

**SANTOS CHAN, SO MING LEE AND AMBROSIO CABO CHENG,
PETITIONERS-APPELLANTS, VS. EMILIO L. GALANG, IN HIS
CAPACITY AS COMMISSIONER OF IMMIGRATION,
RESPONDENT-APPELLEE.**

G. R. No. L-21732. October 17, 1966

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A Portuguese national, So Ming Lee, was allowed to enter the Philippines on May 6, 1957, as a temporary visitor until July 13, 1957, upon a P1,000 cash bond filed by Ambrosio Cabo Cheng.

She contracted marriage with Santos Chan, a Filipino citizen, on July 8, 1957. And due thereto she petitioned the Commissioner of Immigration, on July 10, 1957, for the cancellation of her alien certificate of registration, and for her permanent stay in the Philippines. . Pending resolution of her petition, she requested for a 30-day extension of her permit to remain in this country, which request was denied. As she failed to depart on July 13, 1957 - the date of expiration of her permitted stay - the bond posted for her was ordered forfeited.[*]

Subsequently, on July 31, 1957, the Commissioner of Immigration wrote to So Ming Lee, denying her request for reconsideration of the confiscation of the bond and her petition for the cancellation of her alien certificate of registration due to the finding that both So and Chan having previous marriages - So claimed to be a divorcee - their marriage to each other was without force and effect so that she could not have acquired Filipino citizenship. The Commissioner advised So to leave within three days from receipt of his letter or else appropriate action would be taken for her departure.

On August 2, 1957, a petition for certiorari, prohibition and mandamus was filed by So Ming Lee, Santos Chan and Ambrosio Cabo Cheng, before the Court of First Instance of Manila praying for (1) annulment of the Commissioner of Immigration's order denying So Ming Lee's petition for cancellation of her alien certificate of registration and confiscation of the bond; (2) declaration of So Ming Lee as a Filipino citizen, under Section 15 of Commonwealth Act 473; (3) refund of cash bond to Cheng; and (4) restraint of the arrest of So Ming Lee and of deportation proceedings against her.

Subsequently, a preliminary injunction was prayed for. Because a warrant was issued for So's arrest, the court, upon petitioners' request, temporarily restrained the authorities from arresting her.

Instead of answering, as required by the court, the Commissioner filed a motion to dismiss on the ground that the petition had no cause of action and that it was premature because deportation proceedings had not yet been terminated so that the Court of First Instance had no jurisdiction to review the Commissioner's actuations. To the motion to dismiss, petitioners filed an opposition, denying its alleged grounds and stating further that the petition may also be construed as one for declaratory relief.

In its order of August 29, 1957, the court below dismissed the petition, declaring It premature and finding that in ordering So Ming Lee's arrest preliminary to deportation proceedings, the respondent Commissioner was only complying with Section 37 of the Immigration Act of 1940; that the Board of Immigration Commissioners had not yet decided on So's right to stay, so as to justify interference by the courts; and that the proper remedy is

habeas corpus. Appeal was taken therefrom by petitioners to the Court of Appeals which Court certified the case to Us as involving questions purely of law.

At issue are, mainly, these two questions: First, did the trial court err in acting upon the motion to dismiss and ruling that the petition was premature? Second, should the petition be considered as also for a declaratory relief?

Petitioners argue that in a suit for certiorari once the court orders the respondent to answer according to Section 6 of Rule, 67 of the Rules of Court (now Section 6 of Rule 65), the respondent cannot move to dismiss. They maintain that there are only two stages when the court may dismiss a special civil action for certiorari, prohibition and/or mandamus, that is, first, upon the filing of the petition but before the order to answer; and second, upon the filing of the answer.

The rule in ordinary actions may be applied to special civil actions by virtue of Section 1 of Rule 65 (now Section 1 of Rule 62) provided it is not inconsistent with the provisions on special civil actions. There is no such inconsistency that bars the application here of the rule (Rule 8, now Rule 16) allowing the filing of a motion to dismiss before filing an answer.

Furthermore, in *Arvisu v Vernara*,^{[[1]]} also a petition for certiorari, where a motion to dismiss upon the ground that appeal was the remedy - filed after an answer was required - was granted, this Court, sustaining the dismissal, held that: "On principle, dismissal would also be proper if, before the answer is filed, the attention of the court is called to the fact that from its own allegations, the; petition appears to be without merit."

The petitioners asked the Commissioner to cancel her alien certificate of registration on the ground that by virtue of So Ming Lee's marriage to a Filipino citizen, she is also a Filipino. Time and again We have said that an alien woman marrying a Filipino citizen does not by that fact alone become a Filipino. She has yet to prove that she has all the qualifications and none of the disqualifications enumerated in Sections 2 and 4 of the Naturalization Law before she may be deemed a Filipino Citizen.^{[[2]]} If it were otherwise, our laws could easily be circumvented by the alien's marriage to a Filipino. Temporary stay being a mere privilege, temporary visitors are subject to deportation upon the expiration of the period of their stay.^{[[3]]} Prohibition will not prosper to prevent their deportation. If the alien remains after the expiration of his stay, he may be proceeded against preparatory to the institution of deportation proceedings.^{[[4]]} The alien's remedy is to leave the country and then apply for re-entry.^{[[5]]}

From all the above considerations, therefore, it follows that the disputed issue of citizenship - upon which So Ming Lee premises her alleged right to stay and not to be deported - should first be threshed out in the Board of Commissioners, instead of in the courts. This is in accordance with Section 37 of the Immigration Act of 1940, as amended:

"(a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien: x x x x

"(b) Any alien who remains in the Philippines, in violation of any limitation, or condition under which he was admitted as a nonimmigrant; x x x x

"(c) No alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration."

And with regard to respondent Commissioner's having looked into So Ming Lee's citizenship, it is well settled that for the purpose of determining whether or not a prima facie case exists against an alien to warrant his deportation,

the Commissioner of Immigration may conduct preliminary proceedings and pass upon the validity of the marriage of an alien on which the question of her nationality depends.[6] It is not correct to say that the question of citizenship should be determined exclusively by the courts.[7]

Petitioners further allege abuse of discretion when respondent Commissioner confiscated the bond, the petition for the cancellation of the alien certificate of registration then being pending. The bond posted to insure an alien's departure after the expiration of his stay may be confiscated upon failure to produce the alien when ordered by the Commissioner, because the condition of the bond has thereby been violated.[[8]] An alien's bondsman seeking refund of the cash bond because of marriage of the alien to a Filipino husband, without proof that the alien herself may be naturalized, does not sufficiently show cause to obtain release of the bond. Stated otherwise, an alien who claims that, despite her failure to depart from the country within the period specified in the bond, there has been no breach thereof, has the burden of proving her alleged change of political status, from alien to citizen.[[9]] And as mentioned, this proof should first be given in the proceedings before the Board of Commissioners.

Declaratory relief is discretionary upon the court to entertain. It may refuse to exercise the power to declare rights and to construe instruments in any case where the declaration or construction is not necessary and proper at the time under all the circumstances (Sec. 5, Rule 64, formerly Sec. 6, Rule 66, Rules of Court). This is one such case, for the proper forum in which to first resolve the dispute herein is the Board of Commissioners.

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

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[*] Also because of the failure to produce her as required.

[1] 90 Phil. 621, 623-623.

[2] *King Tee v. Galang*, G.R. No. L-18351, March 26, 1965; *Brito v. Commissioner of Immigration*, G.R. No. L-16829, June 30, 1965, and other cases therein cited.

[3] *Ong Se Lun v. Board of Immigration Commissioners*, 95 Phil. 785; *Hao Yeng v. Commissioner of Immigration*, G.R. No. L-12342, April 20, 1959.

[4] *Choy King Tee v. Galang*, *supra*, no to 2; *Brito v. Commissioner*, *supra*, note 2.

[5] *Kua Suy v. Commissioner*, G.R. No. L-13790, Oct. 31, 1963.

[6] *Brito v. Commissioner*, *supra*, note 2.

[7] *Miranda v. Deportation Board*, 94 Phil. 531.

[8] *Far Eastern Surety & Insurance Co. v. Court of Appeals*, 55 O.G. 9890; *Shiu Shun Man v. Galang*, G.R. No. L-16486, Dec. 20, 1961; *Ng Kua To v. Galang*, G.R. No. L-19140, Feb. 29, 1964.

[9] *Ly Giok v. Galang*, G.R. No. L-10760, May 17, 1957.

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