

**CHING LENG ALIAS CHING BAN LEE AND SO BUAN TY,
PETITIONERS-APPELLANTS, VS. HON. EMILIO L. GALANG, AS
COMMISSIONER OF IMMIGRATION OF THE GOVERNMENT OF THE
PHILIPPINES, RESPONDENT...**

G.R. No. L-11931. October 22, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This Is an appeal, taken by petitioners Ching Leng and So Buan Ty, from a decision of the Court of First Instance of Rizal. The case is before us, the Issue involved in the appeal being one purely of law. The undisputed facts are set forth In the decision appealed from, from which we quote:

"After the petitioner Ching Leng Alias Giving Ban Lee obtained judgment in this Court dated May 2, 1950 granting, his petition for naturalization, he together with, his wife So Buan Ty filed another petition also in this Court In Special Proc. No. 1216 for the adoption of Ching Tiong Seng, Ching Liong Ding, Victoria. Ching Liong Yam, Sydney Ching and Ching Tiong An, all minors and admittedly the illegitimate children of petitioner Ching Leng with one Sy An, a Chinese citizen. Finding the petition for adoption proper, this Court granted the same in a decision dated September 12, 1950, declaring the said minors free from all legal obligations of obedience and maintenance with respect to their mother Sy An and to all legal intents and purposes the children of the adopter Ching Leng alias Ching Ban Lee and So Buan Ty with all, the legal rights and obligations provided by law.

"On September 29, 1955, Ching Leng took his oath of allegiance and became therefore a, full pledge Filipino citizen. Believing now that his Adopted illegitimate children became Filipino citizens by virtue of his naturalization, petitioner Ching Leng addressed a, communication to the respondent. Commissioner of Immigration requesting that the alien certificate of registration of the said minors be cancelled.

"The respondent Commissioner however, turned down their request citing Opinion No. 269 dated October 9, 1954 of the Secretary of Justice which ruled that adoption does not effect a change in the nationality of the adopted.

"This is now an action filed by the Petitioners asking this Court to issue a Writ of Mandamus to compel the said Commissioner of Immigration to drop from the list of aliens the five minor children in question and to cancel their alien certificates of Immigration on the ground that they are now Filipino citizens by virtue of the naturalization of their father, the petitioner, Ching Leng,

"The question to be decided therefore, is whether the adopted children should follow the nationality of the adopting parents."

The order of the lower court resolving this question in the negative is assailed by appellants upon the ground that:

"The lower court, erred in disregarding and overriding the settled rule in this jurisdiction under which the illegitimate filiation of the minors Ching Tiong Seng, Ching Liong Ding, Victoria Ching Liong Yam, Sydney

Ching, and Ching Tiong An, in relation to their natural father, Ching Leng alias Ching Ban Lee, the petitioner-appellant herein, became legitimated by virtue of the final judgment rendered on September 12, 1950 in special Proc. No. 1216-P of the Court of First Instance of Rizal decreeing the said minor children's adoption by their natural father, the petitioner-appellant herein.

"The lower court erred in holding that the terms 'minor children' and 'minor child' as used in paragraphs two and three, section 15, Com. Act No. 473 otherwise known as the Revised Naturalization Law, excludes adopted minor children of persons naturalized under said naturalization law.

"The lower court erred in holding that the petitioner's minor children here involved who became prior to his becoming a, naturalized Filipino citizen his legitimate children by virtue of the final judgment in the adoption proceedings, did not follow the Philippine citizenship of the petitioner under the provisions of section 15, Com. Act No. 473, otherwise known as the Revised Naturalization Law.

"The lower court erred in applying to the facts of this case Opinion No. 334, Series, of 1951 and Opinion No. 269, Series of 1954 of the Department of Justice which held under the facts there involved that the adoption did not effect any change in the nationality of the adopted.

"The lower court erred in refusing to order the respondent Commissioner to cancel the Alien Certificates of Registration of the petitioners minor children here involved who were originally illegitimate but subsequently adopted and legitimated in legal proceedings by the petitioner before becoming a naturalized Filipino citizen himself, and to drop and cancel their names from the Commissioner's list of aliens."

Under the first assignment of error, appellants maintain that adoption gives "to the adopted person the same rights and duties as if he were a legitimate child of the adopter", in the language of Article 341 of the New Civil Code, and that, since a legitimate child follows the nationality of his father, and petitioner Ching Leng is a citizen of the Philippines, his five (5) adopted children, namely, Ching Tiong Seng, Ching Liang Ding, Victoria Ching Liong Yam, Sydney Ching and Ching Tiong An, must also be regarded as citizen of the Philippines.

The argument overlooks several facts. To begin with, citizenship is not a "right", but a mere "privilege".[1]

Secondly, the "rights" of legitimate children are enumerated in Article 264 of said Code, namely:

- "1. To bear the surnames of the father and of the mother;
2. To receive support from them, from their ascen-dants, and in, a proper case, from their brothers and sisters, in conformity with article 291;
3. To the legitimate and other successional rights which this Code recognizes in their favor." (Underscoring supplied.)

The acquisition by legitimate children of the nationality of their legitimate father is not one of the "rights" specified in this Article 264, and, hence, it is not one of those alluded to in the aforementioned Article 341. Indeed, this provision reads:

"Article 341. Adoption shall:

- "(1) Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter;
- "(2) Dissolve the authority vested in the parents by nature;
- "(3) Make the adopted person a legal heir of the adopter;
- "(4) Entitle the adopted person to use the adopter's surname."

The specific mention, in the last two (2) subdivisions of this article, of the status of the adopted person as legal

heir of the adopter and of the authority of the former to use the surname of the latter, indicates clearly that the "rights" referred to in subdivision (1) do not include everything to which a legitimate child is entitled. Otherwise, subdivisions (3) and (4) of said Article 341 would be a mere redundancy. In fact, even with respect to succession, an adopted child does not have the same rights, as a legitimate child, for "If the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child." (Article 343, Civil Code of the Philippines.)

Moreover, the "rights" of a "legitimate child" given to an adopted person, as stated in Article, 341 of the same Code, do not include the acquisition of the citizenship of the adopter, because:

a) Such acquisition of citizenship partakes of the character of "naturalization", which is regulated, not by the Civil Code, but "by special laws" (Article 49, Civil Code of the Philippines), or the naturalization law. Not being one of the means specified in the latter for the acquisition of Philippine citizenship, adoption must be deemed necessarily excluded from the operation of said law (*expressio unius est exclusio alterius*).

b) The framers of the Civil Code had no intention whatsoever to regulate therein political questions. Hence, apart from reproducing the provisions of the Constitution on citizenship, the Code contains no precept thereon except that which refers all matters of "naturalization", as well as those related to the "loss and reacquisition of citizenship" to "special laws." Consistently with this policy, our Civil Code does not include therein any rule analogous to Articles 18 to 28 of the Civil Code of Spain, regulating citizenship.

c) The Civil Code of the Philippines permits adoption by resident "aliens". If construed as vesting in the person adopted by an alien the political status of the latter, Article 341 of said Code would be open to the charge of unconstitutionality, for the Philippines has no jurisdiction to fix conditions for the acquisition of any foreign nationality. Upon the other hand, said provision must be deemed to convey the same meaning, regardless of whether the adopter is a citizen of the Philippines or an alien. If, pursuant thereto, the adopted child does not follow, however, the citizenship of the adopter, when the latter is an alien, the effect of the adoption must be the same when the adopter is a national of the Philippines.

It may not be amiss to note that the same policy obtains in the U.S. and other parts of the world.

"The adoption by a citizen of the United States of a minor child born in a foreign country of alien parents does not render such child a citizen of the United States," (14 C.J.S. sec. 8, p. 1138, citing *Powers vs. Harten*, 167-N.W. 693.)

"All minor children do not acquire nationality through their adoption by nationals of the United States.-

"In a memorandum of September 8, 1928, the Office of the Solicitor General for the Department of State referred to the decision of the Supreme Court of the State of Iowa in the case of *Powers vs. Harten et al.*, 183 Iowa, 764, 167 N.W. 693, 694 (1918), holding that citizenship of the United States is not acquired through adoption of an alien minor by a citizen, and to a note of November 20, 1917 to the Japanese Embassy which concluded that 'there is no room for doubt that citizenship in the United States would not be acquired by Maru Yoshimoto (a Japanese subject) should she be adopted by a citizen of the United States'.

"MS. Department of State, files 130/538: 130 Mowbray, Harry Siddons. See also 1906 For Rel., pt. I," pp. 288-290; *Cabrillos v. Angel et al.*, 278 Fed. 174, 175 (CCA, 9th, 1922)." (Hackworth Digest of International Law, Vol. III, pp. 82-83; see also p. 488, *ibid.*)

"As stated in the title *Adoption of Children* sec. 59, the adoption by an alien of a minor child is a citizen of the United States does not in general change the citizenship of such child." (14 C.J.S. p. 1146.)

"Ordinarily an adoption of an infant citizen by an alien does not change the citizenship of the child." (Cabrillos v. Angel /C.C.A. Gal./ 278 F 174; In re voluntary adoption of Minor, 226 NYS 445; 2 C.J.S. p. 451).

Adoption creates, a status - the domestic relation of parent and child. At the conclusion of the proceeding, all the legal incidents of the natural relations of parent and child attach to the new status, and the child becomes entitled to the same right of person and property, so far as the adopting parent is concerned, as if it were the child by birth of such person.

"The status of adoption, however, is only a civil or contractual one (Re Bradley, 201 NW 973; 38 ALR 1), for it is insisted that giving an adopted child a right to inherent does not make him a child in fact or change his identity." (1 Am. Jur. 652-653, citing Re Puterbaugh, 261 Pa. 235, 104 A. 601, 5 ALR, 1277).

"Adoption does not affect the citizenship of the adopted child; and a minor does not lose his citizenship because of his adoption by an alien, (Cabrillos v. Angel, 278 F. 174.) And adoption does not affect the relationship of any persons other than those of the parents by 'blood, the adopting parents, and the child. (Darling Estate, 159 P 606; Pierce Estate, 196 P(2d) 1). It simply fixes the status of the child as to its natural and adoptive parents, and does not affect its relationship toward its relatives by blood or create new relationship with the kindred of the adopting parents. (Esposito Estate, 135 p./2d/ 167).

To its grandparents by blood the child continues to be a grand child. It does, not acquire new grand-parents in the persons of the father and mother of an adopting parent." (2 Cal Jur /2d/ 560).

In Powers vs. Harten et. al., 167 NW 693, the Supreme Court of Iowa, held: "x x x Curry was not a legal voter. He was born in Italy; came to this country when he was a child; was adopted by a citizen of the United States when still a child. It does not appear that his father was ever naturalized. The adoption did not have the effect of naturalizing the child, x x x."

"Adoption has been held by the French courts to be an institution of strict civil law, which, according to Art. 11 of the Civil Code, is not open, to foreigners in the absence of a treaty or an 'authorized' domicile. It has been held, accordingly, that a foreigner cannot adopt a French citizen in France, "nor can a French citizen adopt a foreigner. This point of view was changed by the law of June 19, 1923, amending Art. 345 of the Civil Code and providing expressly: 'A French citizen may, adopt a foreigner or may be adopted by a foreigner.' In some states and countries adoption is not allowed. In others it is allowed only under severe restrictions. Where the parties are of the same nationality, no difficulty arises, for the national law clearly controls. A child does not acquire, however, the nationality of the adoptive parent x x x." (37. Yale Law Journal, pp. 866-7:, underscoring ours.)

The first assignment of error is, therefore, clearly untenable. The issues raised in the next two assignments of error boil down to the question whether petitioners' adopted children have acquired Philippine citizenship under the provisions of the Naturalization Law (C.A. No. 473, as amended). In support of the affirmative answer, appellants' counsel alleges that the adoption under consideration took place before the naturalization of Ching Leng, by the taking of the corresponding oath of allegiance and, the issuance of the corresponding certificate of naturalization, although subsequently to the rendition. of judgment granting his petition for naturalization, and that pursuant to section 15 of said Naturalization Law:

"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.

A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance."

It is claimed that the phrases "minor children" and "minor child", used in these provisions, include adopted children. The argument is predicated upon the theory that an adopted child is, for all intents and purposes, a legitimate child. Whenever, the word "children" or "child," is used in statutes, it is generally understood, however, to refer to legitimate children, unless the context of the law and its spirit indicate clearly the contrary. Thus, for instance, when the Constitution provides that "those whose parents are citizens of the Philippines", and "those whose mothers are citizens of the Philippines," who shall elect Philippine citizenship "upon reaching the age of majority", are citizens of the Philippines (Article IV, Section 1, subdivisions /3/ and /4/), our fundamental law clearly refers to legitimate children (*Chiong Bian vs. De Leon*, 46 Off. Gaz., 3652-3654; *Serra v. Republic*, L-4223, May 12, 1952).

Similarly, the children alluded to in said section 15 are those begotten in lawful wedlock, when the adopter, at least, is the father. In fact, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father (*U.S. vs. Ong Tianse*, 29 Phil., 332, 335-336; *Santos. Go vs. Gov't of the Philippines*, 52 Phil., 543, 544; *Ferra v. Republic*, supra; *Gallofin v. Ordoñez*, 70 Phil. 287; *Quim-suan v. Republic*, L-4693, Feb. 16, 1953). Although, adoption gives "to the adopted person the same rights and duties as if he were a legitimate child of the adopter", pursuant to said Article 341 of our Civil Code, we have already seen that the rights therein alluded to are merely those enumerated in Article 264, and do not include the acquisition of the nationality of the adopter.

Moreover, as used In said section, 15 of the Naturalization Law, the term "children" could, not possibly refer to those whose relation to the naturalized person is one created by legal fiction, as, for instance, by adoption, for, otherwise, the place and time of birth of the child would be immaterial. The fact that the adopted persons involved in the case at bar are illegitimate children of appellant Ching Leng does not affect substantially the legal situation before us, for, by legal fiction, they are now being sought to be given the status of legitimate children of said appellant, despite the circumstance that the Civil Code of the Philippines does not permit their legitimation.

Again, one of the qualifications for the naturalization of a person is that "he must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part, of the school, curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen." (Sec. 2, subdivision /b/, Com. Act No, 473.) The purpose of this provision is, among other things, to see to it that said children, "as prospective citizens", are prepared to become an integral part of the nation and to assume their duties as such. (*Tan Hi vs. Republic*, L-3354, January 25, 1951; *Ang Yee Roe Sengkee vs. Republic*, L-3863, December 27, 1951; *Chua vs. Republic*, 48 Off. Gaz., 1780; *Kiap vs. Republic*, 48 Off. Gaz., 3362; *Yap Chin vs. Republic*, L-4177, May 29, 1953; *Ho Lay vs. Republic*, L-5666, March 30, 1954; and *Ku E vs. Republic*, L-11364, May 28, 1958.) As stated in *Bangon Du v. Republic of the Philippines*, L-3683 (decided on January 28, 1953):

"Se exige esta, condicion para, que, por su instruccion, educacion y adhesion a las practicas democraticas adquiridas durante sus estudios en las escuelas publicas o las privadas reconocidas por el gobierno, los hijos del solicitante esten en condiciones de formar parte integrante del pueblo de Filipinas, y que, en tiempos de adversidad o de grave crisis nacional, obren con la misma lealtad, interes y espiritu de sacrificio con que se esfuerzan los naturales por salvar la nacion. Las personas con cultura, instruccion, educacion y prejuicios completamente distintos de los de las filipinos, no pueden obrar al unisono con estos, y lo mas probable es que

sean insensibles a las palpitaciones del sentimiento nacional filipino. No debe perderse de vista, que un crecido numero de personas - so capa de ciudadanos filipinos - criadas en un ambiente completamente diferente del en que se desenvuelven los filipinos puede presentar un grave problema social de dificil solucion: la, presencia de una nacion dentro de la nacion. Estas son las razones que determinaron la adopcion de la condicion que exige los hijos de edad escolar de los solicitantes estudien en las escuelas publicas o las privadas reconocidas por el gobierno en Filipinas 'durante todo el periodo de residencia en las mismas' de los solicitantes."

This purpose would, be thwarted If children devoid of such educational background, be became citizens of the Philippines in consequence of adoption by a naturalized citizen of the Philippines. Worse still, appellants' theory, if accepted, would leave the door wide open to a very simple means to circumvent the provisions of our naturalization and immigration laws.

Lastly, if adoption by a natural born citizen of the Philippines does not vest our nationality in the adopted children, we can not see how adoption by a naturalized citizen of the Philippines could have been meant to have a more far reaching effect.

Being a mere consequence of the assignments of error already disposed of, the other assignments of error need no further discussion.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the appellants,

IT IS SO ORDERED.

Paras, C.J. Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., and Endencia, JJ., concur.

Padilla, J., took no part,

[1] Hao Lian Chu v. Republic, 48 Off, Gaz., 1780; Lim Lian Hong vs. Republic, L-3575, December 26, 1950; Tan Hi vs. Republic, L-3354, January 25, 1951; Chan Su Hok v. Republic, L-3470, November-27, 1951; Sengkee v. Republic, L-3863, December 27, 1951; Ng Sin v. Republic, L-7590, September 20, 1955

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