

## THE REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. NORA FE SAGUN, RESPONDENT.

*G.R. No. 187567. February 15, 2012*

Ponente: VILLARAMA, JR., J.

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### VILLARAMA, JR., J.:

Before us is a petition for review on certiorari filed by the Solicitor General on behalf of the Republic of the Philippines, seeking the reversal of the April 3, 2009 Decision[1] of the Regional Trial Court (RTC), Branch 3, of Baguio City in Spcl. Pro. Case No. 17-R. The RTC granted the petition[2] filed by respondent Nora Fe Sagun entitled “In re: Judicial Declaration of Election of Filipino Citizenship, Nora Fe Sagun v. The Local Civil Registrar of Baguio City.”

The facts follow:

Respondent is the legitimate child of Albert S. Chan, a Chinese national, and Marta Borromeo, a Filipino citizen. She was born on August 8, 1959 in Baguio City[3] and did not elect Philippine citizenship upon reaching the age of majority. In 1992, at the age of 33 and after getting married to Alex Sagun, she executed an Oath of Allegiance[4] to the Republic of the Philippines. Said document was notarized by Atty. Cristeta Leung on December 17, 1992, but was not recorded and registered with the Local Civil Registrar of Baguio City.

Sometime in September 2005, respondent applied for a Philippine passport. Her application was denied due to the citizenship of her father and there being no annotation on her birth certificate that she has elected Philippine citizenship. Consequently, she sought a judicial declaration of her election of Philippine citizenship and prayed that the Local Civil Registrar of Baguio City be ordered to annotate the same on her birth certificate.

In her petition, respondent averred that she was raised as a Filipino, speaks Ilocano and Tagalog fluently and attended local schools in Baguio City, including Holy Family Academy and the Saint Louis University. Respondent claimed that despite her part-Chinese ancestry, she always thought of herself as a Filipino. She is a registered voter of Precinct No. 0419A of Barangay Manuel A. Roxas in Baguio City and had voted in local and national elections as shown in the Voter Certification[5] issued by Atty. Maribelle Uminga of the Commission on Elections of Baguio City.

She asserted that by virtue of her positive acts, she has effectively elected Philippine citizenship and such fact should be annotated on her record of birth so as to entitle her to the issuance of a Philippine passport.

On August 7, 2007, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic of the Philippines and authorized the City Prosecutor of Baguio City to appear in the above mentioned case.[6] However, no comment was filed by the City Prosecutor.

After conducting a hearing, the trial court rendered the assailed Decision on April 3, 2009 granting the petition and declaring respondent a Filipino citizen. The fallo of the decision reads:

WHEREFORE, the instant petition is hereby GRANTED. Petitioner Nora Fe Sagun y Chan is hereby DECLARED [a] FILIPINO CITIZEN, having chosen or elected Filipino citizenship.

Upon payment of the required fees, the Local Civil Registrar of Baguio City is hereby directed to annotate [on] her birth certificate, this judicial declaration of Filipino citizenship of said petitioner.

IT IS SO ORDERED.[7]

Contending that the lower court erred in so ruling, petitioner, through the OSG, directly filed the instant recourse via a petition for review on certiorari before us. Petitioner raises the following issues:

I

Whether or not an action or proceeding for judicial declaration of Philippine citizenship is procedurally and jurisdictionally permissible; and,

II

Whether or not an election of Philippine citizenship, made twelve (12) years after reaching the age of majority, is considered to have been made “within a reasonable time” as interpreted by jurisprudence.[8]

Petitioner argues that respondent’s petition before the RTC was improper on two counts: for one, law and jurisprudence clearly contemplate no judicial action or proceeding for the declaration of Philippine citizenship; and for another, the pleaded registration of the oath of allegiance with the local civil registry and its annotation on respondent’s birth certificate are the ministerial duties of the registrar; hence, they require no court order. Petitioner asserts that respondent’s petition before the trial court seeking a judicial declaration of her election of Philippine citizenship undeniably entails a determination and consequent declaration of her status as a Filipino citizen which is not allowed under our legal system. Petitioner also argues that if respondent’s intention in filing the petition is ultimately to have her oath of allegiance registered with the local civil registry and annotated on her birth certificate, then she does not have to resort to court proceedings.

Petitioner further argues that even assuming that respondent’s action is sanctioned, the trial court erred in finding respondent as having duly elected Philippine citizenship since her purported election was not in accordance with the procedure prescribed by law and was not made within a “reasonable time.” Petitioner points out that while respondent executed an oath of allegiance before a notary public, there was no affidavit of her election of Philippine citizenship. Additionally, her oath of allegiance which was not registered with the nearest local civil registry was executed when she was already 33 years old or 12 years after she reached the age of majority. Accordingly, it was made beyond the period allowed by law.

In her Comment,[9] respondent avers that notwithstanding her failure to formally elect Filipino citizenship upon reaching the age of majority, she has in fact effectively elected Filipino citizenship by her performance of positive acts, among which is the exercise of the right of suffrage. She claims that she had voted and participated in all local and national elections from the time she was of legal age. She also insists that she is a Filipino citizen despite the fact that her “election” of Philippine citizenship was delayed and unregistered.

In reply,[10] petitioner argues that the special circumstances invoked by respondent, like her continuous and uninterrupted stay in the Philippines, her having been educated in schools in the country, her choice of staying here despite the naturalization of her parents as American citizens, and her being a registered voter, cannot confer on her Philippine citizenship as the law specifically provides the requirements for acquisition of Philippine citizenship by election.

Essentially, the issues for our resolution are: (1) whether respondent’s petition for declaration of election of

Philippine citizenship is sanctioned by the Rules of Court and jurisprudence; (2) whether respondent has effectively elected Philippine citizenship in accordance with the procedure prescribed by law.

The petition is meritorious.

At the outset, it is necessary to stress that a direct recourse to this Court from the decisions, final resolutions and orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.[11]

In the present case, petitioner assails the propriety of the decision of the trial court declaring respondent a Filipino citizen after finding that respondent was able to substantiate her election of Filipino citizenship. Petitioner contends that respondent's petition for judicial declaration of election of Philippine citizenship is procedurally and jurisdictionally impermissible. Verily, petitioner has raised questions of law as the resolution of these issues rest solely on what the law provides given the attendant circumstances.

In granting the petition, the trial court stated:

This Court believes that petitioner was able to fully substantiate her petition regarding her election of Filipino citizenship, and the Local Civil Registrar of Baguio City should be ordered to annotate in her birth certificate her election of Filipino citizenship. This Court adds that the petitioner's election of Filipino citizenship should be welcomed by this country and people because the petitioner has the choice to elect citizenship of powerful countries like the United States of America and China, however, petitioner has chosen Filipino citizenship because she grew up in this country, and has learned to love the Philippines. Her choice of electing Filipino citizenship is, in fact, a testimony that many of our people still wish to live in the Philippines, and are very proud of our country.

WHEREFORE, the instant petition is hereby GRANTED. Petitioner Nora Fe Sagun y Chan is hereby DECLARED as FILIPINO CITIZEN, having chosen or elected Filipino citizenship.[12]

For sure, this Court has consistently ruled that there is no proceeding established by law, or the Rules for the judicial declaration of the citizenship of an individual.[13] There is no specific legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry.[14] This was our ruling in *Yung Uan Chu v. Republic*[15] citing the early case of *Tan v. Republic of the Philippines*,[16] where we clearly stated:

Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. Courts of justice exist for settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy, granted or sanctioned by law, for said breach of right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status. Otherwise, such a pronouncement is beyond judicial power. x x x

Clearly, it was erroneous for the trial court to make a specific declaration of respondent's Filipino citizenship as such pronouncement was not within the court's competence.

As to the propriety of respondent's petition seeking a judicial declaration of election of Philippine citizenship, it is imperative that we determine whether respondent is required under the law to make an election and if so, whether she has complied with the procedural requirements in the election of Philippine citizenship.

When respondent was born on August 8, 1959, the governing charter was the 1935 Constitution, which declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. Sec. 1, Art. IV of the 1935 Constitution reads:

Section 1. The following are citizens of the Philippines:

x x x x

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

Under Article IV, Section 1(4) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. The right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that “[t]hose who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five” are citizens of the Philippines.[17] Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that “[t]hose born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority” are Philippine citizens.[18] It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution. If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.[19]

Being a legitimate child, respondent’s citizenship followed that of her father who is Chinese, unless upon reaching the age of majority, she elects Philippine citizenship. It is a settled rule that only legitimate children follow the citizenship of the father and that illegitimate children are under the parental authority of the mother and follow her nationality.[20] An illegitimate child of Filipina need not perform any act to confer upon him all the rights and privileges attached to citizens of the Philippines; he automatically becomes a citizen himself.[21] But in the case of respondent, for her to be considered a Filipino citizen, she must have validly elected Philippine citizenship upon reaching the age of majority.

Commonwealth Act (C.A.) No. 625,[22] enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship, to wit:

Section 1. The option to elect Philippine citizenship in accordance with subsection (4), [S]ection 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

Based on the foregoing, the statutory formalities of electing Philippine citizenship are: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry.[23]

Furthermore, no election of Philippine citizenship shall be accepted for registration under C.A. No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, he should first be required to register as an alien.[24] Pertinently, the person electing Philippine citizenship is required to file a petition with the Commission of Immigration and Deportation (now Bureau of Immigration) for the cancellation of his alien certificate of registration based on his aforesaid election of

Philippine citizenship and said Office will initially decide, based on the evidence presented the validity or invalidity of said election.[25] Afterwards, the same is elevated to the Ministry (now Department) of Justice for final determination and review.[26]

It should be stressed that there is no specific statutory or procedural rule which authorizes the direct filing of a petition for declaration of election of Philippine citizenship before the courts. The special proceeding provided under Section 2, Rule 108 of the Rules of Court on Cancellation or Correction of Entries in the Civil Registry, merely allows any interested party to file an action for cancellation or correction of entry in the civil registry, i.e., election, loss and recovery of citizenship, which is not the relief prayed for by the respondent.

Be that as it may, even if we set aside this procedural infirmity, still the trial court's conclusion that respondent duly elected Philippine citizenship is erroneous since the records undisputably show that respondent failed to comply with the legal requirements for a valid election. Specifically, respondent had not executed a sworn statement of her election of Philippine citizenship. The only documentary evidence submitted by respondent in support of her claim of alleged election was her oath of allegiance, executed 12 years after she reached the age of majority, which was unregistered. As aptly pointed out by the petitioner, even assuming *arguendo* that respondent's oath of allegiance suffices, its execution was not within a reasonable time after respondent attained the age of majority and was not registered with the nearest civil registry as required under Section 1 of C.A. No. 625. The phrase "reasonable time" has been interpreted to mean that the election should be made generally within three (3) years from reaching the age of majority.[27] Moreover, there was no satisfactory explanation proffered by respondent for the delay and the failure to register with the nearest local civil registry.

Based on the foregoing circumstances, respondent clearly failed to comply with the procedural requirements for a valid and effective election of Philippine citizenship. Respondent cannot assert that the exercise of suffrage and the participation in election exercises constitutes a positive act of election of Philippine citizenship since the law specifically lays down the requirements for acquisition of citizenship by election. The mere exercise of suffrage, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship cannot take the place of election of Philippine citizenship. Hence, respondent cannot now be allowed to seek the intervention of the court to confer upon her Philippine citizenship when clearly she has failed to validly elect Philippine citizenship. As we held in *Ching*,[28] the prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and, thereafter, file the same with the nearest civil registry. Having failed to comply with the foregoing requirements, respondent's petition before the trial court must be denied.

WHEREFORE, the petition is GRANTED. The Decision dated April 3, 2009 of the Regional Trial Court, Branch 3 of Baguio City in Spcl. Pro. Case No. 17-R is REVERSED and SET ASIDE. The petition for judicial declaration of election of Philippine citizenship filed by respondent Nora Fe Sagun is hereby DISMISSED for lack of merit.

No costs.

**SO ORDERED.**

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

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[1] Rollo, pp. 27-32. Penned by Presiding Judge Fernando Vil Pamintuan.

[2] Records, pp. 1- 4.

- [3] Id. at 60.
- [4] Id. at 7.
- [5] Id. at 8.
- [6] Id. at 28.
- [7] Rollo, p. 32.
- [8] Id. at 59.
- [9] Id. at 43-44.
- [10] Id. at 48-49.
- [11] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 420.
- [12] Rollo, pp. 31-32.
- [13] *Yung Uan Chu v. Republic*, No. L-34973, April 14, 1988, 159 SCRA 593, 597; *Board of Commissioners v. Domingo*, No. L-21274, July 31, 1963, 8 SCRA 661, 664.
- [14] Id. at 598; *Tan v. Republic of the Philippines*, 107 Phil. 632, 634 (1960).
- [15] Id. at 597.
- [16] *Supra* note 14 at 633; *Republic v. Maddela*, Nos. L- 21664 and L- 21665, March 28, 1969, 27 SCRA 702, 705.
- [17] Sec. 1(3), Art. III, 1973 Constitution.
- [18] Sec. 1(3), Art. IV, 1987 Constitution.
- [19] *Re: Application For Admission to the Philippine Bar. Vicente D. Ching*, Bar Matter No. 914, October 1, 1999, 316 SCRA 1, 7-8.
- [20] *Go, Sr. v. Ramos*, G.R. Nos. 167569-70 and 171946, September 4, 2009, 598 SCRA 266, 294-295.
- [21] Id. at 295.
- [22] *An Act Providing for the Manner in Which the Option to Elect Philippine Citizenship shall be Declared by Person Whose Mother is a Filipino Citizen*, approved on June 7, 1941.
- [23] *Ma v. Fernandez, Jr.*, G.R. No. 183133, July 26, 2010, 625 SCRA 566, 577.
- [24] *Ronaldo P. Ledesma, An Outline of Philippine Immigration and Citizenship Laws*, Vol. I, 2006 ed., pp. 526.
- [25] Id. at 527, citing Memorandum Order dated August 18, 1956 of the CID.
- [26] Id., citing DOJ Opinion No. 182 dated August 19, 1982.
- [27] *Re: Application For Admission to the Philippine Bar. Vicente D. Ching*, *supra* note 19 at 9; *Ma v. Fernandez, Jr.*, *supra* note 23 at 578.
- [28] Id. at 12.

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