

**IN THE MATTER OF THE PETITION OF ONG TION SAN TO BE
ADMITTED A CITIZEN OF THE PHILIPPINES, ONG TION SAN,
PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR AND ...**

G.R. NO. L-35382. May 30, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by the Republic of the Philippines, from the order dated September 8, 1971 of the Court of First Instance of Zamboanga City, 16th Judicial District, in Naturalization Case No. 196, granting the motion of petitioner Ong Tion San to take the oath of allegiance as a citizen of the Philippines, and from the order dated November 16, 1971 denying the motion for reconsideration of said order of September 8, 1971.

Petitioner-appellee Ong Tion San was born on November 4, 1940 of Chinese parents named Tion Pioc and Tan Siu Ha, in Zamboanga City, Philippines, which he considers as his permanent residence,[1] and since then has resided continuously in the Philippines. He is a citizen of the Republic of China with seat of government at Taipeh, Taiwan, and is registered with its Embassy in the Philippines. He is the holder of Alien Certificate of Registration No. C-041217 (Exhibit "L"), issued in Manila on November 19, 1954 by the Commissioner of Immigration, and Native Born Certificate of Residence No. 31547 (Exhibit "L-1"), issued in Zamboanga City on May 13, 1964 by the Alien Control Officer, Fort of Zamboanga. He studied and finished his primary and intermediate grades from 1947 to 1956, and his first and second years of high school from 1956 to 1958, at the Zamboanga Chinese High School in Zamboanga City, otherwise called Zamboanga City Chinese High School.[2]

Sometime in 1958, when petitioner was at the age of 18, he left for the City of Manila to continue his studies, and he resided, first, at 835 Salazar Street, then at 512 Plaza de Conde Street, and later at 912 Benavides Street, all located in the district of Binondo, Manila, together with his father and eldest brother, Ong Tion Suy.[3] He pursued and finished his third and fourth years of high school at the Chiang Kai Shek High School in Manila where he studied from 1958 to 1963 as an irregular student.[4]

In January, 1964, after finishing his secondary education, petitioner was employed as a purchasing agent with the Manila branch office of the Guan Seng Trading Company, Inc., with principal office at Zamboanga City, of which his father is a co-owner, and stockholder and manager of said branch office.[4a] The corporation is engaged in the business of selling construction materials and hardware. As a purchasing agent, petitioner had to order materials for the corporation from different commercial firms in Manila and work from 7:30 to 11:00 o'clock in the morning, and from 2:00 to 5:00 o'clock in the afternoon.[4b] He had to attend also his classes at the University of the East, Manila, from 6:00 to 8:00 o'clock in the evening, and at the time he testified on March 12, 1969, he was a third year student in the College of Business Administration of said University.[5] As compensation, he received a monthly salary of P500.00 (Exhibit "G") with free board and lodging, plus a yearly bonus of P1,000.00, depending upon the profits of the corporation. His income for the years 1966 and 1967 was reflected in his

individual income tax returns therefor (Exhs. "I" & "I-1").[5a]Aside from being employed in said corporation, petitioner was a stockholder thereof, and at the time he testified on March 25, 1969, he had, under his name, 240 shares of stock valued at P100.00 per share, or a total value of P24,000.00. These shares of stock were donated to petitioner by his father, i.e., 200 shares on January 3, 1964 and 40 shares on June 15, 1967 (Exhs."N" & "N-1").[6]

From the time he stayed in Manila way back in 1958, when he was barely 18 years old, up to the time he testified on March 12, 1969, when he was 28 years old, petitioner had continuously been residing in the district of Binondo, Manila.[7] However, he goes home to Zamboanga City every month for a visit and in connection with his work with the Guan Seng Trading Company, Inc., during which he invariably stays for a period of two (2) to three (3) days at 120 Marahui Street, Zamboanga City. He also goes home to Zamboanga City during holidays, summer and semestral vacations and during Christmas vacations when he stays in Zamboanga City for about two (2) weeks every year.[8] On May 10, 1970, he married Mary Tan, a Chinese citizen.

Petitioner did not file a declaration of intention, claiming exemption from this legal requirement because he was born in the Philippines and received his primary, secondary and college education in Zamboanga Chinese High School in Zamboanga City, Chiang Kai Shek High School in Manila, and University of the East, also in Manila, all of which were duly recognized by the Republic of the Philippines and are not limited to any race or nationality, and where Philippine history, government, civics and social life were taught or prescribed as part of the school curriculum.[9]

On December 28, 1965, petitioner filed with the Court of First Instance of Zamboanga City a petition, dated June 1, 1965, for naturalization as a citizen of the Philippines.[10] The petition was fully supported by a joint-affidavit signed by Leticia C. Alvarez and Felipe P. Solis, residents of Zamboanga City, who testified in court to substantiate on petitioner's good moral character."[11]

On February 23, 1968, the Government filed its opposition to said petition, which was later amplified by an amended opposition dated March 7, 1969, on the grounds that: 1) the district of Binondo, Manila, where petitioner stayed from 1958 up to the present, is a veritable Chinese residence and therefore he has not mingled and associated with Filipinos as required by law (citing Wang I Fu vs. Republic, L-15819, Sept. 29, 1962, 6 SCRA 93), thereby indicating his desire to perpetuate his Chinese ways of life; 2) petitioner is not exempt from the filing of a declaration of intention because he completed his primary and secondary education at the Zamboanga Chinese High School and at the Chiang Kai Shek High School where the students thereof are predominantly, if not all, Chinese; and 3) petitioner's character witnesses are incompetent to vouch for his good moral character and his irreproachable conduct during his entire residence in the Philippines because said witnesses, who are residents of Zamboanga City, have no opportunity to observe petitioner's conduct and activities during the latter's stay in Manila from 1958 to the present.[12]

After due hearing, on July 18, 1969, the trial court rendered a decision[13] declaring petitioner as eligible for naturalization as a citizen of the Philippines, the dispositive portion of which reads:

"After carefully considering the evidence presented by the petitioner, both oral and documentary, in support of the petition, the Court is convinced that ONG TION SAN has all the qualifications and none of the disqualifications under Commonwealth Act No. 473, as amended, and that he has complied with all the requisites of the naturalization law and, therefore, hereby declares him eligible for naturalization as a citizen of the Philippines. His application is, as it is, hereby GRANTED.

"However, in view of the provisions of Republic Act No. 530, this decision shall not become executory until after the lapse of two (2) years from its promulgation."

No appeal from this decision was interposed by the Government.

On August 17, 1971, petitioner filed with the same trial court a notice to take oath as a citizen of the Philippines alleging substantially that he has complied with all the requirements of the naturalization law during the two-year probationary period from June 18, 1969, the date of the decision of the trial court.[14]

On August 31, 1971, the Government filed its opposition to said motion on the same or identical grounds as those alleged in its amended opposition, dated March 7, 1969, to the petition for naturalization.[15]

On September 8, 1971, the trial court, after the hearing required by Republic Act No. 530, issued an order[16] allowing petitioner to, take his oath as a Filipino citizen.

On September 10, 1971, the Government moved for a reconsideration of the order of September 8, 1971, reiterating the same grounds previously relied upon in its amended opposition of March 7, 1969 to the petition for naturalization, and in its opposition of August 31, 1971 to petitioner's motion to take oath as a Filipino citizen.[17] On September 28, 1971, petitioner also filed an opposition to said motion for reconsideration.[18] On November 16, 1971, the trial court issued an order denying said motion for reconsideration.[19]

Upon the ground that the said orders of September 8, and November 16, 1971 are contrary to law and the evidence, the Government appealed to this Court claiming that the trial court erred: 1) in finding that petitioner-appellee is exempt from filing a declaration of intention to become a naturalized citizen of the Philippines; 2) in not finding that petitioner-appellee's character witnesses are incompetent to vouch for his moral character and conduct; and 3) in declaring that petitioner-appellee is eligible for Philippine citizenship.

After a careful review of the records of this case, We find that the Government's appeal is meritorious.

Under the Revised Naturalization Law, and as consistently interpreted by this Court, an applicant or petitioner for naturalization can avail himself of the benefits of exemption from filing a declaration of intention, if he were born in the Philippines and has received primary and secondary education in public schools or private educational institutions duly recognized by the Government and not limited to any race or nationality.[20] Unless an applicant is by law exempted from such requirement, he must file with the Office of the Solicitor General one year prior to the presentation of the petition for naturalization in court, a declaration under oath of his bona fide intention to become a citizen of the Philippines.[21]

While it is true that herein petitioner was born in the Philippines and received his primary and secondary education, at the Zamboanga Chinese High School in Zamboanga City and at the Chiang Kai Shek High School in Manila, respectively, there is no competent evidence in the records to establish that these schools are duly recognized by the Government and not limited to any race or nationality. The fact that these schools offer curricula for Chinese clearly indicate they are exclusive to Chinese students[22] and there is no evidence presented by petitioner that they were not so.

However, the Zamboanga Chinese High School in Zamboanga City, otherwise called Zamboanga City Chinese High School,[23] was never a government-recognized school during the time that petitioner was studying therein. Thus, in the case of *Alfredo T. Luy vs. Republic*,[24] which involves the very same school at which herein petitioner was a student from 1947 to 1958, it has been found that said school was- granted Government recognition only in the year 1958. On this point, this Court, speaking through the then Chief Justice Concepcion said:

"It should be noted, however, that to impart the benefits of said exemption, petitioner's primary and secondary education — in addition to birth in the Philippines, must have been received 'in public schools not limited to any race or nationality.' The record shows that the Zamboanga City Chinese High School was not granted

Government recognition until 1958, whereas appellee finished high school therein 1959, so that the institution has not, as yet, been recognized by the Government when he completed his primary and elementary education, as well as when he finished second year high school in 1957.

"What is more, it has not been properly established that said institution is not limited to any race or nationality'. We must bear in mind that this character 'cannot be presume from the fact that the school is recognized by the Government', but must be adequately made out by the appellee, who has the burden of proof in relation thereto, as one of the basic premises of the exemption invoked by him. The necessity of clear and convincing evidence thereon is underscored by the adverse implications arising from the term 'Chinese' appearing in the name of said school, and from the fact that it is maintained by the Chinese Educational Society of Zamboanga, and that its principal teacher is a Chinese. x x x " (Italics supplied.)

Similarly, petitioner herein finished his primary and intermediate education at the said Zamboanga Chinese High School in Zamboanga City, otherwise called Zamboanga City Chinese High School, where he studied from 1947 to 1956, (Grade I to Grade VI) and he also finished his first and second years of high school at said school from 1956 to 1958. Inasmuch as Zamboanga City Chinese High School was only recognized by the Government in the year 1958, it is therefore clear that herein petitioner had not finished his primary and intermediate education, as well as his first year of high school, in a government-recognized school, and, as such he cannot be exempted from filing a declaration of intention under Section 6 of Commonwealth Act No. 473 as amended. Any doubt regarding the circumstance that the school where petitioner studied in Zamboanga City is the same Zamboanga City Chinese High School adverted to in *Luy vs. Republic* is foreclosed by the fact the character witness Leticia C. Alvarez, in the *Luy* case, is the same character witness in the case at bar, who testified in both cases as a member of the faculty of the Zamboanga City Chinese High School.

With respect to the Chiang Kai Shek High School in Manila where petitioner allegedly studied and finished his third and fourth years of high school, he submitted Exhibit "D", which is a high school diploma awarded to him on April 23, 1963 by the Board of Trustees of said school for his "satisfactory completion of the Academic Secondary Course prescribed by the Secretary of Education of the Philippines," and Exhibit "D-1", which is a certificate, dated April 21, 1966 and signed by Tsai Pao Ho, Acting President of the Chiang Kai Shek Jr. College, to the effect that herein petitioner "ONG TION SAN was graduated from the Academic Secondary Course in this College on May 29, 1963," an educational institution "which is duly recognized by the Secretary of Education of the Republic of the Philippines," offers Philippine history, civics and government as required subjects in its curriculum, and admits students regardless of race, color, or religious creed. There is, however, neither any showing in the records of this case, nor any explanation given by petitioner, why he graduated twice, first from the academic secondary course at the Chiang Kai Shek High School on April 23, 1963 (Exh. "D") and second at the Chiang Kai Shek Jr. College on May 29, 1963 (Exh. "D-1"). This unexplained discrepancy as to the actual date when petitioner graduated from high school at two different schools — there being no evidence to show that the said two schools are one and the same institution — casts serious doubt on the matter. This notwithstanding, there is also no evidence that either of these schools was regularly attended by a sizeable number of Filipino students from whom petitioner could have imbibed Filipino customs and traditions, in order to place him within the exemption of the Law.[25] Moreover, Exhibit "D-1" is pure hearsay, considering that the certifying official was never presented in court, thus depriving the oppositor-appellant of the opportunity to cross-examine him.[26] The best evidence of government recognition would have been the certificate of recognition issued to the school by the Bureau of Private Schools, or a certified true copy thereof.[27]

From the foregoing, it is therefore clear that petitioner's attendance at those Chinese schools aforementioned would not have served to exempt him from the mandatory requirements of Sections 5 and 6 of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535. Consequently, his failure to file the requisite

declaration of intention warrants a denial of his petition for naturalization.[28]

Having reached this conclusion, it becomes unnecessary to discuss the remaining assignment of errors.

WHEREFORE, the appealed orders are hereby reversed and set aside, and, accordingly, the petition for naturalization is dismissed, with costs against petitioner Ong Tion San.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] Petition, par. 1, Record on Appeal, p. 1, T.s.n., pp. 250-251. March 29, 1969; p. 23, Aug. 31, 1971.

[2] T.s.n., pp. 101-102. March 12, 1969.

[3] Id., pp. 91 & 129, March 12, 1969; pp. 141 & 148, March 25, 1969.

[4] Petition, par. 2, Record on Appeal, p. 2; t.s.n., pp. 102-103, March 12, 1969.

[4a] T.s.n., pp. 92 & 94, March 12, 1969; pp. 26-29 & 37, Aug. 31, 1971.

[4b] Id., pp. 149-158, March 25, 1969.

[5] T.s.n. p. 9, March 12, 1969; p. 157, March 25, 1969; CFI decision, p. 16, Record on Appeal.

[5a] Id., pp. 94-96, March 13, 1969.

[6] Id., pp 177-178, March 25, 1969.

[7] Id., pp. 91, March 12, 1969.

[8] T.s.n., pp. 169-171, March 25, 1969.

[9] Petition par. 10, Record on Appeal, pp. 3-4; t.s.n., p. 124, March 12, 1969.

[10] Record on Appeal, pp. 1-6.

[11] Id., pp. 6-7.

[12] Record on Appeal, pp. 8-12.

[13] Id., pp. 16-25.

[14] Record on Appeal, pp. 25-28.

[15] Id., pp. 28-30.

[16] Id., pp. 30-34.

[17] Record on Appeal, pp. 34-37.

[18] Id., pp. 37-39.

[19] Id., pp. 39-42.

[20] Sec. 6, Com. Act No. 473, as amended by Com. Act No. 535; Wang I Fu vs. Republic, L-15819, Sept. 29, 1962, 6 SCRA 93; Lee Ng Len vs. Republic, L--20151, March 31, 1965, 13 SCRA 532; Lim Cho Kuan vs. Republic, L-21198, Jan. 22, 1966, 16 SCRA 25; Apacible vs. Republic, L-16927, June 21, 1966, 17 SCRA 411; Po Chu King vs. Republic, L-20810, May 16, 1967, 20 SCRA 23; Luy vs. Republic, L-28860, July 24, 1970, 34 SCRA 1; Republic vs. Borromeo, L-26870, May 29, 1970, 33 SCRA 163; Guan vs. Republic, L-26196, July 31,

1970, 34 SCRA 22; Ang Ban Giok vs. Republic, L-16049, Feb. 22, 1974.

[21] Sec. 5, Com. Act No. 473; Republic vs. Borromeo, *supra*.

[22] Lee Ng Len vs. Republic, *Supra*.

[23] Petitioner herein has not presented any competent evidence to show that the Zamboanga Chinese High School in Zamboanga City and the Zamboanga City Chinese High School are not one and the same school. He has the burden of proof to show otherwise.

[24] G.R. No. L-28860, July 24, 1970, 34 SCRA 1. See also Sy Chiang vs. Republic, L-29194, Aug. 30, 1971, 40 SCRA 411.

[25] Lim vs. Republic, L-30424, Jan. 28, 1971, 37 SCRA 96; Lee Ng Len vs. Republic, L-20151, March 3, 1965, 13 SCRA 533; Ng. vs. Republic, L-26242, Oct. 25, 1968, 25 SCRA 574.

[26] Te Poot vs. Republic, L-20017, March 28, 1969, 27 SCRA 644.

[27] "Sy Chiang vs. Republic, L-29194, Aug. 30, 1971, 40 SCRA 411.

[28] Yap vs. Republic, U-12938, July 31, 1961, 2 SCRA 856; Lim Siong vs. Republic, L-26601, June 30, 1969, 28 SCRA 687; Lim vs. Republic, L-27126, May 29, 1970, 33 SCRA 338; Te Poot vs. Republic, L-20017, March 28, 1969, 27 SCRA 644.

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