

IN THE MATTER OF THE PETITION FOR ADMISSION TO PHILIPPINE CITIZENSHIP. ALEXANDER LIM UY, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR APPELLANT.

G.R. No. L-19916. June 23, 1965

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is an appeal from the decision of the Court of First Instance of Misamis Occidental declaring petitioner-appellee Alexander Lim Uy qualified for admission to Philippine citizenship.

The evidence shows that the appellee was born of Chinese parents on March 1, 1939 in Ozamis City, Philippines; that he is single, and is a citizen of the Republic of Nationalist China under whose laws a Filipino may become a naturalized citizen; that he has an average annual income of P3,100.00 as a partner in Lim Uy & Co., a duly registered partnership doing business in Ozamis City; that at the time of the hearing of this petition he was a senior student pursuing the degree of Bachelor of Science in Chemistry in the Mapua Institute of Technology, Manila; that he had studied his elementary and high School courses in the schools in the Philippines recognized by the government; that he has resided continuously in the Philippines, specifically in Ozamis City, since the time of his birth, except for a short visit of three months in China in 1947; that during the entire period of his residence in the Philippines his conduct and relationship with the government and the community where he lives has been proper and beyond reproach; that he has associated socially with the Filipinos and has evinced a sincere desire to learn and embrace Filipino customs, traditions and ideals; that he is a Christian, having been baptized in a Catholic church of Ozamis City; that he speaks, reads and writes the English language and the Cebu-Visayan and Tagalog dialects; that he does not believe in communism and does not practice polygamy; that he adheres to the principles embodied in the Philippine Constitution; that he is not a Member of any association or group of persons upholding and teaching doctrines opposed to organized governments; that he does not defend and teach the necessity and propriety of violence and personal assaults or assassination for the success or predominance of man's ideas; that he has not been convicted of any crime involving moral turpitude; that he is not suffering from any incurable contagious disease; that it is his intention in good faith to become a citizen of the Philippines, that he renounces absolutely and forever his allegiance and fidelity to any foreign prince, potentate, state or sovereignty, particularly the allegiance to the Republic of Nationalist China; that the Republic of China is not at war with the Philippines.

During the hearing of the petition the appellee presented two character witnesses, namely: Tirso Z. Khu and Vitaliano Jimenez, who are both residents of Ozamis City. These two witnesses testified, among others, that the appellee is known as Alejandro Lim Uy alias Alexander Lim Uy.

After hearing, the lower court declared that the appellee has all the qualifications and none of the disqualifications under Philippine laws to become a citizen by naturalization, and it thereby held that the petitioner is eligible for admission to Philippine citizenship. The lower court ordered that certificate of citizenship be issued to the

appellee upon satisfactory proof that he had complied with the requisites provided for in Republic Act No. 530.

In the present appeal the Solicitor General, in behalf of the Republic of the Philippines, has assigned in his brief six errors as having been committed by the trial court in rendering the decision appealed from. However, for the purposes of this decision We consider it necessary to discuss only two of the errors that have been assigned, which We consider meritorious and which constitute sufficient ground to reverse the decision appealed from.

The Solicitor General contends in his first assignment of error, that the petition for citizenship and the notice of hearing of the petition suffer from a fatal defeat in that said petition and notice did not mention all the names by which the appellee was known. We believe that there is merit in this contention of the Solicitor General.

The petition for naturalization in the present case was filed under the name of "Alexander Lim Uy". During the hearing of this case, however, it was shown that the petitioner Alexander Lim Uy is also known by the ot'if name of "Alejandro Lim Uy." That the appellee was known by the name of "Alejandro Lim Uy" is borne out by the very statement of counsel for the petitioner, and by the testimonies of the two character witnesses that were presented during the hearing. Thus, the transcript of the stenographic notes taken during the hearing the following:

"ATTY. KAAMIÑO:

"We present the petition for naturalization as Exhibit 'A' in four pages of petitioner Alejandro Lim Uy; . . ." (p. 3 t.s.n.; Italics supplied)

In the direct examination by Atty. Kaamiño of character witness, Tirso Z. Khu, the following questions and answers are recorded:

"Q— Do you know the petitioner ill this caso Alejandro Lim Uy alias Alexander Lim Uy?

"A— Yes Sir.

x x x

x x x

x x x

"Q— Do you mean to say that you have a personal knowledge of the petitioner Alejandro Lim Uy alias Alexander Lim Uy?

"A— Yes Sir.

x x x

x x x

x x x

"Q—

In your own opinion as a Filipino, do you believe that petitioner Alejandro Lim Uy alias Alexander Lim Uy Iims all the qualifications and none of the disqualifications to be a Filipino citizen?

X X X

X X X

X X X

'A— Personally I believe that Alejandro Lim Uy alias Alexander Lim Uy could be a good Filipino because since my detail of office in the P.C. headquarters here from 1940 up to 1948, I have not known him to have committed any crime involving moral turpitude . . . "

(pp. 4, 5, and C t.s.n. Italics is supplied.).

In the direct examination by Attv. Kaamiño of character witness Vitaliano Jimenez, the following question and answer are recorded:

"Q— Do you know the petitioner in this case, Alejandro Lim Uy alias Alexander Lim Uy?

'A— Yes Sir", (p. 8 t.s.n. Italics is supplied).

The foregoing excerpts from the transcript of the stenographic notes of the statements of counsel for the appellee and of the testimonies of the character witnesses established the fact that the petitioner-appellee Alexander Lim Uy is also known by the name of "Alexander Lim Uy". Atty. Valeriano S. Kaamiño, counsel for the appellee, in his brief, claims that he is surprised that the name "Alejandro Lim Uy" appears in the transcript of the stenographic notes that were taken during the hearing because, according to him, this name "Alejandro" was never mentioned during the hearing of the case. Atty. Kaamiño maintains that the court stenographer committed errors or inaccuracies in his stenographic notes and in transcribing his stenographic notes by placing the name "Alejandro Lim Uy." This assertion of Atty. Kaamiño appears to Us as gratuitous. If the court stenographer had really committed errors, what Atty. Kaamiño should have clone was to secure the correction of the stenographic notes and the transcript of said stenographic notes of the court stenographer. This he did not do. We cannot just rely on the bare statement of Atty. Kaamiño in his brief that the court stenographer committed an error in his transcript of the stenographic notes where the name "Alejandro Lim Uy" appears. Not even an affidavit or statement from the court stenographer has been placed in M" records of this case to support the claim of Atty.

Kaamiño that the appearance of the name "Alejandro Lim Uy in the transcript of the stenographic notes as an error.

We believe that it has been shown that the appellee Alexander Lim Uy in the present case is also known by the name of Alejandro Lim Uy. It appearing that in the petition for naturalization as well as in the notice of hering it was not stated that the petitioner Alexander Lim Uy is also known as Alejandro Lim Uy, or that the petitioner is Alejandro Lim Uy alias Alexander Lim Uy as stated by counsel for the appellee and the character witnesses. We believe that one vital requirement of the law had not been complied with, and this circumstance has rendered invalid the proceedings had in the court below. This Court in a long line of decisions ruled that the failure on the part of the petitioner to state in his petition for naturalization all the names by which he is known constitute a fatal defect of the petition and is a sufficient ground to deny the petition. (*Yu Soco vs. Republic*, 108 Phil. 807; *Kwan Kwock How vs. Republic*, G.R. No. L-18521, Jan. 30, 1964; *Ong Khan vs. Republic*, G.R. No. L-19709 Sept. 30, 1964; *Go vs. Republic*, G.R. No. L-20558, March 31, 1965).

"The non-inclusion of the other name of petitioner in the publication of the petition has resulted fatal, for it has deprived any person knowing him by that name, to come forward and inform the authorities of any matter which might affect his application for naturalization. In other words, the publication was incomplete and insufficient thereby affecting the jurisdiction of the court to take cognizance of this petition. . ." (*Saw Cen vs. Republic*, G. R. No. L-20310, April 30, 1965).

In his fourth assignment of error the Solicitor General points out that the lower court erred in not finding that the appellee does not have a lucrative trade or occupation.

The appellee claims that in 1953, when he was 14 years old, he inherited from his father some shares in the Lim Uy & Co., a partnership doing business in Ozamis City in which his father was a partner. The appellee testified that he derived an average annual income of P3,100.00 from his interests in the Lim Uy & Co. No documentary evidence was presented to establish the existence of the Lim Uy & Co. as a partnership, nor its capitalization and the condition of its business transactions as of the time when the appellee filed his petition for naturalization. No documentary evidence has been presented to establish the death of the father of the appellee and that the father actually a partner in the Lim Uy & Co. in 1953. Nor there any showing regarding the extent of the participation of appellee's father in the said partnership. No documentary evidence had been presented to show if there was any testate or intestate proceedings of the estate of his father, much less was there any showing that the appellee had actually inherited so much of the participation of his father in the partnership of Lim Uy & Co.

The income tax returns of Wan Yu, the mother of the appellee, for the years 1953 to 1960, inclusive (Exhibits G to G-7), were presented in evidence. In all these income tax returns it appears that Alexander Lim Uy was a dependent son of Wan Yu, and that exemption was claimed by Wan Yu for her dependent son. In the income tax returns of Wan Yu for 1953 and 1954 (Exhibits G-7 and G-G), there is no mention of any income that corresponded to Alexander Lim Uy.

In her income tax return for 1955 (Exh. G-5), Wan Yu declared a gross income of P9,857.53, of which P2,533.79 is stated as belonging to her son Alexander Lim Uy as the latter's share from the profits of the partnership Lim Uy & Co. In her income tax return for 1956 (Exh. G-4), Wan Yu declared a gross income of P1,156.78, of which P3,094.34 is stated as belonging to her son Alexander Lim Uy as his share of the profits from the Lim Uy & Co. In her income tax return for 1957 (Exh. G-3), Wan Yu declared a gross income of P10,910.97, of which P3,174.89 is stated as belonging to her son Alexander Lira Uy as his share of the profits from Lim Uy & Co. In her income tax return for the year 1958 (Exh. G-2) Wan Yu declared a gross income of P13,001.76, of which P5,267.79 is stated as belonging to her son Alexander Lim Uy as his share of the profits from Lim Uy & Co. In her income tax return for 1959 (Exh. A-1), Wan Yu declared a gross income of P2,719.48, of which P1,172.39 is

stated as belonging to her son Alexander Lim Uy as his share of the profits from Lim Uy & Co. In her income tax return for 1960 (Exh. C), Wan Yu declared gross income of P11,564.60, of which P4,968.03 is stated as belonging to her son Alexander Lim Uy as his share of the profits from the Lim Uy & Co. The appellee, therefore, tried to show that in 1955 his annual income was P2,533.79, in 1956 it was P3,094.34, in 1957 it was P3,174.89, in 1958 it was P5,267.79, in 1959 it was P1,172.39, in 1960 it was, P4,968.03. No explanation was proffered why no income tax returns were filed for the appellee himself since he had an income of his own and it was not shown that he had authorized his mother to include his income in his mother's income tax returns. No evidence had been presented to show where did all these alleged yearly incomes of the appellee go, whether they were deposited in the bank to his credit, or they were retained by his mother, or had been spent for his studies. In other words, if we have to believe the appellee, as of the time when he filed his petition for naturalization, his only source of income was the alleged share that he had from the profits of the business of the partnership Lim Uy & Co. There is no evidence that the appellee owns any real property, or that he has any other source of income. The fact was that when he filed his application for citizenship he was still a student. It will thus be seen that as of the time when the petitioner filed his petition for naturalization, he had actually no employment or occupation of his own from which he derived a steady or fixed income. It is quite apparent, based upon the figures appearing in the income tax returns of Wan Yu, mother of the appellee, that the business of Lim Uy & Co. for the years from 1953 to 1960 was not steady, and that the shares of the partners from the profits of said partnership were likewise not steady.

The appellee, in his testimony declared that his average income as of the time when he filed his application for citizenship was P3,100.00 a year. Presumably the appellee based this figure upon the yearly average of the alleged shares that was P3,100.00 a year. Presumably the appellee based this figure upon the yearly average of the alleged shares that he was getting from Lim Uy & Co. for six years from 1955 to 1960, as shown in the income tax returns of his mother. Conceding that the average income of the petitioner at the time he filed his application for citizenship was P3,100.00 a year, and considering that his only income is his alleged share from the profits of the partnership Lim Uy & Co., whose business has been shown to be steady. We believe that the appellee, as of the time he filed his petition for naturalization, did not have a lucrative trade or occupation. If the appellee was receiving any income at all, it was his share out of the profits of a partnership of which he had no actual participation in the management of its business. Actually he had no trade, or occupation, or employment, of his own at the time he filed his application for naturalization. He was only 21 years old when he filed his petition, and was yet a student. The financial capacity of the petitioner should be determined as of the time of the filing of the petition for naturalization (*Ong Tan vs. Republic*, L-19418, Dec. 23, 1964). Even if we consider that as of the time of the filing of his application for naturalization he had an average income of P3,100.00 a year (or roughly P258.00 a month), we believe that this income was not lucrative because it was not steady. An income should not be considered lucrative simply by its amount in a given year, but should also be considered from the standpoint of its source and its steadiness. The actual work or participation of the recipient of the income in producing said income should also be taken into account. Here it has been shown that the appellee was a student and he had nothing to do with the actual management of the business operations of the partnership Lim Uy & Co. The business of Lim Uy & Co. may be wiped out any time, and with it the income of the appellee.

Even if we consider the fact that the appellee was single at the time he filed his application, still we believe that his income of P3,100.00 a year, or P258.00 a month can not be considered as lucrative as to qualify him for admission to Philippine citizenship. In the case of *Albert Ong Lin Chuan vs. Republic*, L-18550, February 28, 1964, the petitioner for Philippine citizenship and was single was employed in the Cosmos Industrial Company with a salary of P200.00 a month with free board and lodging which means that the petitioner was earning about P260.00 a month. This Court held that the petitioner in that case did not have a lucrative trade or profession that

would qualify him for Philippine citizenship.

Likewise, in the case of Yap vs. Republic, L-19649, April 30, 1965, this Court denied the petition for naturalization of Luis Yap who is single and who had a monthly salary of P200.00, also with free board and lodging which may be conservatively estimated to cost around P60.00 a month.

WHEREFORE, the decision appealed from is reversed, with costs against the appellee.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal and Bengzon, J.P., concur.

Judgment reversed.

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