RE: APPLICATION FOR ADMISSION TO THE PHILIPPINE BAR VICENTE D. CHING, APPLICANT.

Bar Matter No. 914. October 01, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Can a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father validly elect Philippine citizenship fourteen (14) years after he has reached the age of majority? This is the question sought to be resolved in the present case involving the application for admission to the Philippine Bar of Vicente D. Ching.

The facts of this case are as follows:

> Vicente D. Ching, the legitimate son of the spouses Tat Ching, a Chinese citizen, and Prescila A. Dulay, a Filipino, was born in Francia West, Tubao, La Union on 11 April 1964. Since his birth, Ching has resided in the Philippines.
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> On 17 July 1998, Ching, after having completed a Bachelor of Laws course at the St. Louis University in Baguio City, filed an application to take the 1998 Bar Examinations. In a Resolution of this Court, dated September 1998, he was allowed to take the Bar Examinations, subject to the condition that he must submit to the Court proof of his Philippine citizenship.

In compliance with the above resolution, Ching submitted on 18 November 1998, the following documents:

> 1. Certification, dated 9 June 1986, issued by the Board of Accountancy of the Professional Regulations Commission showing that Ching is a certified public accountant;
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> 2. Voter Certification, dated 14 June 1997, issued by Elizabeth B. Cerezo, Election Officer of the Commission on Elections (COMELEC) in Tubao, La Union showing that Ching is a registered voter of the said place; and
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> 3. Certification, dated 12 October 1998, also issued by Elizabeth E. Cerezo, showing that Ching was elected as a member of the Sangguniang Bayan of Tubao, La Union during the 12 May 1992 synchronized elections.

On 5 April 1999, the results of the 1998 Bar Examinations were released and Ching was one of the successful Bar examinees. The oath-taking of the successful Bar examinees was scheduled on 5 May 1999. However, because of the questionable status of Ching's citizenship, he was not allowed to take his oath. Pursuant to the resolution of this Court, dated 20 April 1999, he was required to submit further proof of his citizenship. In the same resolution, the Office of the Solicitor General (OSG) was required to file a comment on Ching's petition for admission to the bar and on the documents evidencing his Philippine citizenship.

The OSG filed its comment on 8 July 1999, stating that Ching, being the "legitimate child of a Chinese father and a Filipino mother born under the 1935 Constitution was a Chinese citizen and continued to be so, unless upon reaching the age of majority he elected Philippine citizenship”[1] in strict compliance with the provisions of Commonwealth Act No. 625 entitled "An Act Providing for the Manner in which the Option to Elect Philippine Citizenship shall be Declared by a Person Whose Mother is a Filipino Citizen." The OSG adds that (w)hat he

acquired at best was only an inchoate Philippine citizenship which he could perfect by election upon reaching the age of majority."[2] In this regard, the OSG clarifies that "two (2) conditions must concur in order that the election of Philippine citizenship may be effective, namely: (a) the mother of the person making the election must be a citizen of the Philippines; and (b) said election must be made 'upon reaching the age of majority.'"[3] The OSG then explains the meaning of the phrase "upon reaching the age of majority:"

> The clause "upon reaching the age of majority" has been construed to mean a reasonable time after reaching the age of majority which had been interpreted by the Secretary of Justice to be three (3) years (VELAYO, supra at p. 51 citing Op., Sec. of Justice No. 70, s. 1940, Feb. 27, 1940). Said period may be extended under certain circumstances, as when a (sic) person concerned has always considered himself a Filipino (ibid., citing Op. Nos. 355 and 422, s. 1955; 3, 12, 46, 86 and 97, s. 1953). But in Cuenco, it was held that an election done after over seven (7) years was not made within a reasonable time.

In conclusion, the OSG points out that Ching has not formally elected Philippine citizenship and, if ever he does, it would already be beyond the "reasonable time" allowed by present jurisprudence. However, due to the peculiar circumstances surrounding Ching's case, the OSG recommends the relaxation of the standing rule on the construction of the phrase “reasonable period" and the allowance of Ching to elect Philippine citizenship in accordance with C.A. No. 625 prior to taking his oath as a member of the Philippine Bar.

On 27 July 1999, Ching filed a Manifestation, attaching therewith his Affidavit of Election of Philippine Citizenship and his Oath of Allegiance, both dated 15 July 1999. In his Manifestation, Ching states:

> 1. I have always considered myself as a Filipino;
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> 2. I was registered as a Filipino and consistently declared myself as one in my school records and other official document;
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> 3. I am practicing a profession (Certified Public Accountant) reserved for Filipino citizens;
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> 4. I participated in electoral process[es] since the time I was eligible to vote;
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> 5. I had served the people of Tubao, La Union as a member of the Sangguniang Bayan from 1992 to 1995;
>
> 6. I elected Philippine citizenship on July 15, 1999 in accordance with Commonwealth Act No. 625;
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> 7. My election was expressed in a statement signed and sworn to by me before a notary public;
>
> 8. I accompanied my election of Philippine citizenship with the oath of allegiance to the Constitution and the Government of the Philippines;
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> 9. I filed my election of Philippine citizenship and my oath of allegiance to (sic) the Civil Registrar of Tubao La Union, and
>
> 10.I paid the amount of TEN PESOS (Ps 10.00) as filing fees.

Since Ching has already elected Philippine citizenship on 15 July 1999, the question raised is whether he has elected Philippine citizenship within a "reasonable time." In the affirmative, whether his citizenship by election retroacted to the time he took the bar examination.

When Ching was born in 1964, the governing charter was the 1935 Constitution. Under Article IV, Section 1(3) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship.[4] This right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that "(t)hose who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred

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and thirty-five" are citizens of the Philippines.[5] Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that "(t)hose born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority" are Philippine citizens.[6] It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution.[7] If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.[8]

C.A. No. 625 which was enacted pursuant to Section 1(3), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to made a valid election of Philippine citizenship. Under Section 1 thereof, legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines."

However, the 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching twenty-one (21) years.[9] In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a "reasonable time" after attaining the age of majority.[10] The phrase “reasonable time" has been interpreted to mean that the election should be made within three (3) years from reaching the age of majority.[11] However, we held in Cuenco vs. Secretary of Justice,[12] that the three (3) year period is not an inflexible rule. We said:

> It is true that this clause has been construed to mean a reasonable period after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino.[13]

However, we cautioned in Cuenco that the extension of the option to elect Philippine citizenship is not indefinite:

> Regardless of the foregoing, petitioner was born on February 16, 1923. He became of age on February 16,1944. His election of citizenship was made on May 15, 1951, when he was over twenty-eight (28) years of age, or over seven (7) years after he had reached the age of majority. It is clear that said election has not been made "upon reaching the age of majority.”[14]

In the present case, Ching, having been born on 11 April 1964, was already thirty-five (35) years old when he complied with the requirements of C.A. No. 625 on 15 June 1999, or over fourteen (14) years after he had reached the age of majority. Based on the interpretation of the phrase “upon reaching the age of majority," Ching's election was clearly beyond, by any reasonable yardstick, the allowable period within which to exercise the privilege. It should be stated, in this connection, that the special circumstances invoked by Ching, i.e., his continuous and uninterrupted stay in the Philippines and his being a certified public accountant, a registered voter and a former elected public official, cannot vest in him Philippine citizenship as the law specifically lays down the requirements for acquisition of Philippine citizenship by election.

Definitely, the so-called special circumstances cannot constitute what Ching erroneously labels as informal

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election of citizenship. Ching cannot find a refuge in the case of In re: Florencio Mallare,[15] the pertinent portion of which reads:

> And even assuming arguendo that Ana Mallare were (sic) legally married to an alien, Esteban's exercise of the right of suffrage when he cane of age, constitutes a positive act of election of Philippine citizenship. It has been established that Esteban Mallare was a registered voter as of April 14, 1928, and that as early as 1925 (when he was about 22 years old), Esteban was already participating in the elections and campaigning for certain candidate[s]. These acts are sufficient to show his preference for Philippine citizenship.[16]

Ching's reliance on Mallare is misplaced. The facts and circumstances obtaining therein are very different from those in the present case, thus, negating its applicability. First, Esteban Mallare was born before the effectivity of the 1935 Constitution and the enactment of C.A. No. 625. Hence, the requirements and procedures prescribed under the 1935 Constitution and C.A. No. 625 for electing Philippine citizenship would not be applicable to him. Second, the ruling in Mallare was an obiter since, as correctly pointed out by the OSG, it was not necessary for Esteban Mallare to elect Philippine citizenship because he was already a Filipino, he being a natural child of a Filipino mother. In this regard, the Court stated:

> Esteban Mallare, natural child of Ana Mallare, a Filipina, is therefore himself a Filipino, and no other act would be necessary to confer on him all the rights and privileges attached to Philippine citizenship (U.S. vs. Ong Tianse, 29 Phil. 332; Santos Co vs. Government of the Philippine Islands, 42 Phil. 543, Serra vs. Republic, L-4223, May 12, 1952, Sy Quimsuan vs. Republic, L-4693, Feb. 16, 1953; Pitallano vs. Republic, L-5111, June 28, 1954). Neither could any act be taken on the erroneous belief that he is a non-Filipino divest him of the citizenship privileges to which he is rightfully entitled.[17]

The ruling in Mallare was reiterated and further elaborated in Co vs. Electoral Tribunal of the House of Representatives,[18] where we held:

> We have jurisprudence that defines 'election' as both a formal and an informal process.
>
> In the case of In re: Florencio Mallare (59 SCRA 45 [1974]) the Court held that the exercise of the right of suffrage and the participation in election exercises constitute a positive act of election of Philippine citizenship. In the exact pronouncement of the Court we held:
>
> “Esteban s exercise of the right of suffrage when he came of age constitutes a positive act of Philippine citizenship” (p. 52: emphasis supplied)”
>
> The private respondent did more than merely exercise his right of suffrage. He has established his life here in the Philippines.
>
> For those in the peculiar situation of the respondent who cannot be expected to have elected Philippine citizenship as they were already citizens, we apply the In Re Mallare rule.
>
> x x x
>
> The filing of sworn statement or formal declaration is a requirement for those who still have to elect citizenship. For those already Filipinos when the time to elect came up, there are acts of deliberate choice which cannot be less binding. Entering a profession open only to Filipinos, serving in public office where citizenship is a qualification, voting during election time, running for public office, and other categorical acts of similar nature are themselves formal manifestations for these persons.
>
> An election of Philippine citizenship presupposes that the person electing is an alien. Or his status is doubtful because he is a national of two countries. There is no doubt in this case about Mr. Ong's being a Filipino when he turned twenty-one (21).

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> We repeat that any election of Philippine citizenship on the part of the private respondent would not only have bean superfluous but would also have resulted in an absurdity. How can a Filipino citizen elect Philippine citizenship?[19]

The Court, like the OSG, is sympathetic with the plight of Ching. However, even if we consider the special circumstances in the life of Ching like his having lived in the Philippines, all his life and his consistent belief that he is a Filipino, controlling statutes and jurisprudence constrain us to disagree with the recommendation of the OSG. Consequently, we hold that Ching failed to validly elect Philippine citizenship. The span Of fourteen (14) years that lapsed from the time he reached the age of majority until he finally expressed his intention to elect Philippine citizenship is clearly way beyond the contemplation of the requirement of electing "upon reaching the age of majority." Moreover, Ching has offered no reason why he delayed his election of Philippine citizenship. The prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and thereafter, file the same with the nearest civil registry. Ching's unreasonable and unexplained delay in making his election cannot be simply glossed over.

Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient.[20] One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude. Sadly, in this case, Ching slept on his opportunity to elect Philippine citizenship and, as a result, this golden privilege slipped away from his grasp.

IN VIEW OF THE FOREGOING, the Court Resolves to DENY Vicente D. Ching's application for admission to the Philippine Bar.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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[1] Citing Cu vs. Republic of the Philippines, 89 Phil. 473, 476 (1951).

[2] Citing CRUZ, Constitutional Law, 1991 Ed. p 359.

[3] Citing Cuenco vs. Secretary of Justice, 5 SCRA 108, 110 (1962).

[4] Sec. 1. Art IV of the 1935 Constitution reads:

> Section 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of the Constitution;
>
> (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office;
>
> (3) Those whose fathers are citizens of the Philippine;
>
> (4) Those whose mothers are citizens of the Philippines, and, upon reaching the age of majority, elect Philippine citizenship;
>
> (5) Those who are naturalized in accordance with law

[5] Sec. 1(1), Article III, 1973 Constitution.

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[6] Sec 1(3), Article IV, 1987 Constitution.

[7] BERNAS The constitution of the Republic of the Philippines, First Ed. (1987), p. 502.

[8] Ibid., citing Convention Session of November 27,1972 and noting that it is also applicable to the 1987 constitution.

[9] Art. 402. Civil Code

[10] Lim Teco vs. Collector of Customs, 24 SCRA 84, 88 (1912).

[11] Muñoz vs. Collector of Customs, 20 SCRA 494, 498 (1911); Lorenzo vs. Collector of Customs, 15 SCRA 559 592 (1910).

[12] 5 SCRA 108 (1962).

[13] Id., at 110.

[14] Id.

[15] 59 SCRA 45 (1974).

[16] Id., at 52.

[17] Id.

[18] 199 SCRA 692 (1991).

[19] Id at 707-709 (Underscoring Supplied).

[20] Yu vs. Defensor-Santiago, 169 SCRA 364, 379 (1989).

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