

**CHAN KIM LIAN ALIAS JOSE U. CHAN, PETITIONER AND APPELLANT
VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.***G.R. No. L-4551. January 30, 1953*

Ponente: PARAS, C.J.

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On July 26, 1946, the petitioner-appellant filed a petition for naturalization in the Court of First Instance of Misamis Oriental. In the course of the hearing, after the petitioner had testified in his own behalf, the oppositor-appellee filed a petition for dismissal, on the ground that the petitioner had not resided in Misamis Oriental for at least one year immediately preceding the filing of his petition, and that he had failed to establish that he owns real property in the Philippines worth not less than P5,000 or has some known lucrative trade, profession or lawful occupation. In its order of September 6, 1950, the Court of First Instance of Misamis Oriental dismissed the petition for want of jurisdiction, because the petitioner lacks the necessary one-year residence and has failed to show that he owns real property in the Philippines worth not less than P5,000. From this order the petitioner has appealed.

From the evidence so far adduced, it appears that the petitioner arrived in the Philippines in the year 1915, at the age of seven years, with his father who had previously resided in the municipality of Mambajao, Misamis Oriental, wherein he owned several real properties. Since then the petitioner has lived with his father, having been baptized in the Roman Catholic Church and completed the elementary grades in said municipality. After the death of his father in 1933, the petitioner managed the real properties left by him in Camiguin Island, Misamis Oriental, until 1950 when the same were divided among the heirs. The petitioner's children, who were all born in Mambajao, have been attending school in said municipality. Prior to the last war the petitioner was a member of the parent-teacher's association and the treasurer of the rural credit association in Mambajao. The petitioner was caught by the Japanese invasion in the province of Cotabato while he was there for business, and returned to Misamis Oriental around March or April, 1956.

The oppositor contended that the absence of the petitioner from Misamis Oriental during the entire period of the Japanese occupation resulted in the loss of his residence in said province. This contention is untenable, because such absence was sufficiently caused by the war. As claimed by the petitioner in particular, he was compelled to stay in Cotabato for the reason that, being a guerrilla, he was afraid to come out in the open, and that there was furthermore no available transportation from Cotabato to Mambajao which is situated in Camiguin Island off the northern coast of Mindanao. Apart from this explanation, we cannot deduce from the evidence that the petitioner had ever intended to abandon his residence in Misamis Oriental, especially in view of the fact that before the war he always returned once or twice a month to Mambajao to look after the real estates left by his deceased father, and that his purpose in going to and staying in the province of Cotabato before the last war was merely for business. More than mere absence is necessary for one to lose his residence.

As now admitted by the oppositor, the trial court erred in making any pronouncement as to the qualifications of the petitioner before the final termination of the hearing.

Wherefore, the appealed order is hereby reversed and set aside and the case is remanded to the court below for further proceedings. Without costs.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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