

IN THE MATTER OF THE PETITION TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. SEE YEK TEK ALIAS SY YAC TIAK, PETITIONER AND APPELLEE, VS, REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND...

G.R. No. L-19898. June 28, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal by the Government from the decision of the Court of First Instance of Cebu granting the herein appellee his application for Filipino citizenship.

On March 8, 1961, See Yek Tek alias Sy Yak Tiak, the appellee herein, filed with the above named court a petition for naturalization. Among others, the petition recited that the appellee arrived in the Philippines from Amoy, China in 1927 and has .since been continuously a Philippine resident for some thirty-three (33) years except for a short visit to China in 1927. Because of the above alleged continuous residence in this country of 33 years, the petitioner claimed exemption from filing his declaration of intention (Sec. 6, C.A. 473). The petition also alleged that the appellee was residing in No. 35-D, Jones Avenue, Cebu City.

After due publication and notices, the petition was heard during which it was found that the applicant-appellee was born in Amoy, China on April 15, 1919; that he arrived in the Philippines on board the "Susanna" in 1927; that in 1939, he returned to China where he stayed and studied up to 1938; and, that he lived in Manila and in Cebu City and, for a while, stayed "" Matalom, Leyte.

It was also established during the hearing that the petitioner-appellee has four children, all of school age and all enrolled in the Cebu Chinese High School.

Upon the above, and, on the affirmations of two character witnesses whose reliability as such witnesses are not impugned by the Government that the petitioner was a man of good moral character, the lower court Promulgated a decision finding the appellee entitled to naturalization as a Filipino citizen. This is the decision on appeal.

Four errors are assigned to the appealed decision namely:

- The lower court erred in granting the petition for naturalization notwithstanding the fact that the petitioner failed to file his declaration of intention as required by law.

- The lower court erred in granting the petitioner notwithstanding the fact that he made misrepresentation in his petition notwithstanding the fact that he made misrepresentation in his petition as to his length of residence of the Philippines.

- The lower court erred in granting the petition notwithstanding the fact that the petitioner did not allege his previous residence in his petition.

- The lower court erred in not ruling that the petitioner has evinced a sincere desire to learn and assimilate Filipino custom and ideals by enrolling his children in Philippine schools.

Upon a careful consideration of the errors above assigned, this Court believes that the instant appeal should be sustained and the decision in question reversed.

In the first place, the petitioner's application for naturalization was fatally defective because it was not preceded by the required declaration of intention. Of course, the petitioner-appellee maintains that he was exempted from filing such a declaration of intention because he had resided in the Philippines continuously for a period of more than thirty years prior to the filing of his petition and that he had enrolled his children in schools recognized by the Philippine Government. (Sec. 6, C.A. No. 473). We note, however, from the petitioner's own testimony during the hearing of this case, that the grounds relied upon by him for the aforementioned exemption do not really exist. For, by his own admission, he had not Resided in the Philippines continuously for 30 years prior to the filing of this petition.

During the hearing, the petitioner-appellee testified that he arrived in the Philippines in 1927 and that he returned to China in 1930 where he resided to study up to 1938. Considering that the petition in question was filed in 1961, his continuous residence in this country can come to no more than 23 years. He was not entitled to the exemption, therefore, for as he well knows, the law requires therefor 30 continuous years.

Against the above, the appellee contends that at the time he was in China from 1930 to 1938, his father was a resident of the Philippines and that he, the appellee, was then a minor. Consequently, he argues that, for all legal intents and purposes, he must be deemed to have followed the residence of his father.

We find no merit in the contention. The rule that a minor child follows the residence of his father cannot apply when, as in this case, the law demands actual and substantial residence. In the cases of *In re Domingo Dy*, 48 Off. Gaz. 4813, 92 Phil. 278; *Sy See vs. Republic*, 115 Phil., 175; this Court expressed the doctrine in the following language:

"As to the second contention, we declare that the evident reason of Sec. 6 of the Rev. Naturalization Law in exempting applicants who have resided in the country continuously for 30 years or more before the filing of the application for Philippine citizenship, is because they have stayed in the country for so long a time that they can be presumed to have acquired the principles and imbibed the spirit of our institutions, and the community and naturalization service have had full opportunity to observe their conduct. This reason is implied from the requirement from the other class of applicants (those born in the country and have received then' primary and secondary education in public schools or those recognized by the Government) also granted similar exemption. The law, therefore, contemplates actual and substantial residence within the Philippines, not legal residence alone, because only by actual and substantial residence may the said qualification be acquired by an applicant. (*Application of Vilorio*, 84 F. Supp. 584, 583; *U.S. vs. Gunsberg*, 244 Fed. 209, 213). (Italics ours.)

In view of the above, this Court sees no necessity anymore to pass upon the other assigned errors.

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

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Paredes, Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Judgment reversed.

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