

IN THE MATTER OF THE PETITION OF LEON MIRANDA TIO LIOK TO BE ADMITTED AS CITIZEN OF THE PHILIPPINES.

G.R. No. L-4545. October 29, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for naturalization filed by Leon Miranda Tio Liok in the Court of First Instance of Cebu. The provincial fiscal opposed the petition on the ground that petitioner did not have the necessary qualifications to become a Philippine citizen. During the pendency of the case, petitioner discovered that he had not filed his declaration of intention as required by law and so he asked that the hearing be suspended so that he may file such declaration with the Office of the Solicitor General. This he did on March 3, 1950.

Petitioner was born on August 23, 1901 in Cebu, and since his birth he went to China twice for short visits. He resided in the Philippines since 1910 up to the filing of the petition for naturalization, (1946). He is married to one Lu Cia who bore him nine children, and with the exception of those who were under age, these children studied in private schools recognized by our Government.

He owns a house worth P16,000 located in Cebu. He is a merchant by profession and has an average income of P10,000 a year. He can speak and write English and Spanish and the Visayan dialect. He is not suffering from any contagious disease, and has never been accused of any crime. He has all the other qualifications required by law.

After due hearing, the lower court rendered judgment declaring petitioner entitled to Philippine citizenship. From this decision the Government appealed.

The Government contends that petitioner has failed to prove that he possesses all the necessary qualifications to become a Philippine citizen in that he failed to enroll one of his minor children named Teofilo Tio in a school recognized by our Government where Philippine history, government and civics are taught or prescribed as part of the school curriculum, and that, inasmuch as this requirement is essential and cannot be dispensed with, the lower court erred in granting petitioner Philippine citizenship. The claim of the Government is predicated upon the fact that petitioner did not present any certificate showing that said Teofilo Tio has studied in a private school, while in the declaration of intention he filed with the office of the Solicitor General on March 3, 1950, it does not appear that said child has been enrolled in any private school in the Philippines.

An examination of the evidence of record, however, discloses that petitioner has presented enough evidence to prove that he has enrolled all his children of school age, including Teofilo Tio, in several private schools recognized by our Government, contrary to the claim of the Solicitor General. Thus, in the petition filed by petitioner on May 3, 1946, in the lower court, it appears that Teofilo Tio was enrolled in Sta. Theresa's School, in Cebu City. On the witness stand petitioner testified that Teofilo Tio studied in said school. The government did not dispute this testimony. He was not even cross-examined on this matter. Considering that this testimony has not been disputed, nor overcome by any other evidence, we do not believe it necessary for petitioner to submit a certification on the part of the school evidencing the enrollment of his child Teofilo Tio to corroborate his

testimony. Of course, the government could have objected to such testimony on the ground that it is not the best evidence, but there being no such objection, the testimony should stand. The fact that in the declaration of intention which was filed by petitioner during the pendency of this case no such allegation appears is of no moment, as it may only be due to an oversight. This claim is, therefore, without merit.

The government also contends that petitioner failed to file a declaration of intention to become a Philippine citizen one year prior to the filing of the present petition for naturalization, it appearing that he does not come under any of the exceptions provided for by law, and that, as this requirement is mandatory, the petition should be denied.

We agree with the Solicitor General that the requirement regarding the filing of a declaration of intention to become a Philippine citizen is mandatory for those who do not come under the exceptions provided for by law, and that an omission or neglect to file such declaration cannot be supplied or cured by filing such declaration during the pendency of the case as was done by petitioner. But we find that petitioner is exempt from filing such declaration of intention it appearing from the evidence that he has continuously resided in the Philippines for over thirty years with the exception of two instances when he went to China for short visits (Exh. A, pp. 34-35). In our opinion, the petitioner is exempt from filing such declaration, not only because of his residence of more than thirty years, but because he has satisfied the other requirement regarding the enrollment of his children of school age in any of the schools recognized by law. It is clear that this objection is also without merit.

Finding no error in the decision appealed from, the same is hereby affirmed without pronouncement as to costs.

Paras, Bengzon, Montemayor, Labrador, Pablo, Padilla, and Jugo, JJ., concur.

Feria, Tuason, and Reyes, JJ., did not take part.

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