

PO SIOK PIN @ DY SAM, TAN DE ENG @ CHAN LAI YING, PO KIM TIONG @ FU KUM CHUNG, PO SOY KUAN @ FOO SHUI WAN AND PO KIM SING @ FOO KAM SHING, THE LAST THREE REPRESENTED BY PO SIOK ...

G.R. No. L-24792. February 14, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Po Siok Pin, Tan De Eng, Po Kim Tiong, Po Soy Kuan, and Po Kim Sing appealed from the decision of the Court of First Instance of Manila, dismissing their petition for prohibition wherein they sought to restrain the Acting Commissioner of Immigration from deporting them (except Po Siok Pin) (Civil Case No. 52011).

Presumably, the appeal was made direct to this Court because only legal issues would be raised. There is no dispute as to the following facts:

On April 23, 1960 Tan De Eng, the wife of Po Siok Pin, a Chinese resident, and their three minor children named Po Kim Tiong, Po Soy Kuan and Po Kim Sing, arrived from Hongkong as nonimmigrants with reentry permits to Hongkong which, as extended, were valid up to September 27, 1965. For their temporary stay, they posted a cash bond in the amount of P4,000.

On June 23, 1960 Po Siok Pin filed in the Court of First Instance of Manila a petition for naturalization.

On August 30, 1960 the Bureau of Immigration issued to Tan De Eng and her minor children the corresponding alien certificates of registration.

Sometime in September, 1960 Tan De Eng and her three minor children filed a written request for the extension of their stay in this country. The Commissioner of Immigration denied the request on September 20, 1960. They asked for the reconsideration of the denial order in a petition which was addressed to the Secretary of Justice and which was coursed through the Commissioner of Immigration. They alleged that their stay here was necessary in order that Po Siok Pin could comply with the requirements of the Naturalization Law. The Commissioner denied the petition for reconsideration. He did not elevate it to the Secretary of Justice.

In a letter dated August 31, 1962 the Commissioner ordered Tan De Eng and her children to leave the country not later than October 23, 1962; otherwise, their cash bond would be confiscated and warrants for their arrest would be issued.

On October 26, 1962 Tan De Eng and her minor children, represented by their father, Po Siok Pin, filed the instant petition for prohibition with preliminary injunction to stop the Commissioner from deporting them.

In the meantime, the petition of Po Siok Pin for naturalization was granted. He took his oath of allegiance as a Philippine citizen on May 23, 1964.

On May 3, 1965 the lower court rendered a judgment dismissing the petition for prohibition. The petitioners appealed. They contend (1) that the Commissioner of Immigration has no authority to issue a warrant of arrest, (2) that their cash bond is invalid because the form for the bond was never approved by the Secretary of Justice and (3) that they are not obligated to comply with the requirement in the last paragraph of section 9 of the Immigration Law that, to change their status, they must leave the country.

The appeal is meritorious. As correctly stated in appellants' third assignment of error, this case is covered by section 15 of the Revised Naturalization Law (quoted below), and section 9 of the Immigration Law, regarding change of status of aliens, is not applicable to this case.

"SEC. 15. Effect of 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.

Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a citizen, and a foreign-born minor child, who is not, in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he continue to be a Philippine citizen even after becoming of age.

xxx xxx xxx"

The prevailing rule is that under section 15 an alien woman marrying a Philippine citizen, native-born or naturalized, becomes ipso facto a Philippine citizen provided that she is not disqualified under section 4 of the same law. Likewise, an alien woman married to an alien, who subsequently becomes a naturalized Filipino citizen, acquires Philippine citizenship the moment her husband takes his oath as a Philippine citizen provided that she does not have any of the disqualifications under said section 4 (*Burca vs. Republic*, L-24252, June 15, 1973, 51 SCRA 248, 235, per Justice Antonio; *Resolution in Moy Ya Lim Yao vs. Commissioner of Immigration*, L-21289, October 4, 1971, 41 SCRA 292, 351; *Lee vs. Commissioner of Immigration*, L-23446, December 20, 1971, 42 SCRA 561, 565; *Yap vs. Republic*, L-27430, May 17, 1972, 45 SCRA 36; *Tiu vs. Vivo*, L-21425, September 15, 1972, 47 SCRA 23).

Consequently, Tan De Eng, the wife of Po Siok Pin, became a Philippine citizen when the latter took his oath of allegiance as a Philippine citizen on May 23, 1964 if she does not have any of the disqualifications to become a Philippine citizen.

Likewise, by virtue of section 15, the three children of Tan De Eng and Po Siok Pin, who were born in China, who were in the Philippines at the time their father was naturalized, and who must be of age now, automatically became Philippine citizens. They should ask for the cancellation of their alien certificates of registration.

As indicated in Opinion No. 38, series of 1958, of the Acting Secretary of Justice, quoted in the *Moy Ya Lim Yao* case, the married alien woman must file with the Bureau of Immigration a petition for the cancellation of her alien certificate of registration; alleging, inter alia, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship under section 4 of the Revised Naturalization Law.

Upon the filing of said petition, which should be supported by the joint affidavit of the petitioner and her Filipino husband to the effect that she does not belong to any of the groups disqualified under section 4, the Bureau of Immigration conducts an investigation and thereafter promulgates its decision (41 SCRA 367).

The Immigration Law provides:

NONIMMIGRANTS

"SEC. 9. Aliens departing from any place outside the Philippines, who are otherwise admissible and who qualify within one of the following categories may be admitted as nonimmigrants:

(Subparagraphs (a) to (g) are omitted)

"An alien who is admitted as a nonimmigrant cannot remain in the Philippines permanently. To obtain permanent admission, a nonimmigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act."

This Court, speaking through Mr. Justice Barredo in the *Moy Ya Lim Yao* case, held that the above-quoted provisions do not apply to aliens who after coming into the Philippines as temporary visitors legitimately become Filipino citizens or acquire Filipino citizenship. Such change of nationality naturally bestows upon them the right to stay in the Philippines permanently or not, as they may choose, and if they elect to reside here, the immigration authorities may neither deport them nor confiscate their bonds (*Moy Ya Lim Yao* case, 41 SCRA at page 300; *Tiu vs. Vivo*, supra).

Since under section 15 petitioners Tan De Eng, Po Kim Tiong, Po Soy Kuan and Po Kim Sing became Filipino citizens, they are entitled to stay and reside in the Philippines. Any question as to the validity of their citizenship should be resolved in an appropriate proceeding and not in this case (*Tiu vs. Vivo*, supra, 47 SCRA at pages 27-28).

With reference to the other two issues raised by the appellants, it suffices to state that the constitutionality of section 37(a) of the Immigration Law, which empowers the Commissioner of Immigration to order the arrest of aliens who should be deported, had already been upheld.

Section 1(3), Article III of the 1935 Constitution (now section 3, Article IV of the New Constitution) does not mean that only judges can issue warrants of arrest. What it means is that it is the judge who should issue the warrant of arrest where the proceeding is for the determination of a probable cause in a given case. On the other hand, the Commissioner of Immigration can issue a warrant of arrest for the execution of a final deportation order. The Commissioner cannot issue a warrant of arrest solely for purposes of investigation and before a final order of deportation is issued. (*Contemprate vs. Acting Commissioner of Immigration*, L-28604, October 30, 1970, 35 SCRA 623, 630-1; *Vivo vs. Montesa*, L-24576, July 29, 1968, 24 SCRA 155, 161; *Morano vs. Vivo*, L-22196, June 30, 1967, 20 SCRA 562, 568; *Qua Chee Gan vs. Deportation Board*, L-10280, September 30, 1963, 9 SCRA 27, 35-36; *Ng Hua To vs. Galang*, L-19140, February 29, 1964, 10 SCRA 411).

As to appellants' other contention that the form for their bond was defective because that form was never approved by the Secretary of Justice, it should be noted that in *Morano vs. Vivo*, supra, it was held that the provision in section 3 of the Immigration Law, that the Department Head should approve the form for the bond, is merely directory and that, inasmuch as the form in question had been used for a long time, it can be assumed that it had been approved by the Secretary of Justice. Moreover, the appellants, having benefitted from their bond, are estopped from impugning its validity (See *De Borja Vda. de Torres vs. Encarnacion*, 89 Phil. 678, 681).

WHEREFORE, the lower court's decision is reversed, the writ of prohibition is granted, and the petitioners are directed to follow the procedure indicated in the *Moy Ya Lim Yao* case with reference to the cancellation of their alien certificates of registration inasmuch as the factual findings of the Commissioner of Immigration will serve as the bases of their claim of Philippine citizenship. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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