

BENJAMIN YAP ALIAS UY WEI KIM, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.*G.R. No. L-20372. May 14, 1966*

Ponente: MAKALINTAL, J.

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The Solicitor General appeals from the decision of the Court of First Instance of Cebu which granted the petition for naturalization of Benjamin Yap alias Uy Wei Kim.

Appellee's evidence shows: He was born as Uy Wei Kim in Cebu City on September 8, 1934, was baptized Benjamin Yap at the Roman Catholic in Cebu in November 1941, and has been residing in the Philippines since birth. He is single, a citizen of the Republic of China, registered as an alien and has a "native-born" certificate. Since 1957 he has been employed at the San Su Trading, a commercial firm owned by his uncle. He started with a monthly salary of P200, which was increased to P300 in 1962. In 1959 he became a partner in the same business concern with a share of P15,000.00 in its capital. He filed his income tax returns for the years 1959, 1960 and 1961 and paid the corresponding taxes thereon. The San Su Trading provides him with free board and lodging (worth P50 monthly) at 422 Manalili Street, Cebu City, which he considers his place of residence. He finished his elementary and secondary education at the Cebu Chinese High School, Cebu City, and at the time, of the hearing was enrolled as first-year commerce student in the Colegio de San Jose-Recoletos, Cebu City. He can speak and write the local Visayan dialect and the English language.

Appellee also presented evidence to prove that he has all the other qualifications and none of the disqualifications enumerated in the Naturalization Law.

The Solicitor General assails the decision on three grounds: (1) appellee's character witnesses are not credible persons; (2) he does not possess good moral character; and (3) he does not have a lucrative employment or occupation.

The character witnesses referred to are Vicente P. Tantuico and Florencio Campos. The first handles the books of account of San Su Trading, while the second was an employee thereof from 1947 to 1956. Considering that said business establishment used to be owned by appellee's uncle, and appellee has been, since 1959 a partner therein, it cannot be said that his two witnesses are unbiased ones.[1]

Tantuico testified that he met appellee in 1949 when the latter's older brother Luis Yap invited him to a party at their house, but he added: "I cannot say (the acquaintanceship was) without interruption because from that time up to the present I am working with the San Su Trading and from time to time I always see, petitioner because during affairs wherein the San Su Trading will Hold, we can also attend and we can see the petitioner." "This statement leaves the impression that from 1949 to 1957, when appellee was first employed in the San Su Trading", their meetings were infrequent and purely casual. Even after 1957 it cannot be said that they became any closer to each other. Tantuico went to the San Su Trading about two or three times a week to go over its account books, and on those occasions appellee was not always present. The other witness, Florencio Campos, said he saw appellee

regularly from 1947 to 1956 because the latter used to take his meals at the San Su Trading. After 1956, when Campos resigned from said establishment, it was his habit, he said, to drop in at the store on his way to market.

Nothing in the testimony of the two witnesses shows that their relations with appellee were such as would have enabled them to observe his behaviour, or to know his character, his beliefs, his social contacts and associations.

The question of possession of lucrative trade or occupation is determined as of the time of the filing of the petition, (*Senecio Dy Ong alias Senecio Dy Go vs. Republic*, L-21017, November 29, 1965), which in this case was December 29, 1960, when appellee was receiving only P200 a. month. For purposes of qualifying an applicant for naturalization, such a salary is not considered lucrative employment, even if appellee has free board and lodging (*Yap vs. Republic*, L-19649, April 30, 1965). The conclusion would be the same even if we add thereto the amount which appellee allegedly received in 1960 as his share in the net profits of the partnership. According to his income tax return it was P1,514.62, and during the trial appellee testified that it was only P100.00.

Wherefore the judgment appealed from is reversed and the petition denied, with costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment reversed, petition denied.

[1] *Lu vs. Republic*, 122 Phil. 659.

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