

REPUBLIC OF THE PHILIPPINES, MOVANT-APPELLANT, VS. UY PIEK TUY, PETITIONER-OPPOSITOR-APPELLEE.*G.R. No. L-27580. August 27, 1969*

Ponente: CONCEPCION, C.J.

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The Government seeks the review of an order of the Court of First Instance of Manila denying its petition for cancellation of the certificate of naturalization of Uy Piek Tuy.

The main facts are not disputed. On April 11, 1961, the Court of First Instance of Manila rendered a decision granting appellee's petition for naturalization as citizen of the Philippines. No appeal having, seemingly, been taken therefrom, on April 25, 1963, appellee filed a motion to be allowed to take his oath of allegiance, which, after due hearing, was granted on June 26, 1963. Appellee took said oath on August 2, 1963, on which date the corresponding certificate of naturalization was issued to him. Over two (2) years later, or on March 16, 1966, the Solicitor General filed his aforementioned motion for the cancellation of appellee's certificate of naturalization, upon the ground: (1) that appellee was not qualified to become a citizen of the Philippines, because he had not enrolled his children of school age in local public or private schools recognized by the Government where Philippine history, civics and government are taught or prescribed as part of the curriculum, during the entire period of residence required of him in this country, prior to the hearing of the petition for naturalization; (2) that he was not and is not qualified to take the oath of allegiance as a Filipino, he having violated a Government announced policy at the time of the taking of said oath and the issuance of the certificate of naturalization in his favor; and (3) that said petition for naturalization was fatally defective, in that appellee's certificate of arrival had not been attached thereto. Upon denial of this motion, the Government brought the case to us by record on appeal.

It appears therefrom that appellee was born in Amoy, China, on October 13, 1926; that he came to the Philippines on January 21, 1947; that in 1949, he went to Amoy, China, to marry Chua Pic Luan, his present wife, and stayed there for three (3) months; that in 1957, 1958 and 1960, he visited his wife in Hongkong, where she resided with their children, namely, Uy Hoc Siong, born in Amoy, China, on April 16, 1950, and Uy Tian Siong, born in Hongkong, on October 10, 1958; that his aforementioned wife and children were still residing in Hongkong at the time of the filing of his petition for naturalization, on June 26, 1960; and that they were never in the Philippines until October 16, 1960, when they came and were admitted as temporary visitors.

Since October 10, 1957, Uy Koc Siong, appellee's eldest son, had been of school age, and yet he (appellee) allowed him to remain in Hongkong and did not cause him to be enrolled in any school recognized by our Government in which Philippine history, civics and government are taught or prescribed as part of the curriculum. What is more, upon the arrival of his family in the Philippines, on October 16, 1960, he caused Uy Hoc Siong to be enrolled, for the school-year 1960-1961, in the Quiapo Anglo-Chinese School, the bulk of the students of which consists of Chinese citizens, thus evincing that he did not sincerely desire his children to embrace the customs, traditions and ideals of the Filipinos.[1] In other words, appellee had utterly failed to meet the sixth

requirement of Section 2 of Commonwealth Act No. 473, and falls squarely within the purview of Section 4 (f) of the same Act, thereby lacking one of the requisite qualifications to become a citizen of the Philippines and being disqualified therefor.[2] As a consequence, his certificate of naturalization was "obtained x x illegally," and should be cancelled.[3] As forcefully stated in *U. S. v. Ginsberg*[4]:

"No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it, as provided in Section 15, and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact, it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence non-essential."

Moreover, it appears that appellee's wife (Chua Pic Luan) and two (2) children (Uy Koc Siong and Uy Tian Siong) came to the Philippines, and were admitted thereto, as "temporary visitors", yet he did not cause them to depart from the Philippines, upon the expiration of the extended period of their authorized stay, on April 11, 1961. Worse still, although his petition for another extension of said period, up to 1963, had been denied by the Commissioner of Immigration, on June 11, 1962, he maneuvered and managed to keep them much longer, without the approval and over the objection of said officer. The steps taken by appellee are set forth in our decision in *Vivo v. Cloribel, et al.*, from which we quote:

" x x x Chua Pic Luan, a Chinese mother, and her minor children, Uy Koc Siong and Uy Tian Siong, arrived from Hongkong and were admitted in the Philippines as temporary visitors on 16 October 1960, with an initial authorized stay of three (3) months. The husband and father of these aliens, Uy Piek Tuy, had applied for naturalization, and the Court of First Instance of Manila (in its Civil Case No. 43163) granted his petition therefor only on 11 April 1961. Meanwhile, said temporary visitors petitioned for an indefinite extension of their stay. Acting thereon, and purportedly in accordance with a Cabinet Resolution on 29 February 1956 granting them concurrent jurisdiction to act on petitions for extension of stay of temporary visitors, the Secretary of Foreign Affairs, Felixberto Serrano, on 16 May 1961, authorized the change in category from temporary visitors to that of special non-immigrants under Section 47(a) (2) of the Immigration Law for a period of stay extending up to 11 April 1963; and the Secretary of Justice, Alejo Mabanag, on 8 June 1961, approved the extension thus authorized, subject to the condition that Chua Pic Luan, Uy Koc Siong, and Uy Tian Siong shall secure re-entry permits to Hongkong valid at least two months over and beyond their extended stay, and that they shall maintain their cash bonds filed with the Bureau of Immigration and to pay the corresponding fees. But the herein petitioner, Commissioner of Immigration, refused to recognize the said extension further than 16 June 1962, and denied acceptance of payment of the extension fees.

"Thereupon, the respondents, on 4 June 1962, requested the Office of the President of the Philippines to extend their stay up to 11 April 1963 in order to coincide with their hoped - for the forthcoming oath-taking of allegiance of Uy Piek Tuy. The request was referred to the Immigration Commissioner. The latter, on 11 June 1962, informed the respondents, through counsel, that the new Secretary of Justice, Jose Diokno, had ruled in January, 1962 that the Cabinet Resolution of 19 February 1956 had no force and effect, and forthwith denied the request for extension of stay of the respondents and advised them to leave the country voluntarily not later than 16 June 1962; otherwise, they would be proceeded against, in accordance with law.

"The respondents did not leave the country on the date specified, but instead filed a petition for mandamus with injunction, docketed as Civil Case No. 50671 in the Court of First Instance of Manila, to restrain the Commissioner of Immigration from issuing a warrant for their arrest and from confiscating their bond for their temporary stay and to order the Commissioner to implement the extension previously authorized and approved by Secretaries Serrano and Mabanag.

"His Honor, Judge Federico Alikpala, to whose sale the case was assigned, denied the prayer for preliminary injunction for lack of a prima facie showing and set the case for hearing on 13 July 1962. On the said date,

which was pre-selected with the conformity of petitioner's counsel, said counsel did not appear but another lawyer appeared to ask for postponement. Judge Alikpala denied the postponement and dismissed the case without prejudice.

"On 19 July 1962, the herein respondents re-filed the same petition with the same court, which was docketed as Civil Case No. 50993. The petition alleged three grounds therefor, namely: (1) the extension of the stay of the petitioners (herein respondents) up to 11 April 1963 was authorized and approved by the Secretaries of Foreign Affairs and of Justice; (2) they were due for eventual conversion into Filipino citizens by virtue of the granting of Uy Piek Tuy's petition for naturalization, which had not been appealed, and he was due to take his oath of allegiance on 11 April 1962; and (3) their departure from the Philippines would work great injury and injustice to them-selves. As before, the petition prayed for a preliminary injunction. This time, the case was assigned to the sala of herein co-respondent Judge Gaudencio Cloribel.

"On 21 July 1962, respondent judge, ex-parte and without hearing, issued an order granting preliminary injunction, and, on a bond of P3, 000. 00, issued the writ on 24 July 1962.

"On 3 August 1962, the Immigration Commissioner filed his answer (as respondent therein) stating, in defense, inter alia, that the visitors' authorized stay expired on 16 June 1962; that their change in category from temporary visitors to special non-immigrants and the extension of their stay up to 11 April 1963 by the Secretaries of Foreign Affairs and of Justice were invalid, as subsequently ruled by their successors in office, and that it is the Commissioner of Immigration who is vested by law with power to grant extensions of stay; that the petition filed was not the proper remedy; that the Solicitor-General will oppose the oath-taking of Uy Piek Tuy; and that, even if Tuy will become a Filipino citizen, his wife would not automatically become a Filipino citizen, as she has yet to show that she, herself, can be lawfully naturalized.

"Three (3) years passed without the case having been heard.

"Then, on 14 September 1965, the Commissioner filed a motion to dismiss the case for the unreasonable length of time that the petitioners had failed to prosecute their case, and that even the final relief that they sought, which was to implement the extension up to 11 April 1963, had already expired. But, on opposition of herein respondents, the court, on 26 October 1965, denied the motion to dismiss for being 'not well taken'.

"On 9 December 1965, the Immigration Commissioner filed with the Supreme Court the present original action of certiorari and prohibition with preliminary injunction, contesting the respondent court's order of 21 July 1962 granting preliminary injunction ex parte, the writ of preliminary injunction of 24 July 1962, and the order of 26 October 1965 denying the motion to dismiss.

"This Court required the respondents to answer, and on 16 December 1966, on motion of the petitioning Commissioner, it restrained the private respondents from representing themselves to be Filipinos and from exercising any of the rights and privileges of Filipino citizens, until further orders from the Court.

"The conclusions derivable from the foregoing chain of uncontested facts are: that herein private respondents secured admission to the Philippines as temporary visitors by falsely pretending to come for a visit but, actually, with the intent to stay permanently; that, knowing that their authorized stay would expire on 16 June 1962, private respondents filed their petition in court for injunction, then delayed its adjudication, the better to prolong their stay in the country even beyond the date that they had originally sought and asked for, which was 11 April 1963, upon the respondent court's compounded abuse of discretion, inaction and excess of jurisdiction." 6

Our appraisal of the legality, propriety and connotations of the acts thus performed, to extend the stay of appellee's wife and children, was lucidly articulated by Mr. Justice J. B. L. Reyes, in this vein:

"Which was, in law, the expiry date of the respondents' stay: the 16th of June 1962, as fixed by the

Immigration Commissioner, or 11 April 1963, as authorized and approved by the Serrano-Mabanag indorsements? This question, as well as the question of whether temporary visitors may change their status to special non-immigrants without first departing from the country, were specifically answered by this Court in *Lim Chiok, et al., vs. Vivo*, L-20513, 26 December 1963, in the following manner:

'...The so-called Cabinet Resolution of February 29, 1956 did not specifically authorize the Secretaries of Foreign Affairs and of Justice to extend the stay of temporary visitors. It could not legally do so because under the express provisions of the Immigration Law, it is the Commissioner of Immigration who is vested with the power and authority to grant such extensions. And, the Cabinet has no power to amend or modify the law. We so declared in *Ang Liong vs. Commissioner of Immigration* (51 O. G. 2893)⁷ when we said: 'The Secretary of Foreign Affairs is not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines.'

'Neither can the two Secretaries authorize the change of status from temporary visitors to special non-immigrants. The law and our decisions on the matter are clear on this point: temporary visitors can not have their status changed to special non-immigrants without first departing from the country.' (citing authorities)

"As early as 1956, in fact, this Court had already ruled that the period of stay of alien temporary visitors could not be extended without first departing from the Islands; and in *Chiong Tiao Bing vs. Commissioner of Immigration* (28 September 1956), 99 Phil. 1021, we ruled:

'No officer can relieve him of the departure requirements of Section 9 of the Immigration Act, under the guise of 'change' or 'correction', for the law makes no distinctions, and no officer is above the law. Any other ruling would, as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort to examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The damages inherent in such ruling are self-evident.'

"That the Cabinet Secretaries acted as alter egos of the President, as now claimed by the respondents, is not true; because the President, when a request for extension was made directly to him, did not affirm the acts of the Secretaries but referred the matter to the Commissioner. The respondents knew that said Secretaries did not act as alter egos of the President; otherwise, they would not have written the President after they received the Secretaries' indorsements. And when the Immigration Commissioner insisted upon private respondents departing from the Islands, they did not dare ask the President for relief.

"The other reason given by the respondents to support their petition filed with the court below is their expectation to follow the citizenship of Uy Piek Tuy when he should take his oath of allegiance as a Filipino citizen.⁸ Such expectation is legally baseless.

"As to the wife, Chua Pic Luan, she does not, under Section 15 of the Revised Naturalization Law, automatically become a Filipino citizen on account of her marriage to a naturalized Filipino citizen, since she must first prove that she possesses all the qualifications and none of the disqualifications for naturalization.⁹

"By having misrepresented before Philippine consular and administrative authorities that she came to the country for only a temporary visit when, in fact, her intention was to stay permanently; and for having intentionally delayed court processes the better to prolong her stay, respondent Chua Pic Luan demonstrated her incapacity to satisfy the qualifications exacted by the third paragraph of Section 2 of the Revised Naturalization Law, that she must be of good moral character and must have conducted herself in a proper and irreproachable manner during the entire period of her residence in the Philippines in her relation with

the con-stituted government.

"And, having lawfully resided in the Philippines only from her arrival on 16 October 1960 to 16 June 1962, she (Chua Pic Luan) also failed to meet the re-quired qualification of continuous residence in the Phi-lippines for ten (10) years, her stay beyond 16 June 1962 being illegal.

"As to the foreign born minors, Uy Koc Siong and Uy Tian Siong, our pronouncement in *Vivo vs. Clo-ri-bel*, L-23239, 23 November 1966, 18 SCRA 713, ap-plies to them:

'As to foreign-born minor children, they are extended citizenship 'if dwelling in the Philippines at the time of the na-turalization of the parent. "Dwelling' means lawful residence. Since prior to the time the father of respondents visitors was supposed to have taken his oath of citizenship . . . their lawful period of stay had expired and they had already been required to leave, they were no longer lawfully residing here (*Kua Suy, et al. v. The Commissioner of Immigration*, L-13790, October 31, 1963). '

"Nor can these temporary visitors claim any right to a stay co-terminus with the result of the natur-alization proceeding of their husband and father, Uy Piek Tuy, because their authorized stay was for a de-finite period, up to a fixed day, a circumstance incom-patible with the termination of the naturalization pro-ceeding, which is uncertain and cannot be set at a de-finite date.¹⁰

"It is contended for the respondents that two-year old respondent Uy Tian Siong cannot, under Arti-cle 363 of the Civil Code, be separated from his mother; that husband Uy Piek Tuy has the right to fix the resi-dence of the family (Article 110), to the company of his wife (Article 109) and those of his minor children (Arti-cle 316), and said wife and children are obliged to obey and live with him (Articles 109, 311, 357); and that to make said wife and children depart from the Philippines is destructive of family solidarity (Articles 218-221). These arguments are beside the point. Said laws govern the relations between husband and wife inter se or bet-ween private persons, 11 not the relations between visit-ing aliens and the sovereign host-country. Respondents seem to have forgotten that they came here for a visit, and, as visitors, they have no right to impose upon their host a period of stay of their own choosing. Fur-thermore, being still aliens, 12 they are not in a posi-tion to invoke the provisions of the Civil Code of the Philippines, for that Code cleaves to the principle that family rights and duties are governed by their personal law, i. e., the laws of the nation to which they belong even when staying in a foreign country (of. Civil Code, Article 15).

"The date insisted upon by the Commissioner as the terminal date of stay of the respondents (16 June 1962) had already passed when respondent judge issued his writ of preliminary injunction (24 July 1962). This fact should have cautioned him to issue notice to the Immigration Commissioner and hold a hearing before issuing the writ. But respondent judge never did hold a hearing, either on the preliminary injunction or on the merits, so that it is mild to say that his ex--parte preliminary injunction was improvidently is-sued.

"The date insisted on by the respondents as their terminal date of stay (11 April 1963) had, like-wise, long expired when the Commissioner filed his motion to dismiss (14 September 1965) in the court below. Plainly, the case had by then become moot and academic, 13 and the court was left with no fur-ther controversy to adjudicate. Hence, the respon-dent, Judge Cloribel, whimsically and arbitrarily denied the motion, in open disregard of the public interest and of the national policy expressed in the Immigration Act.

"Thus, the respondent judge, by refusing to dismiss the case, allowed these alien visitors to re-main in the country for as long as the case remained pending in his docket; in effect, he abusively arro-gated unto himself the power to grant extensions of stay to temporary visitors, a faculty that, under the law, belongs to the Commissioner. Thus, respon-dent judge, instead of applying and interpreting the law, has effectively disregarded the same and vio-lated its policy." 14

It is thus manifest that herein appellee had, before taking his oath of allegiance, on August 3, 1963, performed acts contrary to an' announced policy of the Philippine Government, in violation of Republic Act No. 530,

thereby, Likewise, rendering illegal the certificate of naturalization issued to him, and furnishing another ground for its cancellation.¹⁵

Lastly, section 7 of Commonwealth Act No. 473 explicitly provides that "the certificate of arrival x x x must be made part of the petition" for naturalization. As far back as 1960, we have held that "this provision is mandatory.¹⁶ We reiterated this view in 1964, ¹⁷ stating that "it is mandatory for the applicant to attach to his application a copy of his certificate of arrival, for without it or other proof of lawful admission, his residence is presumptively unlawful - " as well as in 1965¹⁸. In *Tang Kong Kiat v. Republic*, ¹⁹ we even declared that "the failure x x to comply with this requirement of the law x x is fatal, "

The introduction in evidence of appellee's certificate of arrival could not have cured the defect of his petition, not only because the provision requiring that said certificate be attached thereto is "mandatory" and non-compliance therewith is "fatal", but, also, because, in the language of the Federal Supreme Court of the U. S., ²⁰ the "filing of a certificate of arrival," as required by law "is an essential prerequisite to a valid order of naturalization;" because the purpose of said requirement is to provide a "natural starting point" for the investigation that the Government is given an opportunity to undertake prior to the hearing of the petition for naturalization, since:

" x x x The certificate of arrival is the natural starting point for this investigation. It aids in ascertaining (a) whether the petitioner was within any of the classes of aliens who are excluded from admission, (b) whether he is among those excluded for naturalization, (c) whether he is the same person whose declaration of intention to become a citizen is also attached to the petition, and (d) whether the minimum required of continuous residence has been complied with."

and because the introduction of the certificate, in evidence, at the aforementioned hearing, would be too late to serve the purpose of said investigation.

WHEREFORE, the order appealed from is, accordingly, reversed, and appellee's certificate of naturalization hereby cancelled, with costs against the appellee, who is, moreover, directed to surrender the aforementioned certificate of naturalization, within ten (10) days from the entry of judgment in this Court, to the Clerk of Court of the Court of First Instance of Manila.

IT IS SO ORDERED.

Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano and Teehankee, JJ., concur.

Barredo, J., took no part.

Reyes and Zaldivar, JJ., on official leave abroad.

[1] *Ong Chin Guan v. Republic*, L-15691, March 27, 1961; *Gar-chitorena v. Republic*, L-15102, April 20, 1961; *Haw Su Siong v. Republic*, L-13045, July 30, 1962; *Wang I. Fu v. Republic*, L-15819, Sept. 29, 1962; *Yap Puy Eng v. Republic*, L-24805, May 23, 1968; *Dy v. Republic*, L-20814, Nov. 29, 1966.

[2] *Lim Siong v. Republic*, L-12668, April 30, 1959; *Si Ne v. Republic*, L-16828, May 30, 1962; *Sy See v. Republic*, L-17025, May 30, 1962; *Robert Ting Tong v. Republic*, L-21138, Nov. 27, 1965.

[3] Section 18 (a), Commonwealth Act No. 473.

[4] 243 U.S. 472, 475, 61 L. ed. 853, 856.

⁵ L-25411, Oct. 28, 1968.

⁶ Underscoring supplied.

7 106 Phil. 793, at pages 799-800, promulgated 29 December 1959. Ruling reiterated in *Vivo vs. Cloribel*, (23 November 1966) 18 SCRA 713.

8 Uy Piek Tuy took his oath of allegiance in August, 1963 but the Solicitor General moved for the cancellation of his naturalization certificate on 16 March 1966 (Rollo, pages 68-69).

9 *Lee Suan Ay, et al., vs. Galang, et al.*, 106 Phil. 706; *Austria, et al vs. Conchu*, G.R. No. L-20716, 22 June 1965; *Lo Beng Ha Ong vs. Republic*, G.R. No. L-24503, 28 September 1968.

10 *Vivo vs. Arca*, L-21728, 27 December 1963.

11 *Lo Beng Ha Ong vs. Republic*, *supra*.

12 *Kua Suy vs. Commissioner of Immigration*, L-13790, 31 October 1963; *Vivo vs. Cloribel* (1966) 18 S.C. R.A., 713, 722; *Vivo vs. Cloribel* (1958) 22 S. C. R. A., 159, 164.

13 *Vivo vs. Cloribel*, *supra*.

14 Underscoring supplied.

15 Sec. 18, Commonwealth Act No. 473.

16 *Chan v. Republic*, L-14460, June 30, 1960.

17 *Chua v. Republic*, L-19776, September 29, 1964.

18 *Yu Ti v. Republic*, L-19913, *Tan Sang v. Republic*, L-19914, and *Tan Kong Kiat v. Republic*, G.R. No. L-19915, all promulgated on. June 23, 1965.

19 *Supra*.

20 *U.S. v. Ness*, 245 U.S. 319, 62 L. ed. 320, 323.

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