

ANG NGO CHIONG, SZE SOOK YUEN ALIAS SY SIOK GAN, ANG UN BON AND ANG CHO SIT, THE LAST TWO HEREIN REPRESENTED BY ANG NGO CHIONG, PETITIONERS-APPELLEES, VS. EMILIO GALANG, IN HIS ...

G.R. No. L-21426. October 22, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This case involves the application of the now settled rule that the wife and minor children of a Chinese resident, who was naturalized as a Filipino citizen, acquired Philippine citizenship under the conditions laid down in section 15 of the Revised Naturalization Law and consequently, they cannot be deported (*Po Siok Pin vs. Vivo*, 71 O.G. 5412, L-24792, February 14, 1975, 62 SCRA 363; *Burca vs. Republic*, L-24252, June 15, 1973, 51 SCRA 248, 255; Resolution in *Moy Ya Lim Yao vs. Commissioner of Immigration*, L-21289, October 4, 1971, 41 SCRA 292, 351; *Lee vs. Commissioner of Immigration*, L-23446, December 20, 1971, 42 SCRA 561, 565; *Yap vs. Republic*, L-27430, May 17, 1972, 45 SCRA 36; *Tiu vs. Vivo*, L-21425, September 15, 1972, 47 SCRA 23).

The facts of the instant case are as follows:

Ang Ngo Chiong, a native of Sin Koe, Chinkiang, China emigrated to the Philippines in 1939. He became a permanent Chinese resident of Manila (Exh. F). Apparently, he returned to China in 1947 when he allegedly married Sze Sook Yuen alias Sy Siok Gan in Chingkiang, Fukien in conformity with the laws of the place. They begot two children named Ang Un Bon and Ang Cho Sit. Ang Ngo Chiong returned to Manila without his wife and children.

On March 7, 1960 Sze Sook Yuen and her two children each applied for a passport visa to visit the Philippines as nonimmigrant aliens for a period of thirty days (Exh. 3, 5 and 6). Sze Sook Yuen stated in her application that she is married to Ang Ngo Chiong.

On March 8, 1960 Sze Sook Yuen and her two children were admitted into the Philippines as temporary visitors from Hongkong and Macao with the proper documentation. Their original period of stay, which was one month, was repeatedly extended. The children, Ang Un Bon and Ang Cho Sit, were later enrolled at the Sta. Rita College and San Sebastian College, respectively.

In the meantime, Ang Ngo Chiong filed a petition for naturalization in the Court of First Instance of Manila (Civil Case No. 47663). The hearing on his application was scheduled on August 2, 1961.

The last extension for the temporary stay of Sze Sook Yuen and her children expired on August 8, 1961. The Commissioner of Immigration ordered Sze Sook Yuen and her children to leave the Philippines on or before that date.

In view of that ultimatum, the spouses Ang Ngo Chiong and Sze Sook Yuen and their children on August 4, 1961 or four days prior to the expiration of the last extension filed with the Court of First Instance of Manila this special civil action of prohibition to restrain the Commissioner from arresting and deporting Sze Sook Yuen and her children and from forfeiting their cash bond of P3,000 (Civil Case No. 47705).

On August 9, 1961 the lower court denied the petition for a writ of preliminary injunction. On August 11, 1961 the Commissioner issued a warrant for the arrest of Sze Sook Yuen and her two children and for the confiscation of their cash bond. Later, the lower court reconsidered its order and issued the writ of preliminary injunction restraining their arrest and the forfeiture of their bond.

On November 5, 1961 or during the pendency of the case a third child, Ester Sy Ang, was born to Ang Ngo Chiong and Sze Sook Yuen (Exh. H). The petition for naturalization of Ang Ngo Chiong was granted by the Court of First Instance of Manila in a decision dated September 8, 1962 (Exh. F). No appeal having been made from the decision, it became final. (Ang Ngo Chiong took his oath of allegiance on December 5, 1964).

After trial in the instant case, the lower court in a decision dated May 30, 1963 granted the writ of prohibition and enjoined the Commissioner of Immigration from arresting and deporting Sze Sook Yuen and her three children. To justify that judgment, it held that the wife and children of Ang Ngo Chiong acquired Philippine citizenship by reason of his naturalization; that section 37(a) of the Immigration Law is unconstitutional, and that the form for the bond used by Sze Sook Yuen and her children is illegal.

From that decision, the Commissioner appealed to this Court on questions of law. He contends that the trial court erred (a) in holding that Sze Sook Yuen and her children had acquired Philippine citizenship, (b) in declaring unconstitutional section 37(a) of the Immigration Law, and (c) in declaring that the form for petitioners' bond, which form was not approved by the Secretary of Justice, was illegal.

We hold that the lower court's decision enjoining the arrest and deportation of Sze Sook Yuen and her children, can be sustained on the first ground, which is that under section 15 of the Revised Naturalization Law they could be regarded as Filipino citizens in view of the naturalization of Ang Ngo Chiong.

The lower court correctly applied the following provisions of the Revised Naturalization Law:

"SEC. 15. Effect of the naturalization on wife and children.— 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.

Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age

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The prevailing rule is that under section 15 an alien woman marrying a Philippine citizen, native-born or naturalized, becomes ipso facto a Philippine citizen provided that she is not disqualified under section 4 of the same law. Likewise, an alien woman married to a foreigner, who subsequently becomes a naturalized Filipino citizen, acquires Philippine citizenship the moment her husband takes his oath as Philippine citizen provided that she does not have any of the disqualifications under said section 4 (*Burca vs. Republic*, supra and other cases

cited in the first paragraph of this decision).

Consequently, Sze Sook Yuen the wife of Ang Ngo Chiong, became a Filipino Citizen when the latter took his oath of allegiance on December 5, 1964 if she did not have any of the disqualifications to become a Philippine citizen. Likewise, their three children automatically became Philippine citizens by virtue of section 15. Since under section 15 Sze Souk Yuen, Ang Un Bon, Ang Cho Sit and Ester Sy Ang became Filipino citizens, they cannot be deported.

As indicated in Opinion No. 38, series of 1958 of the Acting Secretary of Justice, quoted in the Moy Ya Lim Yao case, the married alien woman must file a petition for the cancellation of her alien certificate of registration with the Bureau of Immigration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring his husband's citizenship under section 4 of the Revised Naturalization Law.

Upon the filing of said petition, which should be supported by the joint affidavit of the petitioner and her Filipino husband to the effect that she does not belong to any of the groups disqualified under section 4, the Bureau of Immigration will conduct an investigation and thereafter promulgate its decision.

The lower court's rulings on the constitutionality of section 37(a) of the Immigration Law and on the legality of the form used for the bond are erroneous. However, its errors do not preclude the affirmance of its judgment granting the writ of prohibition.

This Court had already upheld the constitutionality of section 37(a) of the Immigration Law, which authorizes the Commissioner of Immigration to order the arrest of aliens who should be deported.

Section 1(3), Article III of the 1935 Constitution (now section 3, Article IV of the new Constitution) does not mean that only judges can issue warrants of arrest. What it means is that it is the judge who should issue the warrant of arrest where the proceeding is for the determination of a probable cause in a given case. On the other hand, the Commissioner of Immigration can issue a warrant of arrest for the execution of a final deportation order. He cannot issue a warrant of arrest solely for purposes of investigation and before a final order of deportation is issued (*Po Siok Pin vs. Vivo*, supra; *Contemprate vs. Acting Commissioner of Immigration*, L-28604, October 30, 1970, 35 SCRA 623, 630-1; *Vivo vs. Montesa*, L-24576, July 29, 1968, 24 SCRA 155, 161; *Morano vs. Vivo*, L-22196, June 30, 1967, 20 SCRA 562, 568; *Qua Chee Gan vs. Deportation Board*, L-10280, September 30, 1963, 9 SCRA 27, 35-36; *Ng Hua To vs. Galang*, L-19140, February 29, 1964, 10 SCRA 411).

As to the form of the bond, it was held in *Morino vs. Vivo*, supra, that the provision of section 3 of the Immigration Law, stating that the Department Head should approve the form for the bond is merely directory and that, inasmuch as the form in question had been used for a long time, it can be assumed that it has been approved by the Secretary of Justice. Moreover, the petitioners-appellees, who benefited from their bond, are estopped from impugning its validity.

Wherefore, the lower court's decision is affirmed insofar as it grants the writ of prohibition on the ground that petitioners Sze Sook Yuen and her children could be regarded as Philippine citizens if they had satisfied the conditions laid down in section 15 of the Revised Naturalization Law.

As indicated in the Moy Ya Lim Yao case, the petitioners (except Ang Ngo Chiong) should ask for the cancellation of their alien certificates of registration, if any. The findings of the Commissioner of Immigration will be the bases of their claim of Philippine citizenship. No costs. So ordered.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Martin[*], JJ., concur.

Fernando, J., on leave.

[*] Designated to sit in the Second Division.

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