

**NGO DY, IN BEHALF OF HIS WIFE NGO SIUTSE AND HIS CHILDREN
NGO MING SEK AND NGO MEE MEE, BOTH MINORS,
PETITIONER-APPELLEE, VS. THE COMMISSIONER OF IMMIGRATION,
RESPONDENT-APPELLANT.**

G.R. No. L-26629. May 29, 1970

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7e83768baeeb/>

TEEHANKEE, J.:

The present case originated from a petition for prohibition and mandamus with preliminary injunction instituted on September 13, 1962 by petitioner in the Court of First Instance of Manila, praying for the issuance of an order prohibiting respondent Commissioner of Immigration from proceeding with the arrest and detention of petitioner's above named wife and their two foreign-born minor children preparatory to their expulsion from the country as overstaying temporary visitors.

During the pendency of the case the parties submitted on August 24, 1965, an amended stipulation of facts wherein it was brought out that on January 3, 1964, petitioner, upon previous authorization, over the State's objection, of the Court of First Instance of Manila in Case No. 44530 thereof, had taken his oath of allegiance as Filipino citizen and was issued by the clerk of court the corresponding certificate of naturalization.

The lower court, following decisions of this Court that the alien wife of a naturalized Filipino citizen does not automatically acquire his citizenship but must prove in an appropriate proceeding her qualifications and lack of disqualifications for Filipino citizenship, dismissed the petition with respect to petitioner's wife and dissolved the writ of preliminary injunction against her expulsion; directing respondent commissioner, however, to take the necessary action on the matter relevant to the status of petitioner's wife in consonance with its opinion that she should be allowed to stay in the country and be given an opportunity to prove that she might herself be lawfully naturalized and thus acquire her husband's Filipino citizenship. With respect to petitioner's two minor children, the lower court granted the petition with respect to them, making permanent the writ of preliminary injunction issued by it against their expulsion, expressing its opinion that they ipso facto became Filipino citizens under the provisions of section 15 of the Revised Naturalization Law.

Both parties appealed on purely questions of law from the decision in so far as it was adverse to them.

On November 9, 1966, petitioner filed a manifestation praying that his appeal be dismissed and/or disregarded for having become moot and academic since his wife had left the country on May 8, 1966 for Taipei, Taiwan, and returned on May 15, 1966 to the Philippines and had since been documented by respondent commissioner as a permanent resident under section 13 of the Immigration Act of 1940 as amended. After the filing on April 6, 1967 of the Solicitor General's brief for respondent commissioner, petitioner filed on August 13, 1967, a motion to dismiss appeal on the ground that the issues raised in respondent's appeal have become moot and academic. In support thereof, petitioner submitted documents showing that on June 17, 1967, he accompanied his two minor children out of the country and returned with them to the Philippines on June 24, 1967 and sought their admission

to the Philippines as Filipino citizens. The Board of Special Inquiry of the Bureau of Immigration rendered its decision dated July 13, 1967 admitting said minors as Filipino citizens finding them to be the legitimate minor children of a Filipino citizen, which decision was confirmed by the Immigration Bureau's Board of Commissioners on August 3, 1967.

The Court acting on said motion to dismiss in its Resolution of September 8, 1967 and "considering that on August 14, 1967 we considered this case submitted for decision without appellee's brief RESOLVED that said motion be resolved when the case is decided on the merits."

Petitioner in a manifestation dated August 30, 1968, submitting that "in view of the fact that the objections of the respondent-appellant to the continued stay in this country of petitioner's wife and the ipso facto acquisition of Philippine citizenship of the foreign-born minor children of petitioner have been removed and/or corrected in accordance with the prevailing rules and regulations and to the satisfaction of the respondent-appellant (the Commissioner of Immigration, who affirmed the decisions of the Board of Special Inquiry admitting petitioner's wife as a permanent resident and petitioner's foreign-born minor children as Filipino citizens), the questions of law allegedly raised by the respondent-appellant have now become moot and academic x x. x" renewed its prayer for dismissal of the present case.

In compliance with this court's resolution requiring respondent's comment, the Solicitor General filed on behalf of respondent commissioner under date of September 11, 1968 his reply to manifestation, as follows:

"COMES NOW the Commissioner of Immigration, respondent-appellant in the above-entitled case, by the undersigned counsel, and with reference to petitioner-appellee's Manifestation, dated August 30, 1968, to this Honorable Court respectfully states that he would interpose no objection to the dismissal of the instant case, subject to the following conditions, to wit:

"1. The admission to this country of petitioner's wife as permanent resident under Section 13 (a) of the Immigration Act, being the wife of a naturalized Filipino (Decision of May 24, 1966 Board of Special Inquiry, Annex 'A', Manifestation), and the admission of petitioner's foreign-born minor children as Filipino citizens (Decision of July 13, 1967. Board of Special Inquiry, Annex 'D', Manifestation) shall retroact as to overcome the fact that they 'overstayed' beyond the authorized period of sojourn as temporary visitors; and

"2. However, petitioner's foreign-born minor children shall not be considered as Filipino citizens considering the fact that at the time of petitioner's oath-taking as a naturalized Filipino, said foreign-born minor children were 'not lawfully dwelling' in their country (Vivo vs. Cloribel, G.R. No. L-23239, November 23, 1966), without prejudice to whatever action the Solicitor General may presently take towards the cancellation of the naturalization of petitioner."

Petitioner, under date of September 19, 1968, filed a rejoinder to said reply as follows:

"3. That a close scrutiny of the full import of paragraphs 1 and 2 of respondent's reply to Manifestation shows two diametrically opposed positions in view of the fact that in the first paragraph of its Reply, respondent premises its conformity to the dismissal of the instant case on the retroactive effect of the admission of petitioner's foreign-born minor children as Filipino citizens (Decision of July 13, 1967, Board of Special Inquiry, Annex 'D', Manifestation) so as 'to overcome the fact that they overstayed,' while in the second paragraph of the same Reply, respondent asserts that the foreign-born minor children of petitioner should not be considered as Filipino citizens for the alleged reason that at the time of petitioner's oath-taking as a naturalized Filipino the said children were not lawfully dwelling in this country;

"4. That petitioner submits and the respondent concurs, that the Decision of the Board of Special Inquiry dated July 13, 1967 has retro-active effect. As such, therefore, the retroactivity of the admission of petitioner's minor children as Filipino citizens must be interpreted to have a curative effect and should operate to correct and/or

remove any and all defects, if any, relative to the alleged 'overstaying' status of said children prior to or at the time of the oath-taking of the petitioner as a naturalized Filipino."

The Court in its resolution of September 27, 1968 resolved to deny the dismissal prayed for by petitioner.

The Solicitor General thereafter filed on October 1, 1968 his surrejoinder, stating that:

"1. To clarify matters and remove all possible doubts on the conditions stated in his Reply to Manifestation, dated September 11, 1968, the statement that the decisions for admission of petitioner's wife and children to this country 'shall retroact as to overcome the fact that they overstayed beyond the authorized period of sojourn as temporary visitors' should be construed to mean that the said decisions for admission to petitioner's wife and children amounted to and in effect, constituted a waiver of grounds of exclusion against them for having overstayed. In short, the Commissioner waived the grounds of exclusion against said temporary visitors (Sec. 29 a(15) (17), Com. Act No. 613 as amend-ed; Sy Hong vs. Commissioner of Immigration, G.R. No. L-10224, May 11, 1957).

"2. But the fact that petitioner's minor children were 'not lawfully dwelling' in this country, being overstaying temporary visitors, at the time of petitioner's oath taking as a naturalized Filipino certainly cannot be erased or wiped out by any kind of legal fiction, and this is the import of the second paragraph of our Reply to Manifestation, dated September 11, 1968."

Petitioner subsequently filed on September 10, 1968 a motion to dismiss appeal and/or a motion to withdraw petition. He contended that the issues presented in the instant appeal to wit: the legality of the continued stay of his wife as a temporary visitor and the court's ruling of ipso facto acquisition of Filipino citizenship of his two foreign born minor children upon his naturalization without proper documentation as such by the Bureau of Immigration have become moot and academic by virtue of the subsequent acts of respondent commissioner and his Board of Commissioners admitting his wife as a permanent resident and his two children as Filipino citizens as above stated.

In compliance with this Court's resolution for respondent's comment, the Solicitor General filed his comment under date of January 16, 1969 opposing the same on the ground that the case was already deemed submitted for decision without petitioner-appellee's brief per the Court's resolution of October 14, 1967 and that there are remaining question ripe for judicial determination. The court in its Resolution of January 24 1969 accordingly denied petitioner's motion.

Upon a review of the records of the present appeal and of the case below, the Court finds that the subsequent actions of respondent commissioner and his Board of Commissioners, after the lower court's decision of December 20, 1965 and pending this appeal, namely, their action of June 27, 1966 granting the readmission on May 15, 1966 of petitioner's wife as a permanent resident and that of August 3, 1967 granting the readmission on June 24, 1967 of petitioner's foreign born minor children as Filipino citizens, were never involved or placed in issue in the case below which involved solely the issue of their expulsion from the Philippines as then overstaying temporary visitors. The issue of the expulsion as overstaying temporary visitors of petitioner's wife and two minor children therefore became moot upon their departure from the Philippines and their readmission afterwards under a completely new status as permanent residents. Their readmission thereafter upon proper documentation by respondent commissioner is a new matter which cannot properly be resolved here, since it was not in issue nor litigated at all in the case before the lower court.

Insofar as their readmission as permanent residents is concerned, respondent commissioner, through the Solicitor General's Surrejoinder of October 1, 1968 expressly acknowledged that he "waived the grounds of exclusion against said temporary visitors" for having overstayed. As to respondent commissioner's readmission and

documentation of petitioner's two foreign-born minor children as Filipino citizens, this obviously cannot be re-solved in the present case but would have to be threshed out in the appropriate proceeding therefor as intimated by the Solicitor General in his above-quoted reply of September 11, 1968.

Under such circumstances, the issues involved in the present case have become moot, and not only the present appeal of respondent commissioner but the case as originally filed should be, as they are hereby, dismissed.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, and Villamor, JJ., concur.

Castro, J., on leave.

Barredo, J., took no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.