

IN THE MATTER OF THE PETITION OF ALFREDO T. LUY TO BE ADMITTED A CITIZEN OF THE REPUBLIC OF THE PHILIPPINES, ALFREDO T. LUY, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES...

G.R. No. L-28860. July 24, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The Solicitor General seeks the reversal of a decision of the Court of First Instance of Misamis Occidental, granting the application for naturalization, as citizen of the Philippines, of herein appellee, Alfredo Tan Luy.

The main question for determination in this appeal is whether or not the lower court has erred in rendering the decision ap-pealed from, considering the fact that, admittedly, appellee had not filed the declaration of intention required in Section 5 of Commonwealth Act No. 473, commonly known as the Revised Naturalization Law. Appellee maintains, and the lower court held, that he is exempt from said requirement, he having, allegedly, been born in the Philippines and completed his primary, elementary and secondary education at the Zamboanga City Chinese High School.

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 or those recognized by the Government and not limited to any race or nationality." [1] The record shows that the Zamboanga City Chinese High School was not granted Government recognition until 1958, whereas appellee finished high school therein in 1959, so that the institution had not, as yet been re-cognized 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 characteristic "cannot be presumed from the fact that the school is recognized by the Government," [2] 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 [3] 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. The latter's certification to the effect that the "school is not limited to any nationality, race or creed," [4] is not a statement of fact, but a mere conclusion, which is incumbent upon the Court to draw.

Then, too, We are not satisfied that appellee's alleged birth in the Philippines has been duly proven. Obviously, his testimony to such effect is insufficient therefor. [5] So are his certificate of residence, Exh. V - dated October 30, 1954, or over 17 years after his alleged birth on August 8, 1937 - issued by the Bureau of Immigration, and his baptismal certificate - issued on March 19, 1961 - since the former merely establishes his right to reside in the Philippines, whereas the latter attests to his baptism at the place and on the date stated therein - May 15, 1940 -

several years after his birth, and neither is the proper evidence of the date and place of such birth.[1] Again, appellee has not given a reasonable explanation for the non-production of his birth certificate. His testimony to the effect that the latter had been "misplaced or lost" by the Local Civil Registrar is, to be sure, far from satisfactory. Worse still, it bears the earmarks of being fanciful, inasmuch as the record of births is contained, not in individual loose leaves, but in well bound, thick and ponderous record books, which cannot just be "misplaced or lost."

Lastly, it is conceded that appellee has not obtained, from the Minister of the Interior of Nationalist China, of which he is a citizen, or even applied therefrom for the permission, required by laws of China, in order that he could validly renounce his allegiance thereto and acquire another citizenship. Inasmuch as no alien may, in general, be naturalized as citizen of the Philippines without divesting himself of the nationality he has at the time of his naturalization, by renouncing such nationality, it is clear that appellee's petition cannot be granted.[2]

WHEREFORE, the judgment appealed from is hereby reversed, and another one shall be entered denying the petition for naturalization of Alfredo T. Luy and dismissing this case, with costs against him.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, and Zaldivar, JJ., concur.

Castro, Fernando, Teehankee, and Villamor, JJ., concur in the result.

Barredo, J., did not take part.

[1] Sec. 6, Com. Act No. 473, as amended by Com. Act No. 535.

[2] Lim Cho Kuan v. Republic, L-21198, Jan. 22, 1966.

[3] Amando Ong Apacible v. Republic, L-16987, June 21, 1966.

[4] Exh. I.

[5] Tan v. Republic, L-22077, Feb. 18, 1967.

[1] De Lara v. Republic, L-18203, May 29, 1964.

[2] Commonwealth Act No. 473, Sec. 12, Go A. Leng v. Republic, L-19836, June 21, 1965; Oh Hek How v. Republic, L-27429, August 27, 1969.

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