

**IN THE MATTER OF THE PETITION OF TAN KIAN SY TO BE
ADMITTED A CITIZEN OF THE PHILIPPINES, TAN KIAN SY,
PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR-APPELLANT.**

G.R. No. L-31376. July 28, 1972

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

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

Appeal by the Government from a decision of the Court of First instance of Surigao del Norte, 15th Judicial District, in its Naturalization Case No. 43, declaring petitioner-appellee Tan Kian Sy entitled to be admitted as a citizen of the Philippines.

Petitioner-appellee is single, and like his parents, is a citizen of Nationalist China. He was born on 28 April 1943 in Loreto, Surigao del Norte. He is registered as an alien in the Bureau of Immigration and he never left the country since birth. Except for the 5th grade which petitioner-appellee took in Surigao Chinese School, Surigao del Norte, he completed his primary education in Loreto Central Elementary School, Loreto, Surigao del Norte. For his secondary education, he attended the following schools: 1st year, Surigao Chinese School, 2nd and 3rd year, Northeastern Mindanao Colleges, also in Surigao, Surigao del Norte, and 4th year, Loreto Academy, Loreto. Petitioner-appellee received his college degree (Bachelor of Science in Commerce, major in accounting) at the University of San Carlos, Cebu City.

Petitioner-appellee is the sales manager of his father's store in Loreto, and was earning P250.00 a month at the filing of the petition on 6 September 1965.

The application for naturalization is supported by the affidavit of the mayor and vice-mayor of Loreto which states, among other things, that the herein applicant "has all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of Commonwealth Act 473."^[1]

The Provincial Fiscal, representing the Solicitor General, opposed the above petition. However, after reception of evidence, both oral and documentary, the court aquo decided in favor of petitioner-appellees admission as Filipino citizen. The state appealed the decision, assigning 6 errors, as follows: The lower court erred in:

1. Not finding that the petition is fatally defective for failure of the petitioner-appellee to allege his having filed or his being exempt from filing a declaration of intention;
2. Not denying the petition for failure of petitioner-appellee to state therein that he was also known by some other name;
3. Holding that the places where petitioner-appellee resided during his school days need not be alleged in the petition;
4. Holding that petitioner-appellee has a lucrative income;

5. Not denying the petition for failure of petitioner-appellee to state therein that he is a person of good moral character;
6. Holding that petitioner is a person of good moral character; and
7. Granting the petition for naturalization.

The herein appeal was submitted to this Court for decision on the basis of petitioner-appellee's Memorandum of 28 December 1967, and without his brief, his counsel having manifested that petitioner-appellee had "no further * * * desire or intention to fight this case on appeal." [2]

Regarding the first assigned error, it is not disputed that petitioner-appellee did not file any declaration of intention. Neither is there an allegation in the petition that he filed any. The explanation given is that petitioner-appellee is exempt from filing the same.

We find no clear evidence that petitioner-appellee is entitled to the exemption. It is true that he was born in the Philippines, which fact is alleged in the petition. However, birth alone does not suffice to comply with the mandatory requirements for exemption. Aside from proof of birth, petitioner-appellee should also have proved that he received his primary and secondary education in public schools or those recognized by the Government, and not limited to any race or nationality. [3] While Surigao Chinese School where petitioner-appellee finished his 5th grade and 1st year high school may have been recognized by the Government, there is no sufficient proof that said school is not limited to any race or nationality. In fact, when asked on cross-examination if practically all of the students therein were Chinese, petitioner-appellee answered in the affirmative.

In the case of *Lim Cho Kuan vs. Republic*, [4] this Court already ruled that-

"The records * * * bear no evidence showing that the Philippine Chinese High School where Lim Cho Kuan finished his elementary education is not limited to any race or nationality. Such point must be proved by applicant and cannot be presumed from the fact that the school is recognized by the Government. The deficiency is fatal to his claim." [5]

But granting, nevertheless, that petitioner-appellee was able to prove the aforesaid requirements for exemption, the petition is still fatally defective for failure to allege said exemption. Exemption from filing the declaration of intention is an "essential particular" [6] and " * * * failure * * * of the petitioner in this case to make a statement in his petition about his having filed, or his being exempt from filing, a declaration of intention constituted a fatal defect in his petition and rendered the same void, for non-compliance with the provision of law relative to the contents of, and annexes to, the petition for naturalization". [7]

This ruling was reiterated in the more recent case of *Tan vs. Republic* [8] when this Court said-

"As in the *Ong Khan* case, supra, the petitioner here did not make any allegation in his original petition that he had complied with section 5 of the Revised Naturalization Law. No declaration of intention was attached to the petition. But there was no claim for exemption from filing such declaration, and neither was there allegation of facts that would entitle petitioner to exemption.

It has been repeatedly held that in cases where the petitioner for naturalization is exempt from filing a declaration of intention, a statement as to his exemption therefrom and the reasons therefor should appear in the petition in order to apprise the public, especially those officers charged with notice of the application, of the reasons advanced in support of the claim for exemption, so that they may be prepared, if legally proper and necessary to contest or object to any evidence adduced in that regard. The failure, therefore, of the petitioner to make a statement in his original petition about his having filed, or his being exempt from that requirement, constitutes a fatal defect in his petition and rendered the same void for non-compliance with the law." [9]

With respect to the second error assigned; it is established that the name "Tan Tianchi", not Tan Kian Sy, appears as the name of petitioner-appellee in his "Secondary Pupil's Permanent Record." [10] Although this was sought to be explained as a mistake "first made by his teacher" when petitioner-appellee enrolled in the Public Elementary School in Loreto, [11] it can not be denied that petitioner-appellee was likewise known for some length of time by this other name, especially among his teachers and classmates, the correction of the name having been sought only after enrollment in college at the University of San Carlos. [12] The non-disclosure of this other name could easily have misled the people who knew him by that name, thus preventing those who may have legitimate complaints to report to the authorities regarding the admission of petitioner-appellee as a Filipino citizen.

This Court in a long line of decisions has ruled that failure on the part of the petitioner to state in his petition for naturalization all the names by which he is known constitutes a fatal defect of the petition and is sufficient ground to deny the petition. [13] It has likewise been held in the case of *Saw Cen vs. Republic*, [14] further cited in the *Lim Uy* case, *supra*, that —

"The non-inclusion of the other name of petitioner in the publication of the petition has resulted fatal, for it has deprived any person knowing him by that name, to come forward and inform the authorities of any matter which might affect his application for naturalization. In other words, the publication was incomplete and insufficient thereby affecting the jurisdiction of the court to take cognizance of this petition. * * *"[15]

Having been also known as Tan Tianchi, petitioner-appellee should have made full disclosure of said fact, by making an allegation in his petition to that effect.

It is contended in the third assignment of error that the petition is also defective in view of the fact that the places where petitioner-appellee resided when he was a student were not alleged in the petition.

It is established that petitioner-appellee finished his 5th grade and 1st year high school in Surigao Chinese School, Surigao, Surigao del Norte, his 2nd and 3rd year high school in Northeastern Mindanao Colleges, also in Surigao, same province, and his Bachelor of Science in Commerce at the University of San Carlos in Cebu City.

Section 7 of the Revised Naturalization Law requires the petition to set forth the applicant's "present and former places of residence." The subject petition merely states that petitioner-appellee's "present place of residence is Loreto * * *", but mentions no other places of residence in the past.

In resolving a similar issue, this Court held in *Uy vs. Republic*, [16] reiterated in *Qua vs. Republic*, [17] as follows:

"Petitioner argues * * * that his residence in Manila was only temporary so that his legal residence or domicile remained to be Legaspi City. Section 7 of the Revised Naturalization Law speaks of present and former places of residence. Its purpose, as stated, is to give the public and the investigating agencies of the government an opportunity to gather information and to express objection relative to the petition. Precisely for this reason it is important that petitioner's actual, physical residence be likewise set forth and published, since information regarding petitioner and objection to his application are apt to be provided by people in his actual, physical surrounding.

Section 7 * * * requires disclosure of 'present and former places of residence' as a precaution against suppression of information regarding any possible misbehaviour on the part of applicant in any community where he may have lived at one time or another. To ignore this purpose would be to disregard obvious legislative intent as well as to forego the high degree of prudence and care required of Us in naturalization proceedings." [18]

The fact that the residence in Surigao and Cebu was merely temporary and that petitioner-appellee intended to permanently reside in Loreto will not justify or cure the non-allegation of such other places of actual physical residence, pursuant to Section 7 of the Naturalization Law. In *Qua vs. Republic*, ante, this Court ruled

"Appellee mentions Republic vs. Tan, L-12409, April 1, 1959, wherein this Court held that residence means legal residence. However, it was to Section 8 of the law on where to file the petition, that said decision referred. Considering the different purpose intended for Section 7, the residence mentioned therein does not exclude actual residence even though temporary. Neither can applicant contend that the omission in his petition was cured during the trial. In Lo vs. Republic, supra,[*] We held that non-compliance with Section 7 cannot be cured by the evidence."[19]

The purpose of the law in requiring setting forth in the petition also of "former places of residence" is further amplified in Keng Giok vs. Republic[20] reiterated in Go Bon The vs. Republic,[21] wherein this Court stated that --

"* * * The reason for such a requirement is, as pointed out by the Solicitor General, to facilitate checking up on the different activities of the petitioner bearing on his petition for naturalization (especially as to his qualifications and moral character) whether by private individuals or government agencies, by indicating to them the localities or places in which to make appropriate inquiries or investigations thereon. Needless to say, by such omission, appellant, in effect, falsified the truth, indicating lack of good moral character on his part, which disqualified him from admission to Philippine citizenship (Sec. 2, Rev. Nat. Law). * * * ."

Thus, failure of petitioner to allege in his petition all his former places of residence "in violation of the mandatory provision of Section 7 of the Naturalization Law is a fatal defect that, not only warrants dismissal of the petition but, also, affects the jurisdiction of the court to hear and decide the case."[22]

It is argued in the next assigned error that the petition should have been denied because petitioner was unable to prove lucrative income.

In Lim vs. Republic[23] it was held by this Court that lucrative implies gainful employment or tangible receipts. This concept was expanded in Tan vs. Republic[24] where it was held that

"Lucrative employment means a gainful employment. It is not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that there is an appreciable margin of his income over his expenses as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid one's becoming the object of charity or a public charge."

In Tan vs. Republic,[25] the petitioner was also single and earned P300.00 a month, plus an annual bonus at the time the petition was filed on 3 January 1962. This Court concluded that "petitioner has not substantially established possession of lucrative income, as required by law."

It follows that if this Court did not consider P300.00 as lucrative income in 1962 (the financial capacity for naturalization purposes being determined as of the date the petition is filed)[26] with more reason should it not hold so in 1965 for petitioner-appellee when the cost of living had increased, and petitioner's monthly income is even less. The error assigned is therefore sustained.

It is also the contention of the appellee that since the applicant failed to allege good moral character in his petition, the dismissal thereof is warranted.

A dose examination of the petition bears out appellee's said contention. In the case of Lim Cho Kuan vs. Republic[27] wherein one of the issues raised was the effect of failure to allege the applicant's good moral character, this Court resolved said issue by stating that

"The above-quoted provision[28] contains two parts: (1) that the applicant must be of good moral character and believe in the principles underlying the Philippine Constitution; and (2) he must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation

with the constituted government as well as with the community in which he is living. The first part speaks of the personal quality and belief of the applicant; whereas the second part speaks of his public and social conduct. Stated otherwise, a person's conduct in relation to the constituted government and the community at large may be irreproachable but his private life or dealings with a particular individual may be such as to render his moral character objectionable. For this reason, the law Mentions the aforesaid requisites separately and even puts a comma between them. It follows that good moral character and proper and irreproachable conduct should be alleged and proved separately. Otherwise, the Legislature would have omitted the phrase 'he must be of good moral character * * *', if the same is necessarily included in the phrase 'must have conducted himself in a proper and irreproachable manner during his entire period of his residence in the Philippines in his relations with the constituted government as well as with the community in which he is living.'"[29]

Having failed to allege good moral character in his petition, the court a quo should have dismissed the same.

For the foregoing reasons, the decision appealed from admitting Tan Kian Sy to Philippine citizenship is reversed, and the petition is ordered dismissed. No special pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Barredo, and Makasiar, JJ., concur.

Teehankee, J., in the result.

Antonio, J., did not take part.

[1] Exhibit "L", dated 1 September 1965, page 4, Record.

[2] See Manifestation of 13 October 1970, Record.

[3] Sec Section 6, CA. No. 473, as amended; *Italics supplied*.

[4] L-21198, 22 January 1966, 16 SCRA 25.

[5] *Italics supplied*.

[6] Ong Khan vs. Republic, L-14866, 28 October 1960, 109 Phil. 855.

[7] Ong Khan vs. Republic, *supra*, citing cases; *Italics supplied*.

[8] L-19897, 24 June 1965.

[9] *Italic supplied*.

[10] See Exhibits "6", "7" and "7-A", Folder of Exhibits.

[11] See Exh. "11-A", *Id*.

[12] See Exh. "11-C", *Id*.

[13] Lim Uy vs. Republic, 1-19916, 23 June 1965, 14 SCRA 396, citing cases; *Italics supplied*.

[14] L-20310, 30 April 1965, 13 SCRA 711.

[15] *Italics supplied*.

[16] L-19578, 27 October 1964, 12 SCRA 182.

[17] L-19834, 27 October 1964, 12 SCRA 187.

[18] *Italics supplied*.

[*] L-15919, 19 May 1961, 2 SCRA 13.

[19] Italics supplied.

[20] L-13347, 31 August 1961 SCRA 1690.

[21] L-16813, 27 December 1963, 9 SCRA 812.

[22] *Go vs. Republic*, L-20558, 31 March 1965; *Tan vs. Republic*, L-22077, 18 February 1967; *Syson vs. Republic*, L-21199, 29 May 1967 and cases cited therein, See Notes to *King Giok vs. Republic* supra: Italics supplied.

[23] L-3920, 20 November 1951, 90 Phil. 387.

[24] L-19580, 30 April 1965, 13 SCRA 663.

[25] L-22077, 18 February 1967, 19 SCRA 867.

[26] *Yu Ti vs. Republic*, L-19913, 71 June 1965; *Lee vs. Republic* L-20148, 30 April 1965; *Ong Tan vs. Republic* L-19148, 23 December 1964 cited in *Lim vs. Republic* L-21193, 30 September 1966, 18 SCRA 276.

[27] L- 21198, 22, January 1966, 16 SCRA 25.

[28] See 2 of the Revised Naturalization Law provides:

"SEC. 2. Qualifications. Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

x x x x x x x x

Third . He must be of good moral character and believe in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted Government as well as with the community in which he is living."

[29] Italics supplied.

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