

**AGUSTIN DE AUSTRIA, CHAN YUEN YING AND SY SUN KIN, MINOR,
REPRESENTED IN THIS INSTANCE BY HIS MOTHER CHAN YUEN
YING, PETITIONERS AND APPELLEES, VS. HON. AGAPITO CONCHU,
IN HIS C...**

G. R. No. L-20716. June 22, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A widow and her minor son, namely, Chan Yuen Ying and Sy Sun Kin, citizens of the Republic of China, were admitted to the Philippines on November 16, 1960 as temporary visitors. Subsequently, their stay was extended up to April 24, 1962.

About a month before the expiration of the extended temporary stay, or on March 20, 1962, Agustin de Austria, a natural born Filipino citizen, married Chan Yuen Ying. Fifteen days later, or specifically on April 5, 1962, she Petitioned the Commissioner of Immigration, for cancellation of her Alien Certificate of Registration on the ground that she acquired Philippine citizenship upon her marriage to Agustin de Austria. On April 10, 1962 the Commissioner of Immigration denied her petition stating that her marriage to a Filipino citizen did not automatically confer Philippine citizenship on her, that she must, in addition, possess all the qualifications for naturalization required by law.

A petition for mandamus and prohibition with preliminary injunction was thereupon filed in the Court of First Instance of Manila, on April 16, 1962, by Chuan Yuen Ying, her husband and her minor son, against the Commissioner of Immigration, to compel the cancellation of Chan Yuen Ying's Alien Certificate of Registration as well as to stop her son's deportation.

The trial court temporarily enjoined Chan Yuen Ying's, and her son's arrest and deportation. Answer to the petition was filed on May 4, 1962. After the parties entered into a stipulation of facts on September 5, 1962, the court, on October 29, 1962, rendered judgment, thus:

"Considering all the foregoing, the petition is hereby granted and the Court orders:

"(1) That a writ of permanent injunction be issued against the Commissioner of Immigration, his agents and representatives, restraining them from deporting or instituting deportation proceedings against petitioners Chan Yuen Ying and Sy Sun Kin and/or confiscating their cash bonds;

"(2) That the denial by the respondent Commissioner of the petition to cancel the alien registry of petitioner Chan is hereby declared null and void; and

"(3) That the respondent Commissioner is ordered to cancel the alien registry of petitioner Chan.

"Without any pronouncement as to costs.

"So ordered."

The Commissioner of Immigration has appealed, following the denial of his motion for reconsideration.

It is admitted that petitioner Chan Yuen Ying and her minor son, Sy Sun Kin[*], do not possess all the qualification³ required for naturalization (Stipulation of Facts, par. 6). Pursuant to the requirements of the Bureau of Immigration, however, petitioners Agustin de Austria and Chan Yuen Ying executed a joint affidavit, on March 26, 1962, in a form prescribed by said office, CEB Form 1 showing that petitioner Can Yuen Ying is not suffering from any of the disqualifications enumerated in Section 4 of the Revised Naturalization Law (Stipulation of Facts, par. 5 and Annex G thereto).

Appellant contends that an alien woman who marries a Filipino citizen does not thereby become a Filipino unless she proves that she is qualified to become a Filipino citizen by naturalization, that is, that she has all the qualifications and none of the disqualifications therefor. Appellees, on the other hand, maintain that she need only show lack of disqualification for naturalization.

Section 15 of the Revised Naturalization Law states:

"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."

Passing upon the same issue raised herein, this Court ruled, in *Choy King Tee vs. Galang*, L-18351, March 26, 1965, that the phrase "might herself be lawfully naturalized" in Section 15 abovementioned refers to the qualifications and disqualifications for naturalization as enumerated in Sections 2 and 4 of the statute. Accordingly, we therein held that: "The alien wife of a Filipino citizen must first show that she has all the qualifications required by Section 2 and none of the disqualifications enumerated in Section 4 of the Naturalization Law before she may be deemed a Philippine citizen."

It may not be amiss to note that in the *Choy King Tee* case, *supra*, the petitioner, Choy King Tee, married an alien, Tan Beng Seng, in 1948 and the provision was invoked after Tan Beng Seng became a Filipino citizen

by Naturalization in 1961. In the present case, however, petitioner married a Filipino citizen on March 20, 1962, or only a month and four days before the scheduled expiration of her stay in the Philippines on April 24, 1962. With more reason, therefore, should the ruling in *Choy King Tee* apply herein, since there obtains in this case a ground to doubt whether petitioner Chan Yuen Ying's marriage was not taken with a view to avoid her deportation and that of her minor son,.

Petitioner Sy Sun Kin, the minor son of Chan Yuen Ying, relies merely on the acquisition by his mother of Filipino citizenship by her marriage to Agustin de Austria. It follows, therefore, that he has likewise remained an alien.

Wherefore, the judgment appealed from is hereby reversed and appellees' petition is dismissed, without costs. It is so ordered.

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

Judgment reversed.

[*] Not Austria's son.

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