

**IN RE PETITION FOR HABEAS CORPUS OF WILLIE YU, WILLIE YU,
PETITIONER, VS. MIRIAM DEFENSOR-SANTIAGO, BIENVENIDO P.
ALANO, JR., MAJOR PABALAN, DELEO HERNANDEZ, BLODDY
HERNANDEZ, B...**

G.R. No. 83882. January 24, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

The present controversy originated with a petition for habeas corpus filed with the Court on 4 July 1988 seeking the release from detention of herein petitioner.[1] After manifestation and motion of the Solicitor General of his decision to refrain from filing a return of the writ on behalf of the CID, respondent Commissioner thru counsel filed the return.[2] Counsel for the parties were heard in oral argument on 20 July 1988. The parties were allowed to submit marked exhibits, and to file memoranda.[3] An internal resolution of 7 November 1988 referred the case to the Court en banc. In its 10 November 1988 resolution, denying the petition for habeas corpus, the Court disposed of the pending issues of (1) jurisdiction of the CID over a naturalized Filipino citizen and (2) validity of warrantless arrest and detention of the same person.

Petitioner filed a motion for reconsideration with prayer for restraining order dated 24 November 1988.[4] On 29 November 1988, the Court resolved to deny with finality the aforesaid motion for reconsideration, and further resolved to deny the urgent motion for issuance of a res-training order dated 28 November 1988.[5]

Undaunted, petitioner filed a motion for clarification with prayer for restraining order on 5 December 1988.

Acting on said motion, a temporary restraining order was issued by the Court on 7 December 1988.[6] Respondent Commissioner filed a motion to lift TRO on 13 December 1988, the basis of which is a summary judgment of deportation against Yu issued by the CID Board of Commissioners on 2 December 1988.[7] Petitioner also filed a motion to set case for oral argument on 8 December 1988.

In the meantime, an urgent motion for release from arbitrary detention[8] was filed by petitioner on 13 December 1988. A memorandum in furtherance of said motion for release dated 14 December 1988 was filed on 15 December 1988 together with a vigorous opposition to the lifting of the TRO.

The lifting of the Temporary Restraining Order issued by the Court on 7 December 1988 is urgently sought by respondent Commissioner who was ordered to cease and desist from immediately deporting petitioner Yu pending the conclusion of hearings before the Board of Special Inquiry, CID. To finally dispose of the case, the Court will likewise rule on petitioner's motion for clarification with prayer for restraining order dated 5 December 1988[9], urgent motion for release from arbitrary detention dated 13 December 1988[10], the memorandum in furtherance of said motion for release dated 14 December 1988[11], motion to set case for oral argument dated 8 December 1988[12].

Acting on the motion to lift the temporary restraining order (issued on 7 December 1988) dated 9 December

1988[13], and the vigorous opposition to lift restraining order dated 15 December 1988[14], the Court resolve to give petitioner Yu a non-extendible period of three (3) days from notice within which to explain and prove why he should still be considered a citizen of the Philippines despite his acquisition and use of a Portuguese passport.[15]

Petitioner filed his compliance with the resolution of 15 December 1988 on 20 December 1988[16] followed by an earnest request for temporary release on 22 December 1988. Respondent filed on 2 January 1989 her comment reiterating her previous motion to lift temporary restraining order. Petitioner filed a reply thereto on 6 January 1989.

Petitioner's own compliance reveals that he was originally issued a Portuguese passport in 1971,[17] valid for five (5) years and renewed for the same period upon presentment before the proper Portuguese consular officer. Despite his naturalization as a Philippine citizen on 10 February 1978, on 21 July 1981, petitioner applied for and was issued Portuguese Passport No. 35/81 series N. 1517410 by the Consular Section of the Portuguese Embassy in Tokyo. Said Consular Office certifies that his Portuguese passport expired on 20 July 1986.[18] While still a citizen of the Philippines who had renounced, upon his naturalization, "absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty" and pledged to "maintain true faith and allegiance to the Republic of the Philippines"[19], he declared his nationality as Portuguese in commercial documents he signed, specifically, the Companies Registry of Tai Shun Estate Ltd.[20] filed in Hongkong sometime in April 1980.

To the mind of the Court, the foregoing acts considered together constitute an express renunciation of petitioner's Philippine citizenship acquired through naturalization. In *Board of Immigration Commissioners vs. Go Gallano*[21], express renunciation was held to mean a renunciation that is made known distinctly and explicitly and not left to inference or implication. Petitioner, with full knowledge, and legal capacity, after having renounced Portuguese citizenship upon naturalization as a Philippine citizen[22] resumed or reacquired his prior status as a Portuguese citizen, applied for a renewal of his Portuguese passport[23] and represented himself as such in official documents even after he had become a naturalized Philippine citizen. Such resumption or reacquisition of Portuguese citizenship is grossly inconsistent with his maintenance of Philippine citizenship.

This Court issued the aforementioned TRO pending hearings with the Board of Special Inquiry, CID. However, pleadings submitted before this Court after the issuance of said TRO have unequivocally shown that petitioner has expressly renounced his Philippine citizenship. The material facts are not only established by the pleadings - they are not disputed by petitioner. A rehearing on this point with the CID would be unnecessary and superfluous. Denial, if any, of due process was obviated when petitioner was given by the Court the opportunity to show proof of continued Philippine citizenship, but he has failed.

While normally the question of whether or not a person has renounced his Philippine citizenship should be heard before a trial court of law in adversary proceedings, this has become unnecessary as this Court, no less, upon the insistence of petitioner, had to look into the facts and satisfy itself on whether or not petitioner's claim to continued Philippine citizenship is meritorious.

Philippine citizenship, it must be stressed, is not a commodity or ware to be displayed when required and suppressed when convenient. This then resolves adversely to the petitioner his motion for clarification and other motions mentioned in the second paragraph, page 3 of this Decision.

WHEREFORE, premises considered, petitioner's motion for release from detention is DENIED. Respondent's motion to lift the temporary restraining order is GRANTED. This Decision is immediately executory.

SO ORDERED.

Melencio-Herrera, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., and Gutierrez, Jr., J., see dissenting opinion.

Narvasa, J., in the result.

Cruz, and Cortes, JJ., see separate opinion.

[1] Petition, Rollo at 2

[2] Rollo at 24 & 29

[3] Resolution of 20 July 1988, Rollo at 47

[4] Rollo at 111

[5] Rollo at 127

[6] Rollo at 136

[7] Rollo at 141

[8] Rollo at 153

[9] Rollo at 136

[10] Rollo at 153

[11] Rollo at 175

[12] Rollo at 166

[13] Rollo at 144

[14] Rollo at 173

[15] Resolution of 15 December 1988, Rollo at 171

[16] Rollo at 187

[17] Compliance, par. 2, p. 5.

[18] Rollo at 151

[19] Petitioner's oath of allegiance as a Philippine citizen, Exh. A., Compliance. Rollo at 200

[20] Rollo at 33

[21] 25 SCRA 890

[22] In *Oh Hek How vs. Republic*, 29 SCRA 94, L-27429, August 27, 1969, Mr. Chief Justice Concepcion speaking for the Court, said: "Section 12 of Commonwealth Act No. 473 Provides, however, that before the naturalization certificate is issued, the petitioner shall 'solemnly swear,' inter alia, that he renounces 'absolutely and forever all allegiance and fidelity to any foreign prince, potentate' and particularly to the state of which' he is

‘a subject or citizen.’ The obvious purpose of this requirement is to divest him of his former nationality, before acquiring Philippine Citizenship, because, otherwise, he would have two nationalities and owe allegiance to two (2) distinct sovereignties, which our laws do not permit, except that, pursuant to Republic Act No. 2639, the acquisition of citizenship by a natural-born Filipino Citizen from one of the Iberian and any friendly democratic Ibero-American countries shall not produce loss or forfeiture of his Philippine citizenship, if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.”

[23] A passport is defined as an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries (Philippine Legal Encyclopedia, 1986 Ed., p. 699). Conformably with the universal concept of a passport, the Philippine Foreign Service Code, Section 136, provides that a Philippine passport is a document certifying to the Philippine citizenship of the holder in use for travel purposes.

FERNAN, C.J.: dissenting opinion

I dissent. The treatment given by the majority to the petition at bar does not meet the traditional standards of fairness envisioned in the due process clause. Petitioner herein is being effectively deprived of his Filipino citizenship through a summary procedure and upon pieces of documentary evidence that, to my mind, are not sufficiently substantial and probative for the purpose and conclusion they were offered.

The observation of Mr. Justice Hugo E. Gutierrez, Jr. in his dissenting opinion that "(c)onsidering the serious implications of de-Filipinization, the correct procedures according to law must be applied," is appropriate as it has been held that "(i)f, however, in a deportation proceeding, the alleged alien claims citizenship and supports the claim by substantial evidence, he is entitled to have his status finally determined by a judicial, as distinguished from an executive, tribunal" (3 Am Jur 2d 949 citing *United States ex rel. Bilokumsky v. Tod*, 263 US 149, 68 L ed 221, 44 S Ct 54; *Ng Fung Ho v. White*, 259 US 276, 66 L ed 938, 42 S Ct 492). By this, it means a full blown trial under the more rigid rules of evidence prescribed in court proceedings. And certainly, the review powers being exercised by this Court in this case fall short of this requirement. Said powers of review cannot be a substitute for the demands of due process, particularly in the light of the well-recognized principle that this Court is not a trier of facts.

As adverted to earlier, I find the evidence on record relied upon by the majority to be inadequate to support the conclusion that petitioner has renounced his Filipino citizenship. Renunciation must be shown by clear and express evidence and not left to inference or implication.

GUTIERREZ, JR., J. dissenting opinion

I disagree with the summary procedure employed in this case to divest a Filipino of his citizenship.

Judging from the records available to us, it appears that Mr. Willie Yu is far from being the desirable kind of Filipino we would encourage to stay with us. But precisely for this reason, I believe that a petition for denaturalization should have been filed and prosecuted in the proper trial court instead of the shortcut methods we are sustaining in the majority opinion. I must emphasize that the Bill of Rights, its due process clause, and other restrictions on the untrammelled exercise of government power find their fullest expression when invoked by non-conforming, rebellious, or undesirable characters.

Considering the serious implications of de-Filipinization, the correct procedures according to law must be applied. If Mr. Yu is no longer a Filipino, by all means this Court should not stand in the way of the respondent Commissioner's efforts to deport him. But where a person pleads with all his might that he has never formally renounced his citizenship and that he might die if thrown out of the country, he deserves at the very least a full

trial where the reasons behind his actions may be explored and all the facts fully ascertained. The determination that a person (not necessarily Mr. Yu) has ceased to be a Filipino is so momentous and far-reaching that it should not be left to summary proceedings.

I find it a dangerous precedent if administrative officials on such informal evidence as that presented in this case are allowed to rule that a Filipino has "renounced" his citizenship and has, therefore, become stateless or a citizen of another country (assuming that other country does not reject him because he formally renounced citizenship therein when he became a Filipino) and to immediately throw him out of the Philippines.

I am not prepared to rule that the mere use of a foreign passport is ipso facto express renunciation of Filipino citizenship. A Filipino may get a foreign passport for convenience, employment, or avoidance of discriminatory visa requirements but he remains at heart a Filipino. Or he may do so because he wants to give up his Philippine citizenship. Whatever the reason, it must be ascertained in a court of law where a full trial is conducted instead of an administrative determination of a most summary nature.

There are allegedly high government officials who have applied for and been given alien certificates of registration by our Commission on Immigration and Deportation or who have in the past performed acts even more indicative of "express renunciation" than the mere use of a passport or the signing of a commercial document where a different citizenship has been typed or entered. Are we ready now to authorize the respondent Commissioner to de-Filipinize them? Can they be immediately deported for lack of lawful documents to stay here as resident aliens? Can a summary administrative determination override the voice of hundreds of thousands or even millions of voters who put them in public office? It is likewise not the function of this Court to be a trier of facts and to arrive at conclusions in the first instance in citizenship cases.

The moral character of Mr. Yu is beside the point. Like any other Filipino being denaturalized or otherwise deprived of citizenship, he deserves his full day in court. I, therefore, regretfully dissent on grounds of due process.

CORTES, J., dissenting opinion

I agree with the majority in the view that a claim of Filipino citizenship in deportation proceedings does not ipso facto deprive the Commission on Immigration and Deportation (CID) of jurisdiction over a case, its findings being subject to judicial review.

However, I am unable to go along with the conclusion that in this case the loss of petitioner's Filipino citizenship has been established. The evidence on record, consisting of the photocopy of a memorandum from the Portuguese Consular Office that petitioner applied for and was issued a Portuguese passport in 1981 and that it expired in 1986 and photocopies of commercial papers manifesting petitioner's nationality as Portuguese, without authentication by the appropriate Philippine Consul, to my mind, do not constitute substantial evidence that under the law petitioner has lost his Filipino citizenship by express renunciation.

I find the CID's evidence inadequate to create even a prima facie case of such renunciation.

CRUZ, J., concurring in the result

I concur in the result because I believe the petitioner has failed to overcome the presumption that he has forfeited his status as a naturalized Filipino by his obtention of a Portuguese passport. Passports are generally issued by a state only to its nationals. The petitioner has not shown that he comes under the exception and was granted the Portuguese passport despite his Philippine citizenship.

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.

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