ha, married Eeatituto Lacasta, a Filipino. The next day the former wrote respondent Emilio L. Galang, as Commissioner of Immigration, advising him of the said wedding and requesting that her alien immigration papers and said cash bond deposit be cancelled, and that the amount thereof be refunded, upon the ground that, by virtue of her marriage, she became a citizen of the Philippines. This notwithstanding, on March 16, 1956, respondent Galang declared said cash deposit forfeited. He having subsequently refused to reconsider this action, Ly Giok Ha, alias Wy Giok Ha, her husband Restituto Lacasta, the former's sister, Wy Hong Eng, and the latter's husband, Ngo In, instituted the present action against Emilio L. Galang, as Commissioner of

Immigration, Enrique Zapanta, as Accounting Officer of the Bureau of Immigration, Manuel Agregado, as Auditor General, and Vicente Gella, as Treasurer of the Philippines, upon the ground that the confiscation of said deposit is illegal and unjust, it having been ordered by respondent Galang without and in excess of his jurisdiction, and with grave abuse of discretion, and that the amount of said deposit had been turned over by respondent Zapanta, under the order of Galang, to the Treasurer of the Philippines, through the Auditor General, and praying that judgment be rendered annulling the aforementioned order of forfeiture of respondent Galang, and directing the refund of said sum of Ly Giok Jlat et al. vs. Gadwtig, et al. P10,000. After due trial, the Court of First Instance of Manila rendered judgment for the petitioners, as prayed for. Hence, this appeal.

Appellants urge a reversal of the judgment appealed from upon the ground that the conditions of the bail bond in question had been violated because: (a) requests for extension of the period of the original authorized stay had been made; and (6) Ly Giok Ha, alias Wy Giok Ha had failed to leave the Philippines on or before March 14, 1956, date of expiration of the last extension granted to said petitioner. The provisions of the bond in question, pertinent to the first count, read as follows:

(a) That the undersigned, with full knowledge that Ly Giok Ha, a temporary visitor whose authorized stay in this country is limited only up to and including August 14, 1955, do hereby undertake that said Ly Giok Ha will actually depart from the Philippines on or before said date so specified, or within such period as in his discretion the Commissioner of Immigration or his authorized representative may properly allow;

“(a-1) That the undersigned hereby guarantee that no extension of the original authorized stay of three (3) months of Ly Giok Ha will be requested.” (See Annex E to the petition, p. 7, rec.)

Appellants maintain that the above-quoted paragraph a—1 had been infringed by the requests for extension—allegedly filed by Ly Giok Ha, through her counsel—of the period of her stay as a temporary visitor. Apart from the fact that the alleged requests by said petitioner do not appear in the stipulation of facts already adverted to, we do not believe that said requests constituted a violation of the bond or sufficed to warrant its forfeiture, for:

(1) Competent authorities granted said requests. Having thus, in effect, been found to be meritorious and *justified*, said requests cannot be considered violative of the contract in question.

(2) Paragraph (a) thereof clearly indicates that the Commissioner of Immigration, or his authorized representative, may properly allow an extension of the period fixed therein. Since, in the ordinary course of events, such extension would not be allowed without a corresponding request therefor, it follows that the very bond under consideration countenances and sanctions such request. (3) Said bond must have been required and given, pursuant to section 40 (a) of Commonwealth Act No. 61S ("The Philippine Immigration Act of 1940") reading:

"The Commissioner of Immigration shall have the power to- exact bonds in such amounts and containing such conditions as he may prescribe:

"(1) To control and regulate the admission into, and departure from, the Philippines of aliens applying for temporary admission;

"(2) To insure against aliens passengers liable to be excluded as likely to become public charges, from becoming public charges;

"(3) To insure the appearance of aliens release from custody during: the course of deportation proceedings instituted against them."

The requests for extension involved in the case at bar do not, in any manner whatsoever, run counter to any of the purposes sought to be served by the bond in question, as set forth in the above provision, and, consequently, were not meant by the lawmaker to constitute a violation of said bond.

(4) Respondent Galang did not regard said requests for extension as a breach of said undertaking, the only reason given in his communication of March 16, 1956, declaring the bond forfeited, being "the failure of Ly Giok Ha, *alias* Ky Giok Ha, to depart upon expiration of the period granted her."

The next and most important question for determination is whether her marriage to a Filipino justified or, at least, excused the aforesaid failure of Ly Giok Ha to depart from the Philippines on or before .March 14, 1956. In maintaining the affirmative view, petitioners allege that, upon her marriage to a Filipino, Ly Giok Ha became, also, a citizen of the

Philippines. Indeed, if this conclusion were correct, it would follow that, in consequence of her marriage, she had been naturalized as such citizen, and, hence, the decision appealed from would have to be affirmed, for section 40 (e) of Commonwealth Act No. 613 provides that "in the event of the naturalization as a Philippine citizen \* \* \* of the alien on whose behalf the bond deposit is given, *the bond shall be cancelled or the sum deposited shall be returned* to the depositor or his legal representative." Thus the issue boils down to whether an alien female who marries a male citizen of the Philippines follows ipso facto his political status. The pertinent part of section 15 of Commonwealth Act No. 473, upon which petitioners rely, reads:

"Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

Pursuant thereto, marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she "herself may be lawfully naturalized." As correctly held in an opinion of the Secretary of Justice (Op. No. 52, series of 1950)<sup>[1]</sup> this limitation of section 15 excludes, from the benefits of naturalization by marriage, those disqualified from being naturalized as citizens of the Philippines under section 4 of said Commonwealth Act No. 473, namely:

- " (a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
- (b) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
- (c) Polygamists or believers in the practice of polygamy;
- (d) Persons convicted of crimes involving moral turpitude;
- (e) Persons suffering from mental alienation or incurable contagious diseases;
- (f) Persons who, during the period of their residence in the , Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
- (g) Citizens or subjects of nations with whom the \* \* \* Philippines are at war, during the period of such war;

(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.”

In the case at bar, there is neither proof nor allegation in the pleadings that Ly Giok Ha does not fall under any of the classes disqualified by law. Moreover, as the parties who claim that, despite her failure to depart from the Philippines within the period specified in the bond in question, there has been no breach thereof, petitioners have the burden of proving her alleged change of political status, from alien to citizen. Strictly speaking, petitioners have not made out, therefore, a case against the respondents-appellants.

Considering, however, that neither in the administrative proceedings, nor in the lower court, had the parties seemingly felt that there was an issue on whether Ly Giok Ha may “be lawfully naturalized,” and this being a case of first impression in our courts, we are of the opinion that, in the interest of equity and justice, the parties herein should be given an opportunity to introduce evidence, if they have any, on said issue.”

Wherefore, the decision appealed from is hereby set aside and let the records of this case be remanded to the lower court for further proceedings, not inconsistent herewith, without special pronouncement as to costs. It is so ordered.

*Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

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<sup>[1]</sup> 1 See, also, Ops., Sec. of Jus., No. 28, s. 1950; No. 96, s. 1949; Nos.\*43, %8, “98 and\* 281, s. 1948; No. 95, s. 1941; Nos. 79 and 168, s. 1940.

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