

JOSE B. AZNAR (AS PROVINCIAL CHAIRMAN OF PDP LABAN IN CEBU), PETITIONER, VS. COMMISSION ON ELECTIONS AND EMILIO MARIO RENNER OSMENA, RESPONDENTS.

G.R. No. 83820, May 25, 1990

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition for certiorari assailing the Resolution of the Commission on Elections (COMELEC) dated June 11, 1988, which dismissed the petition for the disqualification of private respondent Emilio "Lito" Osmena as candidate for Provincial Governor of Cebu Province.

The facts of the case are briefly as follows:

On November 19, 1987, private respondent Emilio "Lito" Osmena filed his certificate of candidacy with the COMELEC for the position of Provincial Governor of Cebu Province in the January 19, 1988 local elections.

On January 22, 1988, the Cebu PDP-Laban Provincial Council (Cebu-PDP Laban, for short), as represented by petitioner Jose B. Aznar in his capacity as its incumbent Provincial Chairman, filed with the COMELEC a petition for the disqualification of private respondent on the ground that he is allegedly not a Filipino citizen, being a citizen of the United States of America.

On January 27, 1988, petitioner filed a Formal Manifestation submitting a Certificate issued by the then Immigration and Deportation Commissioner Miriam Defensor Santiago certifying that private respondent is an American and is a holder of Alien Certificate of Registration (ACR) No. B-21448 and Immigrant Certificate of Residence (ICR) No. 133914, issued at Manila on March 27 and 28, 1958, respectively. (Annex "B-1").

The petitioner also filed a Supplemental Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order to temporarily enjoin the Cebu Provincial Board of Canvassers from tabulating/canvassing the votes cast in favor of private respondent and proclaiming him until the final resolution of the main petition.

Thus, on January 28, 1988, the COMELEC en banc resolved to order the Board tip continue canvassing but to suspend the proclamation.

At the hearing before the COMELEC (First Division), the petitioner presented the following exhibits tending to show that private respondent is an American citizen: Application for Alien Registration Form No. 1 of the Bureau of Immigration signed by private respondent dated November 21, 1979 (Exh. "B"); Alien Certificate of Registration No. 015356 in the name of private respondent dated November 21, 1979 (Exh. "C"); Permit to Re-enter the Philippines dated November 21, 1979 (Ex. "D"); Immigration Certificate of Clearance dated January 3, 1980 (Exh. "E"). (pp. 117-118, Rollo)

Private respondent, on the other hand, maintained that he is a Filipino citizen, alleging: that he is the legitimate child of Dr. Emilia D. Osmena, a Filipino and son of the late President Sergio Osmena, Sr.; that he is a holder of a

valid and subsisting Philippine Passport No. 0855103 issued on March 25, 1987; that he has been continuously residing in the Philippines since birth and has not gone out of the country for more than six months; and that he has been a registered voter in the Philippines since 1965. (pp. 107-108, Rollo)

On March 3, 1988, COMELEC (First Division) directed the Board of Canvassers to proclaim the winning candidates. Having obtained the highest number of votes, private respondent was proclaimed the Provincial Governor of Cebu.

Thereafter, on June 11, 1988, COMELEC (First Division) dismissed the petition for disqualification for not having been timely filed and for lack of sufficient proof that private respondent is not a Filipino citizen.

Hence, the present petition.

The petition is not meritorious.

There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code (B.P. Blg. 881), to wit:

“(1) Before election, pursuant to Section 78 thereof which provides that:

‘Section 78. Petition to deny due course or to cancel a certificate of candidacy. --- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after the notice and hearing, not later than fifteen days before the election.

and

“(2) After election, pursuant to Section 253 thereof, viz:

‘Sec. 253. Petition for quo warranto. --- Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election.”

The records show that private respondent filed his certificate of candidacy on November 19, 1987 and that the petitioner filed its petition for disqualification of said private respondent on January 22, 1988. Since the petition for disqualification was filed beyond the twenty five-day period required in Section 78 of the Omnibus Election Code, it is clear that said petition was filed out of time.

The petition for the disqualification of private respondent cannot also be treated as a petition for quo warranto under Section 253 of the same Code as it is unquestionably premature, considering that private respondent was proclaimed Provincial Governor of Cebu only on March 3, 1988.

However, We deem it is a matter of public interest to ascertain the respondent's citizenship and qualification to hold the public office to which has been proclaimed elected. There is enough basis for us to rule directly on the merits of the case, as the COMELEC did below.

Petitioner's contention that private respondent is not a Filipino citizen and, therefore, disqualified from running for and being elected to the office of Provincial Governor of Cebu, is not supported by substantial and convincing evidence.

In the proceedings before the COMELEC, the petitioner failed to present direct proof that private respondent had lost his Filipino citizenship by any of the modes provided for under C. A. No. 63. Among others, these are: (1) by naturalization in a foreign country; (2) by express renunciation of citizenship; and (3) by subscribing to an oath of allegiance to support the Constitution or laws of a foreign country. From the evidence, it is clear that private respondent Osmena did not lose his Philippine citizenship by any of the three mentioned hereinabove or by any other mode of losing Philippine citizenship.

In concluding that private respondent had been naturalized as a citizen of the United States of America, the petitioner merely relied on the fact that private respondent was issued alien certificate of registration and was given clearance and permit to re-enter the Philippines by the Commission on Immigration and Deportation. Petitioner assumed that because of the foregoing, the respondent is an American and "being an American", private respondent "must have taken and sworn to the Oath of Allegiance required by the U.S. Naturalization Laws." (p. 81, Rollo)

Philippine courts are only allowed to determine who are Filipino citizens and who are not. Whether or not a person is considered an American under the laws of the United States does not concern us here.

By virtue of his being the son of a Filipino father, the presumption that private respondent is a Filipino remains. It was incumbent upon the petitioner to prove that private respondent had lost his Philippine citizenship. As earlier stated, however, the petitioner failed to positively establish this fact.

The cases of Juan Gallanosa Frivaldo v. COMELEC et al, (G.R. No. 87193, June 21, 1989) and Ramon L. Labo v. COMELEC et al (G.R. No. 86564, August 1, 1989) are not applicable to the case at bar.

In the Frivaldo case, evidence shows that he was naturalized as a citizen of the United States in 1983 per certification from the United States District Court, Northern District of California, as duly authenticated by Vice Consul Amado P. Cortez of the Philippine Consulate General in San Francisco, California, U.S. A.

Frivaldo expressly admitted in his answer that he was naturalized in the United States but claimed that he was forced to, embrace American citizenship to protect himself from the persecution of the Marcos government. The Court, however, found this suggestion of involuntariness unacceptable, pointing out that there were many other Filipinos in the United States similarly situated as Frivaldo who did not find it necessary to abandon their status as Filipinos.

Likewise, in the case of Labo, records show that Labo was married to an Australian citizen and that he was naturalized as an Australian citizen in 1976, per certification from the Australian Government through its Consul in the Philippines. This was later affirmed by the Department of Foreign Affairs.

The authenticity of the above evidence was not disputed by Labo. In fact, in a number of sworn statements, Labo categorically declared that he was a citizen of Australia.

In declaring both Frivaldo and Labo not citizens of the Philippines, therefore, disqualified from serving as Governor of the Province of Sorsogon and Mayor of Baguio City, respectively, the Court considered the fact that by their own admissions, they are indubitably aliens, no longer owing any allegiance to the Republic of the Philippines since they have sworn their total allegiance to a foreign state.

In instant case, private respondent vehemently denies having taken the oath of allegiance of the United States (p. 81, Rollo). He is a holder of a valid and subsisting Philippine passport and has continuously participated in the electoral process in this country since 1963 up to the present, both as a voter and as a candidate (pp. 107-108, Rollo). Thus, private respondent remains a Filipino and the loss of his Philippine citizenship cannot be presumed.

In the learned dissent of Mr. Justice Teodoro Padilla, he stresses the fact that because Osmena obtained Certificates of Alien Registration as an American citizen, the first in 1958 when he was 24 years old and the second in 1979, he, Osmena should be regarded as having expressly renounced Philippine citizenship. To Our mind, this is a case of non sequitur (It does not follow). Considering the fact that admittedly Osmena was both a Filipino and an American, the mere fact that he has a Certificate stating he is an American does not mean that he is not still a Filipino. Thus, by way of analogy, if a person who has two brothers named Jose and Mario states or certifies that he has a brother named Jose, this does not mean that he does not have a brother named Mario; or if a person is enrolled as a student simultaneously in two universities, namely University X and University Y, presents a Certification that he is a student of University X, this does not necessarily mean that he is not still a student of University Y. In the case of Osmena, the Certification that he is an American does not mean that he is not still a Filipino, possessed as he is, of both nationalities or citizenships. Indeed, there is no express renunciation here of Philippine citizenship; truth to tell, there is even no implied renunciation of said citizenship. When We consider that the renunciation needed to lose Philippine citizenship must be "express", it stands to reason that there can be no such loss of Philippine citizenship when there is no renunciation, either "express" or "implied".

Parenthetically, the statement in the 1987 Constitution that "dual allegiance of citizens is inimical to the national interest and shall be dealt with by law" (Art. IV, Sec. 5) has no retroactive effect. And while it is true that even before the 1987 Constitution, Our country had already frowned upon the concept of dual citizenship or allegiance, the fact is it actually existed. Be it noted further that under the aforesaid proviso, the effect of such dual citizenship or allegiance shall be dealt with by a future law. Said law has not yet been enacted.

WHEREFORE, the petition for certiorari is hereby DISMISSED and the Resolution of the COMELEC is hereby AFFIRMED.

SO ORDERED.

Narvasa, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., joins J. Sarmiento in his concurring opinion.

Melencio-Herrera, Cruz, Padilla, JJ., see dissenting opinion.

Cortes, J. in the result.

Fernan, C.J., no part, formerly counsel for Osmeña Estate.

Gutierrez, Jr., J, no part.

Gancayco, J., on official leave.

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DISSENTING OPINION

CRUZ, J.:

I join Mr. Justice Padilla in his dissent.

It seems to me that when a person voluntarily registers as an alien, he is in effect affirming that he is not a citizen. The terms "citizen" and "alien" are mutually exclusive from the viewpoint of municipal law, which is what really

matters in the case at bar. Under this discipline, one is either a citizen of the local state or he is not; and the question is resolved on the basis of its own laws alone and not those of any other state.

One of the several modes of losing Philippine citizenship under C.A. No. 63 is by "express renunciation" thereof. In the case of *Frivaldo v. Commission on Elections*, G.R. No. 87193, June 23, 1989, there was such renunciation when the petitioner took an oath as a naturalized citizen of the United States in which he renounced all allegiance to all other states. In the case of *Labo v. Commission on Elections*, G.R. No. 86546, August 1, 1989, the petitioner not only took a similar oath after his naturalization in Australia but also executed other documents in which he stated that he was not a Filipino.

The fact that his naturalization was later revoked did not also invalidate his disavowal of Philippine citizenship. "Express renunciation" is a separate mode of losing Philippine citizenship and is not necessarily dependent on "naturalization in a foreign country," which is another and different mode.

When a person rejects and divorces his wife to enter into a second marriage, he cannot say he still loves her despite his desertion. The undeniable fact is that he has left her for another woman to whom he has totally and solemnly transferred his troth. It does him no credit when he protests he married a second time simply for material convenience and that his heart still belongs to the wife he has abandoned. At worst, it would reveal his sordid and deceitful character.

By the same token, professing continued allegiance to the Philippines after renouncing it because of its meager resources, or for other ulterior and equally base reasons, is to me a paltry form of patriotism. It is a sop to the repudiated state and a slight to the adopted state. No matter how noble this attitude may appear to others, it is to me nothing less than plain and simple hypocrisy that we should not condone, let alone extol.

Coming now to the case at bar, I note first of all that no naturalization is involved here as the private respondent claims to be a citizen both of the Philippines and of the United States. The question I think we must answer is: Was there an express renunciation of Philippine citizenship by the private respondent when he knowingly and voluntarily registered as an alien with the Commission of Immigration and Deportation in 1958 and in 1979?

In *Yu v. Commission of Immigration and Deportation*, G.R. No. 83882, January 24, 1989, I made the following observations in a separate opinion:

Regretfully, I cannot agree with the finding that the petitioner has expressly renounced his Philippine citizenship. The evidence on this point is in my view rather meager. Express renunciation of citizenship as a mode of losing citizenship under Com. Act No. 63 is an unequivocal and deliberate act with full awareness of its significance and consequences. I do not think the "commercial documents he signed" suggest such categorical disclaimer.

That case is distinguished from the one before us now in that Yu did not ask the Philippine government to register him as an alien, Gov. Osmeña did.

It is my opinion that if the governor had confined himself to simply seeking and using an American passport, these acts could not have by themselves alone constituted a repudiation of Philippine citizenship. The problem, though, is that he did more than enjoy this legal convenience. What he actually did was register with the Philippine government as an alien within its own territory, presumably so he could be insulated from the jurisdiction it exercises over its nationals. This was a voluntary act. As a citizen of the Philippines, he was not required to register as an alien. Nevertheless, he chose to do so of his own free will. By this decision, he categorically asked the Republic of the Philippines to treat him as an American and not a Filipino, choosing to be an alien in this land that was willing to consider him its own.

C.A. No. 63 does not necessarily require that the express renunciation of Philippine citizenship be made in connection with the naturalization of the erstwhile Filipino in a foreign country. Renunciation may be made independently of naturalization proceedings. Moreover, no sacramental words are prescribed by the statute for the express renunciation of Philippine citizenship. As long as the repudiation is categorical enough and the preference for the foreign state is unmistakable, as in the case at bar, Philippine citizenship is lost.

The private respondent would have his cake and eat it too, but this can never be allowed where Philippine citizenship is involved. It is a gift that must be deserved to be retained. The Philippines, for all her modest resources compared to those of other states, is a jealous and possessive mother demanding total love and loyalty from her children. It is bad enough that the love of the dual national is shared with another state; what is worse is where he formally rejects the Philippines, and in its own territory at that, and offers his total devotion to the other state.

I am aware of the praiseworthy efforts of Gov. Osmeña to improve the province of Cebu, and also, I should add, of the commendable record of Gov. Frivaldo and Mayor Labo in the administration of their respective jurisdictions. But that is not the point. The point is that it is not lawful to maintain in public office any person who, although supported by the electorate, is not a Filipino citizen. This is a relentless restriction we cannot ignore.

Regretfully, therefore, I must vote to GRANT the petition.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

I join the dissent of Messrs. Justices Isagani A. Cruz and Teodoro R. Padilla.

While it may be that dual citizenship usually results from accident of birth, a choice will have to be made by the individual concerned at some point in time in his life, involving as it does the priceless heritage of citizenship.

That election was made by private respondent when, in 1958, at the age of 24, and in 1979, at 45, he obtained Alien Certificates of Registration. Registration as an alien is a clear and unambiguous act or declaration that one is not a citizen. If, in fact, private respondent was merely compelled to so register because of the "uncooperativeness" of the past regime, he could have, under the new dispensation, asked for the cancellation of those Alien Certificates and abandoned his alienage, specially before he ran for public office in 1988.

The 1987 Constitution declares in no uncertain terms that "dual allegiance of citizens is inimical to the national interest and shall be dealt with by law" (Article IV, Section 5). That statement is but a reaffirmation of an innate conviction shared by every Filipino. The law referred to need not be awaited for one to consider giving up the legal convenience of dual citizenship.

Accordingly, I vote to grant the Petition.

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DISSENTING OPINION

PADILLA, J.:

I am constrained to dissent.

I start from the premise that the private respondent Emilio Mario Renner Osmena enjoyed at one time dual citizenship, i.e., Philippine and U.S. citizenships. He was born in the Philippines of a Filipino father and an American (U.S.) mother. However, his sworn application for alien registration dated 21 November 1979 (Exh. B) filed with the Philippine immigration authorities was, in my view, an express renunciation of his Philippine citizenship. As held in *Board of Immigration Commissioners vs. Go Callano*,^[1] express renunciation means a renunciation that is made known distinctly and explicitly and not left to inference or implication.

Nothing can be more distinct and explicit than when a dual citizenship holder - like the private respondent - of age, and with full legal capacity to act, voluntarily and under oath applies with the Philippine Government for registration as an alien, insofar as his intention not to remain a Filipino citizen is concerned. And because of that distinct and explicit manifestation of desire to be considered an alien in the Philippines, the Philippine immigration authorities issued to private respondent Alien Certificate of Registration No. 015356 dated 21 November 1979 (Exh. C), Permit to Re-enter the Philippines No. 122018 dated 21 November 1979 (Exh. D) and Immigration Certificate of Clearance No. D-146483 dated 3 January 1980 (Exh. E).^[2]

All the foregoing documents issued by the Philippine immigration authorities to the private respondent at his request are predicated on the proposition that private respondent is an alien under Philippine laws. It should also be mentioned that, while not marked as exhibit in the case at bar, private respondent was likewise issued in Cebu City Native Born Certificate of Residence No. 115883 on 21 November 1979 (as verified from Immigration records). This document, copy of which is attached hereto as Annex A, is again predicated on the proposition that private respondent is a duly-registered alien American) residing in the Philippines.

Another relevant document that merits attention is the Application for Re-entry Permit executed and signed by private respondent on 3 January 1980, again under oath, and verified from the records at the CID, wherein private respondent expressly stated that he is a U.S. national. The importance of this document cannot be underestimated. For, if private respondent believed that he is a Filipino citizen, he would not have executed said Application for Re-entry Permit, since it is the right of every Filipino citizen to return to his country (the Philippines). The fact, therefore, that private respondent executed said sworn Application for Re-entry Permit, copy of which is attached hereto as Annex B, is again abundant proof that he himself, no less, believed that he was, as he continuous to be, a resident alien (American) in the Philippines.

It will further be noted that earlier, or in 1958, private respondent had already registered as an alien with the Bureau of Immigration under the Alien Registration Act of 1950 (RA 562). Section 1 of said Act provides:

"SECTION 1. Aliens residing in the Philippines shall, within thirty days after the approval of this Act, apply for registration, in the case of those residing in the City of Manila, at the Bureau of Immigration and in the case of those residing in other localities at the offices of the city or municipal treasurers, or at any other office designated by the President. x x x."^[3] (Emphasis supplied)

Accordingly, per certification of the Commissioner of Immigration and Deportation Miriam Defensor-Santiago (Exh. A), issued on 26 January 1988, private respondent had been issued ACR No. B-21-448 and ICR No. 13391 on 27 and 28 March 1958 respectively. He, therefore, registered himself in the Philippines as an alien twice; first, in the year 1958, when he was 24 years old and again in 1979, when he was 45 years old. By twice registering under oath as an alien with the Bureau of Immigration, private respondent thereby clearly, distinctly and explicitly manifested and declared that he was an alien (and, therefore, not a Filipino citizen) residing in the Philippines and under its laws.

At this point, and to be objectively fair to the private respondent, a clarification should be made. In his Comment on the Petition at bar (Rollo, p. 81), it is stated by his counsel that he (private respondent) was born in 1934 – hence, our mathematical conclusion that when he first registered as an alien in 1958, he was 24 years old and in 1979 when he re-registered as an alien, he was 45 years old. However, private respondent's immigration records disclose that he was born in 1938 (not in 1934). On the assumption that the year 1938 is the correct year of birth of private respondent (and that his alleged year of birth, 1934, as stated in his Comment at bar is erroneous), then in 1958, when he first registered as an alien, he was 20 years old, while in 1979 when he re-registered as an alien, he was 41 years old.

Still, his first registration as an alien (at age 20) has to be taken, in my view, as an express renunciation of his Philippine citizenship, because (1) at that time, he was almost 21 years old - the age of majority, and (2) more importantly, under the applicable Alien Registration Act (RA 562), an alien 14 years or over has to register in person (and not through his parents or guardian). It provides:

"The parent or legal guardian of an alien who is less than fourteen years of age, shall have the duty of registering such alien: Provided, That whenever any such alien attains his fourteenth birthday in the Philippines he shall, within fifteen days thereafter, apply person for registration." (Sec. 1, par. 2)

I take the above provision to mean that the choice by a dual nationality holder on whether to remain a Filipino citizen or an alien has to be made at age 14, and private respondent (although a bit late) made the choice in 1958 (at age 20) in favor of his U.S citizenship.

If all the foregoing acts of express renunciation of Philippine citizenship had been made or filed by private respondent elsewhere (not with the Philippine Government), there could perhaps be some room for contention that vis-a-vis the Philippine Government, private respondent had not renounced his Philippine citizenship. But said acts of express renunciation were filed with the Philippine Government and done right in the Philippines. In turn, the Philippine Government, through the immigration authorities, accepted and acted on private respondent's aforesaid representations, and registered and documented him TWICE as an alien under Philippine law.

The policy of our laws has been, and with laudable reason, to discourage dual citizenship, because this condition or status assumes as a necessary complement thereof dual allegiance at the same time to two (2) different countries. As early as 16 September 1947, a unanimous Supreme Court, speaking thru Mr. Justice Sabino Padilla in the celebrated case of *Tan Chong vs. Secretary of Labor*, rejected the principle of *jus soli* as determinative of Philippine citizenship, for the following reason, among others:

"x x x. Citizenship, the main integrate element of which is allegiance, must not be taken lightly. Dual allegiance must be discouraged and prevented. But the application of the principle of *jus soli* to persons born in this country of alien parentage would encourage dual allegiance which in the long run would be detrimental to both countries of which such persons might claim to be citizens." [4]

This policy found later expression in the 1987 Constitution which now provides -

"Sec. 5. Dual allegiance of citizen is inimical to the national interest and shall be dealt with by law." (Article

IV)

Dual citizenship, in my considered opinion, must be eschewed. While having the "best of two (2) worlds" maybe the result of birth or other factors accidentally brought about, the "dual citizen" has to make a choice at one time or another. Having two (2) citizenships is, as I see it, similar in many ways to having two (2) legal spouses, when as a matter of principle and sound public policy, fealty to only one (1) spouse is both compelling and certainly desirable.

Gordon and Rosenfield in their book on Immigration Law and Procedure state:

"Dual nationality is universally recognized as an undesirable phenomenon. It inevitably results in questionable loyalties and leads to international conflicts. x x x. Dual nationality also makes possible the use of citizenship as a badge of convenience rather than of undivided loyalty. And it impairs the singleness of commitment which is the hallmark of citizenship and allegiance. A person should have a right to choose his own nationality, and this choice should be honored by all countries. However, he should not be entitled to claim more than one nationality." [5] (Emphasis supplied)

Private respondent made a deliberate and decisive choice when he asked the Philippine Government - which, like many other countries, considers dual allegiance as against national or public interest - to register him at least twice (and, therefore, unmistakably) as an alien in this country. That choice pro tanto was a renunciation of his Philippine citizenship. The choice must be respected as a conscious and knowledgeable act of a discerning, distinguished and respected person who must be presumed to have known the full import of his acts.

Finally, the last thing that should be said against the Court is that it is inconsistent in its rulings. In the light of its recent decision in G.R. No. 86565 (Ramon L. Labo, Jr. vs. The Commission on Elections, et al.), I see no valid justification for holding Mr. Labo an alien under Philippine law while holding private respondent herein a Filipino citizen. For, as the majority states: "In fact, in a number of sworn statements, Labo categorically declared that he was a citizen of Australia" (p. 7, Decision). And that is exactly what private respondent did. In a number of sworn statements, he declared that he was a citizen of the United States.

To Mr. Labo, the Court said, "so be it, you are an Australian," yet to the private respondent, despite such sworn statements that he is a U.S. citizen, the Court says, "never mind those sworn statements, you are still a Filipino." Sauce for the goose, as the saying goes, is sauce for the gander. The doctrinal basis of the Court's decisions should be built on the merits, not on distinctions that really make no difference.

ACCORDINGLY, I vote to GRANT the petition and to declare the private respondent not a Filipino citizen by his own acts of express renunciation of such citizenship.

[1] G.R. No. L-24530, October 31, 1968, 25 SCRA 890

[2] Rollo, pp. 117-118

[3] 46 OG 11, 5367

[4] 79 Phil. 257

[5] Volume 4, Nationality, 1989 ed., p. 11-12

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CONCURRING OPINION

SARMIENTO, J.:

The majority seems agreed that the private respondent has acquired American citizenship, only that he did not necessarily lose his Filipino citizenship. The important question, however, inheres in how he obtained American citizenship. I find that there is a dearth of facts here.

For, if the private respondent became an American by naturalization, he has lost Filipino citizenship (Com. Act 63; *Frivaldo v. COMELEC*, G.R. No. 87193, June 21, 1989; *Labo v. COMELEC*, G.R. No. 86564, August 1, 1989.) If he, however, became one by the application of the principle of *jus soli*, it is by force of circumstances rather than choice. But he does not lose his Filipino citizenship, if he were otherwise born of Filipino parents.

In the absence of evidence, we can not presume that he had ceased to be a citizen of the Philippines, simply because he is, at the same time, a citizen of the United States. There must be a clear showing that he lost his Filipino citizenship by any of the means enumerated by Commonwealth Act No. 63. The fact that he had obtained an alien certificate of registration, standing alone, does not amount to "express renunciation."

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