

**IN THE MATTER OF THE PETITION TO BE ADMITTED A CITIZEN OF
THE PHILIPPINES, TANG KONG KIAT ALIAS LIM SU TONG,
PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR ...**

G.R. No. L-19915. June 23, 1965

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is an appeal by the Republic of the Philippines from the decision of the Court of First Instance of Misamis Occidental declaring petitioner-appellee Tang Kong Kiat, alias Lim Su Tong, qualified for admission to Philippine citizenship.

The evidence shows that the appellee is a citizen of the Republic of Nationalist China under whose laws Filipinos may become naturalized citizens; that he was born in Chinkang, China, on June 29, 1912; that he migrated to the Philippines in 1924, arriving at the port of Manila when he was then 12 years old; that soon thereafter he resided in Tagbilaran, Bohol, where he lived for 15 years, and in 1939 he moved to Ozamis City, and since then he had resided in that place until he filed his application for naturalization in the present case; that except for five months absence in 1931, four months in 1941, and five months in 1948, to visit China, and three months in 1960 to visit Hong Kong, he had been residing in the Philippines since 1924 up to the filing of his petition on August 20, 1960, for a period of 36 years, of which period 21 years covered his stay in Ozamis City; that he is a businessman, being the managing partner of Sutong & Co., dealing in the rice and corn business, and that his average annual income is P5,000.00; that he does not own any real property; that he is married to Uy Sio Hun with whom he has four children who are all minors at the time of the hearing of this petition; that all his children, except one who is not yet of school age, are studying in the grade school of the Misamis Chinese School; that he speaks and writes the English and Cebu-Visayan languages; that he believes in the principles underlying the Philippine Constitution; that he has mingled socially with the Filipinos, having contributed to civic organizations like the Red Cross; that it is his sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos; that he is not opposed to organized governments; that he is not a member of any association or group of persons upholding and teaching doctrines opposed to organized governments; that he does not defend or teach the necessity or propriety of violence and personal assault or assassination for the success and predominance of men's ideas; that he does not believe in the practice of polygamy and he does not practice it actually; that he has not been accused of any crime involving moral turpitude; that he is not suffering from any incurable contagious disease; that it is his intention in good faith to become a citizen of the Philippines; that he will renounce all allegiance and fidelity to any foreign Prince, potentate, state or sovereignty particularly to the Republic of China; that he has not filed any declaration of intention prior to the filing of his petition for Philippine Citizenship because he has been a resident of the Philippines for more than thirty years; that he has not applied, or filed any petition, in any court to become a citizen of the Philippines by naturalization. During the hearing of the petition, the appellee himself, and his two character witnesses, namely, Mayor Hilarión A. Ramiro and City Treasurer Maximo Lago, of Ozamis City,

testified.

After hearing, the lower court declared that the appellee as all the qualifications and none of the disqualifications under Philippine laws to become a citizen by naturalization, and it thereby held that the petitioner is eligible for admission to Philippine citizenship. The lower court ordered lat naturalization certificate be issued to the appellee upon satisfactory proof that he had complied with the requisites prescribed by Republic Act 530.

In the present appeal, the Solicitor General, in behalf of the Republic of the Philippines, maintains that the lower court erred:

- (1) in taking cognizance of the petition for naturalization despite lack of jurisdiction;
- (2) in not finding that the appellee is not exempt from filing the declaration of intention;
- (3) in not finding that the appellee's petition is invalid;
- (4) in not holding that the appellee has not conducted himself in an irreproachable manner;
- (5) in not holding that the appellee has no lucrative trade or occupation;
- (6) in net holding that the appellee's witnesses are not credible persons; and
- (7) in granting the appellee's application for naturalization.

We find merit in the first, third, and fifth assignments of errors of the Solicitor General.

In his first assignment of error, the Solicitor General points out that the records do not show, nor is there any evidence to establish, that copies of the petition for naturalization and the general notice of the hearing of the petition were posted at a public and conspicuous place in the office of the clerk of court or in the building where said office is located. We find this observation of the Solicitor General to be correct. The requirement of the posting of the copy of petition for naturalization and of the copy of the notice of hearing of said petition, as provide by law, is jurisdictional; and failure to comply with these requirements renders the court without jurisdiction to hear and decide the petition for naturalization. This Coin" has held:

"In short, non-compliance with tho requirements thereof, relative to the publication of the petition, affects the jurisdiction of court. It constitutes a fatal defect, for it impairs the very root or foundation of the authority to decide the case, regardless whether the one to blame therefor is the clerk of court or the petitioner or his counsel. Failure to raise this question in the lower court would not cure such defect . . ." (Co vs. Republic, 104 Phil., 889; 65 Off. Gaz., 0224, 1)229).

In his third assignment of error, the Solicitor General points out that the petition for citizenship is not filed in accordance with law because the certificate of arrival of the appellee has not been mentioned in the petition as required in Section 7 of the Revised Naturalization Law, nor did the appellee present any evidence establishing his lawful entry for permanent residence in the Philippines. The appellee, really, did not present his certificate of arrival, nor did he include said certificate as part of his petition. This failure of the appellee to comply with the requirement of the law in this respect is fatal (Charm Chan vs. Republic, 108 Phil., 882).

The appellee argues that the Bureau of Immigration had taken his Certificate of Arrival from him and issued to him in lieu thereof Immigrant Certificate of Residence. The law, however, expressly requires inclusion of the Certificate of Arrival as part of the petition (Sec. 7, Revised Naturalization Law). This requirement is mandatory. The petitioner should have at least produced a certified copy of his Certificate of Arrival, if one had really been issued.

In his fifth assignment of error, the Solicitor General Points out that the appellee does not have a lucrative trade or

Profession. In the decision appealed from the trial court simply said that the appellee "has lucrative trade as businessman", without any mention of what the trade is and how much income is derived by him from his trade. The appellee tried to prove that he had an investment of P46,553.55 in the partnership of Sutong & Co. in Ozamisy since 1947, of which partnership he is the managing partner. No evidence was presented to support this supposed investment of the appellee except his own testimony and a certificate of the bookkeeper of the alleged partnership of Sutong & Co. to the effect that the appellee has that much investment in the partnership. The bookkeeper, Eustaquio Jimenez, did not testify during the hearing of the petition. The certificate simply says that per book of accounts of Sutong & Co. the appellee has capital investment in said company in the amount of P46,553.55 as of September 30, 1961. No mention is made in the certificate regarding the actual condition of the business of the partnership as of 1961 to show that said investment of the petitioner was profitable. On the other hand, in the copies of the income tax returns filed by the petitioner for the years 1960, 1959 and 1957 which were presented as evidence (Exhibits C, C-1 and C-2), it appears that in 1957 (Exh. C-2) the appellee had a gross income of P13,860.89 and a net income of P12,860.89, and a taxable income of P7,460.89 for which he paid an income tax of P549.92; in 1959 and 1960 (Exhibits C-1 and C) the appellee had a gross and a net income of P4,200, and after claiming all allowable deductions he was exempt from the payment of income tax for those two years. No copy of the income tax return for 1958 had been presented by the appellee. He simply explained that his income tax return for that year was with the Bureau of Internal Revenue. It will thus be noted that the petitioner's net income of P12,860.89 in 1957 had declined to only P4,200 in 1959 and in 1960. An examination of the income tax returns for 1959 and 1960 reveals that this income of P4,200 represented the annual salary received by the appellee for each of those two years. It appears in the income tax return for 1960 (Exhibit C) that the Sutong & Co. suffered losses, and the share of the appellee in the losses amounted to P6,275.71; and in the income tax return for 1959 (Exh. C-1) it appears also that the Sutong & Co. suffered losses, and the share of the appellee in the losses amounted to P9,850.00. It is very apparent, therefore, that the Sutong & Co., in which the appellee had allegedly an investiture¹¹ of P46,553.55, was losing in its business in 1960 when the appellee filed his petition for naturalization, and the source of income that the appellee had was his salary from the partnership amounting to P4,200 a year. The appellee, in his own testimony, declared that his average annual income was about P5,000.00 (page 14, t.s.n.). The appellee does not own any real property. The appellee has a wife and four minor children to support.

Considering that the appellee has a wife and four minor children to support, and considering that the business of the partnership Sutong & Co. of which he is the managing partner had been declining and incurring losses, We hold that the annual income of P4,200 representing the salary of the appellee (or even conceding that he has an average annual income of P5,000.00 as he declared in court, is not lucrative enough as would qualify the appellee for admission to Philippine citizenship (*Keng Giok vs. Republic*, G.R. No. L-13347, August 31, 1961). In the case of *Koa Gui vs. Republic*, G.R. No. L-13717, July 31, 1962, this Court denied the petition for citizenship of the petitioner who had a wife and three children and whose annual income was P5,980.00. In the case of *Tan vs. Republic*, L-16013, March 13, 1963, this Court denied the petition for citizenship of the applicant who had an annual income of P6,300 but had a wife and one child to support.

IN VIEW OF THE FOREGOING, the decision appealed from is reversed, and another one is entered denying the petition of appellee for admission to Philippine citizenship; with costs against the appellee.

Bengzon, C.J., Concepción, Reyes, J.B.L., Paredes, Regala, Makalintal and Bengzon, J.P., JJ., concur.

Judgment reversed.

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