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[G. R. No. L-10420. January 10, 1958]

IN THE MATTER OF THE PETITION FOR ADMISSION AS CITIZEN OF THE PHILIPPINES. LIM KIM SO ALIAS FRANCISCO LIM KIM SO, PETITIONER AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.

D E C I S I O N

CONCEPCION, J.:

This case is before Us on appeal, taken by Lim Kim *alias* Francisco Lim Kim So, from a decision of the Court of First Instance of Cebu, denying his petition for naturalization, upon the ground that he had not filed the declaration of intention required in section 5 of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535.

Although it is not disputed that said declaration of intention has never been filed, appellant maintains that, pursuant to section 6 of the Revised Naturalization law, he is exempt from making such declaration, he having resided in the Philippines continuously since 1910, or for over thirty (30) years. However, said section 6 requires, in addition to the aformentioned period of residence, "that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the government and not limited to any race or nationality, * * *" and the lower court found that appellant has not satisfied this requirement.

In this connection, it appears that appellant had contracted marriage twice. In 1917, he married in China one Yee Ochia, whom he never brought to the Philippines, and who died in Amoy, China, in 1927. In May, 1928, he married his present wife, Tee Ty, in Amoy, China. His first wife bore him two (2) children, namely, Lim Ching Suan and Lim Ching Kee, both born in Amoy, China, the former in May, 1919 and the latter in January, 1924. They studied in the Little Flower of Jesus Academy, the former for two (2) years, and the latter for about eight (8) years. Inasmuch as these two (2) children by first marriage had not completed the primary and secondary education referred to in the aforementioned section 6 of the Revised Naturalization Law, the lower court held that appellant had to file a declaration of intention,

and that, not having done so, the petition for naturalization should be, as it was, denied.

It is urged that said requirement cannot and does not apply to his children by first marriage, they being of age when his petition for naturalization was filed on October 10, 1950. However, the case of In re Yap Chun (L-8642, January 30, 1956), cited in support of this pretense, is not in point, for it refers to the qualifications for naturalization under section 2 of the Revised Naturalization Law, whereas the issue in the case at bar hinges on the conditions essential in order that *one qualified to be naturalized may be excused from making a declaration of intention* one (1) year prior to the filing of his application for naturalization, under section 6 of said law.

With respect to case of (In re Yu Hiang L-8378, March 23, 1956), likewise cited in appellant's brief, nothing said in our decision therein suggests that failure to give the requisite education to the children of the applicant for naturalization would not bar the enjoyment of the exemption from making a declaration of intention, if said children were of age at the time of the filing of the petition for naturalization. It so happened, merely, that Yu Hiang's children were minors. There was no issue therein whether said declaration of intention would have been necessary had said children been of age at the aforementioned time.

Besides, unlike said section 2, which expressly mentions "minor" children, section 6 refers explicitly to "all" children, regardless of their age. Again, appellant's contention would have been, perhaps, tenable, had his children been already of age, when he came to the Philippines, in 1910, for it would have been legally impossible for him to compel them to go to school and complete the primary and secondary courses of education, if they did not want to. But, such is not the case of appellant herein, for he had been a resident of the Philippines for seven (7) years before he married in China his first wife, who never came in the Philippines. He did not cause his children to come to the Philippines until they were about 15 years of age, and one of them (Lim Ching Suan) stayed in the Philippines for about ten (10) years only. In other words, he could have brought them to the Philippines as soon as they were of school age and seen to it that they took the requisite primary and secondary education during their minority, but he did not do so.

Lastly, our Naturalization Law requires that the children of the applicant for naturalization be educated, either in public schools, or in private schools recognized by our Government, where Philippine government, civics and history are taught as part of the currculum. The record does not show whether or not the Little Flower of Jesus Academy meets this

condition.

It is clear, therefore, that appellant has not satisfactorily established that he is under no obligation to file a declaration of intention, and that, accordingly, the decision appealed from must be, as it is hereby affirmed, with costs against said appellant. It is ordered.

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

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