CUA SUN KE, PLAINTIFF-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, DEFENDANT-APPELLANT.

G.R. No. L-29674. April 08, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by the Government seeking the reversal of the March 5, 1956 Order of the then Court of the First Instance of Manila[*] dismissing its Motion for Cancellation of Certificate of Naturalization issued to Cua Sun Ke.

Herein appellee, Cua Sun Ke, a Chinese citizen who was born on May 6, 1912, emigrated to the Philippines on January 8, 1925. Thereafter, he returned to China twice. The records do not show when he first left the Philippines, but he was married to Li Muy in Nanan District, Province of Fukien, China, on March 17, 1933. As a result of their marriage, five (5) children were born - (1) Cua Yu Kim, born on April 8, 1934 in Amoy, China; (2) Cua Lai Chu, born on February 18, 1936 in Lamoa, China; (3) Nellie Cua, born on March 30, 1949 in Manila; (4) Victorino Cua, born on March 21, 1951 in Manila; and (5) Mary Cua, born on May 29, 1956 in Manila. Likewise, the records do not show when he returned to the Philippines, after his second trip to China in 1935.

On June 7, 1948, his wife and two (2) eldest children, then fourteen (14) and twelve (12) years old, respectively, came to the Philippines and were admitted as temporary visitors.

On June 25, 1955, appellee filed a Petition for Naturalization (Record on Appeal, pp. 1-4) with the then Court of First Instance of Manila, docketed therein as Nat. Case No. 26655.

On March 5, 1956, after due hearing, a Decision (Ibid., pp. 5-6) was rendered finding that herein appellee possesses all the qualifications required by Section 2 and none of the disqualifications enumerated under Section 4 of Commonwealth Act No. 473 to become a Filipino citizen, and that he will be a desirable member of Filipino society.

No appeal was taken from the said decision.

On March 8, 1958, an Order was issued allowing appellee to take his oath of allegiance as a naturalized Filipino citizen under Act No. 530 (Record on Appeal, pp. 6-7).

Pursuant to the aforesaid order, on the same date, March 8, 1958, appellee subscribed to an Oath of Allegiance (Ibid., pp. 7-8), and accordingly, also on the same date, the Clerk of Court issued to him Certificate of Naturalization No. 2360 (Record on Appeal, pp. 8-9).

On December 15, 1967, the Government filed a Motion for Cancellation of Certificate of Naturalization issued to appellee on the grounds that (1) at the time of the filing of the petition, appellee was not qualified because he failed to comply with the educational requirement to enroll his children of school age in local public or private schools recognized by the government during the entire period of his residence in this country, prior to the hearing

of the petition; and (2) as a consequence of his failure to comply with the educational requirement, he is not exempt from the requirement of filing a declaration of intention (Record on Appeal, pp. 9-10). On January 22, 1968, appellee filed his Answer and Opposition (Ibid., pp. 11-13). On January 24, 1968, the Government filed a Request for Admission (Ibid., pp. 13-14), requiring appellee to admit or deny the truth of certain relevant matters as to the education of his children prior to his arrival in this country. On February 15, 1968, appellee filed his Answer to Request for Admission (Ibid., pp. 14-15). On July 12, 1968, an Order was issued dismissing the Government's Motion for Cancellation of Certificate of Naturalization issued to appellee (Ibid., pp. 16-18).

Hence, the instant appeal.

On March 7, 1969, the Government filed its Record on Appeal (Record, p. 32). In a letter dated March 10, 1969, the Clerk of Court of this Court informed the Solicitor General that he is required to file appellant's brief (Ibid., p. 35). Pursuant thereto, the Solicitor General filed his Brief on December 2, 1969 (Ibid., p. 89). On the other hand, appellee filed his Brief on February 18, 1970 (Ibid., p. 101). The Solicitor General having failed to file a reply brief within the period given this Court resolved to consider the case submitted for decision without appellant's reply brief (Ibid., p. 103).

Appellant raised three (3) assignments of error, to wit:

I.

> THE LOWER COURT ERRED IN RULING THAT THE PETITIONER WAS EXEMPT FROM THE REQUIREMENT OF FILING A DECLARATION OF INTENTION;
>
> II.
> THE LOWER COURT ERRED IN RULING THAT PETITIONER HAD SUFFICIENTLY COMPLIED WITH THE EDUCATION REQUIREMENT OF THE NATURALIZATION LAW; AND
>
> III.
> THE LOWER COURT ERRED IN DISMISSING THE GOVERNMENT MOTION FOR CANCELLATION OF CERTIFICATE OF NATURALIZATION.

The main issue in this case is whether or not the lower court erred in dismissing the government's Motion for Cancellation of Certificate of Naturalization issued to appellee for failure to file his declaration of intention.

The answer is in the affirmative.

To be exempt from filing a notice of intention, the applicant must have resided continuously in the Philippines for at least thirty (30) years before the filing of the application, and that he has given primary and secondary education to all his children in the public or private schools recognized by the government and not limited to any race or nationality (Section 6, CA 473, as amended by CA 535; Ho Su Sing vs. Republic, 5 SCRA 628 [1962]).

In the instant case, it will be recalled that appellee arrived here on January 8, 1925, and he filed his petition for naturalization on June 25, 1955, or thirty (30) years, five (5) months and seventeen (17) days from his arrival. Nevertheless, it is undisputed that his stay here was disrupted by two (2) trips to China, which trips, as aptly stated by the appellant, cannot be said to be short visits for appellee took time out to get married on March 17, 1933, and to father two children in China in 1934 and 1936. The continuous residence of thirty (30) years in the Philippines to exempt an applicant for naturalization from filing a declaration of intention means actual or physical presence in the Philippines for said length of time, not legal residence alone (Tan vs. Republic, 7 SCRA 526 [1963]; Yek Tek vs. Republic, 14 SCRA 475 [1965]).

It will be noted that appellee, in his brief, did not elucidate how long were those two (2) trips. He merely stated

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that -

> "x x x. Since his first arrival in the Philippines in 1925, he only visited China twice - in 1933 and 1935 and for short periods. When he filed his petition for naturalization on June 25, 1955, he has been continuously residing in the country for more than thirty (30) years." (Appellee's Brief, p. 12)

Under similar circumstances, in the case of Law Tai vs. Republic (19 SCRA 852 [1967]), where:

> "Petitioner arrived in the Philippines on October 4, 1930 and filed his petition on January 14, 1961, or 30 years, 3 months and 10 days from his arrival. He left the Philippines three (3) times - (1) In 1932 he returned to Amoy, China, to visit his parents. He was away for less than four (4) months; (2) In 1948 again to Amoy; and (3) A sojourn in Hongkong to visit his old sister."

this Court ruled -

> "Petitioner's position suffers from infirmity. His first trip to Amoy for less than four months in 1932 may well be termed a short visit which could bring the case within the coverage of Ting v. Republic, footnote 8. But, with reference to the second trip to Amoy and the third trip to Hongkong, the record is barren as to the duration of each. We are hard put to categorize these two trips. We cannot simply assume, as petitioner suggests, that these trips are for short duration. That would be guesswork.
>
> "Incumbent upon petitioner is to demonstrate - given the fact of absences from the country - that those absences were compatible with continous residence. Failing in this and short of it, his case must fail. For, he has not discharged his burden."

Moreover, it is an undisputed fact that appellee enrolled his two (2) eldest children only after their arrival here on June 7, 1948, at which time they were already fourteen (14) and twelve (12) years old; and worst he enrolled his eldest child at the Anglo-Chinese School, a Chinese school.

In the case of Ong So vs. Republic (14 SCRA 591, 594 [1965]), a similar case, this Court ruled -

> “Since two of the applicant’s minor children, Ong Hu and Ong Tiak were in 1959 still out of the Philippines, and they were born in 1948 and 1949, they were not yet enrolled in Philippine schools when they attained the school age (7) prescribed by our law; wherefore, the condition imposed by the statute was not complied with. The enrollment in our schools of naturalization applicant's children upon their attaining school age is of strict compliance, since the law clearly intended that these children should be made to absorb our customs, traditions, and ideals as early as possible, and the first formative years are the most important for the purpose; hence enrollment at a later age does not satisfy the statute.”

Enrollment of children in a Chinese school negates a sincere desire to embrace Filipino customs, ideals and traditions (Chua Liam Yan vs. Republic, 27 SCRA 1024 [1969]).

This educational requirement for the children is not only for appellee's exemption from filing a declaration of intention. It is also one of the qualifications that he should meet in order to become a Filipino citizen (Hao Su Siong vs. Republic, 5 SCRA 628 [1962]). Failure of applicant to enroll his children of school age in local or public or private schools recognized by the Government where Philippine history, civics and government are taught or prescribed as part of the curriculum, during the entire period of residence required of him in this country, prior to the hearing of the petition for naturalization, as required by Section 2 of Commonwealth Act No. 473, is one of the grounds for cancellation of the certificate of naturalization (Republic vs. Uy Piek Tuy, 29 SCRA 75 [1969]).

Besides, it is admitted that appellee's two (2) eldest children were admitted here as temporary visitors on June 7, 1948. Although it is denied that they failed to depart upon the expiration of their stay, appellee claiming that they

were duly granted corresponding extension up to and including March 31, 1960, "subject to superior orders, and pursuant to Opinion No. 134, series of 1954 of the Secretary of Justice," the fact is that appellee failed to cause them to depart from the Philippines upon the expiration of their authorized stay. His reason is a sham. It is only the Commissioner of Immigration who is vested with the power and authority to grant such extension (Vivo vs. Cloribel, 25 SCRA 616 [1968]; citing the case of Lim Chiok, et al. vs. Vivo, L-20513, Dec. 26, 1963).

Moreover, it will be recalled that the order allowing the oath taking was issued on March 8, 1958, and on the same date, March 8, 1958, the lower court administered the oath of allegiance. Administration of the oath of allegiance on the same day as issuance of order granting citizenship is irregular and makes the proceedings so taken null and void (Republic vs. Guy, 115 SCRA 244 [1982]; citing the case of Ong So vs. Republic of the Philippines, 121 Phil. 1381).

As to appellee's contention that the unexplained change of opinion of the government at this stage will inevitably do violence to the dignity and right attached to citizenship, suffice it to say that no alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon the condition that the government may challenge it, as provided for by Section 2 of Commonwealth Act No. 473, and demand its cancellation unless issued in accordance with such requirements (Republic vs. Uy Piek Tuy, supra). Despite the fact that a decision in a naturalization case has become final, no appeal having been taken therefrom, such decision may still be later evoked where there were irregularities or defects of such nature as to affect the jurisdiction of the court, and, hence, the validity of the decision (Go vs. Republic, 13 SCRA 548 [1965]). In this sense, a judgment granting naturalization is never final.

PREMISES CONSIDERED, the March 5, 1956 Order of the then Court of First Instance of Manila is REVERSED, and accordingly, Certificate of Naturalization No. 2360, issued to Cua Sun Ke is hereby CANCELLED.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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[*] Presided by Hon. Judge Froilan Bayona.

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