

**FELISA LEE ALIAS LEE SIU LUAN, ASSISTED BY HER HUSBAND,
JACKSON BARRA, PETITIONERS-APPELLEES, VS. COMMISSIONER OF
IMMIGRATION, RESPONDENT-APPELLANT.**

G.R. No. L-23446. December 20, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal taken by the Commissioner of Immigration from the decision of the Court of First Instance of Albay in its Civil Case No. 2567.

On June 22, 1958 Felisa Lee, a Chinese citizen, married Jackson Barra, a Filipino citizen. Claiming to have acquired the citizenship of her husband by virtue of her marriage on the ground that she possessed all the qualifications and none of the disqualifications for naturalization as a Filipino citizen, she applied to the Commissioner of Immigration for cancellation of her Alien Certificate of Registration. In a letter dated October 4, 1962, the Commissioner informed her that her petition could not be given due course by his Office "in view of its existing policy of requiring wives of Filipino citizens to go to the courts for judicial determination of whether or not they possess all the qualifications and none of the disqualifications required by law to acquire the Filipino citizenship of their husbands."

Accordingly, on October 13, 1962 Felisa Lee filed in the court a quo a petition for the cancellation of her Alien Certificate of Registration, alleging inter alia: that she was a Chinese citizen affiliated with Nationalist China; that she was born in Manila on March 1, 1938 of Chinese parents; that she was married on June 22, 1958 to Jackson Barra, a Filipino citizen by birth; that she possessed all the qualifications to become a Filipino citizen by naturalization and was not otherwise disqualified by law for that purpose; that pursuant to the provisions of Section 15 of Commonwealth Act No. 473, she became a Filipino citizen as of June 22, 1958 by reason of her marriage to her Filipino husband; that she filed a petition dated May 4, 1961 for the cancellation of her alien registry with the Bureau of Immigration but the petition was turned down; and that she had "no other recourse to have her citizenship status determined and her alien registration cancelled except the present proceeding." She, therefore, prayed that "after due notice and hearing as provided by law the petitioner be adjudged to have acquired the citizenship of her husband, Jackson Barra, who is a Filipino and to order the respondent to cancel her alien papers."

On November 2, 1962 the Solicitor General moved to dismiss the petition on the ground that the court had no jurisdiction over the case, alleging that "under Section 44 (h) of the Judiciary Act of 1948, a Court of First Instance cannot issue a writ of mandamus to compel performance of an act outside the judicial district." Opposing the motion the petitioner contended that her petition was not one for mandamus but an ordinary action seeking a judicial determination as to whether she possessed all the qualifications to be herself lawfully naturalized, in order to "be deemed a citizen of the Philippines" pursuant to paragraph 1 of Section 15 of Commonwealth Act No. 473. In its order dated November 20, 1962, the trial court denied the motion to dismiss. Within the

reglementary period, the respondent filed his answer denying the material allegations in the petition and setting forth the following special and affirmative defenses, to wit: (1) that the trial court had no jurisdiction to enjoin, compel or prohibit the performance of an official act outside of its judicial district; (2) that if the petition was not one for mandamus, it must necessarily be one for declaratory relief, which could not be availed of to have petitioner adjudged a citizen of the Philippines; and (3) that petitioner had not exhausted available administrative remedies before coming to court.

After proper proceedings the trial court rendered its decision, of which dispositive portion reads:

"WHEREFORE, the court finds that Felisa Lee alias Lee Siu Luan has all the qualifications and none of the dis-qualifications to become a Filipino citizen for which reason she is deemed to be a Filipino citizen on account of her marriage to her Filipino husband. Accordingly, the Commissioner of Immigration is therefore ordered to cancel her Alien Certificate of Registration as soon as this decision has become final."

The case is now before this Court on appeal by the Commissioner of Immigration.

The appeal should be upheld. The petition of the appellee in the court a quo is really one for declaratory relief, considering the prayer therein that she "be adjudged to have acquired the citizenship of her husband, Jackson Barra, who is a Filipino x x x." In a long line of decisions, this Court has repeatedly held that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual.[1]

However, in the recent case of Moy Ya Lim Yao alias Edilberto Aguinaldo Lim and Lau Yuen Yeung vs. Commissioner of Immigration,[2] this Court, rejecting the view that an alien woman who marries a Filipino citizen should undergo naturalization proceeding in order to acquire the citizenship of her husband, while at the same time maintaining its previous ruling that a petition for judicial declaration of her citizenship such as the remedy applied for in this case is not allowed either by law or by the Rules of Court, in effect sanctioned the procedure originally resorted to by the appellee before the respondent Commissioner. In the said case this Court stated:

"The question that keeps bouncing back as a consequence of the foregoing views is, what substitute is there for naturalization proceedings to enable the alien wife of a Philippine citizen to have the matter of her own citizenship settled and established so that she may not have to be called upon to prove it everytime she has to perform an act or enter into a transaction or business or exercise a right reserved only to Filipinos? The ready answer to such question is that as the laws of our country, both substantive and procedural, stand today, there is no such procedure, but such paucity is no proof that the citizenship under discussion is not vested as of the date of marriage or the husband's acquisition of citizenship, as the case may be, for the truth is that the same situation obtains even as to native-born Filipinos. Everytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand. This, as we view it, is the sense in which Justice Dizon referred to "appropriate proceeding" in *Brito v. Commissioner*, *supra*. Indeed, only the good sense and judgment of those subsequently inquiring into the matter may make the effort easier or simpler for the persons concerned by relying somehow on the antecedent official findings, even if these are not really binding.

It may not be amiss to suggest, however, that in order to have a good starting point and so that the most immediate relevant public records may be kept in order, the following observations in Opinion No. 38, series of 1958, of then Acting Secretary of Justice Jesus G. Barrera, may be considered as the most appropriate initial step by the interested parties:

"Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman

must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen (please see attached CEB Form 1), the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition."

Once the Commissioner of Immigration cancels the subject's registration as an alien, there will probably be less difficulty in establishing her Filipino citizenship in any other proceeding, depending naturally on the substance and vigor of the opposition."

WHEREFORE, the judgment appealed from is hereby set aside and the petition in the court a quo dismissed, without prejudice to the filing of a petition for the cancellation of appellee's alien certificate of registration with the Bureau of Immigration as above indicated.

Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Concepcion, C.J., Reyes, Zaldivar, and Makasiar, JJ., in the result.

[1] Wong Sau Mei vs. Republic, No. L-22551, March 16, 1971 (38 SCRA 26); Soria vs. Commissioner of Immigration, L-24102, January 30, 1971 (37 SCRA 213) and the cases cited.

[2] L-21289, October 4, 1971.

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