

**CO PEK, LIM WUN CHEE @ LIM UN CHU, ET AL.,
PETITIONERS-APPELLEES, VS. HON. MARTINIANO VIVO, IN HIS
CAPACITY AS ACTING COMMISSIONER OF IMMIGRATION,
RESPONDENT-APPELLANT.**

G.R. No. L-21775. December 17, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

On November 28, 1960, Lim Wun Chee and her minor children Chong Yum Ting alias Co Yum Ting, Co Ngor alias Chong Nor Ngor, Co Yum Fai alias Hong Yum Fax, Co Woon alias Chong Lai Woon, and Co Lai Lam alias Chong Lai Lam, aged 13, 7, 6, 4 and 3, respectively, applied with the Philippine Consulate General in Hongkong for non-immigrant passport visa to the Philippines, allegedly to visit their husband/father, Co Pek alias Chong Wing Fai, who has permanent residence at No. 1110 Sta. Elena, Manila, Philippines. In connection with this application for visa, Lim Wun Chee executed an affidavit stating that while in the Philippines, she and her aforementioned children will never apply for any change of status as temporary visitors and they shall stay in the Philippines for only 3 months, unless otherwise extended by proper authorities. (Exh. 2, respondents). Temporary visitor's visa (Cabinet Policy) No. 210 was issued to them after Co Pek had filed with the Commissioner of Immigration (in Manila) a cash bond of P30,000.00, on behalf of his wife and children. The latter arrived in the Philippines on December 16, 1960.

On February 8, 1961, Co Pek's application for naturalization was granted by the Court of First Instance of Manila (Sp. Proc. No. 4257).[1] On April 13, 1961, the stay of Lim Wun Chee and her children in the Philippines was extended until February 8, 1963, on the strength of the so-called Cabinet Policy of February 29, 1956, authorizing the Secretaries of Foreign Affairs and of Justice to pass upon applications for extensions.

On January 15, 1962, however, the then Secretary of Foreign Affairs, concurred in by the Secretary of Justice, nullified and declared without effect the extensions of the stay of non-immigrants under the aforesaid Cabinet policy of February 29, 1956. As, in view thereof, the Commissioner of Immigration required Lim Wun Chee and her 5 children to leave the country on or before September 9, 1962, Co Pek, Lim Wan Chee and their children petitioned the Court of First Instance of Manila (in Civil Case No. 51499) to enjoin the respondent Commissioner of Immigration from arresting and deporting petitioners Lim Wan Chee and her children, and from confiscating the cash bond of P30,000.00 filed in their behalf by petitioner Co Pek. A writ of preliminary injunction, as prayed for by petitioners, was issued by the court on September 14, 1962 to restrain their arrest and deportation during the pendency of the case. In the meantime, petitioner Co Pek was able to take the oath of allegiance as a Filipino citizen on April 30, 1962.[2]

On July 11, 1963, the court (Judge Francisco Arca, presiding) rendered a decision in the prohibition-case, granting the petition and declaring petitioned, wife and minor children of Co Pek, also citizens of the Philippines by reason of the latter's naturalization. The Commissioner of Immigration, therefore, was ordered to cancel the alien registry

and immigration papers of Lim Wun Chee and her children, and to refund to them the cash bond of P30,000.00. The Solicitor General, on behalf of the Commissioner of Immigration, appealed.

The legal provision pertinent to and applicable in the present appeal is Section 15 of the Revised Naturalization law, which provides:

"SEC. 15. Effect of the naturalization of 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 Philippine 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 will continue to be a Philippine citizen even after becoming of age.

x x x x."

Under this provision, for the wife of a naturalized Filipino to be considered to have followed the citizenship of her husband, it must be shown that she herself is capable of being naturalized. The phrase "who might herself be lawfully naturalized", used in the law, has been construed to mean that the said wife is not disqualified to become a Filipino citizen, and that she possesses all the qualifications for acquisition of Philippine citizenship[3]. Although it may be true that petitioner Lim Wun Chee is not disqualified to become a Filipino citizen, there is no proof that she also possesses all the qualifications for citizenship in this country. The naturalization of her husband did therefore, ipso facto make her a citizen of the Philippines.

There is a more important point that we would like to bring about in this opinion. In the affidavit executed by petitioner Lim Wun Chee before the Philippine Consul in Hongkong on December 6, 1960, which document was one of the bases for the issuance of the non-immigrant visa that enabled her and her 5 children to come to the Philippines, she declared under oath that they were applying for the visa "to visit" their husband/father Co Pek, a permanent resident of this country, and that "while in the Philippines, we (the affiant and her children) shall never apply for any change of status as temporary visitors; and that we shall stay in the Philippines for three (3) months, unless otherwise extended by the proper authorities." However, after they had succeeded in gaining entry into the country on the foregoing allegations, these immigrants, as petitioners in this prohibition case admitted:

"10. That to comply with the naturalization law in order that Co Pek could take his oath as a naturalized Filipino citizen, it is required that his minor children Co Yum Ting, Co Ngor, Co Yum Fai, Co Woon, and Co Lai Lam continue their studies in a school duly recognized by the Government where Philippine history, government and civics are taught as part of the schools curriculum, x x x." (Petition; italics supplied.)

By their own admission in this case, therefore, it has been established that the coming to the Philippines of petitioner's wife and children was intended to insure the granting of petitioner Co Pek's application for naturalization and his admission to Philippine citizenship.[4] The conduct of all of the herein petitioners-appellees could be nothing less than a fraud or misrepresentation perpetrated on our government. In a similar case,[5] this method was censured by this Court, thus:

"x x x if the purpose of these appellants had been from the beginning to take residence until the husband Ong Tai should have become naturalized, on the theory that the Cabinet resolution of February 29, 1956 authorized them to do so, then they should have so stated in their application for entry, instead of solemnly representing

that they would be only temporary visitors. Under the circumstances, their application for a temporary visitor's visa appears to be a fraud, perpetrated on the Immigration authorities of the Republic that denies the holders thereof any right to favorable treatment."

In another case,[6] we said:

"x x x It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. x x x. Any other ruling would as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort in examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The dangers inherent in such a ruling are self-evident."

Referring again to Section 15 of the Revised Naturalization law quoted above, it is noteworthy that a foreign-born minor child automatically becomes a Philippine citizen, if said child is "dwelling in the Philippines at the time of the naturalization of the parent." It must be remembered that this provision confers on a person a primary right, a status, the Philippine citizenship. The term "dwelling" used in the law could not, therefore, be referring to mere physical presence in this country. That the law must have intended none other than domicile can also be inferred from the requirement of permanent residence before foreign-born minors, who are not in the Philippines at the time of the naturalization of their parents, can acquire the unqualified status of a Filipino citizen.

It may here be stated that on September 13, 1966, and long after the issues in this case have been deliberated upon and considered by this Court, petitioners-appelles filed a manifestation and motion praying for the dismissal of this appeal on the ground that it has already become academic. It was therein stated that petitioner Lim Wun Chee had voluntarily left the Philippines and thereafter entered the country as a quota immigrant under Section 13(a) of Commonwealth Act 613, as amended by Republic Act 503, and that the cash bond filed with the Commission of Immigration was already refunded to them. Be that as it may, in view of the facts obtaining in this case and to serve the ends of justice and State-welfare, we find it necessary to pass upon the merits of this appeal. It may be pointed out that even the minor children should have been asked to depart first and allowed to re-enter as non-quota immigrants.

WHEREFORE, and for all the foregoing considerations, the decision of the lower court appealed from is hereby reversed and set aside. The attention of the Solicitor General is hereby called to the facts uncovered by this case, for appropriate action. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar and Ruiz Castro, JJ., concur.
Makalintal, J., concurs in the result.

[1] It appears from the decision in the naturalization case that for having allegedly resided in the Philippines continuously for more than 30 years, and having enrolled his children of school age in government-recognized schools, Co Pek was exempted from filing a declaration of intention. This petition for citizenship was filed on February 16, 1960. His wife and minor children arrived in the Philippines only on December 16, 1960. And yet, the representative of the Solicitor General submitted the case for the government without introducing any

evidence except Exhibit "1", which is the applicant's own handwriting in English with the corresponding Tagalog translation. (pp. 8-13, Record.)

[2] During the hearing of Co Pek's petition to take the oath, the representative of the Solicitor General, when asked by the court, manifested that he was submitting the case for resolution without memorandum or opposition. Considering only the evidence presented by applicant, the court found the petition to be well-taken, and authorized the oath-taking of Co Pek. This hearing was held on March 29, 1963. The petition in this prohibition case where certain admissions were made, was filed on September 5, 1962.

[3] Lo San Tuang v. Galang, L-18775, Nov. 30, 1963; Hua Suy v. Commissioner, L-13790, Oct. 31, 1963, Sun Peck Young v. Commissioner, L-20784, Dec. 27, 1963; Tong Siok Sy vs. Vivo, L-21136, Dec. 27, 1963; Lao Chay v. Galang, L-19977, Oct. 30, 1964.

[4] Strangely, although the records of arrival of the wife and children of petitioner Co Pek must have been available in the immigration office, the representative of the Solicitor General failed to present them, when Co Pek filed the petition in the naturalization case, pursuant to Section 6 of the Naturalization law, as amended by Republic Act 535.

[5] Lo Choy Fa, et al. v. Commissioner, G.R. No. L-20597, Nov. 29, 1963.

[6] Chiong Tiao Bing v. Commissioner, 52 O.G. 6551.

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