

**IN THE MATTER OF THE PETITION TO BE ADMITTED AS CITIZEN OF
THE PHILIPPINES, DY BU SIA @ FILADELFO DY,
PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR-APPELLANT.**

G. R. No. L-22076. October 29, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner-appellee Dy Bu Si, alias Filadelfo a Chinese, filed a petition for naturalization in the Court of First Instance of Samar, on 10 December 1959. The petition was published in the "Nueva Era" in its issues of 18 and 25 January and 1 February 1960 and also in Nos. 47, 48 and 49, Volume 55, of the Official Gazette (issues of 23, 30 November and 7 December 1959, respectively).[1]

After hearing, the lower court, on 18 May 1961, granted the petition. Two (2) years thereafter, on motion by the petitioner, and after reception of evidence, the court ordered, on 21 August 1963, the allowance of the petitioner's oath-taking as a Filipino citizen.

On the same day, 21 August 1963, oppositor Republic of the Philippines appealed, thereby opening to Inquiry petitioner's qualifications (Cheng alias Lim vs. Republic, L-20013, 30 March 1965; Lim alias Lim Eng Chuan vs. Republic, L-21193, 30 Sept. 1966).

The evidence for the petitioner shows that he was born on 3 January 1927 in Ching Kang, China, and came to the Philippines in 1929; that he is married to Dorotea Tan, a Chinese, with whom he has six (6) children; that for 1959 he had an Income of P4,612.10, as an employee of Tan Chuan of Catbalogan, Samar, and as a partner in a retail store at Lucena, Quezon.

It is argued for the government that the petition was not published, as required by law, in that there was no showing that the "Nueva Era" has general circulation in the province of Samar. In reply, the petitioner states that he is not to blame for the publication in the said newspaper because it was the lower court that ordered the publication and which was not of the petitioner's choosing; that the lower court took judicial notice of the general circulation of the newspaper in the province and is presumed to have duly complied with its duties when it issued its order to publish the notice in the "Nueva Era".

The issue is not who is to blame for the publication or the application of the presumption of compliance with a duty but whether the publication requirement of the law was satisfied. Here, it was not. In *Tan Ten Koc vs. Republic*, L-18344, 28 February 1964, this Court ruled:

"The law requires that the newspaper in which the petition for naturalization is to be published must be of general circulation in the province where petitioner resides. While, in the Instant case, there is an affidavit executed by the Editor of the Nueva Era to the effect that the said newspaper is of general circulation in the Philippines, this statement is not sufficient proof that there has been compliance with the law. Positive

evidence must be presented to prove that the Nueva Era is of general circulation in Samar, and it is incumbent upon petitioner to present such evidence." (Underscoring supplied)

Furthermore, the naturalization of herein petitioner is not warranted in law for the following reasons:

(a) The petition itself and the several documents submitted in evidence by the petitioner, Exhibits "A-1", "B", "B-1", "B-2", "F", "G", "N", "N-3", "N-4", "N-6", "N-8", and "N-11", attest to the fact that Dy Bu Sia uses the name "Filadelfo Dy", not as a baptismal name, as he presently claims, but as an alias. Such use, without authority, disqualifies him for naturalization (Tan vs. Republic, L-19580, 30 April 1965; Chiu Bok vs. Republic, L-19111, 22 June 1965).

(b) Petitioner's income of P4,612.10 at the time he filed his petition, with a wife and six (6) children to support, does not satisfy the law that requires applicants to have a lucrative occupation or calling (Chiu Bok vs. Republic, L-19111, 22 June 1965; Chua Eng Hok vs. Republic, L-20479, 29 October 1965).

(c) The petitioner testified that, aside from his present residence at Catbalogan, Samar, he had previously resided or stayed in Lucena, Quezon, Gandara and Tarongan, Samar. However, he failed to state the aforesaid previous places of residence in his petition. The petition is, therefore, fatally defective (Cheng vs. Republic, L-20013, 30 March 1965).

FOR THE FOREGOING REASONS, the decision granting the petition for naturalization and the order granting Filipino citizenship and allowing the petitioner to take his oath, dated 21 August 1963, are hereby reversed and the petition dismissed, with costs against the petitioner-appellee.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

[1] Observing that the notice of the petition was apparently published prior to the filing of the petition, the lower court requested an explanation by the Director of Printing. The bureau replied that at the time the article was received for publication, the O. G. was very much behind its regular issue so that the official releases of its issues did not coincide with their publication; thus, the 23 Nov. 1959 issue was released only on 16 Feb. 1960, the 30 Nov. 1959 issue on 24 Feb. 1960, and the 7 Dec. 1959 issue on 2 March 1960 (Exhibit "B-1").

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