

**IN THE MATTER OF THE PETITION OF O KU PHUAN TO BE
ADMITTED A CITIZEN OF THE PHILIPPINES. O KU PHUAN,
PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR-APPELLANT.**

G.R. No. L-23406. August 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, taken by the Solicitor General, from an order of the Court of First Instance of Manila authorizing petitioner O Ku Phuan to take his oath of allegiance as citizen of the Philippines.

A decision having been rendered, on September 6, 1961, granting his application for naturalization, as citizen of the Philippines, petitioner moved, on November 22, 1963, that a day be set for the reception of evidence, pursuant to Republic Act No. 530, as a condition precedent to the taking of said oath. A date was, accordingly, set therefor, but, before petitioner had completed the presentation of his evidence, or on April 7, 1964, the Solicitor General objected to said motion and urged the dismissal of the petition for naturalization, upon specified grounds. Subsequently, or on June 16, 1964, said officer filed a supplemental opposition to the oath taking and to his motion to dismiss. This, notwithstanding, in an order, dated July 6, 1964, the court authorized petitioner to take his oath of allegiance. Hence, this appeal by the Solicitor General.

He maintains that the lower court erred in issuing the order appealed from, because: 1) petitioner does not have a lucrative occupation; 2) he had not stated, in his application for naturalization, some of his former places of residence; 3) he had not conducted himself in a proper and irreproachable manner, in his relation with the Government, by using an alias without prior judicial authority, in violation of the Anti-Alias Law (Commonwealth Act No. 142); and 4) his character witnesses have not met the requirements of the law.

The appeal is well taken for:

1. Petitioner's gross incomes for the years 1957, 1958, 1959, 1960, 1961 and 1962 were P3,212.55, P3,322.44, P3,358.58, P3,840.00, P4, 077.95 and P4,225.75, respectively. Considering that he has a wife and four (4) children, some of them of school age, petitioner's occupation (that of cargo solicitor) is, obviously, not a lucrative one.[1]

It is true that, in his income tax return for 1963, petitioner reported an aggregate gross income of P8, 266.95, but, this sum includes P3, 296.10, as commission allegedly received from Rava Pharmacial Company, and P1, 250.00, representing scholarships granted to his children. It is well settled, however, that, in general, commissions derived from certain transactions should not be considered in determining whether or not an applicant for naturalization has a lucrative occupation, profession or trade, because of the unstable and irregular nature of such income.[2] It is, likewise, doubtful whether it was proper to include, in petitioner's income tax return, the sum represented by the aforementioned scholarships, considering that the same had been granted, not to him, but to his children.

At any rate, petitioner's qualifications to be naturalized must be determined as of the date of the filing of his application,[3] or on October 29, 1959. His lack of property qualification, at that time, can-not be cured by his allegedly increased income subsequently thereto. Then, again, there is every reason to believe that the alleged gross income, as reported in petitioner's income tax return for 1963, had been jacked up to more than double his average annual income of P3,656.21 from 1957 to 1962, with a view precisely to curing or offsetting the flaws of his income for that period.

2. The only former place of residence mentioned in the petition for naturalization was 1040 O'Donnell, Sta. Cruz, Manila. The record shows, however, that petitioner had resided in Davao from 1936 to 1946, at No. 788 Juan Luna, Tondo, Manila, from 1946 to 1948 and in the 2nd Avenue, Grace Park, Caloocan City, from 1948 to 1949. It is well settled that this failure to mention petitioner's former residences affects the jurisdiction of the court to hear the case.[4]

Indeed, such omission tends to defeat the purpose of the publication, required by law, of notice of the filing of the petition for naturalization. It deprives the Government of the opportunity to make a thorough and effective investigation of petitioner's background, prior to the hearing of his petition. Moreover, people residing in the neighborhood of the former places of residence not mentioned in the petition may thus be led to believe that petitioner is another person. They may, accordingly, refrain from conveying to the Government pieces of information relevant, if not vital, to the petition for naturalization. For this reason, the fact that petitioner mentioned, in his testimony, said former places of residence, does not and can not - contrary to the import of the order appealed from - cure the effect of the failure to specify them in his aforementioned petition.[5]

3. Without prior judicial authority and, hence, in violation of Commonwealth Act No. 142, petitioner has used the alias "O TIONG KIAT." What is more, he would have the Court believe that he never did so, when, in fact, he did it in his declaration of intention, Exhibit L, and in securing his clearances, Exhibits M-2, M-3 and M-7, from the National Bureau of Investigation, the Anti-Dummy Board and the Deportation Board, respectively. It is well settled that the unlawful use of an alias suffices to warrant the denial of a petition for naturalization or the setting aside of a decision granting said petition, before the aforementioned decision has become executory.[6]

4. Petitioner's character witnesses, Pedro G. Sta. Cruz and Jose D. Caballes, do not satisfy the requirements of the law, inasmuch as: a) they could not attest to petitioner's good behaviour "during the entire period of his residence in the Philippines,"[7] or from 1936 to 1959, for they came to know him only in 1949 and 1948, respectively; b) they are not "credible persons," as the phrase is used in Commonwealth Act No. 473 (Section 8) and has been construed by this Court[8] for Sta. Cruz is no more than a "producer" of baby dresses and a house owner, whereas Caballes is chief operations officer of MOP Shipping Co., as there is no evidence on the standing or reputation of either in the community.

His Honor, the trial Judge, seemed to be under the impression that matters covered by the decision, rendered two (2) years before, on the petition for naturalization, can not or should not be taken up, passing upon petitioner's motion for the taking of his oath of allegiance. Such view is contrary to established precedents.[9] It overlooks the fact that petitions for naturalization are not ordinary actions and that the specific statutory provision declaring that decisions granting said petitions, do not become executory until after certain specified proceeding to take place over two (2) years later, necessarily implies that some matters covered by findings made in said decisions may still be taken up in the course of the subsequent proceedings.

WHEREFORE, the order appealed from is hereby reversed and another one shall be entered, dismissing petitioner's application for naturalization, with costs against the petitioner.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Ng v. Republic, L-21179, January 22, 1966; Ong Hock Lian vs. Republic, L-21197, May 19, 1966; Tang Kong Kiat v. Republic, L-19915, January 23, 1965; Tan v. Republic, L-16013, March 30, 1963; Koa Gui v. Republic, L-13717, July 31, 1962; Te Eng Ling v. Republic, L-17918, November 28, 1962; Keng Giok v. Republic, L-13347, August 31, 1961; and Swee Din Tan v. Republic, L-13177, August 30, 1960.

[2] King v. Republic L-19082, Sept. 29, 1966; Lim v. Republic, L-22437, June 21, 1966; Lim Uy v. Republic, L-19916, June 23, 1965; Sy v. Republic, L-19636, June 30, 1965; Ong So vs. Republic, L-20145, June 30, 1965; Ong Tai v. Republic, L-19418, Dec. 23, 1965; Sia v. Republic, L-20290, Aug. 31, 1965; Tochip v. Republic, L-19637, Feb. 26, 1965 and Tse v. Republic, L-19642, November 9, 1965.

[3] Yap v. Republic, L-20372, May 14, 1966; Chan Kiat Huat v. Republic, L-19579, February 28, 1966; Dy v. Republic, L-20152, February 28, 1966; Dy Ong v. Republic, L-21017, November 29, 1965 and Ong Tai v. Republic L-19418, December 23, 1964.

[4] Dy v. Republic, L-20152, Feb. 28, 1966; Chan Kiat Huat v. Republic, L-19579, Feb. 28, 1966; Republic v. Hon. Andres Reyes, etc., et al., L-20602, Dec. 24, 1965; Yao Long v. Republic, L-20910, Nov. 27, 1965; Tan Nga Kok v. Republic, L-16767, June 30, 1965; Yu Ti v. Republic, L-19913, June 23, 1965; Cheng v. Republic, L-20013, Mar. 1965; Ong Ping Seng v. Republic of the Philippines, L-19575, Feb. 26, 1965; Go v. Republic, L-20558, Mar. 31, 1965; Lee v. Republic, L-20151, Mar. 31, 1965; Tan v. Republic, L-19694, Mar. 30, 1965; Qua v. Republic, L-19834, Oct. 27, 1964; Dy Pek Long v. Republic, L-18758, May 30, 1964; Serwani v. Republic, L-18219, Dec. 27, 1963; Gaw Ching v. Republic, L-19419, Sept. 30, 1964; Ngo v. Republic, L-18319, May 31, 1963; Koa Gui v. Republic, L-13717, July 31, 1962; Co v. Republic L-15794, Dec. 29, 1962; Lo v. Republic, 59 O. G. 547; Ng Bui Kui v. Republic, 55 O. G. 9220; Keng Giok v. Republic, L-13347, Aug. 31, 1961 and Uytengsu v. Republic L-6379, September 29, 1954.

[5] Koa Heng v. Republic, L-21079, February 28, 1966; Qua v. Republic, L-19834, October 27, 1964; Lo v. Republic, L-15919, May 19, 1961; Ching v. Republic, L-15955, October 26, 1961; Yu Ti v. Republic, L-19913, June 23, 1965.

[6] Chua Tek @ Senando Tan v. Republic, L-22372, March 31, 1967; Dy v. Republic, L-20152, February 28, 1966; Lee Tit @ Sia Khu v. Republic, L-21446, April 29, 1966; Ko Bok v. Republic, L-21452, April 29, 1966; Ong Hock Lian vs. Republic, L-21197, May 19, 1966; Chiu Bok v. Republic, L-19111, June 22, 1965; Tan v. Republic, L-20287, July 30, 1965; Koa Gui v. Republic, L-13717, July 31, 1962; Wang I. Fu v. Republic, L-15819, September 29, 1962; Ng Liam Ken @ Tancongkong v. Republic, L-14146, April 29, 1961; People v. Uy Jui Pio, 55 O. G. 8463; and Albano v. Republic, L-15691, October 31, 1958.

[7] As required in the third subdivision of Section 2, Commonwealth Act No. 473.

[8] "x x x within the purview of the Naturalization Law, a 'credible' person is, to our mind, not only an individual who has not been previously convicted of a crime; who is not a police character and has no police re-cord; who has not perjured in the past; or whose 'affidavit' or testimony is not incredible. What must be 'credible' is not the declaration made, but the person making it. This implies that such person must have a good standing in the community; that he is known to be honest and upright; and he is reputed to be trustworthy and reliable; and that his word may be taken on its face value, as a good warranty of the worthiness of the petitioner. Thus in Cu vs. Republic, G. R. No. L-3018 (decided on July 18, 1951), we declared that said affiants 'are in a way insurers of the

character of the candidate concerned.' Indeed, by their affidavits, they do not merely make the statements therein contained. They also vouch for the applicant, attest to the merits of his petition and sort of underwrite the same.” (Ong v. Republic, 103 Phil., 964, 971, May 10, 1958; Antonio Go v. Republic, L-18068, October 30, 1962 and Saw Cen vs. Republic, L-20310, April 30, 1965.) (Underscoring supplied.)

[9] Lim Chiao Cun v. Republic, L-21955, May 1966; Cheng v. Re-public, L-20013, Mar. 30, 1965; Republic v. Go Bon Lee, L-11499, Apr. 29, 1961; Ong Ching Guan v. Republic, L-15691, Mar. 27, 1961; Albano v. Republic, L-10912, Oct. 31, 1958; Yap Chin v. Republic, L-4177, May 20, 1953 and Lim Lian v. Republic, L-3575, Dec. 26. 1950.

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