

KUA SUY ALIAS KWAN SAY DEE, ET AL., PETITIONERS-APPELLEES VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT-APPELLANT.

G.R. No. L-13790. October 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on points of law from a decision of the Court of First Instance of Manila in its Case No. 33407. Appellees Kua Suy and her three minor sons, all of Chinese nationality, had sued the appellant Commissioner of Immigration to have him enjoined from expelling appellees as overstaying visitors, and confiscating their P34,000 cash bond. The case was submitted upon the following stipulated facts:

"1. That petitioners, who are respectively the wife and minor children of Liu Giok In, a Chinese and permanent resident merchant in the Philippines, were admitted as temporary visitors in the country on June 17, 1955 with an authorized stay of 3 months only.

"2. That on August 4, 1955, that is before the expiration of their original authorized period of temporary stay in this country petitioners, through their counsel, requested the Secretary of Foreign Affairs for permission to remain in this country for a period not exceeding the pendency of the naturalization proceedings of Liu Giok In, husband/father, of the petitioners which request was granted by the Secretary of Foreign Affairs and notice thereof was sent to the respondent by way of 1st indorsement dated August 15, 1955, subject to the following conditions:

'(a) That subject aliens will have their reentry permits to Hongkong kept valid during their temporary stay in this country or until the determination of the naturalization proceedings of aforesaid husband father.

'(b) That non-immigrant statute and cash bond as prescribed by the resolution of the cabinet on March 19, 1954 are mentioned.

'(c) That the said minor sons of Liu Giok In are actually enrolled in any of the public or government recognized government public school during the entire period of their temporary stay in this country.

'(d) That the proceedings for the naturalization of the alien husband/father shall be pursued in good faith and without unnecessary delay and should it fail to prosper their permits shall be deemed cancelled and they shall immediately voluntarily leave the country.'

" '3. That the petitioners have complied with the conditions imposed by the Secretary of Foreign Affairs relative to the extension of their temporary stay in this country.

" '4. That on June 24, 1957, the respondent called attention of the Secretary of Foreign Affairs to the fact that the petitioners who are staying in this country by virtue of the extension of their stay as mentioned above, have been staying in this country beyond the period that which is allowed by the Immigration Law and asked whether petitioners should be allowed to stay further.

" '5. That on August 2, 1957 the Acting Secretary of Foreign Affairs informed the respondent that the said department is unable to authorize the further extension of petitioners herein and suggested to respondent that petitioners be required to leave the Philippines immediately.

" '6. That in line with the aforesaid directive from the Department of Foreign Affairs, respondent requested the petitioners to leave the Philippines voluntarily within 3 days from receipt, otherwise drastic action for their forcible removal may be taken by his Office and the cash bond posted in their behalf declared forfeited.

" '7. That as a result of the abovementioned letter of the respondent, petitioners filed the present petition. This Honorable Court granted a writ of preliminary injunction upon the filing of the petition of the surety bond in the amount of P5,000.00 restraining the respondent from causing the forcible removal of petitioners from the country and confiscating the cash bond of P34,000.00 deposited by Liu Giok In until further orders from the Court.

" '8. That on August 17, 1957, the Court of First Instance of Leyte in Case No. 40, rendered a decision granting Liu Giok In's petition for naturalization, which decision became final without an appeal taken therefrom by the government."

On 28 March 1958, the Court of First Instance of Manila rendered judgment granting a writ of injunction as prayed for on the ground that the decision of the Court of First Instance of Leyte, in its Civil Case No. 40, granting naturalization to Liu Giok In, Kua Suy's husband (and father of the other petitioners-appellees), and dated 17 August 1957, having become final, the Immigration Commissioner's order for appellees to leave the Islands within three days from notice had "become untenable", and any implementation of said order "is evidently in excess of his power and jurisdiction and inconsistent with the provisions" of the naturalization law.

From this decision the Commissioner has duly appealed.

The decision must be reversed.

In the first place, the finality of the 1957 decision declaring the husband of Kua Suy to be qualified for naturalization does not automatically make him a Filipino citizen, since the law prescribes a further probationary period of two years before he can take an oath of allegiance. Until then, and only upon proof that he complied with the statutory requirements, the applicant does not become naturalized as a citizen; much less would citizenship be extended to his wife and children, appellee herein. Therefore, the latter remained aliens at the time the appealed decision was rendered, and since there is no question that they had exhausted, the maximum period allotted them as temporary: visitors, it was the appellant Commissioner's right, nay, his duty, to expel appellees.

Appellees invoke the benefits of an alleged Cabinet resolution of 29 February 1956 that authorized the extension of the period of stay of aliens Tan Ban and Go Siok Yan. But paragraph 5 of the stipulation of facts clearly shows that in the case of present appellees, the extension granted by the Secretary of Foreign Affairs was definitely terminated on 2 August 1957, and the Immigration Commissioner was then set free to proceed with the appellees' expulsion. Only the injunction issued by the trial court stopped the Commissioner from doing so.

It is also argued that the Secretary of Justice (who is the administrative superior of the Commissioner of Immigration), by Opinion (No. 287, dated 3 December 1958, extended appellees' stay until the expiration of the husband's two-year probationary period. It appears, however, that the same Secretary revoked the opinion referred to, on 5 February 1959, because his prior opinion was obtained without full disclosure of facts and circumstances.

That the husband Liu Giok In should have finally taken his oath of allegiance in 1959, when this appeal was already pending, does not improve the case for appellees. Under Section 15 of the Naturalization Act, the wife is deemed a citizen of the Philippines only if she "might herself be lawfully naturalized", so that the fact of marriage

to a citizen, by itself alone, does not suffice to confer citizenship, as this Court has previously ruled in *Ly Giok Ka vs. Galang*, 101 Phil., 459; 54 Off. Gaz., 356; and in *Cua vs. Board of Immigration Commissioners*, 101 Phil., 521; 53 Off. Gaz., 8567; and there is here no evidence of record as to the qualifications or absence of disqualifications of appellee Kua Suy. As to the minor children, it is to be observed that the same section (paragraph 3) of the naturalization law extends citizenship to & foreign-born minor child "if dwelling in the Philippines at the time of the naturalization of the parent", and, of course, "dwelling" must necessarily be construed to mean "lawful residence". Since prior to the time the father of these appellees took his oath of allegiance (on 24 August 1959), the lawful period of stay of these children had already expired in 1957, and they had been already required to leave the Islands, plainly they were no longer lawfully residing therein and have no right to be considered as also naturalized. The naturalization Act was certainly not intended to be an excuse for violations of our immigration laws.

This case, and many others of the same nature that this Court has had to decide, are strong evidence of a tendency on the part of certain aliens to enter on temporary visitors' permits and thereafter rely on the improvident issuance of injunctions in immigration cases by the Courts of First Instance; for even if the error is subsequently corrected on appeal, such aliens are meanwhile able to unduly prolong their illegal stay, in violation of our country's immigration laws and policies. We can not, therefore, overemphasize the need of extreme caution in issuing such injunctions. Aliens who voluntarily enter under temporary permits must be strictly required to abide by the periods fixed therein, because laxity in this matter would merely encourage entry under false pretenses.

The appellees' plain remedy is to first leave the country as they promised, and thereafter secure permission to reenter permanently.

The decision appealed from is reversed, and the writ of injunction heretofore issued is hereby revoked and set aside. Costs against appellees.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera and Dizon, JJ., concur.
Paredes and Regala, JJ., concur in the result.

CONCURRING AND DISSENTING

MAKALINTAL, J.:

The facts are stated in the decision. Based on those facts, the trial court rendered its decision enjoining respondent or whoever acts in his behalf from causing the forcible removal of petitioners from the country and confiscating their P34,000 bond until after the expiration of the period of two years provided in Republic Act No. 530 should Liu Giok In be disqualified from taking his oath of allegiance as a naturalized citizen.

The Commissioner of Immigration appealed.

He claims that the lower court erred in (1) holding that upon the grant of Liu Giok In's petition for naturalization the issue herein became moot since his wife and children acquired the right to follow his abode; and (2) in declaring consequently that appellant acted in excess of his power in ordering appellees to leave the Philippines within 3 days from notice of his order.

During the pendency of this appeal, Liu Giok In took his oath as a Philippine citizen. As of that time his oldest

son Liu Kang was already of age, but the other two were still minors, Liu Yack Hua having born on September 7, 1942, and Liu Su Lim on August 16, 1944. The issue is whether or not a Chinese alien's wife and minor children who entered the Philippines as temporary visitors may be deported after said Chinese alien has become naturalized as a Philippine citizen.

The Immigration Act of 1940, as amended, provides:

"An alien who is admitted as a non-immigrant cannot remain in the Philippines permanently. To obtain permanent admission, a nonimmigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine Consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act." (last par., Section 9).

Kua Suy alias Kwan Say Dee has not, by the fact of her husband's naturalization, become a Philippine citizen. This Court has had occasion to lay down the rule that "marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she 'herself may be lawfully naturalized.'" (Ly Giok Ha alias Wy Giok Ha 1 vs. Galang, 101 Phil., 459; 54 Off. Gaz., 356; Cua vs. Board of Immigration Commissioners, 101 Phil., 521; 53 Off. Gaz., C 8567; Lee Suan Ay vs. Galang, 106 Phil., 706). A distinction may be noted between the present case and the cited cases. Whereas in the former the husband was an alien who subsequently became naturalized, in the latter, the alien woman were single when they came to the Philippines as temporary visitors, and while here married Filipino citizens. Nevertheless, since the basis for the rule (enunciated in the three cases) is Section 15 of the Revised Naturalization Law, which states that "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," the same applies with equal force to appellee Kua Suy. She cannot allege she is a Philippine citizen because she has not proven that she has all the qualifications and none of the disqualifications of one who may be naturalized.

The issue with respect to her minor children stands on a different footing. As to the effect on them of their father's naturalization, Section 15 of the Revised Naturalization Law also provides that:

"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."

May the minors Liu Yack Hua and Liu Su Lim be considered as dwelling in the Philippines at the time their father was naturalized? To "dwell" mean "to abide as a permanent resident, to live in a place, to reside or to have a habitation for some time or permanently." (13 Words and Phrases, 713-714). Accordingly, since said minors were in the Philippines as "temporary visitors" when their father took his oath, they may not be considered as dwelling herein. But even so, they are deemed^[1] Filipino citizens during their minority—a status which shall become permanent upon establishment by them of permanent residence here during their minority. "Deemed" is the equivalent of "considered" or "adjudged"; and whatever an Act requires to be deemed or taken as true of any person must in law be considered or adjudged, and have full force and effect accordingly. (11 Words and Phrases 479).

To these minors, considered Philippine citizens as they are, Section 9 of the Immigration Act, does not apply. This section covers not only aliens—non immigrant aliens seeking permanent admission to the Philippines, who are enjoined to first leave the country voluntarily and then secure the appropriate papers and undergo an examination by the Bureau of Immigration to determine their admissibility as permanent residents. They may be shown to be

undesirable for admission and thus prevented from entering the Philippines permanently.

The cases that may be cited as interpretative of the last paragraph of Section 9 of Immigration Law are all concerned with situations where alien temporary visitors sought to become permanent residents without first leaving the country (Ong Se Lun vs. Board of Immigration, 95 Phil., 785 Sept. 16, 1954; Sy Hong vs. Commissioner of Immigration, G.R. No. L-10224, May 11, 1957; Tui Chun Hao vs. Commissioner of Immigration, 104 Phil., 949; Ng Him vs. Commissioner of Immigration, 107 Phil., 537). If the same situation obtained here, there would be no alternative to deporting the petitioning minors in accordance with the law's clear mandate. But we have here a case, not of alien temporary visitors seeking to become alien permanent residents, but of alien temporary visitors who now are, by law deemed Filipino citizens. The change is not in the character of an alien's stay in this country, that is, from temporary to permanent, without changing the fact of his being an alien, but in his status from that of alien to citizen. The first situation concerns an alien who is requesting our hospitality, which request we may deny by excluding him from admission; the latter involves an alien who has become a citizen and seeks to exercise his rights as such, which rights may not be curtailed. If the law not only allows but indeed confers a change in the citizenship status of the minors in question. I see no reason why a change of lesser magnitude regarding their right of residence should not be countenanced.

The question may be asked: Suppose the petitioning minors, before they may acquire permanent residence, are first ordered to leave the country, should they do so as Philippine citizens or as aliens? They must be either one or the other. If they are Philippine citizens (which no doubt they are at least during their minority, for otherwise the aforequoted Section 15 of the Revised Naturalization Law would be meaningless), then they may not be subject to deportation.[2] On the other hand, to consider them as aliens would be to ignore the explicit provision of the Revised Naturalization Law. Or should they be deemed citizens under the said law and at the same time aliens under the Immigration Act? The suggestion, on its face, is unthinkable. It is contrary to the intendment of Section 15 of the Revised Naturalization Law, particularly that portion which refers to foreign-born minor children who, at the time of the naturalization of their father, is outside the Philippines. They are deemed Philippine citizens only during their minority, unless they begin to reside permanently here when still minors in which case they will continue to be citizens even after becoming of age. Implicit in this provision is the right of these minors to establish a permanent residence in this country in order that they may not lose their citizenship status conferred by law, which loss would inevitably result if during minority they are deported and thus prevented from complying with the requisite of the law as to the establishment of a permanent residence.

The purpose of Section 9, last paragraph, of the Immigration Act is to prevent an alien from converting his temporary visit into a permanent stay without prior determination of his desirability as Philippine resident. Since the right of the petitioning minors to be admitted into the country cannot be seriously questioned, by reason of their Philippine citizenship, it would be unreasonable and impractical to require them to go through the rigmarole of first leaving the country before their admission as permanent residents at least during their minority. Whether or not, after becoming of age, they will continue to be citizens will of course depend upon the fact of the permanence of their residence here within the meaning of the aforesaid provision of the law. Is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability. The legal basis of the prohibition is the absence of the jurisdictional fact, alienage. *Chua Hiong vs. The Deportation Board*, 96 Phil., 61 Off. Gas., p. 1837. *Urgelio, et al vs. Osmena Jr., et al*.

I concur with the decision insofar as appellee Kua Suy alias Kwan Say Dee is concerned, and dissent therefrom with respect to appellee Liu Yack Hua and Liu Su Lim who were minors when their father took his oath of naturalization.

[1] The phrase, "shall be deemed a citizen", Section 1994, Revised Statute (U.S. Comp. Stat. 1901 1268) or as it was in the Act of 1855 (10 Sta. at L-604, Chapt. 71, Sec. 2), "shall be deemed and taken to be a citizen", while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet does not follow that such a person is not on that account practically any the less a citizen. The word "deemed" is the equivalent of "considered" or "adjudged", and therefore, whatever an act of Congress requires to be "deemed" or "taken as true" of any person or thing must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have the force and effect accordingly. When, therefore, Congress declares that alien woman shall, under certain circumstances, be "deemed" an American citizen, the effect when the contingency occurs, is equivalent to her being naturalized directly by an act of Congress or in the usual mode thereby prescribed. Velayo's Philippine Citizenship and Naturalization, p. 127, citing Van Dyne, Op. Cit., pp.239-240.

[2] There is no question that as the power to deport is limited to aliens only, the alienage of the respondent in deportation proceedings is a basic and fundamental fact upon which the jurisdiction of the Deportation Board depends. If the alienage of the respondent is not denied, the Board's jurisdiction and its proceedings are unassailable; if the respondent is admittedly a citizen, or conclusively shown to be such, the Board lacks jurisdiction and its proceedings are null and void ab initio and may be summarily enjoined in the courts. Naturally, the Board must have the power, in the first instance, to determine the respondent's nationality. And the respondent must present evidence of his claim of citizenship before the courts alone in a subsequent action of habeas corpus. (*Armona vs. Aldanese*, 54 Phil., 696). It must quash the proceedings if it is satisfied that respondent is a citizen, and continue it if finds that he is not, even if the respondent claims citizenship and denied alienage. Its jurisdiction is not divested by the mere claim of citizenship. (*Miranda, et. al., vs. Deportation Board*, G.R. No. L-6784, prom. March 12, 1954.)

There is also no question that respondent who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings. When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of habeas corpus or of prohibition, on the legal ground that the Board lacks jurisdiction. If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability. The legal basis of the prohibition is the absence of the jurisdictional fact, alienage. *Chua Hiong vs. The Deportation Board*, 51 Off. Gaz., p.1837.

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