

**ESTEBAN MORADO, CHAN SAU WAH AND FU YAN FUN, PETITIONERS
AND APPELLANTS, VS. HON. MARTINIANO VIVO, IN HIS CAPACITY AS
ACTING COMMISSIONER OF IMMIGRATION, RESPONDENT AND
APPELLANT.**

G.R. No. L-22196. June 30, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Chan Sau Wah, a Chinese citizen born in Fukien, China on January 6, 1932, arrived in the Philippines on November 23, 1961

to visit her cousin, Samuel Lee Malaps. She left in mainland China two of her children by a first marriage: Fu Tse Haw and

Fu Yan Kai. With her was Fu Yan Fun, her minor son also by the first marriage, born in Hongkong on September 11, 1957.

Chan Sau Wah and her minor son Fu Yan Fun were permitted entry into the Philippines under a temporary visitor's visa for

two (2) months and after they posted a cash bond of P4.000.00.

On January 24, 1962, Chan Sau Wah married Esteban Morano, a native-born Filipino citizen. Born to this union on

September 16, 1962 was Esteban Morano, Jr.

To prolong their stay in the Philippines, Chan Sau Wah and Fu Yan Fun obtained several extensions. The last extension

expired on September 10, 1962.

In a letter dated August 31, 1962, the Commissioner of Immigration ordered Chan Sau Wah and her son, Fu Yan Fun, to

leave the country on or before September 10, 1962 with a warning that upon failure to do so, he will issue a warrant for

their arrest and will cause the confiscation of their bond.

Instead of leaving the country, on September 10, Chan Sau Wah (with her husband Esteban Morano) and Fu Yan Fun

petitioned the Court of First Instance of Manila for mandamus to compel the Commissioner of Immigration to cancel

petitioner's Alien Certificates Registration; prohibition to stop the Commissioner from issuing warrants of arrest pending

resolution of this case.[1] The trial court, on November 3, 1962, issued

the writ of preliminary injunction prayed for, upon a P2,000-bond. After trial and the stipulations of facts filed by the parties,
the Court of First Instance rendered judgment, viz:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

- (a) Granting this petition for Mandamus and Prohibition with respect to petitioner CHAN SAU WAH, who is hereby declared a citizen of the Philippines; ordering the respondent to cancel her Alien Certificate of Registration and other immigration papers, upon the payment of proper dues; and declaring the preliminary injunction with respect to her permanent admission, prohibiting the respondent, his representatives or subordinates from arresting and/or deporting said petitioner;
- (b) Dismissing this petition with respect to petitioner FU YAN FUN, and dissolving the writ of preliminary injunction issued herein, restraining the respondent, his representatives or subordinates from arresting and/or deporting said petitioner;
- (c) Authorizing respondent Commissioner to forfeit the bond filed by herein petitioners CHAN SAU WAH and FU YAN FUN in the amount of P4,000.00; and
- (d) Denying, for lack of merit, the prayer to declare Sec. 37 (a) of the Philippine Immigration Act of 1940 unconstitutional
Without pronouncement as to costs."

Petitioners and respondent Commissioner both appealed.

We will deal with the claims of both appellants in their proper sequence.

1. The Solicitor General's brief assails the trial court's declaration that Chan Sau Wah is a citizen of the Philippines. The court a quo took the position that "Chan Sau Wah became, by virtue of, and' upon, her marriage to Esteban Morano, a natural-born Filipino, a Filipino citizen." [2]

Placed to the fore is paragraph 1, Section 15 of Commonwealth Act 473 [Revised Naturalization Act], which reads:

'SEC. 15. Effect of the -naturalization on wife and children - Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

To apply this provision, two requisites must concur: (a) a valid marriage of an alien woman to a citizen of the Philippines;

and (b) the alien woman herself might be lawfully naturalized.

We may concede that the first requisite has been properly met. The validity of the marriage is presumed.

But can the same be said of the second requisite? This question by all means is not new. In a series of cases, this court has

declared that the marriage of an alien woman to a Filipino citizen does not ipso facto make her a Filipino citizen.

She must

satisfactorily show that she has all the qualifications and none of the disqualifications required by the Naturalization Law.<sup><sup</sup>

STYLE="COLOR: RGB(255, 0, 0);">[3] Ly Giok Ha alias Wy Giok Ha, et al. vs. Emilio Galang, L-21332, March 18,

1966, clearly writes down the philosophy behind the rule in the following expressive language, viz:

"Reflection will reveal why this must be so. The qualifications prescribed under section 2 of the Naturalization Act, and the disqualifications enumerated in its section 4, are not mutually exclusive; and if all that were to be required is that the wife of a Filipino be not disqualified under section 4, the result might well be that citizenship would be conferred upon persons in violation of the policy of the statute. For example, section 4 disqualifies only—

(c) Polygamists or believers in the practice of polygamy; and

(d) Persons convicted of crimes involving moral turpitude', so that a blackmailer, or a maintainer of gambling or bawdy houses, not previously convicted by a competent court, would not be there by disqualified; still, it is certain that the law did not intend such a person to be admitted as a citizen in view of the requirement of section 2 that an applicant for citizenship 'must be of good moral character'.

Similarly, the citizen's wife might be a convinced believer in racial supremacy, in government by certain selected classes, in the right to vote exclusively by certain 'herrenvolk', and thus disbelieve in the principles underlying the Philippine Constitution; yet she would not be disqualified under section 4, as long as she is not 'opposed to organized government', nor affiliated to groups 'upholding or teaching doctrines opposing all organized governments', nor 'defending or teaching the necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas'. Et sic de caeteris."

Upon the principle of selective citizenship, we cannot afford to depart from the wise precept affirmed and reaffirmed in the cases heretofore noted.

In the additional stipulation of facts of July 3, 1963, petitioners admit that Chan Sau Wah is not possessed of all the qualifications required by the Naturalization Law.

Because of all these, we are left under no doubt that petitioner Chan Sau Wah did not become a Filipino citizen.

2. Squarely put in issue by petitioners is the constitutionality of Section 37 (a) of the Immigration Act of 1940, which reads:

"SEC. 37. (a) The following aliens shall be arrested upon the I warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner

of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a nonimmigrant."

Petitioners argue that the legal precept just quoted trenches upon the constitutional mandate in Section 1 (3), Article III [Bill of Right] of the Constitution, to wit:

"(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

They say that the Constitution limits to judges the authority to issue warrants of arrest and that the legislative delegation of such power to the Commissioner of Immigration is thus violative of the Bill of Rights.

Section 1 (3), Article III of the Constitution, we perceive, does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation contemplates an order of arrest in the exercise of judicial power^[4] as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation.

The following from American Jurisprudence,^[5] is illuminating:

"It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. Owing to the nature of the proceeding, the deportation of an alien who is found in this country in violation of law is not a deprivation of liberty without due process of law. This is so, although the inquiry devolves upon executive officers, and their findings of fact, after a fair though summary hearing, are made conclusive."

* * * * *

"The determination of the propriety of deportation is not a prosecution for, or a conviction of, crime; nor is the deportation a punishment, even though the facts underlying the decision may constitute a crime under local law. The proceeding is in effect simply a refusal by the government to harbor persons whom it does not want. The coincidence of local penal law with the policy of congress is purely accidental, and, though supported by the same facts, a criminal prosecution and a

proceeding for deportation are separate and independent."

In consequence, the constitutional guarantee set forth. in Section 1(3), Article III of the Constitution aforesaid requiring that the issue of probable cause be determined by a judge, does not extend to deportation proceedings.[6]

In view, we, here express finds support in the discussions during the constitutional convention. The convention recognized, as sanctioned by due process, possibilities and cases of deprivation of liberty, other than by order of a competent court.

[7]

Indeed, the power to deport or expel aliens is an attribute of sovereignty. Such power is planted on the "accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions." [8] So it is, that this Court once aptly remarked that there can be no controversy on the fact that where aliens are admitted as temporary visitors, "the law is to the effect that temporary visitors who do not depart upon the expiration of the period of stay granted them are subject to deportation by the Commissioner of Immigration, for having violated the limitation or condition under which they were admitted as nonimmigrants (Immigration Law, Sec. 37 (a) t subsection (7) C.A. 613, as amended)"⁹

And, in a case directly in point, where the power of the Commissioner to issue warrants of arrest was challenged as unconstitutional because "such power is only vested in a judge by Section 1, paragraph 3, Article III of our Constitution", this Court declared—

"This argument overlooks the fact that the stay of appellant Ng Hua To as temporary visitor is subject to certain contractual stipulations as contained in the cash bond put up by him, among them, that in case of breach the Commissioner may require the recommitment of the person in whose favor the bond has been filed. The Commissioner did nothing but to enforce such condition. Such a step is necessary to enable the Commissioner to prepare the ground for his deportation under section 37 (a) of Commonwealth Act 613. A contrary interpretation would render such power nugatory to the detriment of the State." [10]

It is in this context that we rule that Section 37 (a) of the Immigration Act of 1940 is not constitutionally proscribed.

3. A sequel to the question just discussed is the second error set forth in the government's brief. The Solicitor General balks at the lower court's ruling that petitioner Chan Sau Wah is entitled to permanent residence in the Philippines without first

complying with the requirements of Sections 9 and 13 of the Immigration Act of 1940, as amended by Republic Act 503.

We first go to the law, viz:

"SEC. 9 [last paragraph]

An alien who is admitted as a nonimmigrant cannot remain in the Philippines permanently. To obtain permanent admission,
a nonimmigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine consul
the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry
for determination of his admissibility in accordance with the requirements of this Act."

* * * * *

"SEC. 13. Under the conditions set forth in this Act, there may be admitted into the Philippines immigrants, termed 'quota
immigrants' not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the
following immigrants, termed 'nonquota immigrants, may be admitted without regard to such numerical limitations.

The corresponding Philippine Consular representative abroad shall investigate and certify the eligibility of a quota immigrant
previous to his admission into the Philippines. Qualified and desirable aliens who are in the Philippines under temporary stay
may be admitted within the quota, subject to the provision of the last paragraph of section 9 of this Act.

(a) The wife or the husband or the unmarried child under twenty-one years of age of a Philippine citizen, if accompanying or
following to join such citizen:

(b) A child of alien parents born during the temporary visit abroad of the mother, the mother having been previously
lawfully admitted into the Philippines for permanent residence, if the child is accompanying or coming to join a parent and
applies for admission within five years from the date of its birth;"

Concededly, Chan Sau Wah entered the Philippines on a tourist temporary visitor's visa. She is a non-immigrant. Under Section 15 just quoted, she may therefore be admitted if she were a qualified and desirable alien and subject to the provisions of the last paragraph of Section 9. Therefore, first, she must depart voluntarily to some foreign country; second, she must procure from the appropriate consul the proper visa; and third, she must thereafter undergo examination by the officials of the Bureau of Immigration at the port of entry for determination of her admissibility in accordance with the requirements of the Immigration Act.

This Court in a number of cases has ruled, and consistently too, that an alien admitted as a temporary visitor cannot change

his or her status without first departing from the country and complying with the requirements of Section 9 of the Immigration Act. [11]

The gravamen of petitioner's argument is that Chan Sau Wah has, since her entry, married in Manila a native-born Filipino, Esteban Morano. It will not particularly help analysis for petitioners to appeal to family solidarity in an effort to thwart her deportation. Chan Sau Wah, seemingly is not one who has a high regard for such solidarity. Proof: She left two of her children by the first marriage, both minors, in the care of neighbors in Fukien, China.

Then, the wording of the statute heretofore adverted to is a forbidding obstacle which will prevent this Court from writing into the law an additional provision that marriage of a temporary alien visitor to a Filipino would ipso facto make her a permanent resident in this country. This is a field closed to judicial action. No breadth of discretion is allowed us. We cannot insulate her from the State's power of deportation.

Really, it would be an easy matter for an alien woman to enter the Philippines as a temporary visitor, go through a mock marriage, but actually live with another man as husband and wife, and thereby skirt the provisions of our immigration law.

Also, a woman of undesirable character may enter this country, ply a pernicious trade, marry a Filipino, and again throw overboard Sections 9 and 13 of the Act. Such a flanking movement, we are confident, is impermissible.

Recently we confirmed the rule that an alien wife of a Filipino may not stay permanently without first departing from the Philippines. Reason: Discourage entry under false pretenses.[12]

The ruling of the trial court on this score should be reversed.

4. It is petitioner's turn to point as error the dismissal of the petition for mandamus and prohibition with respect to petitioner Fu Yan Fun.

Petitioner's line of thought is this: Fu Yan Fun follows the citizenship of his mother. They cite Section 15, paragraph 3, Commonwealth Act 473, which says that:

"A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen. * * * "

Petitioner's position is based on the assumption that Chan Sau Wah, the mother, is a Filipino citizen. We have held that she is not. At best, Fu Yan Fun is a step-son of Esteban Morano, husband of Chan Sau Wah. A step-son is not a foreign-born child of the step-father. The word child, we are certain, means legitimate child, not a step-child. We are not wanting in precedents.

Thus, when the Constitution provides that "[t]hose whose fathers are citizens of the Philippines" are citizens thereof,¹³

the fundamental charter intends "those" to apply to legitimate children. [14] In another case, the term "minor children" or "minor child" in

Section 15 of the Revised Naturalization Law refers only to legitimate children of Filipino citizens. This Court, thru Mr. Chief

Justice Roberto Concepción, there said:[15]

"It is claimed that the phrases 'minor children' and 'minor child', used in these provisions, include adopted children. The argument is predicated upon the theory that an adopted child is, for all intents and purposes, a legitimate child. Whenever, the word 'children' or 'child' is used in statutes, it is generally understood, however, to refer to legitimate children, unless the context of the law and its spirit indicate clearly the contrary. Thus, for instance, when the Constitution provides that 'those whose fathers are citizens of the Philippines', and 'those whose mothers are citizens of the Philippines' who shall elect Philippine citizenship upon reaching the age of majority' are citizens of the Philippines (Article IV, Section 1, subdivisions [3] and [4]), our fundamental law clearly refers to legitimate children (Chiongbian vs. De Leon, 46 Off. Gaz., 3652-3654; Serra vs. Republic, L-4223, May 12, 1952)."

At any rate, Fu Yan Fun entered the Philippines as a temporary visitor. The status of a temporary visitor cannot be converted

into that of a permanent resident, as we have heretofore held, without first complying with Section 9 of the Immigration

Law.

5. Petitioners finally aver that the lower court erred in authorizing respondent Commissioner to forfeit the bond filed by

petitioners Chan Sau Wah and Fu Yan Fun in the amount of P4,000.00.

Here is petitioner's posture. They enjoyed their stay in the Philippines upon a bond. Now they come to court and say that as

the prescribed form of this bond was not expressly approved by the Secretary of Justice in accordance with Section 3 of

Commonwealth Act 613, which reads

"SEC. 3. * * * He [Commissioner of Immigration] shall issue, subject to the approval of the Department Head, such rules and regulations and prescribe such forms of bond, reports, and other papers, and shall issue from time to time such instruction, not inconsistent with law, as he shall deem best calculated to carry out the provisions of the immigration laws. * * *".

that bond is void.

Reasons there are which prevent us from giving our imprimatur to this argument.

The provision requiring official approval of a bond is merely directory. "Irregularity or entire failure in this

respect does not
affect the validity of the bond." [16] The reason for the rule is found in 9
C.J., p. 26 (footnote), which reads:

"(a) Reason for rule.—'Statutes requiring bonds to be approved by certain officials are not for the purpose of protecting the obligors in the bond, but are aimed to protect the public, to insure their solvency, and to create evidence of an unimpeachable character of the fact of their execution. When they are executed for a legal purpose, before a proper tribunal, and are in fact accepted and approved by the officer or body, whose duty it was to approve them, it could serve no useful purpose of the law to hold them invalid, to release all the obligors thereon, and to defeat every purpose of its execution, simply because the fact of approval was not indorsed precisely as had been directed by the Legislature.' American Book Co., vs. Wells, 83 SW 622, 627, 26 KyL 1159." (Emphasis supplied).

And another. This bond was accepted by the government. It has been there. The form of the bond here used is of long continued usage. If the government did not question the form of the bond at all, then we must assume that it counted with the Secretary's approval. For the presumption is that official duty has been legally-performed.

Surely enough, equitable considerations will stop petitioners from pleading invalidity of the bond. They offered that bond to enable them to enter and stay in this country. They enjoyed benefits therefrom. They cannot, "in law and good conscience, be allowed to reap the fruits" of that bond, and then jettison the same. They are "precluded from attacking the validity" of such bond.[17]

Actually, to petitioners the bond was good while they sought entry into the Philippines; they offered it as security for the undertaking that they "will actually depart from the Philippines" when their term of stay expires. Now that the bond is being confiscated because they overstayed, they make an about-face and say that such bond is null and void. They shall not profit from this inconsistent position. Their bond should be confiscated.

Conformably to the foregoing, the judgment under review is hereby modified as follows:

(1) The portion thereof which reads:

"(a) Granting this petition for Mandamus and Prohibition with respect to petitioner CHAN SAU WAH, who is hereby declared a citizen of the Philippines; ordering the respondent to cancel her Alien Certificate of Registration and other immigration papers, upon the payment of proper dues; and declaring the preliminary injunction with respect to her permanent, prohibiting the respondent, his representatives or subordinates from arresting and/or deporting said petitioner;"

is hereby reversed; and, in consequence—

The petition for mandamus and prohibition with respect to petitioner Chan Sau Wah is hereby denied; and the judgment declaring her a citizen of the Philippines, directing respondent to cancel her Alien Certificate of Registration and other immigration papers, and declaring the preliminary injunction with respect to her permanent, are all hereby set aside; and

(2) In all other respects, the decision appealed from is hereby affirmed.

No costs. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

CONCURRING

DIZON, J.:

I concur (in the result) with the majority opinion penned by Mr. Justice Conrado Sanchez, for the reason that, as stated therein,—“In the additional stipulation of facts of July 3, 1963, petitioners admit that Chan Sau Wah is not possessed of all the qualifications required by the Naturalization Law”.

Judgment affirmed with modification.

[1] Civil Case

No. 51538 of the Court of First Instance of Manila entitled "Esteban Morano, Chan Sau Wah and Fu Yan Fun, petitioners, vs.

Hon. Martiniano Vivo, in his capacity as Acting Commissioner of Immigration, respondent."

[2] Record below, pp. 181-182.

[3] Lo San Tuang vs. Galang, L-18775, November 30, 1963; Sun Peck

Young vs. Commissioner of Immigration, L-20784, December 27, 1963; Tong Siok Sy vs. Vivo, L-21136, December 27,

1963; Lao Chay vs. Galang, L-19977, October 30, 1964; Choy King Tee vs. Galang L-18351, March 26, 1965; Austria vs.

Conchu, L-20716, June 22, 1965; Brito vs. Commissioner of Immigration L-16829, June 30, 1965; Santos Chan vs. Galang,

L-21732, October 17, 1966.

[4] Tu Ghuan Hai vs. Commissioner of Immigration, 55 Off. Gaz. No. 28, pp. 5272, 5274-5275.

[5] 2 Am. Jur., p. 517.

[6] Tu Chuan Hai vs. Commissioner of Immigration, supra; Abel vs. United States, supra, at pp. 681-683.

[7] Laurel's Records of the Proceedings of the Constitutional Convention, Vol. VIII, pp. 86-89. Justice Laurel here makes mention of arrests in a "contempt proceeding of the Legislature."

[8] Nishimura Ekiu vs. U.S., 142 U.S. 651, 35 L. ed. 1146, 1149.

[9] Ong Se Lun and Go Uan vs. Board of Immigration and Jose P. Bengzon, etc., 95 Phil. 785, 788.

[10] Ng Hua To vs. Galang, L-19140, February 29, 1964. _ NOTE:
Petitioners' bond herein contains the following stipulation: "(a) That the undersigned, with full knowledge that SEE ABOVE

are tourist-'temporary visitors whose authorized stay in this co try is limited only up to and including FIFTYNINE (59) DAYS

10, hereby undertake that said SEE ABOVE will actually depart from the Philippines on or before said date so specified or within such, period as, in his discretion, the Commissioner Immigration or his authorized representative may properly allow;"

[11] Ong Se Lun vs. Board of Immigration Commissioners, supra,
Chiong Tiao Bing vs. Commissioner of Immigration, 99 Phil. 1020, 1022, Sy Hong vs. Commissioner of Immigration, 101

Phil. 1207' 1208; Ang It vs. Commissioner of Immigration, 102 Phil. 532, 535-537; Ng Hin vs. Commissioner of Immigration, L-13026, March 30, 1960; Kua Suy vs. Commissioner of Immigration, L-1379 October 31, 1963; Lim Chiok

Vivo, L-20513, December 26, 196 See Guan vs. Commissioner of Immigration, L-211811, November 29, 1965.

[12] Co Pek vs. Vivo, L-21775, December 17, 1966.

[13] Article IV, Section 1, subdivisions 3, Philippine Constitution.

[14] Chiongbian vs. de Leon, 82 Phil. 771, 774.

[15] Chiongbian vs. de Leon, 82 Phil. 771, 774.

[16] 9C. J., p. 25.

The failure of a court or officer to approve or file an official bond will not affect its validity for the reason that the government or other official body is not responsible for the laches of its officers." 8 Am. Jur., p. 717.

[17] De Borja vda. de Torres vs. Encarnación, 89 Phil. 678, 681.</sup

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