

IN THE MATTER OF THE PETITION OF ROBERT CU TO BE ADMITTED AS A CITIZEN OF THE PHILIPPINES. ROBERT CU, PETITIONER AND APPELLEE VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPE...

G. R. No. L-3018. July 18, 1951

Ponente: TUASON, J.

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TUASON, J.:

Robert Cu filed a petition for naturalization setting forth facts required and appropriate for that purpose, but at the hearing he said that he was a citizen of the Philippines; and upon the conclusion of the trial, the Court of First Instance of Rizal found him "to be a Filipino citizen, both by right of birth and by right of selection," and dismissed the petition for naturalization, holding impliedly that being already a Philippine citizen he did not have to be naturalized.

The lower court's pronouncement that the applicant is a Philippine citizen is based solely on the applicant's following testimony:

Q.

Where were you born?

A.

I was born in Angat, Bulacan.

Q.

When?

A.

1913.

Q.

At present, what citizenship do you have?

A.

Subject of the Philippines.

Q.

Why do you petition before this Court to be admitted as a citizen of the Philippines?

A.

On account of the fact that when I was a kid of about five months old, my mother died. She was a Filipina. Then my father brought me to China right after that. At the age of five, we left China, and I was given to the care of Dona Margarita Emanahas (Mangahas).

Upon motion of the attorney for the Government, who protested that the last answer (that the applicant is a Filipino citizen) was a mere conclusion of the witness, the testimony was ordered stricken out. But the petitioner proceeded: "I consider myself a Filipino citizen on account of the fact that my mother is (was) a Filipina and I was born in the Philippines. My only fault was that I failed to file my application to elect Philippine citizenship. That is why I am now asking this Court to make a judgment on that." Further on he testified:

Q.

Was your mother legally married to your father?

A.

The way I know it, they are not legally married.

Q.

Have you ever seen your father after you returned to the Philippines when you were five years old?

A.

No, Your Honor.

These statements make plain that the applicant was at best uncertain that his parents were unmarried to each other, and are utterly inadequate to serve as basis for declaring the petitioner a Philippine citizen—granting for the sake of argument that such declaration is authorized on the application filed and on the issues joined in these proceedings. The strong legal presumption that the applicant was born in wedlock—that his parent were lawful husband and wife—cannot be destroyed by evidence so slim and shaky.

If the applicant's parents were legally married, which is to be presumed, then he was born a Chinese citizen and continued to be so, unless upon the age of majority he elected Philippine citizenship (Art. IX, sec. 1, par. 4, Philippine Constitution), which he confessedly did not do.

The question that remains is, Is the petitioner entitled to be admitted to Philippine citizenship under the present application ?

Section 7 of the Revised Naturalization Law (Commonwealth Act No. 473) provides that the petition, for citizenship, besides stating the petitioner's qualifications as enumerated in the Act, "must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post office

addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case."

According to this provision, the witnesses must be citizens of the Philippines and "personally know the petitioner to be a resident of the Philippines for the period of time required by this Act," which in cases of petitioners born in the Philippines is five years (Sec. 3) and in other cases ten years (Sec. 2, par. 2).

By their testimony, the two witnesses who made affidavits and gave evidence in support of the application were not qualified for this role. Dr. Jose Ku Yeg Keng admitted that his father was a Chinese national and his mother a Filipina; and when asked, "Did you actually elect the Philippine citizenship? Have you filed any citizenship application by election in writing?", he answered, "I have not in the sense that I did not have any proceedings in it," True, he said, "I am a member of the reserve force of the Philippine Army. I was an R. O. T. C. trainee. I trained in the Philippine Army. I was called during the war." And he also said, in answer to further questions, that he had voted in one of the post-liberation elections and that "at present I am a government employee, and I am a member of the faculty of the University of the Philippines, and also I am a resident physician of the Philippine General Hospital." But these circumstances alone made this witness neither a citizen of this country nor eligible as a vouching witness in a proceeding of this character.

As to the other witness, Dr. Pastor Gomez, he testified that "he had known Mr. Cu since liberation, about August, 1945." Besides, after this answer was given, the counsel for the Government objected to the witness' testifying any further, and the objection having been sustained, Dr. Gomez was withdrawn.

In *United States vs. Martorana*, 171 Fed. Rep. 397, the District Court of the United States for the Eastern District of Pennsylvania held: "Under Naturalization Act, June 29, 1906, c. 3592, Section 4, 34 Stat. 596 (U. S. Comp. St. Supp. 1907, p. 420), which requires a petition for naturalization to be verified by the affidavits 'of at least two credible witnesses who are citizens of the United States,' stating certain facts relating to the applicant, a petition not so verified by at least two persons who are citizens is not merely voidable but void." The Court went further and said that such petition could not be amended.

In the case of *In re Kornstain*, 268 Fed. Rep. 182, the court expressed the same idea and reasoned: "In naturalization petitions, the Courts are peculiarly at the mercy of the witnesses offered by the candidate. Such candidate takes care to see that only those who are friendly to him, are offered as witnesses. The Courts cannot be expected to possess acquaintance with the candidates presenting themselves for naturalization—in fact, no duty rests upon them in this particular; so that witnesses appearing before them are in a way insurers of the character of the candidate concerned, and on their testimony the courts are of necessity compelled to rely. A witness who is incompetent renders an application void. (*United States vs. Martorana*, 171 Fed. 397, 96 C. C. A. 353.) A competent witness cannot be substituted for an incompetent one. (*United States vs. Gulliksen*, 244 Fed. 727, 157 C. C. A. 175.) The question of a witness' qualifications in naturalization proceedings is therefore a matter of more than usual importance."

The above decisions are not binding upon this Court, but it is a rational rule of statutory construction that a statute adopted from another state or country will be presumed to be adopted with the construction placed upon it by the courts of that state or country before its adoption. Such construction is regarded as of great weight, or at least persuasive, and will generally be followed if found reasonable, and in harmony with justice and public policy, and with other laws of the adopting jurisdiction on the subject. (59 C. J. 1065-1068.) We find the United States courts' reasoning to be sound and reasonable and we make it our own.

It is unnecessary to consider whether the application could be granted if witnesses, other than the vouching witnesses, who were Philippine citizens and knew the applicant for the time required by the statute, had testified and established the petitioner's qualifications for admission to citizenship ; as already indicated, no such witnesses

were introduced in support of the petition.

Wherefore, the appealed decision is affirmed in so far as it dismissed the petition for naturalization and reversed in so far as it declared the applicant a citizen of the Philippines, with costs against the appellee. This dismissal, however, will be without prejudice to the right of the petitioner to file a new application for naturalization.

Paras C. J., Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes and Jugo, JJ., concur.

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