

[With resolution of December 29, 1960]*G.R. No. L-14866. October 28, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is an appeal taken by the Government from a decision of the Court of First Instance of Laguna granting the petition of Andres Ong Khan to be admitted a citizen of the Philippines.

On December 18, 1957, Andres Ong Khan applied for Philippine citizenship. After the publication of his petition and the notice of hearing as required by section 9 of the Revised Naturalization Law (Commonwealth Act No. 473, as amended), the provincial fiscal of Laguna, representing the Solicitor General, registered an opposition on the ground that there was no showing in the petition that the petitioner has complied with section 5 of the Act, nor was there any allegation to the effect that he was exempt from such requirement. In reply, the petitioner reasoned out that he should be considered exempt from making a declaration of intention because he was born in the Philippines and has received his elementary and secondary education in schools recognized by the Philippine Government. Upon his request and with prior leave of court, the petitioner filed an amended petition, incorporating the allegation that he is exempt from filing a declaration of intention, including the reason's for such exemption.

When the case was called for hearing, the fiscal objected to the presentation of evidence in support of the petition on the ground of lack of jurisdiction on the part of the court to try the case, unless and until the petition, as amended, is published anew in accordance with the requirements of the law. It was argued, however, in behalf of the petitioner, that a republication was not necessary since the amendment refers merely to form and not to substance. Upholding the contention, the lower court allowed the petitioner to present his evidence, and after hearing, rendered judgment granting the petition for naturalization. From that decision, the Solicitor General appealed.

The appeal is well taken.

Section 7 of the Revised Naturalization Law (Commonwealth Act No. 473, as amended) enumerates what should be set forth in a petition for naturalization. Among others, it requires that the petition must contain a statement that the applicant has complied with the requirements of section 5 of the Act which enjoins the said applicant to file with the office of the Solicitor General, one year prior to the filing of his petition for naturalization, a declaration under oath that it is his bona fide intention to become a citizen of the Philippines. It also requires that the declaration be made part of the petition. The filing of such declaration of intention is mandatory and an absolute pre-requisite to naturalization. Failure to file the same, unless exempted under section 6, is fatal to the application for naturalization. (*Yu Yap vs. Republic*, G. R. No. L-4270, May 8, 1952; *Yu vs. Republic*, 92 Phil., 804; and *Tan vs. Republic*, 94 Phil. 882.) Under the said section 6, in order that an applicant may be entitled to exemption from filing a declaration of intention, either of the following two conditions must exist: (1) that the applicant was born in the Philippines and has received his primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality; or (2) that he has resided

continuously in the Philippines for a period of thirty years or more before filing his application. To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality (See Commonwealth Act No. 535); that is, if the applicant's children, if any, are already of school age (Chan Tiao vs. Republic, 95 Phil., 709).

In the present case, the petitioner made no allegation in his original petition that he has complied with section 5 of the Revised Naturalization Law. No declaration of intention was attached, to his petition. He did not claim exemption from filing such declaration of intention under section 6 of the said law, and neither did he make any allegation of facts that would entitle him to exemption. Thus, being less than 25 years at the time of the filing of his petition, he never claimed continuous residence in the Philippines for 30 years or more. He did allege that he was born here but, certainly, that statement alone cannot serve as a claim for exemption. It would have been otherwise had petitioner also alleged, in addition, that he had finished his elementary and secondary education in schools recognized by the Government. In cases where the petitioner is exempt from filing a declaration of intention, a statement as to his exemption and the reasons therefor should appear in the petition, in order to apprise the public, especially those officers charged with notice of the application, of the reasons advanced in support of the claim for exemption, so that they may be prepared, if legally proper and necessary, to contest or object to any evidence adduced on that regard. The failure, therefore, of the petitioner in this case to make a statement in his petition about His having filed, or his being exempt from filing, a declaration of intention constituted a fatal defect "in his petition and rendered the same void, for non-compliance with the provisions of law relative to the contents of, and annexes to, the petition for naturalization. (In re Robert Cu, 89 Phil., 473; Pidelo vs. Republic, 97 Phil., 632.)

Of course, as already stated, petitioner amended his petition by incorporating the allegation that he is exempt from filing a declaration of intention and alleging his reasons therefore. The petition, as amended, however, was not published. The original petition being void in that it lacked some essential particular, the amended petition should have been treated as a new one and published in accordance with section 9 of the Revised Naturalization Law.

In view of the foregoing, the petition for naturalization is hereby denied, without prejudice. So ordered, without costs. '

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

Judgment reversed.

RESOLUTION

December 29, 1960

GUTIERREZ DAVID, J.:

Petitioner Andres Ong Khan has filed a motion for reconsideration of the decision promulgated on October 28, 1960, denying his application for naturalization, without prejudice, for the reasons that he did not comply with the provisions of law relative to the contents of a petition for naturalization and that while he subsequently amended his petition to supply the deficiency, the same was not published.

Before action could be taken on the aforesaid motion, petitioner filed another motion praying that the case be

returned to the trial court and that he be permitted to comply at once with the required publication of his amended petition without the necessity of filing a new application.

Considering the arguments advanced in support of the motion for reconsideration, we find and so hold that the same are without merit. Said motion must, therefore, be as it is hereby, denied.

We are, however inclined to grant petitioner's other motion to remand the case to the trial court in order to avoid the necessity of filing a new application and the repetition of proceedings already had. This is with the understanding, of course, that the parties, especially the Government, shall be given additional or new opportunity to establish or disprove the existence of circumstances as would justify the grant of naturalization. For this purpose the dispositive portion of our decision is hereby amended to read as follows:

"In view of the foregoing, the case is ordered remanded to the court of origin and that court, after due publication of the amended petition as required by law, is hereby instructed to give the parties additional or new opportunity to be heard." So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Paredes and Dizon, JJ., concur.

Dispositive portion of Supreme Courts' decision amended; case remanded to court of origin.

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