

SUN PECK YONG, ET AL., PETITIONERS AND APPELLANTS, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. L-20784. December 27, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Manila, denying the petition of Sun Peck Yeng and her two minor children, to restrain the Commissioner of Immigration from ordering their departure from the Philippines.

Petitioner Sun Peck Yong, the wife of Cheng Ching who is a permanent resident of the City of Manila, arrived with her minor, son, petitioner Cheng Sing Hong alias Sing in the Philippines on September 17, 1960 as temporary visitors. The other minor, son, petitioner Cheng Suy Lu alias Cheng Suy Lo arrived and was admitted in the Philippines as a temporary visitor on December 1, 1960. On February 1, 1961, petitioner Cheng Ching the other petitioner's husband and father, was admitted to Philippine citizenship by virtue of a decision of the Court of First Instance of Manila.

On March 8, 1961, the Secretary of Foreign Affairs, on application of herein petitioners recommended to the Secretary of Justice the change in category of their (petitioners) stay from that of temporary visitors to special non-immigrants, in view of the fact that by February 1, 1963, when the husband and father said immigrants shall have taken oath as Filipino citizens, the latter would automatically become also citizens of the Philippines. The extension of their stay to February 1, 1963 (not a change of status) was approved by the Secretary of Justice, subject to the condition that they shall secure routinary re-entry permits in Hongkong valid for a period beyond their extended stay, and their cash bonds shall be maintained. Such requirements were duly complied with.

On January 15, 1962, however, the new Secretary of Foreign Affairs declared as null and void the Cabinet Resolution of February 29, 1956, laying the policy of extending the period of stay of immigrants such as the petitioners by the mere action of the Secretary of Foreign Affairs and the Secretary of Justice. As their previous authorized stay prior to the extension granted by the two Secretaries which was declared invalid, would expire. June 17, 1962, the petitioners were required by the Commissioner of Immigration, oh June 15, 1962, to leave the country in 7 days. Hence, the filing of the petition for prohibition to restrain said immigration official from carrying out his order. Decision was thereafter rendered upholding the power of the Commissioner of Immigration to order their exclusion from the country, for the reason that the extension of petitioner's stay until February 1, 1963 was without "authoritative basis." (sic) From this decision, the present appeal has been taken.

The decision should be affirmed. In the case of Lo San Tuan vs. Commissioner of Immigration (G. R. No. L-18775 prom. November 30, 1963) Kua Buy vs. Commissioner of Immigration, L-13790, prom. October 31, 1963), we held that the fact that the husband became a naturalized citizen does not automatically make the wife a citizen of the Philippines. It must also be shown that she herself possesses all the qualifications and none of the disqualifications to become a citizen; In this case, there is no allegation, much less showing, that petitioner-wife is

qualified to become a Filipino citizen herself. Furthermore, the fact that a decision was favorably made on the naturalization petition of her husband is no assurance that he (the husband) would become a citizen, as, to make a basis for the extension of her temporary stay.

With respect to the action of the Secretary of Foreign Affairs nullifying the cabinet resolution of February 29, 1956, suffice it to say that the extended permission to stay, having already expired on February 1, 1963, we find no reason anymore to pass upon the same.

The decision appealed from is hereby affirmed, with costs against appellants. It is so ordered.

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

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