

MANUEL YAP, ALIAS YAP SUAT POO, PETITIONER-APPELLEE, VS. THE REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

G.R. No. 13944. March 30, 1962

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by the Solicitor General from the decision of the Court of First Instance of Cebu granting the petition of Manuel Yap alias Yap Suat Poo for naturalization as a citizen of the Philippines,

On March 8, 1955 Manuel Yap alias Yap Suat Poo filed a petition for naturalization under oath in the Court of First Instance of Cebu under the provisions of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535 and Republic Act No. 530. It alleged, inter alia, that having been born in the Philippines and having received his primary and secondary education in schools recognized by the Government and not limited to any race or nationality, petitioner was exempt from the requirement of filing his declaration of intention with the Office of the Solicitor General one year prior to the filing of the petition.

In support of his petition, petitioner presented the affidavits of Gilbert V. Emata, Instructor in Mathematics, Cebu Institute of Technology; Rafael F. Yap, BSC graduate and Bookkeeper, Maximino S. Ylaya, Lawyer; and Antonio R. Avilla, Lawyer, all Filipinos and prominent residents of Cebu City, but only Emata and Yap were called to testify on the day of the hearing.

After due publication of the notice of hearing, the petition was heard on the merits.

The evidence of record shows that petitioner is single and was born on March 9, 1931 in San Jose, Nueva Ecija, of Chinese parents named Yap Chui and Lim Wan; that he completed his primary and secondary grades, as well as his high school education, in private institutions in the City of Cebu; that he finished his 1st and 2nd years of engineering at the Cebu Institute of Technology, also of said city, and his Bachelor of Science in Mechanical Engineering at the Mapua Institute of Technology in Manila; that all the schools attended by petitioner are private institutions recognized by the Government where Philippine Government, Civics and History are taught.

It also appears that petitioner can write and speak fluently the English language and the Cebu-Visayan dialect; that he was formerly employed as a salesman of the Royal Grocery in Cebu City with a monthly salary of P140.00 and, at the time his application was filed, was employed as assistant cashier of the Pan Asiatic Commercial Co., Inc. in Manila with a salary of P220.00 a month; that he had no liability in favor of the Government; and that he possesses all the qualifications required under Section 2 and none of the disqualifications under Section 4 of Commonwealth Act No. 473.

The ground relied upon by the Solicitor General in support of the appeal taken by the Government is that Gilbert V. Emata, one of petitioner's witnesses, had not known him for at least five years prior to the filing of his petition for naturalization. We find this to be without merit.

The testimony of said witness shows that he had known petitioner before the last world war, having been his

classmate in the fourth grade; that while they became separated during the war, they had occasion to write to each other; that they met again in 1948 when they took summer courses in the Cebu Institute of Technology, and then became classmates again in 1950-1952 in the same institute; that when petitioner went to Manila to finish his studies at the Mapua Institute of Technology in the school years 1952-1953 and 1953-1954, they also had occasion to correspond with each other and met personally every year during the period of vacation when petitioner went back to Cebu to spend his vacation, residing at 253 Comercio St., Cebu City, while Emata resided at 62 Figueroa St. of the same city. It appearing from the record that the petition for naturalization was filed on March 8, 1955, we believe that the testimony of Emata is sufficient to show that he had known petitioner for at least five years prior to the filing of said petition.

We have heretofore held, however, that it is incumbent upon a petitioner for naturalization to prove affirmatively, not only with his testimony but also with that of the persons whose affidavits were filed in support of the petition for naturalization, that he does not possess any one of the disqualifications provided by Section 4 of Commonwealth Act No. 473 (*Santiago Ng vs. Republic*, supra p. 480). In this connection, petitioner testified that he is not opposed to organized government and was not affiliated to any association or group of persons that uphold and teach doctrines opposed to organized government; that he does not believe in defending or teaching the necessity or propriety of violence, personal assault, or assassination for "the success and predominance of his ideas; that he does not believe in Communism nor in the practice of polygamy; that he has never been arrested for or charged with any crime involving moral turpitude nor was he suffering from mental alienation or incurable contagious diseases; that during the period of his residence in the Philippines—which country he has never left—he had mingled socially with the Filipinos and had learned and embraced their customs, traditions and ideals.

His testimony on the above matters is supported by the following documentary evidence: (a) Exhibit O, a tax clearance issued by the Provincial Revenue Officer of Cebu on May 4, 1956; (b) Exhibit P, a certificate issued by Leo P. Geronilla, Deputy Treasurer of Cebu City in charge of internal affairs, to the effect that petitioner was not engaged in any business requiring payment of internal revenue and/or municipal license taxes and that he had no other tax liability; (c) Exhibit Q, a certificate issued by Jose L. Abad, Fiscal, City of Cebu, to the effect that he personally knows petitioner, a resident of such city, to be a person of good moral character and that, according to the records of his office, petitioner had not been charged with any crime; (d) Exhibit R dated May 2, 1956 issued by Enrique E. Carson, Captain of the Cebu Police Department, giving petitioner a police clearance; (e) Exhibit S of June 4, 1956, a certificate issued by Agustin Patricio, by authority of Director Lukban of the National Bureau of Investigation, to the effect that said office had no derogatory record against petitioner; (f) Exhibit T of May 7, 1956, a similar certificate issued by Felipe M. Fetalvero, Provincial Commander, Philippine Constabulary, with headquarters in Cebu; (g) Exhibit V dated August 20, 1957, a certificate issued by the Clerk of Court, Court of First Instance of Cebu, to the effect that, according to the records of the court, petitioner had never been charged with any criminal offense in said court; (h) Exhibit V of August 20, 1957, a similar certificate issued by the Clerk of Court of the Municipal Court, City of Cebu; (i). Exhibit W dated August 20, 1957 issued by Apolinar B. Faustino of the Bureau of Immigration, to the effect that in said office there was no derogatory information against petitioner, (j) Exhibit X, a certificate dated August 20, 1957 issued by Dr. Alejandro C. Baltazar, City Health Officer, Cebu City, to the effect that on August 20, 1957 petitioner was physically examined by him and found free from any communicable disease and that the results of fluoroscopic examination showed that his lungs were apparently clear and his heart normal, and (k) Exhibits M and N, his Income Tax Returns for the years 1955 and 1956.

In addition to the facts testified to by Gilbert V. Emata stated heretofore and, with particular reference to the disqualifications provided by Jaw, said witness testified that petitioner is well-behaved and of irreproachable character; that he had not been involved in any quarrel; that he is not a member of any Chinese association and he

is not a Communist; that he is not sick of any contagious disease or any communicable disease; that he had not attended any Chinese school.

For his part, the other witness, Rafael Yap, testified that he is not related to petitioner whom he came to know in 1938 when they lived in neighboring houses located at Leon Kilat St., Cebu City; that during the war they met in the municipality of Tabogon, Cebu, hometown of the witness, where petitioner and his family evacuated; that after the war they met again in the city of Cebu; that before the war, petitioner was studying at the Southern College and after the war he studied at the Cebu Institute of Technology, Cebu City, and later at the Mapua Institute of Technology, Manila; that while they lived in Cebu he and petitioner used to go out together to see games, to fiestas and religious activities with Filipino friends; that petitioner had never been arrested, charged, nor convicted of any criminal offense; that after petitioner's graduation he first worked at the Royal Grocery as purchasing agent with a monthly salary of P140.00; that petitioner is of good moral character and speaks English and the Visayan dialect; that during the war petitioner did not collaborate with the Japanese; that he has never been sick of any contagious disease, nor has he ever been a member of any subversive organization and, finally, that he is a Roman Catholic.

While the testimony of Emata proves that petitioner is not a communist and has not been convicted of any crime involving moral turpitude; that he mingled with Filipinos whose customs he has adopted and that he is of irreproachable character, the testimony of Rafael Yap appear to be more deficient and unsatisfactory. The testimony of both witnesses not giving sufficient facts from which we may infer that petitioner—as personally known to them—is not a person opposed to organized government; that he is not affiliated to any group of persons who uphold and teach doctrines opposed to organized government; that he does not defend or teach the necessity or propriety of violence, personal assault or assassination for the success and predominance of his ideas and that he does not believe in the practice of polygamy, we are constrained to hold that it is not sufficient to establish the absence of the disqualifications specified in the Naturalization Act. As stated in *Ng vs. Republic of the Philippines* (supra), the absence of the disqualifications provided by law is part and parcel of the case for naturalization, and petitioner has the burden of proving such absence affirmatively, in addition to his possession of the positive qualifications required by the statute.

WHEREFORE, the decision appealed from is hereby reversed and another rendered denying the petition for naturalization filed by petitioner Manuel Yap alias Yap Suat Poo.

Bengzon, C.J., Padilla, Baustista Angelo, Labrador, Concepcion, Barrera, Paredes, and De Leon, JJ., concur.

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