

IN RE: PETITION FOR ADOPTION OF THE MINOR LUIS ALBERTO MAR-TIN DE SANTOS, FREDERICK WILLIAM MALKINSON AND ANA MARIE DE SANTOS MALKINSON, PETITIONERS, VS. HON. CORAZON JULIANO A...

G.R. No. L-36309. November 26, 1973

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0febaea51916/>

TEEHANKEE, J.:

In this appeal from the dismissal orders of the Juvenile & Domestic Relations Court of Manila, the Court, in reversing, re-affirms the established jurisprudence based on the plain language of the codal provision that alienage by itself does not disqualify a foreign-er from adopting a Filipino child and that our Civil Code "only disqua-lifies from being adopters those aliens that are either (a) non-residents or (b) who are residents but the Republic of the Philippines has broken diplomatic relations with their government." Neither does our Civil Code require that both adopter and adopted be of the same nationality.

On October 13, 1972, petitioners-spouses filed with respondent court their verified petition to adopt the minor Luis Alberto Martin de Santos, who was born a Filipino citizen in Madrid, Spain on August 4, 1969, the acknowledged natural child of petitioner Ana Marie de Santos Malkinson who alone of his parents extended him recognition.

Petitioners-spouses averred that since their marriage on March 6, 1972, the said child who owns no property has been living with them under their care and custody at their residence at No. 1443 Jose P. Laurel Street, Manila; that petitioner Frederick William Malkinson is an Ameri-can citizen,[1] gainfully employed as a seaman with an average yearly income of US \$7,000 - \$8,000, while his co-petitioner spouse is a Fili-pino citizen and a property owner in the Philippines; and that it is to the best interest of the child that he be adopted by petitioners-spouses who possess all the qualifications and none of the disqualifications for such legal adoption.

Judge Vicente M. Santiago, Jr. then on detail with respondent court issued his order of October 18, 1972 giving due course to the pe-tition and setting it for hearing on January 8, 1973 and directed that ap-propriate notices be sent to the Solicitor General and the Director, Bu-reau of Child and Youth Welfare, Department of Social Welfare and pu-blication of the order be made.

Upon respondent judge's return to her court after her leave of absence, she issued her order of November 22, 1972, stating that upon a review of the petition wherein "it is alleged that petitioner husband is an alien, while the child sought to be adopted is a citizen of this country" respondent court was of the opinion that "the petition, for that reason, is not sufficient in substance, and the same cannot be given course" and ordered that "the petition filed herein will be ordered dismissed after the lapse of 30 days from petitioners' receipt of notice hereof unless, within said period, proper proceedings are instituted before the Supreme Court for the purpose of questioning the correctness of this Order."

Petitioners moved for reconsideration on the ground that no law prohibits a resident alien, who is not a citizen of a country without diplomatic relations with the Philippines and is not otherwise legally disqualified, from adopting a Filipino, and respondent court denied the same under its order of December 18, 1972.

Hence, the present appeal by certiorari from respondent court's dismissal orders.

Respondent judge thus ordered the dismissal of the petition on the basis of her known view that "a Filipino could not adopt an alien and vice versa;" hence, since petitioner husband is an alien while the child sought to be adopted is a Filipino, she decreed that the petition cannot be given due course. While aware of the controlling doctrine enunciated by this Court in the *Therkelsen*[2] and *Cathey*[3] adoption cases that alienage by itself does not disqualify a foreigner from adopting a Filipino child and that the Philippine Civil Code "only dis-qualifies from being adopters those aliens that are either (a) non-residents or (b) who are residents but the Republic of the Philippines has broken diplomatic relations with their government"[4] respondent court felt that Justice J. B. L. Reyes' statement in *Therkelsen* as to its non-exposition of its reasons for dismissal of the petition therein as set aside by this Court left the way open for a review and restudy of the controlling precedents.

Respondent court thus once again as in *Therkelsen* ordered the dismissal of the petition solely on the ground of alienage of the petitioner husband, maintaining inter alia that Article 334 of the Civil Code (which provides that "Every person of age, who is in full possession of his civil rights, may adopt") "cannot be accepted literally. If *Scaevola*[5] is correct, it should be construed as not permitting a citizen to adopt an alien, or vice versa;" "that the prohibitions contained in Article 335 (4) and (5) of the Code should be construed as aimed at the adoption of aliens by other aliens, and not at the adoption by an alien of a Filipino;" "that an alien who has adopted a Filipino child cannot be expected, by precept and example, to imbue the adopted with love of the Philippines and veneration for Filipino national heroes" (under Article 358 of the Civil Code) and that "solidarity of a family cannot be achieved if we hold the view that a Filipino child can be adopted by an alien."

Petitioners-spouses therefrom urge that under the clear and plain language of the Civil Code and the Court's express rulings in *Therkelsen* and *Cathey*, petitioner husband as an American resident not suffering from any legal disqualification may jointly with his co-petitioner Filipino wife legally adopt the latter's acknowledged natural child.

The Solicitor General in a manifestation in lieu of appellee's brief dated October 26, 1973 stated that "with all due respect to the opinion and reasons of the respondent judge for wanting the above ruling to be reexamined and restudied by this Honorable Court, undersigned counsel not only feel bound by said ruling but also honestly believe that the same is the correct, proper, and reasonable interpretation of our law on adoption; as a matter of fact, in said cases of *Therkelsen* and *Cathey*, undersigned counsel were also impelled by reason and the law to place themselves on the side of appellants in asking for the reversal of the orders of the same respondent judge in said cases holding that an alien cannot adopt a Filipino," and joined petitioners in praying for reversal of respondent court's dismissal orders.

Petitioners-spouses' appeal must be sustained on the strength of the controlling doctrine enunciated in the cited cases.

In *Cathey*, Justice Jose P. Bengzon ruled for a unanimous Court that "(A)s this Court pointed out through Mr. J. B. L. Reyes in *Uggi Therkelsen v. Republic*, G.R. No. L-21951, November 27, 1964: 'the present Civil Code in force (Article 335) only disqualifies from being adopters aliens that are either (a) non-residents or (b) who are residents but the Republic of the Philippines has broken diplomatic relations with their government. Outside of these two cases, alienage by itself alone does not disqualify a foreigner from adopting under our laws.'" The Court thus held therein that "(P)etitioner, Robert H. Cathey though an American citizen, is a resident alien entitled to

re-main in the Philippines, as his Immigrant Certificate of Residence (Exhibit D) shows. He is legally married to Helen Olalia and presently is the administrative officer of the U. S. Naval Construction office at Clark Air Base with an annual compensation of \$6,295.00 and has P25,000 worth of personal properties in the Philippines. As petitioners spouses have no child of their own, they wish to adopt Bertha Ann Rivera and thus make her their heir. The welfare of the child being the para-mount consideration under the law (Art. 363, New Civil Code), the child now sought to be adopted being virtually unwanted by her own mother, who, by the way, has seven other children to feed (Tsn of May 2, 1963, p. 11), We see no reason why the adoption should not be granted."

In *Therkelsen*, Justice J. B. L. Reyes had occasion to discuss respondent court's contrary view and to reject for a unanimous Court its imposition of an additional requisite not imposed by the Civil Code that both adopter and adopted be of the same nationality in this wise;

"The court a quo denied the adoption sought, saying:

'In *Sp. Proc. No. D-00011*, adoption of Benigno Lim, this Court has had occasion to rule that a Fili-pino cannot adopt an alien (Chinese) minor about 19 years old. The adoption would not confer Philippine citizenship on the Chinese, but could definitely legalize his stay in this country. It was also stated that conversely, an alien cannot adopt a Filipino un-less the adoption would make the Filipino minor a citizen of the alien's country. As petitioner husband in this case is a Danish subject, it has to be held that he cannot legally adopt the minor Charles Joseph Blancaflor Weeks, whose citi-zenship is of this country, following that of his natural mother.'

"If we understand the decision correctly, the adop-tion was denied solely because the same would not result in the loss of the minor's Filipino citizenship and the acquisition by him of the citizenship of his adopter. Unfortunately, the Juvenile and Domestic Relations Court did not expound the reasons for its opinion; but it is clear that, if pursued to its logical consequences, the judgment appealed from would operate to impose a further prerequisite on adoptions by aliens beyond those required by law. As pointed out by the Solicitor General in his brief, the present Civil Code in force (Article 335) only disqualifies from being adopters those aliens that are either (a) non-residents or (b) who are residents but the Republic of the Philippines has broken diplomatic re-lations with their government. Outside of these two cases, alienage by itself alone does not disqualify a foreigner from adopting a person under our law. Petitioners ad-mittedly do not fall in either class.

"The criterion adopted by the Court a quo would de-mand as a condition for the approval of the adoption that the process should result in the acquisition, by the person adopted, of the alien citizenship of the adopting parent. This finds no support in the law, for, as observed by this Court in *Ching Leng vs. Galang*, G. R. No. L-11931, promulgated on 27 October 1958, the citizenship of the adopter is a matter political, and not civil, in nature, and the ways in which it should be conferred lay outside the ambit of the Civil Code. It is not within the province of our civil law to determine how or when citizenship in a foreign state is to be acquired. The disapproval of the adoption of an alien child in order to forestall circumvention of our exclusion laws does not warrant denial of the adoption of a Filipino minor by qualified alien adopting parents, since it is not shown that our public policy would be thereby subverted."

The Court finds no justification for deviating or departing from the established doctrine. Whatever may be the merit of respondent court's views as above-cited, they go into the wisdom or policy of the statute which are beyond the Court's domain.[6] The Civil Code provisions on adoption are quite plain and clear and are free from any ambiguity. Under such circumstances, there is no room for construction, the law is controlling and the clear task of the judiciary is to apply the law as it is.[7]

If alienage alone of the adopter or of the adopted were to be a disqualification, it is inconceivable that the lawmakers would not have so explicitly provided, considering that in Article 335 of the Code non-resident aliens

and resident aliens with whose government the Philip-pines has broken diplomatic relations are the only two classes of aliens expressly disqualified and prohibited to adopt while in Article 339 only an alien with whose state our government has broken diplomatic rela-tions is expressly disqualified and prohibited to be adopted. Inclusio unius exclusio alterius. This is but in consonance with the liberal concept that adoption statutes, being humane and salutary, hold the in-terest and welfare of the child to be of paramount consideration and are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family in the person of the adopter as well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts. Every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.[8]

Finally, aside from the above-decisive consideration that under the plain language of the law alienage by itself does not disqualify a foreign-er such as petitioner-husband from adopting a Filipino child, the Solici-tor General further enumerated correctly various other factors that show the merit of the petition below, viz, that petitioner wife as the natural mother is expressly authorized under Article 338, paragraph (1) of the Civil Code to adopt her natural child and raise its status to that of a legitimate child,[9] that under paragraph (3) of the same article, petitioner-husband as the step-father is likewise expressly authorized to adopt his step-child, and that the adoption sought would strengthen the family solidarity of petitioners-spouses and the child, because the child after adoption, would have its status of a natural child of petitioner wife and a step-child of petitioner husband raised to that of a legitimate child of both petitioners with all the rights and duties appertaining thereto, as provided in Article 341 of the Civil Code.

ACCORDINGLY, the appealed dismissal orders of November 22 and December 18, 1972 are hereby set aside and respondent court is directed to give due course to the petition in accordance with the previous order of October 18, 1972 and to reset the hearing thereof at the earliest practicable date. In view of the established jurisprudence covering the case, this decision shall be immediately executory upon promulgation.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Petitioners' brief (at page 5) further states that they would establish at the hearing that petitioner husband "in addition to being a resident of the Philippines, was born in the City of Manila, grew up in Manila, studied in Manila and married his co-petitioner in Manila."

[2] In re adoption of the minor Joseph Blancaflor Weeks; Therkelsen vs. Republic, 12 SCRA 400 (Nov. 27, 1964).

[3] In re adoption of the minor Bertha Ann Rivera; Cathey vs. Republic, 18 SCRA 86 (Sept. 23, 1966).

[4] 12 SCRA at pp. 401.

[5] As against Scaevola, petitioners cite Manresa who states the contrary view that aliens may legally adopt under the laws of Spain which grant them the same civil rights as Spanish citizens. II Manresa 105.

[6] See Veneracion vs. Congson Ice Plant & Cold Storage, Inc., G.R. No. L-31213-14, (July 23, 1973).

[7] See Maritime Co. of the Phil. vs. Repacom, 40 SCRA 70 (1971); People vs. Santos, 104 Phil. 551 (1958); Ysasi vs. Fernandez, 26 SCRA 393 (1968) and cases cited.

[8] Santos vs. Aranzanso, 16 SCRA 344 (1966); Santos vs. Republic, 21 SCRA 378 (1967); Prasnick vs. Republic, 98 Phil. 665 (1956).

[9] Prasnick vs. Republic, *supra*; Jimenez vs. Republic, 101 Phil. 518 (1957).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.