

ANTONIO DY, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.*G. R. No. L-20348. December 24, 1965*

Ponente: REYES, J.B.L., J.

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Appeal interposed by the Republic of the Philippines, through the Solicitor General, from a decision of the Court of First Instance of Manila, Branch VI, in its Civil Case No. 47148, granting the petition for naturalization of Antonio Dy, a citizen of Nationalist China.

In the lower court, as well as on appeal, the Solicitor General opposed the naturalization of petitioner on the sole ground that the latter has not satisfactorily established that he has a lucrative income or occupation to qualify for Philippine citizenship.

On the issue posed, petitioner Antonio Dy tried to establish at the hearing of this petition in the court below (and the trial judge gave credence to his testimony) that from the latter half of 1958 up to April, 1961, the petitioner was employed by his father as a business associate in their family store known as "Chuan An Bazaar" situated at 227-229 Quezon Boulevard, Manila, receiving a monthly salary of P80.00 while he was, at the same time, attending the liberal arts course in the University of the Philippines; that during the years 1959-1960, he also engaged in private tutoring work, deriving fees therefrom at an average of P20.00 a month; that upon graduation from said university with a Bachelor of Science degree major in Physics and Mathematics, in April, 1961, he was appointed by his father as manager of the same family business enterprise (Chuan An Bazaar), working full time (Exh. "12" p. 18) and increasing his monthly salary to P250.00; that his salary was further increased to P300.00 a month, effective January, 1962; that while acting as such manager, he has been enrolled as a full time medical student at the College of Medicine (Ramon Magsaysay Memorial Medical Center), University of the East; that for the whole year of 1961, he also earned a salary of P90.00 a month as a private tutor and the additional sum of P720.00 as fees for his written articles contributed to the Chinese Commercial News; that this incomes for the year 1961, in the total amount of P4,158.50 were reflected in his tax return (Exh. "N"); that he does not own any real property; that he is still single; that he is the eldest among seven (7) brothers and sisters, all of whom live with their parents; that he is being given free board and lodging by his parents.

We find that applicant has not proved that he possessed a lucrative employment or occupation as required by law. It should be noted that as of the time Antonio Dy filed his petition for naturalization on May 26, 1961 (Rec. on Appeal, p. 1), the date that should be the one determining petitioner's qualifications to admission to Filipino citizenship, as held in *Pablo Lee alias Eng Jio vs. Republic*, L-20148, April 30, 1965; and *Pantaleon Sia alias Alfredo Sia vs. Republic*, L-20290, August 31, 1965), the petitioner alleged and claimed to be earning a regular salary of P250.00 a month as manager of their family store. The petitioner's salary was increased from P80.00 to P250.00 only one month prior to the filing of his petition, although he was still attending the medical courses in the University of the East, with classes morning and afternoon. It is also noted that applicant's other alleged sources of income, such as salary derived from private tutoring and fees as news contributor, appear to be

unsteady, contingent and irregular; hence, they should not be considered in determining gainful employment (Tse vs. Republic, L- 19642, Nov. 9, 1964). Furthermore, no evidence was submitted to prove that petitioner's father, who purportedly-paid his salary, has sources of income other than their family business enterprises and that such business is highly profitable so that it can well afford to employ petitioner at such substantial rate of salary without prejudicing the support and maintenance of his father's wife and 6 other children. On the contrary, the business apparently could not afford a full time employee, since it had to employ petitioner herein, notwithstanding his heavy schedule at medical school. Under these circumstances, We entertain serious doubt that petitioner possesses a lucrative income or occupation, particularly because the evidence therein is self-serving and is not supported by petitioner's witnesses, except from hearsay information (tsn., p. 15, Limpin; tsn., Regala, p. 19) (cf Po vs. Republic, L-21019, December, 1965).

Thus, this Court has already held that:

"We have repeatedly declared that such income allegedly derived from employment, in a business enterprise of petitioner's father, is not sufficient to establish compliance with the statutory requirement of lucrative occupation or calling (Sy Ang Hoc vs. Republic, L-12400, March 29, 1961; Richard Velasco vs. Republic, 108 Phil. 2M; Tan vs. Republic, L-14861, March 17, 1961; Zacarias vs. Republic L-14860, May 30, 1961; Que Choc Gui vs. Republic, L-16148, September 30, 1961." (Pablo Lee alias Eng Jio vs. Republic, L-20148, April 30, 1965)

Needless to emphasize, petitioner must satisfy the court that he possesses all the qualifications and none of the disqualifications of our Naturalization Law. We hold, therefore, that the opposition of the Solicitor General is meritorious.

Although not raised by the Solicitor General, another ground for the denial of the present petition is the failure of the petitioner to prove conclusively that he was born in the Philippines in order that he may be entitled to an exemption from filing a declaration of intention one (1) year prior to the filing of his petition under Section 6 of our Revised Naturalization Law. The record reveals that the name appearing in the birth certificate which petitioner submitted in evidence to prove that he was born here is not Antonio Dy but Carmen Dy (Exh. "F"). Petitioner has not explained this discrepancy appearing in his own Exhibit "F"; neither has it been shown that these two names (Antonio Dy and Carmen Dy) belong to one and the same person. We believe that this omission casts strong doubt on whether petitioner was really born in this country and entitled to exemption from filing a declaration of intention. It appearing that he did not file such a declaration, the failure is fatal to the jurisdiction of the trial court in taking cognizance of his petition.

Wherefore, the appealed decision should be, as it hereby is, reversed, and another one entered dismissing the petition for naturalization. With costs against appellee Antonio Dy.

Bautista Angelo, Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Judgment reversed.

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