

**JOSE TIU, ONG WAN KING ALIAS WONG YUEN KING, ET AL.,
PETITIONERS-APPELLEES, VS. MARTINIANO VIVO, IN HIS CAPACITY
AS ACTING COMMISSIONER OF IMMIGRATION,
RESPONDENT-APPELLANT.**

G.R. No. L-21425. September 15, 1972

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal on purely questions of law, from the decision in Civil Case No. 51488, of the Court of First Instance of Manila (Branch XIX) granting the petition for prohibition and enjoining respondent Commissioner of Immigration from arresting, detaining and deporting petitioners Ong Wan King and her two foreign-born minor children.

Petitioner Ong Wan King, wife of Jose Tiu, and her two minor children Tiu Chi Kiong and Tiu Chi Eng, arrived in the Philippines on October 29, 1960 and were admitted as temporary visitors for a period of stay of three (3) months. As a result of the favorable decree in Naturalization Case No. 42904 of the Court of First Instance of Manila (Branch VIII) on February 21, 1961, granting Jose Tiu's application to be admitted as a citizen of the Philippines, subject to the provisions of Republic Act No. 530, the Secretary of Foreign Affairs on April 6, 1961, pursuant to a cabinet policy, approved Ong Wan King and her two minor children's application for change of category from temporary visitors to special non-immigrants for a period of stay up to February 21, 1963. On April 12, 1961, the Secretary of Justice concurred in the action of the Secretary of Foreign Affairs and approved the authorized stay of petitioners up to February 21, 1963. The Assistant Chief of the Immigration Division on April 21, 1961, accordingly informed said petitioners of the extension of their authorized stay.

The termination of petitioner's authorized stay by the Respondent Acting Commissioner of Immigration on August 30, 1962, and his directive to them to leave the country within seven (7) days otherwise the cash bond would be forfeited and warrants for their arrest issued, as a result of a repudiation of the previous policy, by the new Secretary of Foreign Affairs and the Secretary of Justice led to the filing of the petition for prohibition before the court a quo.

After the parties filed their respective memoranda, the court of first instance of Manila in said Civil Case No. 51488 rendered its decision on May 28, 1963, granting the petition for prohibition and enjoined the respondent Commissioner from arresting, detaining and deporting Petitioner Ong Wan King and her two minor children, until the lapse of two years from the date of the decree granting Jose Tiu's application for Filipino citizenship in Civil Case No. 42904, and declaring that section 37(a) of the Philippine Immigration Act of 1940 as amended, empowering the Commissioner of Immigration to issue warrants for the arrest of aliens subject to deportation as violative of the constitution.

The principal issues raised were whether or not the trial court erred (1) in declaring that any alien woman married to a citizen of the Philippines automatically follows the citizenship of her husband by virtue of such marriage,

provided she possesses none of the disqualifications to be admitted a citizen of the Philippines, even without possessing all the qualifications required by law, (2) in not declaring that the authorized stay of petitioners had already terminated and (3) in declaring section 37(a) of Commonwealth Act No. 613 as amended authorizing the Immigration Commissioner to issue warrants for the arrest of aliens subject to deportation as unconstitutional.

During the pendency of this appeal, petitioners filed on September 13, 1966, a "Motion To Dismiss Petition and Waiver of Decision" on the ground that the issues raised have become moot. In said pleading they manifested that: (a) Ong Wan King after the promulgation of the decision in the naturalization case of Jose Tiu (Civil Case No. 42904) had voluntarily left the Philippines and was subsequently re-admitted as a non-quota immigrant by the Commissioner of Immigration under Section 13(a) of the Immigration Act of 1940 as amended, and (b) her two minor children Tiu Chi Kiong and Tiu Chi Eng, had already been recognized as Filipino citizens by the Bureau of Immigration. This motion was denied in view of the opposition of the Solicitor General. The supervening facts since the case was submitted for decision, including the precedent setting *Moy Ya Lim Yao vs. Commissioner of Immigration*, promulgated on October 4, 1971, (L-21289) rendered a re-examination of the relevant facts necessary. Consequently this Court required the petitioners to submit documents in support of their claim that Ong Wan King had voluntarily left the country with the consent of the Bureau of Immigration and was subsequently re-admitted as a non-quota immigrant, and that her two minor children are already recognized by the Bureau of Immigration as Filipino citizens. The Solicitor General was also required to inform the court of the status of the naturalization case of Jose Tiu (Civil Case No. 42904) and to verify the alleged departure and re-admission of petitioner Ong Wan King.

The Solicitor General on June 21, 1972, informed this Court that according to their records "the Court of First Instance of Manila, Branch VIII, on February 21, 1961, rendered a decision granting the petition for naturalization of Jose Tiu; that on January 13, 1964, the said Court issued an order allowing the petitioner to take his oath of allegiance; and that on February 17, 1964, petitioner Jose Tiu took his oath of allegiance as a Filipino citizen and was on the same date issued a certificate of naturalization by the Court." Similarly on September 4, 1972, the same official manifested that according to the records of the Bureau of Immigration, Ong Wan King left the Philippines for Hongkong on March 23, 1966 and returned to this country on March 30, 1966.

Upon a review of the records of the present appeal, We find that the subsequent action of the Commissioner of Immigration in re-admitting petitioner Ong Wan King, after the lower court's decision of May 28, 1963 and during the pendency of this appeal specifically the re-admission of said petitioner on March 30, 1966, was never involved or placed in issue in the case. The issue of the expulsion of Jose Tiu's wife and her two minor children as then overstaying temporary visitors, has become moot not only because of Ong Wan King's voluntary departure and subsequent re-admission into the Philippines, but also because of the legal consequences on the petitioners of our ruling in *Moy Ya Lim Yao vs. Commissioner of Immigration*[1] We held in that case (1) that under Section 15 of Commonwealth Act 473, an alien woman marrying a Filipino native born or naturalized, becomes ipso facto a Filipina provided she is not disqualified to be a citizen of the Philippines under section 4 of the same law, and (2) that section 9(g) of the Immigration Act which required that to obtain permanent admission, a non-immigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility, does not apply to aliens who after coming into the Philippines as temporary visitors, legitimately become Filipino citizens or acquire Filipino citizenship.[2]

As a necessary concomitant of Jose Tiu's acquisition of Filipino citizenship, his wife unless disqualified under; section 4 of the naturalization law and his two foreign-born minor children dwelling in the Philippines at the time of the naturalization, became as a consequence thereof Filipino citizens. The acquisition of Filipino citizenship

naturally bestowed upon them the right to stay and reside in the Philippines. Any question revolving upon the validity of the acquisition of such citizenship, should there be any, cannot be resolved in the present case but at an appropriate proceeding.

Finally on the issue as to whether or not the issuance of warrants for the arrest of aliens by the Immigration Commissioner under Section 37(a) of the Immigration Law trenches upon the constitutional mandate in Section 1(3) Article III of the Constitution, suffice it to state that the same has been settled in previous decisions, wherein we held that such power is not violative of the constitution as it is confined to warrants issued for the execution of a final deportation order.[3]

Under such circumstances, the issues involved in the present case have become moot, not only in the present appeal, but including the case as originally filed and should therefore be as they are hereby dismissed.

Makalintal, Castro, Fernando, and Esguerra, JJ., concur.

Zaldivar, J., concurs in the result.

Makasiar, J., dissents on the grounds stated in the *Burca vs. Republic* (19 SCRA 186) and in the dissent of Mr. Justice J.B.L., Reyes in the *Moy Ya Lim* case.

Concepcion, C.J., Teehankee, and Barredo, JJ., took no part.

[1] 41 SCRA 292.

[2] *Ibid.*

[3] *Morano vs. Vivo*, 20 SCRA 570; *Vivo vs. Montasa*, 24 SCRA 155, 161. *Contemprate vs. Acting Commissioner of Immigration*, 35 SCRA 624, 631 holding that the "rule now established in this jurisdiction circumscribes the authority to issue the same (warrants of arrest) only to judges, where the purpose of the warrant is merely the determination of the existence of probable cause in a given case, with the power of the Immigration Commissioner to issue similar warrants being confined to those necessary for the execution of a final deportation order."

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