

SEE GUAN, ET AL., PETITIONERS AND APPELLANTS, VS. THE COMMISSIONER OF IMMIGRATION, ETC., RESPONDENTS AND APPELLEES.

G.R. No. L-21811. November 29, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Alleging that he had secured a judgment granting his Petition to be naturalized as a citizen of the Philippines, that steps preparatory to the taking of the oath of allegiance required therefor had already been taken, that he is the husband of Lu Lai Fu and the father of her daughters See Siok Cheng and See Siu Hua – hereinafter referred to as visitors – and that the Commissioner of Immigration hereinafter referred to as the respondent – is threatening to deport said visitors from the Philippines and to proceed against their cash bonds, See Guan, purporting to act on their and his own behalf, filed with the Court of First Instance of Manila a petition praying that a writ of certiorari and mandamus be issued setting aside respondent's communication of September 11, 1962, containing said threat, and compelling him to allow said visitors to remain in the Philippines until the taking of the aforementioned oath of allegiance and the issuance of the certificate of naturalization in his (See Guan's) favor.

In his answer, respondent denied the alleged relation between See Guan and said visitors, and averred, among other defenses, that the latter had been admitted as temporary visitors and that their right to stay as such in the Philippines had expired already. Pending determination of the merits of the case, the lower court issued a writ of preliminary injunction. Upon submission of the case for decision, said court subsequently rendered judgment dismissing the petition and dissolving said writ, costs against the petitioners. Hence this appeal by the latter.

It is not disputed that said visitors came to the Philippines on May 21, 1960, and, after posting cash bonds, were admitted therein as temporary visitors, for a specified period of time, which, upon their request, had been extended from time to time. On September 3, 1962, they sought another extension of time, which was denied in a letter of the Bureau of Immigration dated September 11, 1962. The letter, moreover, required them to leave the Philippines on or before September 18, 1962, and stated that, otherwise, said office would be "constrained to proceed against their persons and the cash bonds posted on their behalf". Inasmuch as respondent has no ministerial duty to grant said petition for extension of time, it is clear that a mandamus does not lie to compel him to do so. Neither does writ of certiorari for, in the absence of an order by a competent authority, which under the Philippine Immigration Act of 1940 is no other than the respondent, extending the period of their stay in this country, their right thereto had expired on September 18, 1962, and, consequently it became its bounden duty thereafter to proceed against their persons and against their aforementioned bonds.

Obviously, the decision rendered on May 23, 1960, granting See Guan's petition for naturalization did not have the effect of imposing upon respondent the duty to extend the period of time within which said visitors may stay in the Philippines. Again, when this case was instituted on September 14, 1962, See Guan and said visitors were not Filipinos, but aliens. What is more, they still are aliens, for, after appropriate proceedings, the Court of First

Instance of Manila denied See Guan's motion to be allowed to take the requisite oath of allegiance and secure the corresponding certificate of naturalization. In the language of the order to this effect, dated July 5, 1963:

"From the facts thus unfolded, it is patent and undeniable that petitioner does not know how to speak and write English. Indeed, he had to admit it, as already adverted to above. Neither is his ability to write Tagalog sufficient within the contemplation of the Naturalization Law, because Exh. 5, is not only hard to read but also practically unintelligible.

"In other words, petitioner lacks the fifth qualification provided in Section 2 of Commonwealth Act No. 473, known as the Revised Naturalization law, possession of which may be inquired into even at this stage of the proceedings, pursuant to the ruling in the case of *Ong Ching Guan vs. Republic of the Philippines*, wherein the Supreme Court said:

'During the hearing on the petition to take the oath, any question affecting the qualifications of the applicant may be invoked (*Lim Hok Albano vs. Republic*, L-10912, October 31, 1958). On *Ching Guan vs. Republic of the Philippines*, G.R. No. L-15691, prom. March 27, 1961).' "

Then too, an alien admitted as non-immigrant cannot, Pursuant to Section 9 of the aforementioned Act, change his status without first departing from the Philippines and complying with the other requirements of said section (*Ong Se Lun, et al. vs. Board of Immigration, et al.*, 95 Phil. 785; *Chiong Tio Bing, et al. vs. Commissioner of Immigration*, 99 Phil. 1020; *Sy Hong, et al. vs. Commissioner*, L-10224, May 11, 1957; *Ng Min vs. The Commissioner*, 107 Phil. 537; *Kua Suy, et al. vs. Commissioner*, L-13790, October 31, 1963).

Last, but not least, See Guan has not even tried to prove his alleged relation with the aforementioned visitors, notwithstanding the fact that the allegation to this effect had been specifically denied by respondent herein. Hence, the petition herein and this appeal have no leg to stand on.

Wherefore, the decision appealed from should be, as it is hereby affirmed, with costs against petitioners-appellants. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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