

**GREGORIO CO AND HERCULANO CO, PETITIONERS-APPELLEES, VS.
THE DEPORTATION BOARD, RESPONDENT-APPELLANT.***G.R. No. L-22748. July 29, 1977*

Ponente: FERNANDO, J.

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The basic question before us is whether the judiciary may entertain an action for prohibition and habeas corpus filed against the Deportation Board, now appellant, during the pendency of an inquiry against petitioners, now appellees, that may possibly lead to their expulsion from the country. The then Judge Jesus de Veyra of the Manila Court of First Instance, in a well-written decision, sustained his jurisdiction, granted the relief sought on the ground that they were Filipinos, and restrained appellant Board from taking further cognizance of the proceeding. Hence this appeal by the Deportation Board. On the basis of the finding of facts of the lower court, tested by the standards prescribed in *Chua Hiong v. Deportation Board*,^[1] there was justification for the decision it rendered. While *Vivo v. Montesa*^[2] and *Calacday v. Vivo*^[3] stand for the proposition that under the well-settled administrative law doctrine of primary jurisdiction, an administrative agency, such as appellant, must be given the opportunity to decide the matter before it before the courts could intervene, the latter case pointed out that there are appropriate cases where the right to immediate judicial review should be recognized. As the lower court found, this is one of them. We cannot see any valid ground for reversal.

The facts set forth in the brief for appellant, which to its credit did manifest objectivity do not, upon careful scrutiny, warrant the reversal sought. Right at the start, it made mention of the petitioners Gregorio Co and Herculano Co being born in Aparri, Cagayan, on April 24, 1920 and September 25, 1922. Their father, a certain Co Pengco, was a Chinese merchant residing in Aparri, Cagayan and their mother was Maria Tan Comin, whose nationality was disputed.^[4] The parties were, however, agreed that she had lived maritally with Co Pengco, out of which seven children were born, among them petitioners. Such relationship continued until the death of Co Pengco sometime in 1926 in China. The mother died in 1946, also in China.^[5] Then on July 12, 1957, a Special Prosecutor of the Deportation Board filed charges against petitioners with such Board alleging that as Chinese subjects residing in the Philippines, who failed, neglected and refused to register as Chinese nationals with the Bureau of Immigration, they violated the law, compounded by the fact that they represented themselves as Filipinos.^[6] They were thus enabled to enjoy certain rights and privileges which are accorded only to Filipino citizens, such as suffrage, ownership of real property, Herculano's ownership of a coastwise vessel, Gregorio Co's loan from the Rehabilitation Finance Corporation.^[7] First, they sought and were granted liberty upon the filing of cash and surety bonds, subject to other terms and conditions.^[8] Then they filed with the Deportation Board a motion to dismiss based on the plea that it lacked jurisdiction for the reason that they are citizens of the Philippines.^[9] Such motion was denied as was a subsequent motion seeking reconsideration.^[10] They did exhaust their administrative remedy, an appeal to the President being fruitless.^[11] Thereafter, they filed the special civil action of prohibition and habeas corpus, with the decision as noted being in their favor on the ground of their being Filipinos.^[12] The exhaustive brief of petitioners as appellees denied the claim that there was a dispute concerning Maria Tan Comin's citizenship.^[13] They pointed out that both the appellee Deportation Board

and the lower court maintained the contrary view, her citizenship being admitted.[14] Moreover, they called attention to the "overwhelming and uncontroverted evidence" as to their citizenship based on their having been born in the Philippines of a Chinese father and a Filipino mother, the recognition of such status by several government agencies, and the exercise by them of the right to suffrage, not to mention the fact that their birth certificates showed that they are Filipinos.[15]

On the above facts, it is understandable why judicial intervention even prior to the final decision of appellant Deportation Board was justified. The plea for reversal cannot be granted.

1. *Chua Hiong v. Deportation Board*[16] stands for this principle: "When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings." [17] Nor is it required that such standard be rigidly adhered to, as pointed out in the opinion of Justice Labrador: "The difficulty arises when the evidence is not conclusive on either side, as in the case at bar. Should the deportation proceedings be allowed to continue till the end, or should the question of alienage or citizenship of respondent be allowed to be decided first in a judicial proceeding, suspending the administrative proceedings in the meantime that the alienage or citizenship is being finally determined in the courts? The highest judicial authority in the United States has answered the second question in the affirmative." [18] It was likewise stressed that judicial determination is allowable "in cases when the courts themselves believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct. In other words, the remedy should be allowed only in the sound discretion of a competent court in a proper proceeding." [19] That sound discretion was properly exercised by the then Judge de Veyra in the judgment now on appeal.

2. *Calacday v. Vivo*[20] reiterated the principle announced in *Vivo v. Montesa* as to the applicability of the doctrine of primary jurisdiction in deportation proceedings, thus precluding judicial intervention until completed. Nonetheless, the opinion made express mention of the exception to the rule set forth in the *Chua Hiong* decision. Thus: "A clarification announced in *Chua Hiong v. Deportation Board* is not to be lost sight of however." [21] Petitioners could thus very well rely on the pronouncements set forth with such clarity by Justice Labrador in the aforesaid case. The only question that remains is whether on the test prescribed as to the quantum of evidence required to justify judicial intervention before the termination of the deportation proceedings, the judgment reached by the lower court may be termed as suffering from the corrosion of substantial legal error.

3. No such infirmity has been shown. The facts were fairly appraised and the law based on judicial precedents. It is to be noted that even the brief for appellant could not assert categorically that the mother of petitioners, Maria Tan Comin, was an alien. All that it did say was that her nationality "is disputed." [22] Again, with candor, there was an admission that she was born in Iguig, Cagayan in 1892, the father being a Chinese and the mother being a Filipino. It was on the basis of such fact that the lower court, relying on the Philippine Bill of 1902, also in the light of applicable authorities, reached the conclusion that her illegitimate children were entitled to Filipino citizenship. The restraint apparent in the claim of appellant Deportation Board that its prosecutor at most "is possessed with evidence to show that Maria Tan Comin was a Chinese" [23] certainly militates against its persuasive force. The finding of the lower court as to her being a Filipina had not been shown to be without basis. Likewise, as was made mention at the outset, the trial court, on the basis of the evidence before it, reached the conclusion that deportation would not lie as the status of petitioners as Filipino citizens, "being the illegitimate children of an unwed Filipino mother," [24] was duly established. Nor was that the only basis for reaching such a conclusion. It did take into consideration the birth certificates showing that they are Filipinos. [25] Then there was proof from at least two government agencies recognizing such status as Filipino citizens. The Commissioner of Immigration did so as well as the City Fiscal of Quezon City when he sustained the legality of petitioner Co's

applying for a loan from the Rehabilitation Finance Corporation mortgaging his real property therein located.[26] Moreover, it was likewise proven that they exercised as Filipinos the right of suffrage as set forth in their brief.[27] There is warrant for the conclusion reached by the lower court as to their citizenship following the doctrine announced in *Talaroc v. Uy*. [28] Justice Tuason, speaking for this Court, specifically made mention of respondent Uy having been allowed to exercise the right of suffrage, to hold public office and to take the oath of allegiance to the Republic of the Philippines. It is thus clear that to impute error to the lower court for sustaining the prohibition proceedings against the Deportation Board in view of the status of petitioners having been duly established, finds no support from the authoritative doctrines of this Court.

WHEREFORE, the decision of respondent Judge Jesus de Veyra, holding that petitioners are Filipino citizens and that the Deportation Board was without jurisdiction to take cognizance of the deportation proceedings filed against them, is affirmed. No costs.

Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., took no part.

[1] 96 Phil. 665 (1955).

[2] L-24576, July 29, 1967, 24 SCRA 155.

[3] L-26681, May 29, 1970, 33 SCRA 413.

[4] Brief for Appellant, 3.

[5] *Ibid.*

[6] *Ibid.*, 4.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*, 4-5.

[10] *Ibid.*

[11] *Ibid.*, 5.

[12] *Ibid.*, 6.

[13] Cf. Brief for Appellees, 2-3. The counsel for appellants was the Lopez-De Joya, Dimaguila and Hermoso Law Firm and Attorneys Manuel V. Romillo, Jr. and Isabelo Azurin.

[14] *Ibid.*, 8-9.

[15] *Ibid.*, 24-30.

[16] 96 Phil. 665 (1955).

[17] *Ibid.*, 671.

[18] *Ibid.*

[19] *Ibid.*, 672.

[20] 33 SCRA 413.

[21] Ibid, 416.

[22] Brief for Appellant, 3.

[23] Ibid, 10.

[24] Brief for Appellees, 24.

[25] Ibid, 29-30.

[26] Ibid, 26, 28-29.

[27] Ibid, 27-28.

[28] 92 Phil. 52 (1952).

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