

S/SGT. JOSEPH K. KATANCIK, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

G. R. No. L-15472. June 30, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is an appeal from the decision of the Court of First Instance of Pampanga finding above petitioner-appellee qualified to adopt the minor Joseph Agullo.

In a special proceeding for the adoption of the said minor, first instituted August 13, 1958, in the Justice of the Peace Court of Clark Field, Pampanga, which granted the petition, and later appealed to the Court of First Instance which approved the grant, it appears that petitioner, an American citizen, is a staff sergeant of the United States Air Force at Clark Field, Pampanga. Assigned to the said air base since September 11, 1957, he has been actually living with his Filipina wife in such province. He has three more years of service before final discharge, but he expects thereafter to be employed as a civilian employee in the same Air Base under the Federal U. S. Civil Service. He manifested his intention to reside in the Philippines permanently.

A Catholic with no legitimate, legitimated or natural-children, he seems to be physically, morally and financially fit to adopt the child, Joseph Agullo. His wife has consented to the adoption.

Oppositor-appellant interposed this appeal on the ground that petitioner-appellee's stay in the Philippines being merely temporary, conditioned on his assignment with the Air Forces at Clark Field, he is a non-resident Alien and therefore, disqualified to adopt under Art. 335 of the Civil Code of the Philippines.

A case in point to this issue is that of "In the Matter of the Adoption of the minor Norma Lee Caber, Ricardo R. Caraballo vs. Republic of the Philippines" (L-15080, April 25, 1962). As in the present case, the petitioner for adoption therein was a staff sergeant of the United States Air Force in Clark Field, married, without children. He was also due for discharge after several years of service, and intended to stay here permanently upon retirement from the U. S. forces. After a brief discussion on the subject of his residence, we came to the conclusion that because of his assignment as staff sergeant in the United States Air Force, Ricardo R. Caraballo was a non-resident alien, incapable of adopting a minor in this country.

In consonance with the above ruling, petitioner-appellee Joseph J. Katancik must also be considered a non-resident' alien and therefore disqualified to adopt, under Philippine laws.

Wherefore, the decision appealed from is hereby reversed, and the petition for adoption denied. Costs against appellee.

Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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