

**THE SPOUSES, JOSE YAP JOAQUIN AND LAM SOK KAM,
PETITIONERS-APPELLANTS, VS. HON. EMILIO L. GALANG, THE
COMMISSIONER OF IMMIGRATION, RESPONDENT-APPELLEE.**

G.R. No. L-29132. May 29, 1970

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

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

Appeal to the Court of Appeals but certified to the Supreme Court as a case involving questions purely of law. This appeal was interposed against a decision of the Court of First Instance of Manila, in its Civil Case No. 39025, denying a petition for prohibition against the herein respondent-appellee, Commissioner of Immigration, for ordering the deportation of herein petitioner-appellant Lam Sok Kam.

The case was submitted for decision before the trial court upon a stipulation of facts. In resume, these facts are as follows:

On 21 January 1958, petitioner-appellant Lam Sok Kam, a Portuguese woman, filed with the Philippine consulate general in Hongkong a non--immigrant application for passport visa for the Philippines, "for the purpose of visiting a friend" and "to remain in the Philippines for a period of 30 days", according to her applications. She also therein stated that she was married to one Tan Pio, a resident of Macau.

She arrived in the Philippines on 19 April 1958 and was admitted as a temporary visitor for a limited stay up to 18 May 1958. On 7 May 1958, she petitioned for, and was granted, an extension of her temporary stay up to 17 November 1958. On 17 October 1958, however, she married one Jose Yap Joaquin, a Filipino citizen, in a wedding solemnized by the Justice of the Peace of Siniloan, Laguna. Four (4) days after the marriage, she applied for the cancellation of her alien registry on the ground of having acquired Philippine citizen-ship by reason of her marriage to Joaquin. Her application was granted in an order, dated 21 October 1958, by Associate Commissioner of Immigration Francisco de la Rosa, and she was issued an identification certificate recognizing her as a citizen of the Philippines.

Upon further investigation, however, Immigration Commissioner Emilio L. Galang discovered that Lam Sok Kam was not a divorcee, as she had stated in her marriage contract with Joaquin, because the document of divorce by mutual consent that she had presented was defective and irregular on its face and, therefore, she had no right to contract another marriage. The Commissioner sought the opinion of the consul of Portugal on the force and validity of a "Divorcio Por Muto Consentimento" and its effect upon the marriage of Lam Sok Kam to Tan Pio, and the consul replied that he considered the document not valid for the lack of the signature of Lam Sok Kam; the document was supposed executed in Macau on 19 July 1958, when Lam Sok Kam was already in the Philippines. Neither had the consul issued to petitioner any certificate of legal capacity to marry, required by Article 66 of the Civil Code. Thereupon, respondent-appellee Commissioner revoked, on 15 January 1959, the previous order of 21 October 1958 of Associate Commissioner de la Rosa, and ordered her to leave the country within five (5) days. The Commissioner further denied her request for stay of execution of the order, pending

action by the President of the Philippines on her request for additional extension of her stay. The Commissioner, likewise, forfeited her bond for having changed her residence without giving notice and obtaining a previous written consent of the Bureau of Immigration.

On 21 January 1959, petitioners-appellants filed a petition for prohibition against the Commissioner of Immigration to prohibit him from enforcing his deportation order.

In the meanwhile, two (2) daughters, Lita and Cita, had been born, on 20 January 1960 and 26 March 1961, respectively, to the petitioner appellants.

After trial, the Court of First Instance of Manila rendered its decision, subject of the present appeal, denying the petition for prohibition.

The power of the Commissioner of Immigration to determine the validity of a marriage for the purpose of deporting aliens was upheld in *Brito, et al. vs. Commissioner of Immigration*, 106 Phil. 417, in the following language:

"The pivotal issue is whether or not the respondent Commissioner of Immigration has the power to determine the validity of the marriage contracted by the petitioners for the purpose of arresting and deporting Tan Soo alias So Wa. There is no question that the power to deport is limited to aliens, that the citizenship of the respondent in deportation proceedings is determinative of the jurisdiction of the Commissioner of Immigration, and that the power to deport carries that of determining the respondent's nationality. But if the question of nationality is dependent upon the validity of the respondent's marriage, may the Commissioner of Immigration pass judgment thereon?

"The lower court rules against appellant Commissioner of Immigration. The latter, however, drew a distinction between a voidable marriage and one which is void ab initio. He argues that in the first case the court may be correct, but in the second, where the marriage is void ab initio, the Commissioner of Immigration may pass upon the validity of said marriage - - - - no judicial decree being necessary to establish its nullity.

"It is true that in relation to the marriage of petitioners no assumption can arise or should be made from the mere discovery of a marriage contract between Olegario Brito and Narcisa Maya executed in 1943, without proof that the first wife was still alive or that said first marriage was otherwise subsisting in 1954. As a matter of fact, it is to be supposed that the marriage between the herein petitioners in 1954 is valid although this is only a prima facie presumption which may be overcome by evidence that it was contracted during the lifetime of Narcisa Maya and before the first marriage of Olegario Brito was annulled or dissolved. In any event, these considerations going into the validity of the marriage of petitioners are not an obstacle to the preliminary proceedings to be conducted in this particular case by the appellant Commissioner of Immigration pursuant to Section 37(a) of the Philippine Immigration Act, as amended, to determine whether or not a prima facie case exists against appellee Tan Soo alias So Wa to warrant her deportation."

Though the decision in the *aforecited* case was subsequently set aside, the ground therefor was new relevant evidence (See *Brito, et al. vs. Commissioner of Immigration*, G.R. No. L-16829, 30 June 1965; 14 SCRA 539) which did not reject or alter the ruling or opinion *aforequoted* upholding the power of the Commissioner to determine the validity of a marriage, in the exercise of his jurisdiction to deport aliens, where such marriage is claimed as a ground for non-alienage or citizenship.

But even assuming, for the sake of argument, that the divorce from her first husband and her second marriage were both valid, petitioner Lam Sok Kam is plainly deportable because her marriage to Joaquin did not excuse her from her failure to depart from the country upon the expiration of the extended period of her temporary stay, which was on 17 November 1958, because her marriage did not ipso facto make her a Filipino citizen (*Ly Giok Ha, et al. vs. Galang*, G.R. No. L-10760, 17 May 1957, 101 Phil. 459; *Moreno vs. Vivo*, G.R. No. L-22196, 30

June 1967, 20 SCRA 562; Commissioner of Immigration vs. Go Tieng, et al., G.R. No. L-22581, 21 May 1969, 28 SCRA 237).

Petitioners oppose consideration of the foregoing issue on the ground of its being raised for the first time on appeal. The opposition is unacceptable; petitioners themselves raised the issue in their fourth assignment of error (Brief, 32) by citing Section 15 of the Revised Naturalization Law, providing that:

"Any woman who is now or may hereafter be married to a citizen of the Philippines and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

Besides, the circumstances shown by the record before us are convincing that the marriage was not entered into in good faith but only for the purpose of evading Lam Sok Kam's promise to leave the country upon expiration of her temporary stay. Her case is identical to that dealt with in *De Austria vs. Conchu*, G.R. No. L-20716, 22 June 1965, 14 SCRA 336, wherein this Court held the temporary visitor to be deportable, notwithstanding her marriage to a natural born Filipino citizen some forty days before expiration of her permit to remain in the Islands. Such devious maneuvers to circumvent our immigration laws and confront the authorities with a "fait accompli" must be firmly discouraged if the country is not to be flooded by illegal entrants, abetted by unthinking citizens devoid of regard for the country's higher interests.

That Lam Sok Kam now has children by her second husband, and that her deportation would tear her apart from them, is not a ground that would bar exclusion. In *Vivo vs. Cloribel*, G.R. No. L-25411, 26 October 1968, 25 SCRA 616, this Court held:

"It is contended that two-year old respondent Uy Tian Siong cannot, under Article 363 of the Civil Code, be separated from his mother -----; and that to make said wife depart from the Philippines is destructive of family solidarity (Articles 218-221). These arguments are beside the point. Said laws govern the relations ----- between private persons, not the relations between visiting aliens and the sovereign host-country. -----."

FOR THE FOREGOING REASONS, the appealed decision is hereby affirmed. Costs against the petitioners-appellants.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Teehankee, and Villamor, JJ., concur.

Castro, J., is on leave.

Fernando, J., in the result.

Barredo, J., did not take part.

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