

BOARD OF COMMISSIONERS (COMMISSION ON IMMIGRATION AND DEPORTATION), BOARD OF SPECIAL INQUIRY, COMMISSIONER ANDREA D. DOMINGO, ASSOCIATE COMMISSIONER JORGE V. SARMIENTO, ACTING A...

G.R. Nos. 95122-23. May 31, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and prohibition filed by the Solicitor General seeking 1) to set aside the Resolution/Temporary Restraining Order dated September 7, 1990, issued by respondent Judge dela Rosa in Civil Case No. 90-54214 which denied petitioners' motion to dismiss and restrained petitioners from commencing or continuing with any of the proceedings which would lead to the deportation of respondent William Gatchalian, docketed as D.C. No. 90-523, as well as the Order of respondent Judge Capulong dated September 6, 1990 in Civil Case No. 3431-V-90 which likewise enjoined petitioners from proceeding with the deportation charges against respondent Gatchalian, and 2) to prohibit respondent judges from further acting in the aforesaid civil cases.

On October 23, 1990, respondent Gatchalian filed his Comment with Counter-Petition, docketed as G.R. Nos. 96512-13, alleging lack of jurisdiction on the part of respondent Board of Commissioners, et al., over his person with prayer that he be declared a Filipino citizen, or in the alternative, to remand the case to the trial court for further proceedings.

On December 13, 1990, petitioners filed their comment to respondent Gatchalian's counter-petition. The Court considers the comment filed by respondent Gatchalian as answer to the petition and petitioners' comment as answer to the counter-petition and gives due course to the petitions.

There is no dispute as to the following facts:

On July 12, 1960, Santiago Gatchalian, grandfather of William Gatchalian, was recognized by the Bureau of Immigration as a native born Filipino citizen following the citizenship of his natural mother, Marciana Gatchalian (Annex "1", counter-petition). Before the Citizenship Evaluation Board, Santiago Gatchalian testified that he has five (5) children with his wife Chu Gim Tee, namely: Jose Gatchalian, Gloria Gatchalian, Francisco Gatchalian, Elena Gatchalian and Benjamin Gatchalian (Annex "2", counter-petition).

On June 27, 1961, William Gatchalian, then a twelve-year old minor, arrived in Manila from Hongkong together with Gloria, Francisco, and Johnson, all surnamed Gatchalian. They had with them Certificates of Registration and Identity issued by the Philippine Consulate in Hongkong based on a cablegram bearing the signature of the then Secretary of Foreign Affairs, Felixberto Serrano, and sought admission as Filipino citizens. Gloria and Francisco are the daughter and son, respectively, of Santiago Gatchalian; while William and Johnson are the sons of Francisco.

After investigation, the Board of Special Inquiry No. 1 rendered a decision dated July 6, 1961, admitting William Gatchalian and his companions as Filipino citizens (Annex "C", petition). As a consequence thereof, William Gatchalian was issued Identification Certificate No. 16135 by the immigration authorities on August 16, 1961 (Annex "D", petition).

On January 24, 1962, the then Secretary of Justice issued Memorandum No. 9 setting aside all decisions purporting to have been rendered by the Board of Commissioners on appeal or on review motu proprio of decisions of the Board of Special Inquiry. The same memorandum directed the Board of Commissioners to review all cases where entry was allowed on the ground that the entrant was a Philippine citizen. Among those cases was that of William and others.

On July 6, 1962, the new Board of Commissioners, after a review motu proprio of the proceedings had in the Board of Special Inquiry, reversed the decision of the latter and ordered the exclusion of, among others, respondent Gatchalian (Annex "E", petition). A warrant of exclusion also dated July 6, 1962 was issued alleging that "the decision of the Board of Commissioners dated July 6, 1962 . . . has now become final and executory (Annex "F", petition).

The actual date of rendition of said decision by the Board of Commissioners (whether on July 6, 1962 or July 20, 1962) became the subject of controversy in the 1967 case of *Arocha v. Vivo* (21 SCRA 532) wherein this Court sustained the validity of the decision of the new Board of Commissioners having been promulgated on July 6, 1962, or within the reglementary period for review.

Sometime in 1973, respondent Gatchalian, as well as the others covered by the July 6, 1962 warrant of exclusion, filed a motion for re-hearing with the Board of Special Inquiry where the deportation case against them was assigned.

On March 14, 1973, the Board of Special Inquiry recommended to the then Acting Commissioner Victor Nituda the reversal of the July 6, 1962 decision of the then Board of Commissioners and the recall of the warrants of arrest issued therein (Annex "5", counter-petition).

On March 15, 1973, Acting Commissioner Nituda issued an order reaffirming the July 6, 1961 decision of the Board of Special Inquiry thereby admitting respondent Gatchalian as a Filipino citizen and recalled the warrant of arrest issued against him (Annex "6", counter-petition).

On June 7, 1990, the acting director of the National Bureau of Investigation wrote the Secretary of Justice recommending that respondent Gatchalian along with the other applicants covered by the warrant of exclusion dated July 6, 1962 be charged with violation of Sec. 37 (a), pars. 1 and 2, in relation to Secs. 45 (c), (d) and (e) of Commonwealth Act No. 613, as amended, also known as the Immigration Act of 1940 (Annex "G", petition).

On August 1, 1990, the Secretary of Justice indorsed the recommendation of the NBI to the Commissioner of Immigration for investigation and immediate action (Annex "20", counter-petition).

On August 15, 1990, petitioner Commissioner Domingo of the Commission of Immigration and Deportation[*] issued a mission order commanding the arrest of respondent William Gatchalian (Annex "18", counter-petition). The latter appeared before Commissioner Domingo on August 20, 1990 and was released on the same day upon posting P200,000.00 cash bond.

On August 29, 1990, William Gatchalian filed a petition for certiorari and prohibition with injunction before the Regional Trial Court of Manila, Br. 29, presided by respondent Judge dela Rosa, docketed as Civil Case No. 90-54214. On September 4, 1990, petitioners filed a motion to dismiss Civil Case No. 90-54214 alleging that

respondent judge has no jurisdiction over the Board of Commissioners and/or the Board of Special Inquiry. Nonetheless, respondent judge dela Rosa issued the assailed order dated September 7, 1990, denying the motion to dismiss.

Meanwhile, on September 6, 1990, respondent Gatchalian's wife and minor children filed before the Regional Trial Court of Valenzuela, Metro Manila, Br. 172, presided by respondent judge Capulong Civil Case No. 3431-V-90 for injunction with writ of preliminary injunction. The complaint alleged, among others, that petitioners acted without or in excess of jurisdiction in the institution of deportation proceedings against William. On the same day, respondent Capulong issued the questioned temporary restraining order restraining petitioners from continuing with the deportation proceedings against William Gatchalian.

The petition is anchored on the following propositions: 1) respondent judges have no jurisdiction over petitioners (Board of Commissioners, et al.,) and the subject matter of the case, appellate jurisdiction being vested by BP 129 with the Court of Appeals; 2) assuming respondent judges have jurisdiction, they acted with grave abuse of discretion in preempting petitioners in the exercise of the authority and jurisdiction to hear and determine the deportation case against respondent Gatchalian, and in the process determine also his citizenship; 3) respondent judge dela Rosa gravely abused his discretion in ruling that the issues raised in the deportation proceedings are beyond the competence and jurisdiction of petitioners, thereby disregarding the cases of *Arocha v. Vivo* and *Vivo v. Arca* (supra), which put finality to the July 6, 1962 decision of the Board of Commissioners that respondent Gatchalian is a Chinese citizen; and 4) respondent judge Capulong should have dismissed Civil Case No. 3431-V-90 for forum-shopping.

In his counter-petition, William Gatchalian alleges among others that: 1) assuming that the evidence on record is not sufficient to declare him a Filipino citizen, petitioners have no jurisdiction to proceed with the deportation case until the courts shall have finally resolved the question of his citizenship; 2) petitioners can no longer judiciously and fairly resolve the question of respondent's citizenship in the deportation case because of their bias, pre-judgment and prejudice against him; and 3) the ground for which he is sought to be deported has already prescribed.

For purposes of uniformity, the parties herein will be referred to in the order the petitions were filed.

Petitioners argue that under Sec. 9 (3) of BP 129, it is the Court of Appeals which has exclusive appellate jurisdiction over all final judgments or orders of quasi-judicial agencies, boards or commissions, such as the Board of Commissioners and the Board of Special Inquiry.

Respondent, on the other hand, contends that petitioners are not quasi-judicial agencies and are not in equal rank with Regional Trial Courts.

Under Sec. 21 (1) of Batas Pambansa Blg. 129, the Regional Trial Courts have concurrent jurisdiction with this Court and the Court of Appeals to issue "writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which maybe enforced in any part of their respective regions, x x x." Thus, the RTCs are vested with the power to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the government.

It is true that under Sec. 9 (3) of Batas Pambansa Blg. 129, the Court of Appeals is vested with —

"(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, order, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, board or commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of sub-paragraph (1) of the third paragraph of and sub-paragraph (4) of the fourth paragraph of

Section 17 of the Judiciary Act of 1948."

It does not provide, however, that said exclusive appellate jurisdiction of the Court of Appeals extends to all quasi-judicial agencies. The quasi-judicial bodies whose decisions are exclusively appealable to the Court of Appeals are those which under the law, Republic Act No. 5434, or their enabling acts, are specifically appealable to the Court of Appeals (Presidential Anti-Dollar Salting Task Force v. Court of Appeals, 171 SCRA 348 [1989]; Lupangco v. Court of Appeals, 160 SCRA 848 [1988]). Thus, under Republic Act No. 5434, it is specifically provided that the decisions of the Land Registration Commission (LRC), the Social Security Commission (SSC), Civil Aeronautics Board (CAB), the Patent Office and the Agricultural Invention Board are appealable to the Court of Appeals.

In the Presidential Anti-Dollar Salting Task Force (*supra*), this Court clarified the matter when We ruled:

"Under our Resolution dated January 11, 1983:

". . . The appeals to the Intermediate Appellate Court (now Court of Appeals) from quasi-judicial bodies shall continue to be governed by the provisions of Republic Act No. 5434 insofar as the same is not inconsistent with the provisions of B.P. Blg. 129.

"The pertinent provisions of Republic Act No. 5434 are as follows:

'SECTION 1. Appeals from specified agencies. -- Any provision of existing law or Rules of Court to the contrary notwithstanding, parties aggrieved by a final ruling, award, order, or decision, or judgment of the Court of Agrarian Relations; the Secretary of Labor under Section 7 of Republic Act Numbered Six hundred and two, also known as the 'Minimum Wage Law'; the Department of Labor under Section 23 of Republic Act Numbered Eight hundred seventy-five, also known as the 'Industrial Peace Act'; the Land Registration Commission; the Social Security Commission; the Civil Aeronautics Board; the Patent Office and the Agricultural Inventions Board, may appeal therefrom to the Court of Appeals, within the period and in the manner herein provided, whether the appeal involves questions of fact, mixed questions of fact and law, or questions of law, or all three kinds of questions. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by certiorari to the Supreme Court as provided under Rule 45 of the Rules of Court.'

"Because of subsequent amendments, including the abolition of various special courts, jurisdiction over quasi-judicial bodies has to be, consequently, determined by the corresponding amendatory statutes. Under the Labor Code, decisions and awards of the National Labor Relations Commission are final and executory, but, nevertheless, 'reviewable by this Court through a petition for certiorari and not by way of appeal.

"Under the Property Registration Decree, decision of the Commission of Land Registration, *en consulta*, are appealable to the Court of Appeals.

"The decisions of the Securities and Exchange Commission are likewise appealable to the Appellate Court, and so are decisions of the Social Security Commission.

"As a rule, where legislation provides for an appeal from decisions of certain administrative bodies to the Court of Appeals, it means that such bodies are co-equal with the Regional Trial Courts, in terms of rank and stature, and logically, beyond the control of the latter. (*Italics supplied*)

There are quasi-judicial agencies, as the National Labor Relations Commissions, whose decisions are directly appealable to this Court. It is only when a specific law, as Republic Act No. 5434, provides appeal from certain bodies or commissions to the Court of Appeals as the Land Registration Commission (LRC), Securities and Exchange Commission (SEC) and others, that the said commissions or boards may be considered co-equal with the RTCs in terms of rank, stature and are logically beyond the control of the latter.

However, the Bureau of Immigration (or CID) is not among those quasi-judicial agencies specified by law whose decisions, orders, and resolutions are directly appealable to the Court of Appeals. In fact, its decisions are subject to judicial review in accordance with Sec. 25, Chapter 4, Book VII of the 1987 Administrative Code, which provides as follows:

"SEC. 25. Judicial Review. -- (1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

".

"(6) The review proceeding shall be filed in the court specified in the statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court."

Said provision of the Administrative Code, which is subsequent to B.P. Blg. 129 and which thus modifies the latter, provides that the decision of an agency like the Bureau of Immigration should be subject to review by the court specified by the statute or in the absence thereof, it is subject to review by any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

B.P. Blg. 129 did not intend to raise all quasi-judicial bodies to the same level or rank of the RTC except those specifically provided for under the law as aforesaid. As the Bureau of Immigration is not of equal rank as the RTC, its decisions may be appealable to, and may be reviewed through a special civil action for certiorari by, the RTC (Sec. 21 (1), BP 129).

True, it is beyond cavil that the Bureau of Immigration has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and in the process, determine also their citizenship (*Lao Gi v. Court of Appeals*, 180 SCRA 756 [1989]). And a mere claim of citizenship cannot operate to divest the Board of Commissioners of its jurisdiction in deportation proceedings (*Miranda v. Deportation Board*, 94 Phil 531 [1954]).

However, the rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned. Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In *Chua Hiong v. Deportation Board* (96 Phil 665 [1955]), this Court answered the question in the affirmative, and We quote:

"When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of habeas corpus or of prohibition, on the legal ground that the Board lacks jurisdiction. If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability.

". . . And if the right (to peace) is precious and valuable at all, it must also be protected on time, to prevent undue harassment at the hands of ill-meaning or misinformed administrative officials. Of what use is this much boasted right to peace and liberty if it can be availed of only after the Deportation Board has unjustly trampled upon it, besmirching the citizen's name before the bar of public opinion?" (*Italics supplied*)

The doctrine of primary jurisdiction of petitioners Board of Commissioners over deportation proceedings is, therefore, not without exception (*Calacday v. Vivo*, 33 SCRA 413 [1970]; *Vivo v. Montesa*, 24 SCRA 155 [1967]). Judicial intervention, however, should be granted only in cases where the "claim of citizenship is so substantial that there are reasonable grounds to believe that the claim is correct. In other words, the remedy should be allowed only on sound discretion of a competent court in a proper proceeding (*Chua Hiong v. Deportation*

Board, *supra*; *Co v. Deportation Board*, 78 SCRA 107 [1977]. It appearing from the records that respondent's claim of citizenship is substantial, as We shall show later, judicial intervention should be allowed.

In the case at bar, the competent court which could properly take cognizance of the proceedings instituted by respondent Gatchalian would nonetheless be the Regional Trial Court and not the Court of Appeals in view of Sec. 21 (1), BP 129, which confers upon the former jurisdiction over actions for prohibition concurrently with the Court of Appeals and the Supreme Court and in line with the pronouncements of this Court in *Chua Hiong and Co cases*.

Ordinarily, the case would then be remanded to the Regional Trial Court. But not in the case at bar. Considering the voluminous pleadings submitted by the parties and the evidence presented, We deem it proper to decide the controversy right at this instance. And this course of action is not without precedent for "it is a cherished rule of procedure for this Court to always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. No useful purpose will be served if this case is remanded to the trial court only to have its decision raised again to the Court of Appeals and from there to this Court" (*Marquez v. Marquez*, 73 Phil. 74; *Keramic Industries, Inc. v. Guerrero*, 61 SCRA 265 (1974); *Alger Electric, Inc. v. Court of Appeals* (135 SCRA 37 [1985]), citing *Gayos v. Gayos* (67 SCRA 146 [1975])

In *Lianga Bay Logging Co., Inc. v. Court of Appeals* (157 SCRA 357 [1988]), We also stated:

"Remand of the case to the lower court for further reception of evidence is not necessary where the court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice would not be subserved by the remand of the case or when public interest demands an early disposition of the case or where the trial court had already received all the evidence of the parties (*Quisumbing v. CA*, 112 SCRA 703; *Francisco, et al., v. The City of Davao, et al.*, *supra*; *Republic v. Security Credit & Acceptance Corp., et al.*, 19 SCRA 58; *Samal v. CA, supra*; *Republic v. Central Surety & Insurance Co.*, 25 SCRA 641).

Likewise in *Tejones v. Gironella* (159 SCRA 100 [1988]), We said:

"Sound practice seeks to accommodate the theory which avoids waste of time, effort and expense, both to the parties and the government, not to speak of delay in the disposal of the case (cf. *Fernandez v. Garcia*, 92 Phil. 592, 297). A marked characteristic of our judicial set-up is that where the dictates of justice so demand . . . the Supreme Court should act, and act with finality (*Li Siu Liat v. Republic*, 21 SCRA 1039, 1046, citing *Samal v. CA*, 99 Phil. 230 and *US v. Gimenez*, 34 Phil 74.)" (*Beautifont, Inc. v. Court of Appeals, et al.*, Jan. 29, 1988; See also *Labo v. Commission on Elections*, 176 SCRA 1 [1989]).

Respondent Gatchalian has adduced evidence not only before the Regional Trial Court but also before Us in the form of public documents attached to his pleadings. On the other hand, Special Prosecutor Renato Mabolo in his Manifestation (dated September 6, 1990; Rollo, p. 298, counter-petition) before the Bureau of Immigration already stated that there is no longer a need to adduce evidence in support of the deportation charges against respondent. In addition, petitioners invoke that this Court's decision in *Arocha v. Vivo* and *Vivo v. Arca* (*supra*), has already settled respondent's alienage. Hence, the need for a judicial determination of respondent's citizenship specially so where the latter is not seeking admission, but is already in the Philippines (for the past thirty [30] years) and is being expelled (*Chua Hiong v. Deportation Board, supra*).

According to petitioners, respondent's alienage has been conclusively settled by this Court in the *Arocha* and *Vivo* cases. We disagree. It must be noted that in said cases, the sole issue resolved therein was the actual date of rendition of the July 6, 1962 decision of the then Board of Commissioners, i.e., whether the decision was rendered

on July 6, 1962 or on July 20, 1962, it appearing that the figure (date) "20" was erased and over it was superimposed the figure "6" thereby making the decision fall within the one-year reglementary period from July 6, 1961 within which the decision maybe reviewed. This Court did not squarely pass upon any question of citizenship, much less that of respondent's who was not a party in the aforesaid cases. The said cases originated from a petition for a writ of habeas corpus filed on July 21, 1965 by Macario Arocha in behalf of Pedro Gatchalian. Well settled is the rule that a person not party to a case cannot be bound by a decision rendered therein.

Neither can it be argued that the Board of Commissioners' decision (dated July 6, 1962) finding respondent's claim to Philippine citizenship not satisfactorily proved, constitute *res judicata*. For one thing, said decision did not make any categorical statement that respondent Gatchalian is a Chinese. Secondly, the doctrine of *res judicata* does not apply to questions of citizenship (*Labo v. Commission on Elections* (supra); citing *Soria v. Commissioner of Immigration*, 37 SCRA 213; *Lee v. Commissioner of Immigration*, 42 SCRA 561 [1971]; *Sia Reyes v. Deportation Board*, 122 SCRA 478 [1983]).

In *Moy Ya Lim v. Commissioner of Immigration* (41 SCRA 292 [1971] and in *Lee v. Commissioner of Immigration*, supra), this Court declared that:

"(e)verytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand."

An exception to the above rule was laid by this Court in *Burca v. Republic* (51 SCRA 248 [1973]), viz:

"We declare it to be a sound rule that where the citizenship of a party in a case is definitively resolved by a court or by an administrative agency, as a material issue in the controversy, after a full-blown hearing with the active participation of the Solicitor General or his authorized representative, and this finding or the citizenship of the party is affirmed by this Court, the decision on the matter shall constitute conclusive proof of such party's citizenship in any other case or proceeding. But it is made clear that in no instance will a decision on the question of citizenship in such cases be considered conclusive or binding in any other case or proceeding, unless obtained in accordance with the procedure herein stated."

Thus, in order that the doctrine of *res judicata* may be applied in cases of citizenship, the following must be present: 1) a person's citizenship must be raised as a material issue in a controversy where said person is a party; 2) the Solicitor General or his authorized representative took active part in the resolution thereof; and 3) the finding or citizenship is affirmed by this Court.

Gauged by the foregoing, We find the pre-conditions set forth in *Burca* inexistent in the *Arocha* and *Vivo* cases relied upon by petitioners. Indeed, respondent William Gatchalian was not even a party in said cases.

Coming now to the contention of petitioners that the arrest of respondent follows as a matter of consequence based on the warrant of exclusion issued on July 6, 1962, coupled with the *Arocha* and *Vivo* cases (*Rollo*, pp. 33), the Court finds the same devoid of merit.

Sec. 37 (a) of Commonwealth Act No. 613, as amended, otherwise known as the Immigration Act of 1940, reads:

"Sec. 37. (a) The following aliens shall be arrested upon the 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 Commissioner of the existence of the ground for deportation as charged against the alien." (*Italics supplied*)

From a perusal of the above provision, it is clear that in matters of implementing the Immigration Act insofar as

deportation of aliens are concerned, the Commissioner of Immigration may issue warrants of arrest only after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien. In other words, a warrant of arrest issued by the Commissioner of Immigration, to be valid, must be for the sole purpose of executing a final order of deportation. A warrant of arrest issued by the Commissioner of Immigration for purposes of investigation only, as in the case at bar, is null and void for being unconstitutional (*Ang Ngo Chiong v. Galang*, 67 SCRA 338 [1975] citing *Po Siok Pin v. Vivo*, 62 SCRA 363 [1975]; *Vivo v. Montesa*, 24 SCRA 155; *Morano v. Vivo*, 20 SCRA 562; *Qua Chee Gan v. Deportation Board*, 9 SCRA 27 [1963]; *Ng Hua To v. Galang*, 10 SCRA 411); see also *Santos v. Commissioner of Immigration*, 74 SCRA 96 [1976]).

As We held in *Qua Chee Gan v. Deportation Board* (supra), "(t)he constitution does not distinguish warrants between a criminal case and administrative proceedings. And if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee?" It is not indispensable that the alleged alien be arrested for purposes of investigation. If the purpose of the issuance of the warrant of arrest is to determine the existence of probable cause, surely, it cannot pass the test of constitutionality for only judges can issue the same (Sec. 2, Art. III, Constitution).

A reading of the mission order/warrant of arrest (dated August 15, 1990; Rollo, p. 183, counter-petition) issued by the Commissioner of Immigration, clearly indicates that the same was issued only for purposes of investigation of the suspects, William Gatchalian included. Paragraphs 1 and 3 of the mission order directs the Intelligence Agents/Officers to:

".....

"1.

Make a warrantless arrest under the Rules of Criminal Procedure, Rule 113, Sec. 5, for violation of the Immigration Act, Sec. 37, para. a; Secs. 45 and 46 Administrative Code;

.....

"3.

Deliver the suspect to the Intelligence Division and immediately conduct custodial interrogation, after warning the suspect that he has a right to remain silent and a right to counsel; . . ."

Hence, petitioners' argument that the arrest of respondent was based, ostensibly, on the July 6, 1962 warrant of exclusion has obviously no leg to stand on. The mission order/warrant of arrest made no mention that the same was issued pursuant to a final order of deportation or warrant of exclusion.

But there is one more thing that militates against petitioners' cause. As records indicate, which petitioners conveniently omitted to state either in their petition or comment to the counter-petition of respondent, respondent Gatchalian, along with others previously covered by the 1962 warrant of exclusion, filed a motion for re-hearing before the Board of Special Inquiry (BSI) sometime in 1973.

On March 14, 1973, the Board of Special Inquiry, after giving due course to the motion for re-hearing, submitted

a memorandum to the then Acting Commissioner Victor Nituda (Annex "5", counter-petition) recommending 1) the reconsideration of the July 6, 1962 decision of the then Board of Commissioners which reversed the July 6, 1961 decision of the then Board of Special inquiry No. 1 and 2) the lifting of the warrants of arrest issued against applicants. The memorandum inferred that the "very basis of the Board of Commissioners in reversing the decision of the Board of Special Inquiry was due to a forged cablegram by the then Secretary of Foreign Affairs, . . ., which was dispatched to the Philippine Consulate in Hong Kong authorizing the registration of applicants as P.I. citizens." The Board of Special Inquiry concluded that (i)f at all, the cablegram only led to the issuance of their Certificate(s) of Identity which took the place of a passport for their authorized travel to the Philippines. It being so, even if the applicants could have entered illegally, the mere fact that they are citizens of the Philippines entitles them to remain in the country."

On March 15, 1973, then Acting Commissioner Nituda issued an Order (Annex "6", counter-petition) which affirmed the Board of Special Inquiry No. 1 decision dated July 6, 1961 admitting respondent Gatchalian and others as Filipino citizens; recalled the July 6, 1962 warrant of arrest and revalidated their Identification Certificates.

The above order admitting respondent as a Filipino citizen is the last official act of the government on the basis of which respondent William Gatchalian continually exercised the rights of a Filipino citizen to the present. Consequently, the presumption of citizenship lies in favor of respondent William Gatchalian.

There should be no question that Santiago Gatchalian, grandfather of William Gatchalian, is a Filipino citizen. As a matter of fact, in the very order of the BOC of July 6, 1962, which reversed the July 6, 1961 BSI order, it is an accepted fact that Santiago Gatchalian is a Filipino. The opening paragraph of said order states:

"The claim to Filipino citizenship of above-named applicants is based on the citizenship of one Santiago Gatchalian whose Philippine citizenship was recognized by the Bureau of Immigration in an Order dated July 12, 1960." (Annex "37", Comment with Counter-Petition).

Nonetheless, in said order it was found that the applicants therein have not satisfactorily proven that they are the children and/or grandchildren of Santiago Gatchalian. The status of Santiago Gatchalian as a Filipino was reiterated in *Arocha and Arca* (supra) where advertence is made to the "applicants being the descendants of one Santiago Gatchalian, a Filipino." (at p. 539).

In the sworn statement of Santiago Gatchalian before the Philippine Consul in Hongkong in 1961 (Annex "1" to the Comment of petitioners to Counter-Petition), he reiterated his status as a Philippine citizen being the illegitimate child of Pablo Pacheco and Marciana Gatchalian, the latter being a Filipino; that he was born in Manila on July 25, 1905; and that he was issued Philippine Passport No. 28160 (PA-No. A91196) on November 18, 1960 by the Department of Foreign Affairs in Manila. In his affidavit of January 23, 1961 (Annex "5", counter-petition), Santiago reiterated his claim of Philippine citizenship as a consequence of his petition for cancellation of his alien registry which was granted on February 18, 1960 in C.E.B. No. 3660-L; and that on July 20, 1960, he was recognized by the Bureau of Immigration as a Filipino and was issued Certificate No. 1-2123.

The dissenting opinions of my esteemed brethrens, Messrs. Justices F.P. Feliciano and H.G. Davide, Jr., proposing to re-open the question of citizenship of Santiago Gatchalian at this stage of the case, where it is not even put in issue, is quite much too late. As stated above, the records of the Bureau of Immigration show that as of July 20, 1960, Santiago Gatchalian had been declared to be a Filipino citizen. It is a final decision that forecloses a re-opening of the same 30 years later. Petitioners do not even question Santiago Gatchalian's Philippine citizenship. It is the citizenship of respondent William Gatchalian that is in issue and addressed for determination of the Court in this case.

Furthermore, petitioners' position is not enhanced by the fact that respondent's arrest came twenty-eight (28) years after the alleged cause of deportation arose. Section 37 (b) of the Immigration Act states that deportation "shall not be effected . . . unless the arrest in the deportation proceedings is made within five (5) years after the cause of deportation arises." In *Lam Shee v. Bengzon* (93 Phil. 1065 [1953]), We laid down the consequences of such inaction, thus:

"There is however an important circumstance which places this case beyond the reach of the resultant consequence of the fraudulent act committed by the mother of the minor when she admitted that she gained entrance into the Philippines by making use of the name of a Chinese resident merchant other than that of her lawful husband, and that is, that the mother can no longer be the subject of deportation proceedings for the simple reason that more than 5 years had elapsed from the date of her admission. Note that the above irregularity was divulged by the mother herself, who in a gesture of sincerity, made an spontaneous admission before the immigration officials in the investigation conducted in connection with the landing of the minor on September 24, 1947, and not through any effort on the part of the immigration authorities. And considering this frank admission, plus the fact that the mother was found to be married to another Chinese resident merchant, now deceased, who owned a restaurant in the Philippines valued at P15,000 and which gives a net profit of P500 a month, the immigration officials then must have considered the irregularity not serious enough when, inspite of that finding, they decided to land said minor "as a properly documented preference quota immigrant" (Exhibit D). We cannot therefore but wonder why two years later the immigration officials would reverse their attitude and would take steps to institute deportation proceedings against the minor.

"Under the circumstances obtaining in this case, we believe that much as the attitude of the mother would be condemned for having made use of an improper means to gain entrance into the Philippines and acquire permanent residence there, it is now too late, not to say unchristian, to deport the minor after having allowed the mother to remain even illegally to the extent of validating her residence by inaction, thus allowing the period of prescription to set in and to elapse in her favor. To permit his deportation at this late hour would be to condemn him to live separately from his mother through no fault of his thereby leaving him to a life of insecurity resulting from lack of support and protection of his family. This inaction or oversight on the part of immigration officials has created an anomalous situation which, for reasons of equity, should be resolved in favor of the minor herein involved." (*Italics supplied*)

In the case at bar, petitioners' alleged cause of action and deportation against herein respondent arose in 1962. However, the warrant of arrest of respondent was issued by Commissioner Domingo only on August 15, 1990 — 28 long years after. It is clear that petitioners' cause of action has already prescribed and by their inaction could not now be validly enforced by petitioners against respondent William Gatchalian. Furthermore, the warrant of exclusion dated July 6, 1962 was already recalled and the identification certificate of respondent, among others, was revalidated on March 15, 1973 by the then Acting Commissioner Nituda.

It is also proposed in the dissenting opinions of Messrs. Justices Feliciano and Davide, Jr., that the BOC decision dated July 6, 1962 and the warrant of exclusion which was found to be valid in *Arocha* should be applicable to respondent William Gatchalian even if the latter was not a party to said case. They also opined that under Sec. 37 (b) of the Immigration Act, the five (5) years limitation is applicable only where the deportation is sought to be effected under clauses of Sec. 37 (b) other than clauses 2, 7, 8, 11 and 12 and that no period of limitation is applicable in deportations under clauses 2, 7, 8, 11 and 12.

The Court disagrees. Under Sec. 39 of the Immigration Act, it is reiterated that such deportation proceedings should be instituted within five (5) years. Section 45 of the same Act provides penal sanctions for violations of the offenses therein enumerated with a fine of "not more than P1,000.00 and imprisonment for not more than two (2) years and deportation if he is an alien." Thus:

"Penal Provisions

"Sec. 45. Any individual who -

"(a) When applying for an immigration document personates another individual, or falsely appears in the name of deceased individual, or evades the immigration laws by appearing under an assumed name; fictitious name; or

"(b) Issues or otherwise disposes of an immigration document, to any person not authorized by law to receive such document; or

"(c) Obtains, accepts or uses any immigration document, knowing it to be false; or

"(d) Being an alien, enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by wilful, false, or misleading representation or wilful concealment of a material fact; or

"(e) Being an alien, shall for any fraudulent purpose represent himself to be a Philippine citizen in order to evade any requirement of the immigration laws; or

"(f) In any immigration matter shall knowingly make under oath any false statement or representations; or

"(g) Being an alien, shall depart from the Philippines without first securing an immigration clearance certificates required by section twenty-two of this Act; or

"(h) Attempts or conspires with another to commit any of the foregoing acts, shall be guilty of an offense, and upon conviction thereof, shall be fined not more than one thousand pesos, and imprisoned for not more than two years, and deported if he is an alien." (*Italics supplied*)

Such offenses punishable by correctional penalty prescribe in 10 years (Art. 90, Revised Penal Code); correctional penalties also prescribe in 10 years (Art. 92, Revised Penal Code).

It must be noted, however, that under Sec. 1, Act No. 3326 [1926], as amended, (Prescription for Violations Penalized by Special Acts and Municipal Ordinances), "violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: . . .; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; xxx."

Consequently, no prosecution and consequent deportation for violation of the offenses enumerated in the Immigration Act can be initiated beyond the eight-year prescriptive period, the Immigration Act being a special legislation.

The Court, therefore, holds that the period of effecting deportation of an alien after entry or a warrant of exclusion based on a final order of the BSI or BOC are not imprescriptible. The law itself provides for a period of prescription. Prescription of the crime is forfeiture or loss of the rights of the State to prosecute the offender after the lapse of a certain time, while prescription of the penalty is the loss or forfeiture by the government of the right to execute the final sentence after the lapse of a certain time (Padilla, *Criminal Law*, Vol. 1, 1974, at p. 855).

"Although a deportation proceeding does not partake of the nature of a criminal action, however, considering that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process should not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings." (*Lao Gi v. Court of Appeals*, *supra*). Under Sec. 6, Rule 39 of the Rules of Court, a final judgment may not be executed after the lapse of five (5) years from the date of its entry or from the date it becomes final and executory. Thereafter, it may be enforced only by a separate action subject to the statute of limitations. Under Art. 1144 (3) of the Civil Code,

an action based on judgment must be brought within 10 years from the time the right of action accrues.

In relation to Sec. 37 (b) of the Immigration Act, the rule, therefore, is:

1. Deportation or exclusion proceedings should be initiated within five (5) years after the cause of deportation or exclusion arises when effected under any other clauses other than clauses 2, 7, 8, 11 and 12 of paragraph (a) of Sec. 37 of the Immigration Act; and
2. When deportation or exclusion is effected under clauses 2, 7, 8, 11 and 12 of paragraph (a) of Sec. 37, the prescriptive period of the deportation or exclusion proceedings is eight (8) years.

In the case at bar, it took petitioners 28 years since the BOC decision was rendered on July 6, 1962 before they commenced deportation or exclusion proceedings against respondent William Gatchalian in 1990. Undoubtedly, petitioners' cause of action has already prescribed. Neither may an action to revive and/or enforce the decision dated July 6, 1962 be instituted after ten (10) years (Art. 1144 [3], Civil Code).

Since his admission as a Filipino citizen in 1961, respondent William Gatchalian has continuously resided in the Philippines. He married Ting Dee Hua on July 1, 1973 (Annex "8", counter-petition) with whom he has four (4) minor children. The marriage contract shows that said respondent is a Filipino (Annex "8"). He holds passports and earlier passports as a Filipino (Annexes "9", "10" & "11", counter-petition). He is a registered voter of Valenzuela, Metro Manila where he has long resided and exercised his right of suffrage (Annex 12, counter-petition). He engaged in business in the Philippines since 1973 and is the director/officer of the International Polymer Corp. and Ropeman International Corp. as a Filipino (Annexes, "13" & "14", counter-petition). He is a taxpayer. Respondent claims that the companies he runs and in which he has a controlling investment provides livelihood to 4,000 employees and approximately 25,000 dependents. He continuously enjoyed the status of Filipino citizenship and discharged his responsibility as such until petitioners initiated the deportation proceedings against him.

"The power to deport an alien is an act of the State. It is an act by or under the authority of the sovereign power. It is a police measure against undesirable aliens whose presence in the country is found to be injurious to the public good and domestic tranquility of the people" (Lao Gi v. Court of Appeals, *supra*). How could one who has helped the economy of the country by providing employment to some 4,000 people be considered undesirable and be summarily deported when the government, in its concerted drive to attract foreign investors, grants Special Resident Visa to any alien who invest at least US \$50,000.00 in the country? Even assuming *arguendo* that respondent is an alien, his deportation under the circumstances is unjust and unfair, if not downright illegal. The action taken by petitioners in the case at bar is diametrically opposed to settled government policy.

Petitioners, on the other hand, claim that respondent is an alien. In support of their position, petitioners point out that Santiago Gatchalian's marriage with Chu Gim Tee in China as well as the marriage of Francisco (father of William) Gatchalian to Ong Chiu Kiok, likewise in China, were not supported by any evidence other than their own self-serving testimony nor was there any showing what the laws of China were. It is the postulate advanced by petitioners that for the said marriages to be valid in this country, it should have been shown that they were valid by the laws of China wherein the same were contracted. There being none, petitioners conclude that the aforesaid marriages cannot be considered valid. Hence, Santiago's children, including Francisco, followed the citizenship of their mother, having been born outside of a valid marriage. Similarly, the validity of the Francisco's marriage not having been demonstrated, William and Johnson followed the citizenship of their mother, a Chinese national.

After a careful consideration of petitioners' argument, We find that it cannot be sustained.

In *Miciano v. Brimo* (50 Phil. 867 [1924]; *Lim and Lim v. Collector of Customs*, 36 Phil. 472; *Yam Ka Lim v. Collector of Customs*, 30 Phil. 46 [1915]), this Court held that in the absence of evidence to the contrary, foreign laws on a particular subject are presumed to be the same as those of the Philippines. In the case at bar, there being no proof of Chinese law relating to marriage, there arises the presumption that it is the same as that of Philippine law.

The lack of proof of Chinese law on the matter cannot be blamed on Santiago Gatchalian much more on respondent William Gatchalian who was then a twelve-year old minor. The fact is, as records indicate, Santiago was not pressed by the Citizenship Investigation Board to prove the laws of China relating to marriage, having been content with the testimony of Santiago that the Marriage Certificate was lost or destroyed during the Japanese occupation of China. Neither was Francisco Gatchalian's testimony subjected to the same scrutiny by the Board of Special Inquiry. Nevertheless, the testimonies of Santiago Gatchalian and Francisco Gatchalian before the Philippine consular and immigration authorities regarding their marriages, birth and relationship to each other are not self-serving but are admissible in evidence as statements or declarations regarding family reputation or tradition in matters of pedigree (Sec. 34, Rule 130). Furthermore, this salutary rule of evidence finds support in substantive law. Thus, Art. 267 of the Civil Code provides:

"Art. 267. In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws." (See also Art. 172 of the Family Code)

Consequently, the testimonies/affidavits of Santiago Gatchalian and Francisco Gatchalian aforementioned are not self-serving but are competent proof of filiation (Art. 172 [2], Family Code).

Philippine law, following the *lex loci celebrationis*, adheres to the rule that a marriage formally valid where celebrated is valid everywhere. Referring to marriages contracted abroad, Art. 71 of the Civil Code (now Art. 26 of the Family Code) provides that "(a)ll marriages performed outside of the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country ..." And any doubt as to the validity of the matrimonial unity and the extent as to how far the validity of such marriage may be extended to the consequences of the coverture is answered by Art. 220 of the Civil Code in this manner: "In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression." (Italics supplied). Bearing in mind the "processual presumption" enunciated in *Miciano* and other cases, he who asserts that the marriage is not valid under our law bears the burden of proof to present the foreign law.

Having declared the assailed marriages as valid, respondent William Gatchalian follows the citizenship of his father Francisco, a Filipino, as a legitimate child of the latter. Francisco, in turn, is likewise a Filipino being the legitimate child of Santiago Gatchalian who (the latter) is admittedly a Filipino citizen whose Philippine citizenship was recognized by the Bureau of Immigration in an order dated July 12, 1960.

Finally, respondent William Gatchalian belongs to the class of Filipino citizens contemplated under Sec. 1, Article IV of the Constitution, which provides:

"Section 1. The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution. . . ."

This forecloses any further question about the Philippine citizenship of respondent William Gatchalian.

The Court is not unaware of *Woong Woo Yiu v. Vivo* (13 SCRA 552 [1965]) relied upon by petitioners. The ruling arrived thereat, however, cannot apply in the case at bar for the simple reason that the parties therein testified to have been married in China by a village leader, which undoubtedly is not among those authorized to solemnize marriage as provided in Art. 56 of the Civil Code (now Art. 7, Family Code).

Premises considered, the Court deems it unnecessary to resolve the other issues raised by the parties.

WHEREFORE, G.R. Nos. 95122-23 is DISMISSED for lack of merit; G.R. Nos. 95612-13 is hereby GRANTED and respondent William Gatchalian is declared a Filipino citizen. Petitioners are hereby permanently enjoined from continuing with the deportation proceedings docketed as DC No. 90-523 for lack of jurisdiction over respondent Gatchalian, he being a Filipino citizen; Civil Cases Nos. 90-54214 and 3431-V-90 pending before respondent judges are likewise DISMISSED. Without pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Gancayco, Sarmiento, Griño-Aquino, and Medialdea, JJ., concur.

Fernan, C.J., and Narvasa, JJ., concur in the result.

Melencio-Herrera, J., concur in the dissent of J. Feliciano. Cruz, Paras, Padilla, and Regalado, JJ., join J. Feliciano in his dissenting opinion.

Feliciano, J., see separate dissenting opinion.

Davide, Jr., J., with separate concurring and dissenting opinion.

[*] Renamed Bureau of Immigration as per Executive Order No. 292.

DISSENTING OPINION

FELICIANO, J.:

I regret I am unable to join the opinion written by my distinguished brother in the Court, Mr. Justice A.A. Bidin, and I, therefore, undertake to submit this separate opinion.

For convenience, the following is a precis of the matters discussed in detail below.

1. I agree that the Warrant of Arrest dated 14 August 1990 is defective in its language. The surrounding facts, however, make quite clear that an amended warrant of arrest or mission order, or a new one correctly worded, may be issued by Immigration Commissioner Domingo for the purpose of carrying out an existing and valid Warrant of Exclusion covering respondent William Gatchalian and his co-applicants for admission.

2. The 6 July 1962 Decision of the Board of Commissioners ("BOC") and Warrant of Exclusion remain valid and effective and enforceable against respondent William Gatchalian, and his co-applicants for that matter. That Decision reversed a 6 July 1961 decision of the Board of Special Inquiry ("BSI") and held that respondent William Gatchalian and his co-applicants failed to substantiate and prove their claim to Philippine citizenship in 1961. Respondent William Gatchalian does not claim Philippine citizenship by any mode of entitlement subsequent to his application for entry as a citizen of the Philippines in 1961, i.e., by any act or circumstance subsequent to his birth and supposed filiation as a legitimate son of Francisco Gatchalian, also a supposed citizen of the Philippines.

3. In its Decision in *Arocha v. Vivo*,^[1] the Supreme Court upheld the validity and legal effect of the 6 July 1962 Decision of the BOC and the Warrant of Exclusion not only against Pedro Gatchalian, the particular Gatchalian

who was taken into custody by immigration authorities in 1965, but also against Pedro's co-applicants, which include respondent William Gatchalian. The validity of the claim to Philippine citizenship by Pedro Gatchalian, as a supposed descendant of Santiago Gatchalian, allegedly a natural born citizen of the Philippines, was directly placed in issue in the 1961-1962 proceedings before the BSI and the BOC, and by the Solicitor General and Pedro Gatchalian in *Arocha v. Vivo* (supra). In upholding the validity and legal effect of the 6 July 1962 BOC Decision that the Gatchalian applicants had not substantiated their claim to Philippine citizenship, this Court in effect ruled that the Gatchalian applicants were not Philippine citizens, whatever their true nationality might be.

4. Should this Court now determine to examine once more the claim to Philippine citizenship of respondent William Gatchalian, a detailed examination of the facts, including the supposed status of Santiago Gatchalian as a natural born Philippine citizenship, shows that those claims to Philippine citizenship were indeed not proven by respondent William Gatchalian and his co-applicants. Since respondent William Gatchalian does not claim to have been naturalized as a Philippine citizen after rendition of the 6 July 1962 BOC Decision, he must accordingly be held to be not a Philippine citizen.

5. Should the legal results thus reached seem harsh to some, I respectfully submit that the remedy lies not with this Court which is charged with the application of the law as it is in fact written, but with the political branches of the Government. It is those departments of Government which must consider the desirability and wisdom of enacting legislation providing for the legalization of the entry and stay of aliens who may be in the same situation as respondent William Gatchalian and his co-applicants.

I

1. Petitioner argues that respondent William Gatchalian's arrest follows as a matter of "consequence" of the Warrant of Exclusion issued by the BOC on 6 July 1962. This is opposed by respondent Gatchalian upon the ground that the Mission Order or Warrant of Arrest does not mention that it is Issued pursuant to a final order of deportation or Warrant of Exclusion.

The Mission Order or Warrant of Arrest dated 14 August 1990 issued by petitioner Commissioner Domingo, CID, reads in part as follows:

"Intelligence Officers/Agents: All Teams

Team No.

Subject: William, Juan, Francisco, Jose, Benjamin, Jonathan, Pedro, Gloria, Elena, all surnamed Gatchalian

Address: Bgy. Canumay, Valenzuela, M.M.

x x ----- x x

- Make a warrantless arrest under the Rules of Criminal Procedure, Rule 113, Section 5, for violation of the Immigration Act, Section 37, para. a; Secs. 45 and 46 Administrative Code;
- Make a warrantless search as an incident to a lawful arrest under Rule 125, Section 12.
- Deliver the suspect to the Intelligence Division and immediately conduct custodial interrogation, after warning the suspect that he has a right to remain silent and a right to counsel;

- Prepare and file an affidavit of arrest with the Special Prosecutor's Office and, in case of a search, prepare and file an inventory of the properties seized, verified under oath following Office Memorandum Order No. 45.

....."

The above Mission Order merely referred to Section 37 (a) of the Immigration Act, as amended, and to Sections 45 and 46 of the Administrative Code (should be Immigration Law), and that its wording suggests that the arrest is sought to be carried out for the purpose of carrying out a preliminary investigation or custodial interrogation rather than for the purpose of enforcing a final order of deportation or warrant of exclusion. More specifically, the Mission Order failed to mention the 6 July 1962 BOC Decision and Warrant of Exclusion. At the same time, there is no gainsaying the fact that the 6 July 1962 BOC Decision and Warrant of Exclusion do exist and became final and, as discussed in detail below, remain valid and effective.

It should be noted also that by 6 September 1990, Special Prosecutor Mabolo had filed a Manifestation or Motion before the Bureau of Immigration explicitly referring to the Warrant of Exclusion issued against respondent William Gatchalian and his original co-applicants for admission in 1961, which had been passed upon in *Arocha v. Vivo* (supra), and argued that there was, therefore, no longer any need to adduce evidence in support of the charges against respondent William Gatchalian.

Thus it appears to me that the Warrant of Arrest or Mission Order dated 15 August 1990, ineptly worded as it is, may be amended so as to refer explicitly to the mentioned Warrant of Exclusion, or a new warrant of arrest or mission order issued similarly explicitly referring to the Warrant of Exclusion.

2. It is indispensably necessary to refer to the Warrant of Exclusion of 6 July 1962 which read as follows:

"WHEREAS, upon review, motu proprio of the proceedings had on the application for admission as Philippine citizens of JOSE GATCHALIAN, ELENA GATCHALIAN, BENJAMIN GATCHALIAN, JUAN GATCHALIAN, PEDRO GATCHALIAN, GLORIA GATCHALIAN, FRANCISCO GATCHALIAN, WILLIAM GATCHALIAN, and JOHNSON GATCHALIAN, the Board of Commissioners found them not entitled to admission as Filipinos in a Decision, dated July 6, 1962, and ordered their exclusion as persons not properly documented;

AND WHEREAS, the Decision of the Board of Commissioners, dated 6 July 1962, ordering the exclusion of above-named applicants, has now become final and executory.

NOW THEREFORE, by virtue of the authority vested in the undersigned by law, you are hereby ordered to exclude the aforementioned individuals and cause their removal from this country to the port where they came or to the port of the country of which they are nationals, on the first available transportation, in accordance with law." (Italics supplied)

It should be noted that respondent William Gatchalian was a party to the 1961-1962 proceedings before the Bureau of Immigration which proceedings culminated in the 6 July 1962 Decision of the BOC and the aforequoted Warrant of Exclusion.

It is, however, insisted by respondent William Gatchalian that the Warrant of Exclusion may no longer be executed or implemented as against him in view of the passage of approximately twenty-eight (28) years since the issuance of such Warrant. Respondent Gatchalian here relies upon Section 37 (b) of the Immigration Act which states that:

"Sec. 37 (b). Deportation may be effected under clauses 2, 3, 7, 8, 11 and 12 of the Par. (a) of this Section at any time after entry, but shall not be effected under any other clauses unless the arrest in the deportation proceedings is made within five (5) years after the cause for deportation arises . . ." (Italics supplied)

Examination of the above quoted Section 37 (b) shows that the five (5) year-limitation is applicable only where deportation is sought to be effected under clauses of Section 37 (a) other than clauses 2, 7, 8, 11 and 12; that where deportation or exclusion is sought to be effected under clauses 2, 7, 8, 11 and 12 of Section 37 (a), no period of limitation is applicable; and that, to the contrary, deportation or exclusion may be effected "at any time after entry".

Examination of contemporaneous facts shows that the Government has sought to effect the exclusion and deportation of respondent William Gatchalian upon the ground that he had entered the country as a citizen of the Philippines when he was not lawfully admissible as such at the time of entry under Section 37 (a) (2), since the BOC had held him and the other Gatchalians there involved as not properly documented for admission, under Section 29 (a) (17) of the Immigration Act, as amended. On 7 July 1990, the Acting Director of the National Bureau of Investigation ("NBI") initiated the proceedings immediately before us by writing to the Secretary of Justice recommending that respondent William Gatchalian, and his co-applicants covered by the Warrant of Exclusion dated 6 July 1962, be charged with: "Violation of Section 37 (a), paragraphs 1 and 2, in relation to Section 45 (c), (d) and (e) of Commonwealth Act 613 as amended, also known as the Immigration Act of 1940." The Secretary of Justice endorsed this recommendation to Immigration Commissioner Domingo for investigation and immediate action. On 20 August 1990, Special Prosecutor Mabolo filed a charge sheet against respondent William Gatchalian which specified the following charges:

"The respondent is an alien national who unlawfully gained entry into the Philippines without valid travel document in violation of the Immigration Act; Sec. 37 par. a, sub pars. (1) and (2);

That respondent being an alien misrepresented himself as Philippine Citizen by false statements and fraudulent documents in violation of the Immigration Act, Sec. 45, par. (c), (d) and (e).

That respondent being an alien national is an undocumented person classified as excludable under the Immigration Act, Sec. 29 (a) sub par. (17).

....."

(Italics supplied)

Section 37 (a) (1) and (2), of Commonwealth Act No. 13, as amended, provides as follows:

"Sec. 37 (a). The following aliens shall be arrested upon the 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.

(1) Any alien who enters the Philippines after the effective date of this act by means of false and misleading statements or without inspection and admission by the Immigration authorities at a designated port of entry or at any place other than at a designated port of entry; (As amended by Republic Act No. 503).

(2) An alien who enters the Philippines after the effective date of this act, who was not lawfully admissible at the time of entry.

....."

(Italics supplied)

Section 37 (a) (2), quoted above, relates back to Section 29 (a) of the Immigration Act, as amended, which lists the classes of alien excluded from entry in the Philippines, as follows:

"Sec. 29. (a). The following classes of aliens shall be excluded from entry into the Philippines;

x x x x x x x x

(17) Persons not properly documented for admission as may be required under the provisions of this act."
(Italics supplied)

Thus, in the instant case, the net result is that no time limitation is applicable in respect of the carrying out of the Warrant of Exclusion issued in 1962.

A little reflection suffices to show why this must be so. What was involved in 1961 when the supposed children and grandchildren of Santiago Gatchalian first descended upon the Philippines, was the right of a person claiming to be a Philippine citizen to enter for the first time and reside in the Philippines. On the part of the Government, what was at stake was the right to exclude from the country persons who had claimed the right to enter the country as Philippine citizens but who had failed to substantiate such claimed status. Aliens seeking entry into the Philippines do not acquire the right to be admitted into the country by the simple passage of time. Exclusion of persons found not to be entitled to admission as Philippine citizens, must be distinguished from the deportation of aliens, who, after having been initially lawfully admitted into the Philippines, committed acts which rendered them liable to deportation.

Normally, aliens excluded are immediately sent back to their country of origin.[2] This is so in cases where the alien has not yet gained a foothold into the country and is still seeking physical admittance. However, when the alien had already physically gained entry but such entry is later found unlawful or devoid of legal basis, the alien can be excluded any time after it is found that he was not lawfully admissible at the time of his entry. Technically, the alien in this case is being excluded; however, the rules on deportation can be made to apply to him in view of the fact that the cause for his exclusion is discovered only after he had gained physical entry.

It is worth noting at this point that in *Arocha v. Vivo* (supra), this Court upheld the 6 July 1962 Order of the BOC and the application of the Warrant of Exclusion, in respect of Pedro Gatchalian, even though more than five (5) years had elapsed by the time the Court's Decision was promulgated on 26 October 1967.

Though respondent William Gatchalian is physically inside the country, it is the government's basic position that he was never lawfully admitted into the country, having failed to prove his claim of Philippine citizenship, and hence the Warrant of Exclusion of 6 July 1962, or a new Warrant of Exclusion for that matter, may be executed "at any time" under Section 37 (b). It is the correctness of that basic position which must be ascertained and in that ascertainment, the mere passage of time is quite peripheral in relevance considering the express language of section 37 (b).

My distinguished brother, Bidin, J., finally invokes Act No. 3326, and on the basis of Section 1 thereof, would hold that where the arrest for purpose of deportation is made more than five (5) years after the cause for deportation arose, the prescriptive period of eight (8) years should be applied. Act No. 3326 which took effect on 4 December 1926, establishes prescriptive periods in respect of criminal prosecutions for violations penalized not by the Revised Penal Code but rather by special acts which do not otherwise establish a period of prescription. In other words, Act No. 3326 establishes a statute of limitations for the institution of criminal proceedings. It is, however, quite settled that deportation proceedings cannot be assimilated to criminal prosecutions for violation either of the Revised Penal Code or of special statutes.[3] Moreover, Act No. 3326 purports to be applicable only where the special act itself has not established an applicable statute of limitations for criminal proceedings. It cannot, however, be said that Article 37 (b) of the Immigration Act (quoted earlier) has not established an applicable statute of limitations. For, precisely, Section 37 (b) of the Immigration Act states that deportation may be effected under certain clauses of Section 37 (a) "at any time after entry." One of those instances is, precisely, deportation upon the ground specified in Clause (2) of 37 (a) which relates to "any alien who enters the

Philippines after the effective date of this act, who was not lawfully admissible at the time of entry." Thus, the Immigration Act, far from failing to specify a prescriptive period for deportation under Section 37 (a) (2), expressly authorizes deportation under such ground "at any time after entry." It is, thus, very difficult to see how Act No. 3326 could apply at all to the instant case.

Finally, we must recall once more that what is actually involved in the case at bar is exclusion, not deportation.

3. It is urged by the government that *Arocha v. Vivo* (supra) has already resolved the claim to Philippine citizenship of respondent William Gatchalian adversely to him and that such ruling constitutes *res judicata*. Upon the other hand, respondent William Gatchalian vehemently argues that neither the 6 July 1962 BOC's Decision nor *Arocha* definitely settled the question of his citizenship.

My respectful submission is that respondent William Gatchalian's argument constitutes a highly selective reading of both the BOC Decision and the Decision in *Arocha* written by J.B.L. Reyes, J. for a unanimous court. The 6 July 1962 Decision of the BOC, in its dispositive portion, reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, this Board finds and hereby holds that the applicants [Jose Gatchalian, Elena Gatchalian, Benjamin Gatchalian, Juan Gatchalian, Pedro Gatchalian, Gloria Gatchalian, Francisco Gatchalian, William Gatchalian and Johnson Gatchalian] herein have not satisfactorily proved their claim to Philippine citizenship and therefore the Decision of the Board of Special Inquiry, dated July 6, 1961 admitting them as Filipinos is hereby reversed, and said applicants should be, as they are hereby ordered excluded as persons not properly documented.

SO ORDERED." (*Italics supplied*)

Since respondent William Gatchalian and his co-applicants in 1961 claimed the right to enter the country as Philippine citizens, determination of their right to enter the Philippines thus indispensably involved the resolution of their claim to Philippine citizenship. In other words, the determination of that citizenship in the instant case was not a mere incident of the case; it was rather the central and indeed the only issue that had to be resolved by the BOC. Review of the 1961 proceedings before the BSI shows that the sole issue before it was the supposed Philippine citizenship of the applicants. Thus, the very same issue of claimed Philippine citizenship was resolved by the BOC when it reversed the 6 July 1961 decision of the BSI. This case may be distinguished from other types of cases, e.g., applications for public utility franchises, petitions for change of name, applications for registration as voter, filing of certificates of candidacy for an elective position, etc., where the central issue is not citizenship although resolution of that issue requires a determination of the citizenship of the applicant, candidate or petitioner.

The ruling of the BOC that respondent William Gatchalian and his co-applicants for admission as Philippine citizens had not satisfactorily proved their claim to Philippine citizenship, can only be reasonably read as a holding that respondent William Gatchalian and his co-applicants were not Philippine citizens, whatever their true nationality or nationalities might be. Thus, it appears to be merely semantic play to argue, as respondent William Gatchalian argues, that the 1962 BOC Decision did not categorically hold him to be an "alien" and that the BOC had merely held him and his co-applicants as "not properly documented." The phrase "not properly documented" was strictly and technically correct. For William Gatchalian and his co-applicants had presented themselves as Philippine citizens and as such entitled to admission into the country. Since the BOC rejected their claims to Philippine citizenship, William Gatchalian and his co-applicants were non-Filipinos "not properly documented for admission" under Section 29 (a) (17), Immigration Act as amended.

4. In *Arocha v. Vivo* (supra), the Supreme Court had before it the following items:

- The 6 July 1961 Decision of the BSI which allowed the entry of respondent Gatchalian and his co-applicants

as citizens of the Philippines;

- A split BOC Decision approving the 6 July 1961 BSI decision, which had been "noted" by two (2) Commissioners but rejected by Commissioner Galang on 14 and 26 July 1961 and 21 August 1961, respectively;
- The 6 July 1962 Decision of the BOC in which the BOC had reviewed *motu proprio* the Gatchalian proceedings before the BSI and reversed the BSI decision of 6 July 1961;
- The Warrant of Exclusion dated 6 July 1962 issued pursuant to the 6 July 1962 Decision of the BOC; and
- A decision of the Manila Court of First Instance dated 31 July 1965, rendered in a habeas corpus proceeding brought to effect the release of Pedro Gatchalian who had been taken into custody by immigration officials pursuant to the 6 July 1962 Warrant of Exclusion.

The Court of First Instance ("CFI") decision ordered Pedro Gatchalian's release upon the ground that the 6 July 1962 BOC Decision had been issued beyond the one (1) year period for review of the BSI decision of 6 July 1961. The CFI decision was reversed and nullified by the Supreme Court.

The Supreme Court held that the BOC Decision of 6 July 1962 had not been antedated and that it was valid and effective to reverse and nullify the BSI order granting admission to the Gatchalians as citizens of the Philippines.

The Court also held that the split BOC decision of July-August 1961 did not operate to confirm and render final the BSI decision of 6 July 1961, the split decision being null and void because it had not been rendered by the BOC as a body.

The Court further rejected Pedro Gatchalian's argument that he was not bound by the 6 July 1962 BOC Decision:

"It is argued for the appellee that the minutes in Exh. 5-A refer only to the cases of Gloria, Francisco and Benjamin Gatchalian. But the designation of the case is 'Gloria Gatchalian, et al.' No reason is shown why the case of these three should be considered and voted upon separately, considering that the claims to citizenship and entry of all were based on the same circumstances, applicants being the descendants of one Santiago Gatchalian, a Filipino and that all their applications for entry were in fact jointly resolved by the Board of Inquiry in one single decision (Annex 1, petition, G.R. No. L-24844)."[4]

I respectfully submit that the above-quoted ruling in *Arocha* disposes of the contention here being made by respondent William Gatchalian that he is not bound by the Decision in *Arocha v. Vivo*. *Arocha* held that the 1962 BOC Decision was valid and effective and William was certainly one of the applicants for admission in the proceedings which began in 1961 before the BSI.

Respondent William Gatchalian contends that the Court in *Arocha* did not find him nor any of his co-applicants to be aliens and that all the Court did was to hold that the 6 July 1962 Board of Commissioners decision had not been antedated. This contention cannot be taken seriously. As has already been pointed out several times, the 1962 Board of Commissioners decision held that William Gatchalian and his eight (8) other co-applicants for admission had not proved their claim to Philippine citizenship; not being Filipinos, they must have been aliens, to be excluded as persons not properly documented. Moreover, a review of the *Rollo* in *Arocha v. Vivo* shows that the parties there had expressly raised the issue of the citizenship of Pedro Gatchalian in their pleadings. The Solicitor General, in his fifth assignment of error, argued that the Court of First Instance had erred in declaring Pedro Gatchalian a Filipino, and simultaneously urged that the 6 July 1962 decision of the Board of Commissioners was quite correct. Pedro Gatchalian, upon the other hand, contended that precisely because he was a Filipino, the Bureau of Immigration had no jurisdiction to exclude him.[5]

The Court also said in *Arocha*:

"Finally, it is well to note that appellee did not traverse the allegation of appellant Commissioners in their return to the writ of Habeas Corpus that appellee Pedro Gatchalian gained entry on the strength of a forged cablegram, purportedly signed by the former Secretary of Foreign Affairs Felixberto Serrano, and apparently authorizing appellee's documentation as a Filipino (par. 3[a] of Return, C.F.I. Rec., pp. 15-16). Such failure to deny imports admission of its truth by the appellee, establishes that his entry was irregular. Neither has he appealed the decision of the Commissioners of Immigration to the Department Head." [6]

Since the physical entry of Pedro Gatchalian was effected simultaneously with that of Francisco and William Gatchalian, on exactly the same basis and on the strength of the same forged cablegram allegedly from then Secretary of Foreign Affairs Felixberto Serrano, it must follow that the entry of Francisco and William Gatchalian was similarly irregular. The applications for admission of the nine (9) Gatchalians were all jointly resolved by the BSI on 6 July 1961 on the identical basis that they were all descendants of Santiago Gatchalian, a supposed natural born Philippine citizen.

5. The purported reversal of the 1962 BOC Decision by Commissioner Nituda in 1973, cannot be given any effect. A close examination of the same reveals that such purported reversal was highly irregular.

Respondent William Gatchalian alleges that Mr. Nituda, being in 1973 Acting Commissioner of Immigration, had the authority to reverse the BOC Decision of 6 July 1962, since he (Nituda) had immediate control, direction and supervision of all officers, clerks and employees of the Bureau of Immigration. Control means, respondent Gatchalian continues, the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. [7]

Respondent Gatchalian's view is obviously flawed. The Commissioner's power of control over the officers and employees of the Bureau of Immigration cannot be compared to the power of control and supervision vested by the Constitution in the President of the Philippines (which was what Ham was all about), for the Commissioner's general power of control cannot be said to include the power to review and set aside the prior final decision reached by the BOC. The Commissioner of Immigration, acting alone, cannot be regarded as an authority higher than the BOC itself (constituted by the Commissioner and the two [2] Associate Commissioners), in respect of matters vested by the governing statute in such Board itself. One of these matters is precisely the hearing and deciding of appeals from decisions of the BSI, and the *motu proprio* review of the entire proceedings of a case within one (1) year from the promulgation of a decision by the BSI. [8]

Respondent Gatchalian points to Section 29 (b) of the Immigration Act as amended, an empowering Nituda to reverse the 1962 BOC Decision. Section 29 (b) reads as follows:

"Section 29. . . .

.....

(b) Notwithstanding the provisions of this section, the Commissioner of Immigration, in his discretion, may permit to enter (sic) any alien properly documented, who is subject to exclusion under this section, but who is

—

(1) an alien lawfully resident in the Philippines who is returning from a temporary visit abroad;

(2) an alien applying for temporary admission"

It is difficult to understand respondent's argument. For one thing, Section 29 (b) relates to an "alien properly documented" while respondent Gatchalian precisely claims to be a citizen of the Philippines rather than a resident alien returning from a temporary visit abroad or an alien applying for temporary admission.

It should be recalled that Nituda's 1973 Decision approved a ruling rendered by a Board of Special Inquiry in 1973 that respondent Gatchalian was properly documented, a ruling which was precipitated by a "Petition for Rehearing" filed by respondent Gatchalian and his co-applicants in 8 March 1972 before the BSI. There are a number of obvious defects in the action of the BSI. Firstly, the motion for rehearing was filed way out of time. Rule 3, B 22 of the Immigration Rules and Regulations of 1 January 1941 provides as follows:

"At any time before the alien is deported, but not later than seven days from the date he receives notice of the decision on appeal of the Board of Commissioners, the applicant or his attorney or counsel may file a petition for rehearing only on the ground of newly discovered evidence. Such petition shall be in writing and shall set forth the nature of the evidence discovered and the reason or reasons why it was not produced before. . . ."
(Italics supplied)

Respondent Gatchalian's and his co-applicants' motion for rehearing was filed, not seven (7) days but rather ten (10) years after notice of the 1962 BOC Decision had been received by them. Secondly, Rule 3, B 25 of the Immigration Rules and Regulations prescribed that any motion for rehearing shall be filed only with the Board of Commissioners; the Gatchalians' motion for rehearing was filed with the BSI which then purported to re-open the case "without first securing the consent in writing of the Commissioner of Immigration" as required by Rule 2, D 20.

Furthermore, the purported reversal of the 1962 BOC Decision was made not by the duly constituted BOC in 1973, but only by its Chairman, then Acting Commissioner Nituda. Mr. Nituda's action flew in the face of Rule 3, B 22 of the Immigration Rules and Regulation, which mandates that the decision of any two (2) members of the BOC shall prevail. It thus appears that Mr. Nituda purported to act as if he were the entire BOC. Indeed, even the BOC itself in 1973 could not have lawfully reversed a final decision rendered by the BOC ten (10) years ago.[9]

We must, finally, not lose sight of the ruling in *Arocha v. Vivo* (supra) where the Supreme Court expressly outlined the procedure to be followed by the BOC in resolving cases before them. This Court was very explicit in holding that individual actions of members of the BOC are legally ineffective:

". . . [T]he former Immigration Commissioners appeared to have acted individually in this particular instance and not as a Board. It is shown by the different dates affixed to their signatures that they did not actually meet to discuss and vote on the case. This was officially made to record by the Secretary of Justice in his Memorandum Order No. 9, on January 24, 1962, wherein he stated.
'that for the past several years, the Board of Commissioners of Immigration has not met collectively to discuss and deliberate in the cases coming before it.' [Citation omitted]

Individual action by members of a board plainly renders nugatory the purpose of its constitution as a Board. The Legislature organized the Board of Commissioners precisely in order that they should deliberate collectively and in order that their views and ideas should be exchanged and examined before reaching a conclusion (See *Ryan vs. Humphrise*, LRA 1915F 1047). This process is of the essence of a board's action, save where otherwise provided by law, and the salutary effects of the rule would be lost were the members to act individually, without benefit of discussion.

"The powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts are official only when done by the members convened in sessions, upon a concurrence of at least a majority and with at least a quorum present. [Citation omitted]

Where the action needed is not of the individuals composing a board but of the official body, the members must be together and act in their official capacity, and the action should appear on the records of the board. [Citation omitted]

Where a duty is entrusted to a board, composed of different individuals, that board can act officially only as such, in convened sessions, with the members, or a quorum thereof, present.' [Citation omitted]"[10] (Italics supplied)

The act of Mr. Nituda of reversing the 1962 Decision of the BOC could not hence be considered as the act of the BOC itself.

The pretended act of reversal of Mr. Nituda must, therefore, be stricken down and disregarded for having been made in excess of his lawful authority. The 1973 order of Nituda was ineffective to vest any right upon respondent Gatchalian who, it is worth nothing, did not pretend to submit any newly discovered evidence to support their claim to Philippine citizenship already rejected by the 1962 BOC. In essence, Mr. Nituda purported not merely to set aside the 1962 BOC Decision but also the 1967 Decision of this Court in *Arocha v. Vivo*.

II

I turn to an examination of the underlying facts which make up the basis of the claim of William Gatchalian to Philippine citizenship. The most striking feature of this claim to Philippine citizenship is that it rests upon a fragile web constructed out of self-serving oral testimony, a total lack of official documentation whether Philippine or foreign, of negative facts and of invocation of presumptions without proof of essential factual premises. Put in summary terms, the claim of William Gatchalian to Philippine citizenship rests upon three (3) premises, to wit:

- that Santiago Gatchalian was a Philippine citizen;
- the supposed filiation of Francisco Gatchalian as a legitimate son of Santiago Gatchalian, which leads to the intermediate conclusion that Francisco was a Philippine citizen; and
- the supposed filiation of William Gatchalian as a legitimate son of Francisco Gatchalian leading to the final conclusion that William Gatchalian is a Philippine citizen.

I respectfully submit that a careful examination of the facts made of record will show that the correctness and factual nature of each of these layered premises are open to very serious doubt, doubts which can only lead to the same conclusion which the BOC reached on 6 July 1962 when it reversed the BSI, that is, that there was failure to prove the Philippine citizenship of William Gatchalian and of his eight (8) alleged uncles, aunts and brother in 1961 when they first arrived in the Philippines.

1. The supposed Philippine citizenship of Santiago Gatchalian must be considered first. Santiago was allegedly born in Binondo, Manila, on 25 July 1905 to Pablo Pacheco and Marciana Gatchalian. The records do not disclose anything about Pablo Pacheco but everyone, including William Gatchalian, assumes that Pablo Pacheco was a Chinese subject and never became a citizen of the Philippine Islands. The basic claim of Santiago was that his mother Marciana Gatchalian was a Philippine citizen and that Marciana was not lawfully married to Pablo Pacheco and that consequently, he (Santiago) was an illegitimate son of Marciana Gatchalian.

The first point that should be made in respect of Santiago's claim was that he had always regarded himself as a Chinese citizen until around 1958 or 1960, that is, when he reached the age of 53 or 55 years. Santiago, by his own testimony, lived the bulk of his adult life in China where he went in 1924 at age 19 and where he stayed for about 13 years returning to the Philippines for the first time in 1937. He returned in the same year to China, stayed there for another nine (9) years, and then came back to the Philippines again in 1946. He once more left the Philippines for China on 14 April 1947 and returned on 14 June 1947. Upon his second return to the Philippines in 1946, he documented himself as a Chinese national: he was holder of ICR No. 7501 dated 3 May 1946. He continued to be documented as such, the record showing that he was also holder of an ACR No. A-219003 dated

13 January 1951. Santiago, again by his own statement, married in China a Chinese woman. This Chinese wife, however, Santiago never brought or attempted to bring to the Philippines and she allegedly died in China in 1951, or four (4) years after Santiago had permanently returned to the Philippines.

In 1958, when he was 53 years of age, Santiago obtained a residence certificate where for the first time he described himself as a Filipino. It was also only in 1960, that is, when Santiago was 55 years of age, that he filed a petition for cancellation of his ACR obviously upon the theory that he had always been a Philippine citizen. It was at the hearing of his petition for cancellation of his ACR that Santiago made his oral statements concerning the supposed circumstances of his birth, parentage and marriage. Santiago's petition to cancel his ACR was apparently made in preparation for efforts to bring in, the succeeding year, a whole group of persons as his supposed descendants.

The second point that needs to be made in respect of Santiago's claim of citizenship resting on his supposed status as an illegitimate son of a Filipina woman, is that no birth certificate bearing the name of Santiago Gatchalian was ever presented.

Instead, a baptismal certificate bearing the name Santiago Gatchalian was presented showing the name of Marciana Gatchalian, Filipina, as mother, with the name of the father unknown. There was also presented a marriage certificate dated 1936 of Joaquin Pacheco, alleged brother of Santiago Gatchalian, also showing Marciana Gatchalian as mother with the name of the father similarly left blank. These two [2] pieces of paper, together with Santiago's own statements to the Citizenship Evaluation Board as well as the statements of Joaquin Pacheco to the same Board, constituted the sum total of the evidence supporting Santiago's claim to Philippine citizenship and on the basis of which an Order dated 12 July 1960, signed by Felix S. Talabis, Associate Commissioner, granted the petition to cancel Santiago's alien registry.

In so issuing his Order granting cancellation of Santiago's ACR, Commissioner Talabis disregarded Santiago's failure to present a birth certificate, in obvious violation of rules of the Bureau of Immigration which expressly require the submission of a birth certificate, or a certified true copy thereof, in proceedings brought for cancellation of an ACR upon the ground that the petitioner is an illegitimate son of a Filipina mother.[11] It is well-settled that a baptismal certificate is proof only of the administration of baptism to the person named therein, and that such certificate is not proof of anything else and certainly not proof of parentage nor of the status of legitimacy or illegitimacy.[12]

That Order also casually disregarded a number of other things, one of which was a document dated 1902 signed by Maxima Gatchalian, the mother of Marciana Gatchalian, stating that Maxima —

"... residing in the City of Manila, mother of Marciana Gatchalian, unmarried, of 18 years of age, her father being dead, do hereby freely consent to her marriage with Pablo C. Pacheco, of Manila, and that I know of no legal impediment to such marriage." (Italics supplied)

Such parental consent indicated that a marriage ceremony would have taken place shortly thereafter as a matter of course; otherwise, the consent would have been totally pointless. Even more importantly, Commissioner Talabis' Order disregarded the testimony of Santiago Gatchalian himself in the same cancellation proceedings that he (Santiago) believed that his parents had been married by the Justice of the Peace of Pasig, Rizal.[13] In his Order, Commissioner Talabis referred to the fact that Santiago Gatchalian had been "interchangeably using his parental and maternal surnames. In school, he was known as Santiago Pacheco (Class Card for 1920-1921, Meisic, Manila; Certificates of Completion of Third and Fourth Grades, Meisic, Primary School). But in his Special Cedula Certificate No. 676812 dated 17 September 1937, and in tax clearance certificate issued on 2 October 1937, he is referred to as Santiago Gatchalian; and in a Communication dated 6 June 1941, he was addressed to as Santiago

Pacheco by the Philippine Charity Sweepstakes Office." At the very least, such use of both paternal and maternal surnames indicated that Santiago was uncertain as to his supposed illegitimacy. In our case law, moreover, the use of a paternal surname may be regarded as an indication of possession of the status of a legitimate or acknowledged natural child.[14]

Perhaps the most important aspect of Commissioner Talabis Order granting cancellation of Santiago's ACR, is that such Order failed to give any weight to the presumption in law in favor of marriage, a presumption significantly reinforced by the parental consent given by Maxima Gatchalian to the marriage of her daughter Marciana Gatchalian to one Pablo C. Pacheco. A related presumption is that in favor of the legitimacy of offspring born of a man and woman comporting themselves as husband and wife.[15] I respectfully submit that these presumptions cannot be successfully overthrown by the simple self-serving testimony of Santiago and of his alleged brother Joaquin Pacheco and by the two (2) pieces of paper (the baptismal certificate of Santiago and the marriage certificate of Joaquin Pacheco). It seems relevant to point out that Joaquin Pacheco, too, was unable to present any birth certificate to prove his supposed common parentage with Santiago Gatchalian; Joaquin was allegedly born in 1902, the same year that Maxima Gatchalian gave her consent to the marriage of Marciana Gatchalian and Pablo C. Pacheco.

The third point that needs to be underscored is that Santiago Gatchalian did nothing to try to bring into the Philippines his supposed sons and daughters and grandchildren since 1947, when he returned permanently to the Philippines, and until 1960. The story given by the nine (9) supposed descendants of Santiago when they first arrived in the Philippines was that they had left the People's Republic of China and had gone to Macao in 1952 and there they stayed until they moved to Hongkong in 1958. It should also be noted that the youngest supposed child of Santiago, Benjamin Gatchalian, was said to have been born in China in 1942 and was consequently only five (5) years old when Santiago returned permanently to the Philippines in 1947. In other words, Santiago Gatchalian behaved as if the nine (9) supposed descendants did not exist until 1960 when Commissioner Talabis' Order cancelling Santiago's ACR was issued.

It may also be noted that Santiago's 1951 ACR application mentioned only two (2) children of Santiago: Jose and Elena. In 1961, however, Santiago stated before the immigration investigator that he had a total of five (5) children: Jose, Elena, Francisco, Gloria and Benjamin. Santiago's explanation strongly echoes a common lawyer's excuse for failure to seasonably file some pleading, and, it is respectfully submitted, is equally contrived and unpersuasive: that he had his clerk fill up the ACR; that he gave his clerk four (4) names (not five [5]); that the clerk had simply failed to fill up the ACR correctly. In its 6 July 1962 Decision, the BOC noted that "while the two (2) names listed in [Santiago's] [ACR application] Jose and Elena, bear the same names as two of the (9) applicants, the differences in the ages of said persons compared to the said applicants, casts serious doubts on their identity".[16]

It is suggested in the majority opinion that the question of citizenship of Santiago Gatchalian is a closed matter which cannot be reviewed by this Court; that per the records of the Bureau of Immigration, as of 20 July 1960, Santiago Gatchalian had been declared to be a Filipino citizen and that this forecloses re-opening of that question thirty (30) years later. I must, with respect, disagree with this suggestion. The administrative determination by the Bureau of Immigration as of 20 July 1960 certainly does not constitute *res adjudicata* that forecloses this Court from examining the supposed Philippine citizenship of Santiago Gatchalian upon which private respondent William Gatchalian seeks to rely. The Court cannot avoid examining the Philippine nationality claimed by Santiago Gatchalian or, more accurately, claimed on his behalf by William Gatchalian, considering that one of the central issues here is the tenability or untenability of the claim of William Gatchalian to Philippine citizenship and hence to entry or admission to the Philippines as such citizen.

2. The second of the three (3) premises noted in the beginning of this section is: that Francisco Gatchalian was the legitimate son of Santiago Gatchalian and therefore followed the supposed Philippine citizenship of Santiago. This premise has in fact two (2) parts: (a) the physical filiation of Francisco Gatchalian as the son of Santiago Gatchalian; and (b) that Santiago Gatchalian was lawfully married to the Chinese mother of Francisco Gatchalian. This premise is remarkable for the total absence of documentary support for either of its two (2) parts. Francisco was born in Amoy, China in 1931, according to Santiago. The sum total of the evidence on this premise consists of Francisco Gatchalian's own statement and that of Santiago. No birth certificate or certified true copy thereof, or comparable documentation under Chinese law, was submitted by either Santiago or by Francisco. No secondary evidence of any kind was submitted. No testimony of a disinterested person was offered.

Santiago Gatchalian claimed to have been married in China in 1926 to a Chinese woman, Chua Gim Tee, out of which marriage Francisco was allegedly born. No documentary proof of such marriage in China, whether primary or secondary, was ever submitted. Neither was there ever presented any proof of the contents of the Chinese law on marriage in 1926 and of compliance with its requirements.

It is firmly settled in our jurisdiction that he who asserts and relies upon the existence of a valid foreign marriage must prove not only the foreign law on marriage and the fact of compliance with the requisites of such law, but also the fact of the marriage itself. In *Yao Kee v. Sy-Gonzales*,^[17] the issue before the Court was whether the marriage of petitioner Yao Kee to the deceased Sy Kiat in accordance with Chinese law and custom had been adequately proven. In rendering a negative answer, this Court, speaking through Cortes, J., said:

"These evidence may very well prove the fact of marriage between Yao Kee and Sy Kiat. However, the same do not suffice to establish the validity of said marriage in accordance with Chinese law and custom.

Custom is defined as 'a rule of conduct formed by repetition of acts, uniformly observed (practiced) as a social rule, legally binding and obligatory.' The law requires that 'a custom must be proved as a fact, according to the rules of evidence' (Article 12, Civil Code). On this score the Court had occasion to state that 'a local custom as a source of right can not be considered by a court of justice unless such custom is properly established by competent evidence like any other fact' [*Patriarca v. Orate*, 7 Phil. 390, 395 (1907)]. The same evidence, if not one of a higher degree, should be required of a foreign custom.

The law on foreign marriages is provided by Article 71 of the Civil Code which states that:

Art. 71. All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages, as determined by Philippine law.

Construing this provision of law the Court has held that to establish a valid foreign marriage two things must be proven, namely: (1) the existence of the foreign law as a question of fact; and (2) the alleged foreign marriage by convincing evidence [*Adong v. Cheong Seng Gee*, 43 Phil. 43, 49 (1922)].^[18] (Italics supplied)

In the instant case, there was absolutely no proof other than Santiago's bare assertion that a marriage ceremony between Santiago and Chua Gim Tee had taken place in China in accordance with Chinese law. The contents of the relevant Chinese law on marriage at the time of the supposed marriage, was similarly not shown. Should it be assumed simply that the requirements of the 1926 Chinese law on marriage are identical with the requirements of the Philippine law on marriage, it must be pointed out that neither Santiago nor Francisco Gatchalian submitted proof that any of the requirements of a valid marriage under Philippine law had been complied with.

I respectfully urge, therefore, that the reliance in the majority opinion upon our conflicts rule on marriage embodied in Article 71 of the Civil Code (now Article 26 of the Family Code; then Section 19 of Act No. 3630) is unwarranted. The rule that a foreign marriage valid in accordance with the law of the place where it was

performed shall be valid also in the Philippines, cannot begin to operate until after the marriage performed abroad and its compliance with the requirements for validity under the marriage law of the place where performed, are first shown as factual matters. There is, in other words, no factual basis for a presumption that a lawful marriage under Chinese law had taken place in 1926 in China between Santiago Gatchalian and Chua Gim Tee.

It must follow also that Francisco Gatchalian cannot simply rely upon a presumption of legitimacy of offspring of a valid marriage. As far as the record here is concerned, there could well have been no marriage at all in China between Santiago Gatchalian and Chua Gim Tee (just as Santiago had insisted that his father and mother had never married each other) and that consequently Francisco Gatchalian could just as well have followed the nationality of his admittedly Chinese mother.

3. The last premise noted earlier is the supposed filiation of William Gatchalian as a legitimate son of Francisco which resulted in William's following the supposed Philippine citizenship of Francisco Gatchalian. William was, according to Santiago Gatchalian, born in Amoy, China in 1949. Here again, just in the case of Francisco Gatchalian, there is a complete absence of contemporaneous documentary evidence of the supposed filiation of William Gatchalian as a legitimate son of Francisco Gatchalian.[19] The only support ever presented for such alleged filiation consisted of the oral statements of Santiago Gatchalian, Francisco Gatchalian and William Gatchalian. It is difficult to resist the impression that there took place here a pyramiding of oral statements, each resting upon another oral statement and all going back to the supposed bastardy of Santiago, a status suddenly discovered or asserted by Santiago in his 55th year in life. No birth certificate, or comparable documentation under Chinese law, exhibiting the name of William Gatchalian was submitted.

Francisco Gatchalian stated that he had married a Chinese woman, Ong Siu Kiok, in Amoy in 1947 according to Chinese custom. Once again, we must note that there was no proof submitted that a marriage ceremony satisfying the requirements of "Chinese custom" had ever taken place in China between Francisco and Ong Siu Kiok; neither was there any proof that a marriage "according to Chinese custom" was valid and lawful under Chinese law in 1947 and of factual compliance with the requirements of the law and custom in China concerning marriage.[20] Ong Siu Kiok was alleged to have died in Macau and never came to the Philippines. It must then follow, once again, that no presumption of a lawful marriage between Francisco Gatchalian and his alleged Chinese wife can be invoked by William Gatchalian. It follows still further that William Gatchalian cannot invoke any presumption of legitimacy in his own favor. As in the case of his putative father Francisco, William could as well have followed the nationality of his concededly Chinese mother.

One final note: it might be thought that the result I have reached is unduly harsh considering the prolonged physical stay of William Gatchalian in the country. But this Court must apply the law as it is in fact written. I respectfully submit that the appropriate recourse of respondent William Gatchalian, should he feel that he has some humanitarian claim to a right to stay in the Philippines, is to the political departments of Government. Those departments of Government may then consider the wisdom and desirability, in the light of the interests of the country, of legislation permitting the legalization of the entry and stay in the Philippines of respondent William Gatchalian and those similarly situated. Unless and until such legislation is enacted, this Court really has no choice save to apply and enforce our immigration law and regulations and our law on citizenship.

Accordingly, I vote to GRANT the Petition for Certiorari and Prohibition in G.R. Nos. 95122-23, and to SET ASIDE the Resolution/Temporary Restraining Order dated 7 September 1990 issued by respondent Judge Dela Rosa in Civil Case No. 90-5214, as well as the Order of respondent Judge Capulong dated 6 September 1990 in Civil Case No. 3431-V-90; and to REAFFIRM that respondent William Gatchalian is not a Philippine citizen.

[1] 21 SCRA 532 (1967); 128 Phil. 566 (1967).

[2] Section 36, Commonwealth Act No. 613 as amended, or Immigration Law.

[3] *Tiu Chun Hai and Go Tam v. Commission of Immigration and the Director of National Bureau of Investigation*, 104 Phil. 949 (1958); *La Tang Bun v. Fabre*, 81 Phil. 683 (1948).

[4] 21 SCRA at 539.

[5] Rollo of G.R. No. 24844, p. 32 (Brief for the Respondents-Appellants, p. 28); Rollo of G.R. No. 24844, p. 41 (Brief for the Petitioner-Appellee, p. 8).

[6] 21 SCRA at 541.

[7] Citing *Ham v. Bachrach*, 109 Phil. 949 (1968).

[8] Section 27 (d), Commonwealth Act No. 613, as amended.

[9] See *Commissioner of Immigration v. Hon. Fernandez, et al.*, 120 Phil. 178 (1964).

[10] 21 SCRA at 540.

[11] Memorandum Circular, Department of Justice, dated 28 August 1958; Administrative Memorandum, Bureau of Immigration, dated 17 March 1952, cited in E.F. Hernandez and O.A. Domingo, *Philippine Immigration Law and Procedure*, (1970 ed.,) p. 437.

[12] See, e.g., *People v. Villeza* 127 SCRA 349 (1984); *Macadangdang v. Court of Appeals*, 100 SCRA 73 (1980); *Fortus v. Novero*, 23 SCRA 1331 (1968); *Cid v. Burnaman*, 24 SCRA 434 (1968); *Vidauraza v. Court of Appeals*, 91 Phil. 492 (1952); and *Capistrano v. Gabino*, 8 Phil. 135 (1907).

[13] The transcript of the investigation conducted on 12 February 1960 in CEB No. 3860-R, *In Re Petition to Cancel Alien Registry, Santiago Gatchalian, petitioner*," Annex "2" of private respondent Gatchalian's "Comment with Counter-Petition" in G.R. Nos. 95612-13 states:

"[Immigration Investigator]

Q:

It says here, 'this is to certify that I, the undersigned, residing in the City of Manila, mother of Marciana Gatchalian, unmarried, of 18 years of age, her father being dead, do hereby freely consent to her marriage with Pablo C. Pacheco, of Manila, and that I know of no legal impediment to such marriage.' Was your father, Pablo C. Pacheco, and mother, Marciana Gatchalian, ultimately or eventually married because of this consent of your grandmother?

[Santiago Gatchalian]

A:

Yes, I was informed by my brother Joaquin Pacheco that our parents were married by the justice of the peace of Pasig, Rizal." (*Italics supplied*)

In his subsequent testimony in the same proceedings, Joaquin Pacheco, and a singularly accommodating immigration investigator who posed obviously leading questions, sought to soften the impact of Santiago's admission that his parents were married:

"[Immigration Investigator]

Q:

Or is it because [Santiago] was ashamed to admit that he was a legitimate child and that is the reason why he said your parents were married?

[Joaquin Gatchalian]

A:

It may be also that he is ashamed to make it be known that he is a legitimate child that is why he said our parents are married."

(Annex "B-9" of private respondent Gatchalian's "Comment with Counter-Petition" in G.R. Nos. 95612-13).

[14] E.g., *In Re Mallare*, 59 SCRA 45 (1974); and *Adriano v. De Jesus*, 23 Phil. 350 (1912).

[15] See, in this connection, Rule 131, Section 5 (cc) and (dd) of the Rules of Court.

[16] Annex "37" of Comment with Counter-Petition, G.R. Nos. 95612-13.

[17] 167 SCRA 736 (1988).

[18] 167 SCRA at 743-744.

[19] William Gatchalian presented his own marriage contract executed in 1973, which showed as his parents Francisco Gatchalian and Ong Siu Kick. This, of course, has no probative value for present purposes.

[20] *Yao Kee v. Sy-Gonzales*, *supra*.

CONCURRING-DISSENTING OPINION

DAVIDE, JR., J.:

I can easily agree with the summary of antecedent facts in the ponencia of Mr. Justice Bidin and the reiteration therein of the established doctrine that the Bureau of Immigration has the exclusive authority and jurisdiction to try and hear cases against alleged aliens, and in the process, determine also their citizenship, and that "a mere claim of citizenship cannot operate to divest the Board of Commissioners of its jurisdiction in deportation proceedings." I also agree with the conclusion that the petitioners in G. R. No. 95122-23, the Board of Commissioners and Board of Special Inquiry, hereinafter referred to as the Boards, are quasi-judicial bodies.

However, I cannot go along with the view that the case of William Gatchalian should be treated as an exception to that doctrine and, above all, to the law which vests upon the Court of Appeals exclusive appellate jurisdiction over

the Boards. Neither can I have solidarity with his opinion that this Court should, in this instance, rule on the citizenship of Mr. Gatchalian instead of remanding the case to the Regional Trial Court. To grant him these benefits would do violence to the law, liberally stretch the limits of the exceptions or misapply the exceptional rule, and to unduly pollute the settled doctrine. No fact or circumstance exists to justify the application of the exceptions for the benefit of Mr. Gatchalian. On the contrary, substantial facts exist to render immutable the unqualified application of the law and the doctrine.

To my mind, the questioned acts of the Boards were done absolutely within their quasi-judicial functions. Therefore, the rule laid down in *Filipinas Engineering and Machine Shop vs. Ferrer* (135 SCRA 25) and *Lupangco vs. Court of Appeals* (160 SCRA 848) does not apply.

Consequently, pursuant to paragraph 3 of Section 9 of Batas Pambansa Blg.129, and Our resolutions of 15 September 1987 and 2 April 1990 in G. R. No. 79635 (Commissioner of Customs vs. Court of Tax Appeals, et al.) and G. R. No. 80320 (Commissioner of Internal Revenue vs. Court of Tax Appeals, et al.), respectively, and Our decisions of 16 March 1989, 22 December 1989, and 6 June 1990 in G. R. No. 83578 (Presidential Anti-Dollar Salting Task Force vs. Court of Appeals, et al.), 171 SCRA 348, G. R. No. 86625 (Development Bank of the Philippines vs. Court of Tax Appeals, et al.), 180 SCRA 609, 617, and in G. R. No. L-48113 (Yang vs. Court of Appeals, et al.), respectively, the Gatchalians should have invoked the exclusive appellate jurisdiction of the Court of Appeals for appropriate redress instead of filing petitions for certiorari and prohibition with injunction before the Regional Trial Court of Manila (Civil Case No. 90-54214) and before the Regional Trial Court of Valenzuela, Metro Manila (Civil Case No. 3431-V-90). The trial courts should have dismissed the cases. In issuing the questioned orders, respondents Judge Dela Rosa and Judge Capulong clearly acted without jurisdiction or with grave abuse of discretion.

As to why William Gatchalian filed his petition before the former court and his wife and minor children filed a separate complaint before the latter has not been explained. It is to be noted that he is a registered voter of Valenzuela, Metro Manila where he has long resided and exercised his right of suffrage (Annex 12, Counter-Petition). Therefore, he should have filed his petition with the Regional Trial Court of Valenzuela. His wife and minor children are not parties to the case before the Commission on Immigration and Deportation. Their causes of action are based mainly on their claim that the acts of the Boards against William tend to deprive plaintiff mother consortium and connubium and the plaintiffs minors protection and support. At once, the viability of their causes of action is doubtful; however, if indeed they have valid causes of action, they could have been joined as co-plaintiffs in the case filed by William. It appears then that their filing of a separate complaint before another court was part of a strategy to frustrate the proceedings before the Boards. As correctly maintained by the petitioning Boards, we have here a clear case of forum-shopping, especially considering the fact that on September 4, 1990, or two days before the filing of the case before the Valenzuela court the Government filed a motion to dismiss the case before the Manila court. Forum-shopping has long been condemned and proscribed. In *People vs. Court of Appeals, et al.* (101 SCRA 450, 463), promulgated on 28 November 1980, this Court held that a party "should not be allowed to pursue simultaneous remedies in two different forums." In the Resolution of 31 July 1986 in *E. Razon Inc., et al. vs. Philippine Port Authority, et al.*, G. R. No. 75197, this Court held:

"The acts of petitioners constitute a clear case of forum-shopping, an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes. It is improper conduct that tends to degrade the administration of justice." (See also *Buan vs. Lopez, Jr.*, 145 SCRA 34; *Palm Avenue Realty Development Corp. vs. PCGG*, 153 SCRA 591; *Minister of Natural Resources, et al. vs. Heirs of Orval Hughes, et al.*, 155 SCRA 566; *Limpin vs. IAC*, 161 SCRA 98; *Collado vs. Hernando*, 161 SCRA 639; *Villanueva, et al. vs. Adre, et al.*, 172 SCRA 877; *Danville Maritime Inc. vs. COA*, 175 SCRA 717; *Crisostomo vs. SEC*, 179 SCRA 154; *Adlawan vs. Tomol*, 179 SCRA 42; and *Alonto vs. Memoracion*, 185 SCRA 73).

William Gatchalian did not stop in his forum-shopping in the regional trial courts. Under the guise of a counter-petition, he is now before this Court in an active offensive role. This is a very clever, albeit subtle, ploy to bring directly to this Court the issue of his deportation and to divest the Boards of their original jurisdiction thereon. He could have done this at the first instance; he did not. He and his wife and minor children deliberately chose, instead, to separately go to the wrong court, evidently to delay the proceedings before the Boards, which they accomplished when the two judges separately issued orders restraining said Boards from commencing or continuing with any of the proceedings which would lead to the deportation of William Gatchalian (Civil Case No. 90-54214) and from proceeding with the deportation charges against William Gatchalian (Civil Case No. 3431-V-90).

Chua Hiong vs. Deportation Board (96 Phil. 665) cited in the ponencia as another authority which allows William Gatchalian to enjoy the protective mantle of the exceptionary rule affecting the exclusive power of the Commission on Immigration and Deportation to try and hear cases against aliens and in the process also determine their citizenship is either not applicable or is mis-applied. This case laid down the principle that "when the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. . . . If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability. . . ." (underscoring applied). The word courts should not now be interpreted to mean or to include the regional trial courts because, as stated above, said courts do not have any appellate jurisdiction over the Commission on Immigration and Deportation, the Board of Commissioners and the Board of Special Inquiry. This case was decided in 1955 yet, or twenty-six years before the effectivity of *Batas Pambansa Blg. 129*.

The condition *sine qua non* then to an authorized judicial intervention is that the evidence submitted by a respondent is conclusive of his citizenship, or as stated in *Co vs. Deportation Board*, (78 SCRA 104, 107), the claim of citizenship is so substantial that there are no reasonable grounds for the belief that the claim is correct.

The facts before this Court do not constitute, or even show, a conclusive or substantial evidence that William Gatchalian is a Filipino citizen. On the contrary, very serious doubts surround such a claim from the beginning. His initial entry into the Philippines was made possible through a Certificate of Identity (as Filipino) which was issued on the basis of a forged cablegram by the then Secretary of Foreign Affairs. Then on 6 July 1962 the then new Board of Commissioners promulgated a written decision in I.C. Cases Nos. 61-2108-C to 61-2116-C inclusive (Application for admission as Philippine citizens of Jose, Elena, Benjamin, Juan, Pedro, Gloria, Francisco, William and Johnson, all surnamed Gatchalian) reversing the decision of the Board of Special Inquiry No. 1 of 6 July 1961 and ordering the exclusion of William Gatchalian and the others as aliens not properly documented. Accordingly, a warrant of exclusion, also dated 6 July 1962, was issued by the Commissioners commanding the deportation officer to exclude William Gatchalian, and others, and to cause their removal from the country on the first available transportation in accordance with law to the port of the country of which they were nationals. The pertinent portion of the Decision reads as follows:

"The claim to Philippine citizenship of above-named applicants is based on the citizenship of one Santiago Gatchalian whose Philippine citizenship was recognized by the Bureau of Immigration in an Order, dated July 12, 1960. It is alleged that applicants JOSE GATCHALIAN, FRANCISCO GATCHALIAN, ELENA GATCHALIAN, and BENJAMIN GATCHALIAN are the legitimate children of Santiago Gatchalian with one Chiu Gim Tee. Except for the self-serving testimonies of Santiago Gatchalian and his alleged children, there has not been submitted any evidence of Santiago Gatchalian's marriage to Chiu Gim Tee and the birth of the alleged children of the couple. The personal records of Santiago Gatchalian on file with this office do not reflect the names of applicants as his children, and while two names listed in his Form 1 (ACR application),

Jose and Elena, bear the same name as two of herein applicants, the difference in the ages of said applicants, casts serious doubt on their identity. Apropos, the applicants JOSE GATCHALIAN, GLORIA GATCHALIAN, FRANCISCO GATCHALIAN, ELENA GATCHALIAN, and BENJAMIN GATCHALIAN, not having satisfactorily proved as the children of Santiago Gatchalian, determination of the citizenship of the other applicants, JUAN GATCHALIAN, PEDRO GATCHALIAN, and JOHNSON GATCHALIAN, whose right to Filipino citizenship are merely drawn from their fathers, Jose Gatchalian and Francisco Gatchalian, is unnecessary." (Decision, Annex "E" of Petition).

Looking back to the case of Santiago, William's alleged grandfather, I cannot find sufficient credible evidence to support his claim of Filipino citizenship. For a long time before 20 July 1960 he considered himself a Chinese citizen. The "conclusion" of the Bureau of Immigration that Santiago is a Filipino citizen is based on totally questionable and insufficient evidence which cannot inspire belief. The Order itself, signed by Associate Commissioner Felix Talabis, supports this conclusion. It reads in full as follows:

"This is a petition for the cancellation of an alien registry of SANTIAGO GATCHALIAN, registered as Chinese and holder of ACR No. A-219003 issued at Manila on 13 February 1951 and ICR No. 7501 dated 3 May 1946. He is alleged to be the son of Filipino parents who were not lawfully married.

It is alleged that the petitioner was born in Binondo, Manila, on 25 July 1905, to Pablo Pacheco and Marciana Gatchalian. It is noted that in his application for alien registration filed with this Office on 13 January 1951, Santiago Gatchalian stated that his deceased parents were Pablo Pacheco and Marciana. He was identified by his only brother, Joaquin Pacheco, who insisted that he and petitioner are illegitimate. It is true that, on record, there is a certificate signed on 26 October 1902 by Maxima Gatchalian, their maternal grandmother, giving consent to the marriage of Marciana Gatchalian to Pablo Pacheco (Exh. B), but Joaquin said that his parents did not actually get married. In proof of this, the baptismal record of the petitioner expressly states that Santiago Gatchalian was born on 25 July 1905 and baptized on 6 October 1905, being the son of Marciana Gatchalian, "filipina", and an unknown father (verbatim copy dated 22 June 1907, Parish Priest of Binondo, Manila).

The petitioner, apparently not completely certain about his civil status, has been interchangeably using his paternal and maternal surnames. In school he was known as Santiago Pacheco (Class card for 1920-1921, Meisic, Manila; Certificates of completion of third and fourth grades, Meisic Primary School); but in his residence certificate dated 17 September 1937, and in Tax Clearance Certificate issued on 2 October 1937, he is referred to as Santiago Gatchalian; and in a communication dated 6 June 1941, he was addressed to as Santiago Pacheco by the Philippine Charity Sweepstakes office.

Considering, however, the positive assertion by his elder brother who is better informed about their origin, the incontestable entry in his baptismal record that he is illegitimate and the entry in the marriage contract of his elder brother wherein the father's name is omitted and the mother, Marciana Gatchalian, is described as Filipina (marriage contract dated 29 November 1936) there is sufficient evidence to establish that Santiago Gatchalian is really Filipino at birth, being the legitimate child of a Filipino woman.

WHEREFORE, the herein petition to cancel his alien registration is granted, petitioner shall henceforth be shown in the records of this office as a citizen of the Philippines and the issuance to him of the appropriate identification certificate showing his correct status is hereby authorized." (Order of 12 July 1960, Annex "1" of Comment with Counter--Petition).

As to his alleged marriage to Chu Gim Tee, and their five children, we only have his self-serving oral testimony, thus:

"Q

What is the name of your wife?

A

Her name is Chu Gim Tee.

Q

Is she still alive?

A

No, she died in 1951, in Amoy.

Q

Do you have children with her, if so, mention their names, ages and sexes.

A

Yes. I have five children, all of them alive and they are as follows:

Jose Gatchalian, born on Jan. 2, 1927 in Amoy; Gloria Gatchalian, born February 20, 1929 in Amoy; Francisco Gatchalian, born on March 3, 1931 in Amoy; Elena Gatchalian, born on April 4, 1933 in Amoy; Benjamin Gatchalian, born on 31 March 1942 in Amoy.

Q

Where are they living now?

A

All of them are now living in Macao, with my sister-in-law by the name of Chu Lam Tee." (p. 4, Transcript of the proceedings before the Citizen Evaluation Board on 12 February 1960, Annex "2" of Comment with Counter-Petition).

If indeed Santiago's parents, Pablo Pacheco and Marciana Gatchalian, were married, what was his reason for insisting, through his brother Joaquin, that he, is an illegitimate son? The only possible reason is that Pablo Pacheco is a Chinese citizen, in which case Santiago would follow the citizenship of Marciana, a "filipina". But to give full faith and credit to the oral insistence of illegitimacy is to do violence to the presumptions of validity of marriage, the indissolubility of the marriage bonds and the legitimacy of children. (Art. 220, Civil Code). These are among the presumptions which the ponencia precisely applied when it rejected the petitioners' claim that Santiago failed to establish his claimed marriage to Chu Gim Tee and Francisco's (father of William) claimed marriage to Ong Chiu Kiok, both of which were allegedly celebrated abroad. I cannot find any valid justification

why these presumptions should be liberally applied in favor of claimed marriages allegedly celebrated abroad but denied to purported marriages celebrated in the Philippines.

Interestingly, Santiago used the surname Pacheco during such proceedings and when he testified, he gave his name as Santiago Gatchalian Pacheco. This is an incontrovertible proof that he recognized the legitimate union of his father and mother.

On 18 February 1960, Santiago was recalled to be confronted re his claim as to the number of his children; he testified thus:

"Q

In your testimony on February 12, this year, you named as your children the following: Jose, Gloria, Francisco, Elena, and Benjamin, all born in Amoy, arranged according to the order of their ages. However, in your Form 1 when you secured your ACR in 1951, you mentioned only Jose Gatchalian and Elena Gatchalian. Why, what is the reason why in this form that you filled up in 1951, you mentioned, only Jose and Elena?

A

That form I am not the one who filled it because that is not my handwriting. It is the handwriting of my broker or the clerk of my broker. However, when they prepared that I mentioned my children named Jose, Gloria, Francisco, Elena in a piece of paper which I gave to him, except Benjamin.

Q

Why did you not mention Benjamin in the list?

A

Because he was not yet baptized then."

(Transcript, p. 7, Annex "2" of Comment with Counter-Petition).

The explanation is very flimsy and does not deserve the respect of a passing glance.

There is no showing that Gatchalian took any immediate definite positive step against the 6 July 1962 decision and the warrant of exclusion.

It was only sometime in 1973, or eleven years after, that he and others covered by the warrant of expulsion filed a motion for re-hearing with the Board of Special Inquiry. There has been no explanation for the unreasonable delay in the filing of the motion. It may be surmised that it was due to his minority, considering that he was allegedly only twelve years old when he arrived in Manila from Hongkong on 27 June 1961. But, such minority was no obstacle to the filing of any remedial action for and in his behalf.

The action taken by and the recommendation of the Board of Special Inquiry of 14 March 1973 to the then Acting Commissioner Victor Nituda for the reversal of the July 6, 1962 decision of the Board of Commissioners were not

only highly anomalous, irregular and improper, it was done without any semblance of authority. The Board of Special Inquiry did not have the power to review, modify or reverse a Decision of the Board of Commissioners rendered about eleven years earlier. Then Acting Commissioner Victor Nituda, acting alone, did not likewise have the power or authority to approve the recommendation of said Board, to revive and/or reaffirm the July 6, 1961 decision of the Board of Special Inquiry, to reverse, and nullify, the Decision of 6 July 1962 of the Board of Commissioners, and to order the admission of William Gatchalian as a Filipino citizen. Pursuant to Sec. 26 (b) of C.A. No. 613, as amended (The Philippine Immigration Act of 1940), only the Board of Commissioners can act on the recommendation, if at all it was legally and validly done. The Board of Commissioners is composed of the Commissioner of Immigration and the two Deputy Commissioners. In the absence of any member of the Board, the Department Head shall designate an officer or employee in the Bureau of Immigration to serve as member thereof. In any case coming before it, the decision of any two members shall prevail. (Sec. 8, C.A. No. 613 as amended). The Department Head referred to is the Secretary of Justice since the Commission is, for administrative purposes, under the supervision and control of the Department of Justice.

The decision then of Acting Commissioner Nituda was void and invalid ab initio. In view thereof, the rationalization in the ponencia that the issue could be re-opened since the decision of the Board of Commissioners of 6 July 1962 did not constitute *res judicata* is irrelevant. But even if it is to be conceded that the 6 July 1962 decision did not constitute *res judicata*, I find it both strange and illogical to give full faith and credit to the unilateral action of Mr. Nituda and to use it to bar the Boards from exercising its power and jurisdiction over William Gatchalian.

Assuming that indeed William is the grandson of Santiago, I find it rather strange why Santiago did not mention him in his testimony before the Citizenship Evaluation Board. At that time William was already eleven years old. It is logical to presume that the proceeding initiated by Santiago was principally for the benefit of his alleged children and grandchildren. It was, as subsequent events proved, intended to prepare the legal basis for their entry into the country as Filipino citizens. Thus, eleven months after he obtained a favorable decision from the Board, and on two successive dates, his alleged children and grandchildren entered the country. On 25 June 1961 his alleged children Jose, Elena, Benjamin, and his alleged grandchildren Pedro and Juan arrived from Hongkong. On 27 June 1961, his alleged daughter Gloria and son Francisco with his alleged children William and Johnson also arrived from Hongkong. (pp. 4-5, Petition).

That he has continuously resided in the Philippines since 1961; he is married to Ting Dee Hua on July 1, 1973, and his marriage contract shows that he is a Filipino citizen; he holds passports and earlier passports as a Filipino; he is a registered voter of Valenzuela, Metro Manila where he has long resided and exercised his right of suffrage; he is engaged in business in the Philippines since 1973, and is a director/officer of the International Polymer Corp. and Ropeman International Corp. as a Filipino, and that the companies he runs and in which he has a controlling investment provided a livelihood to 4,000 employees and approximately 25,000 dependents; he is a taxpayer; and he has continuously enjoyed the status of Filipino citizenship, discharged his responsibility as such until petitioning Boards initiated the deportation proceedings against him, are not of any help to William Gatchalian. For, they neither confer nor strengthen his claim of Filipino citizenship since they are all rooted on the illegal and void decision of then Acting Commissioner Victor Nituda of 15 March 1973. A decision which is void and invalid ab initio cannot be a source of valid acts. Neither can such substantive infirmity be cured by salutary acts that tend to confirm the status conferred by the void decision.

In the light of the foregoing, it follows that the warrant of exclusion issued against William Gatchalian pursuant to and by virtue of the 6 July 1962 Decision of the Board of Commissioners subsists and remains valid and enforceable.

I disagree with the view advanced in the ponencia that the State can no longer enforce the warrant of exclusion because it is already barred by prescription considering that Section 37 (b) of the Immigration Act states that deportation "shall not be effected . . . unless the arrest in the deportation proceedings is made within five (5) years after the cause of deportation arises."

Said paragraph (b) of Section 37 reads in full as follows:

"(b) Deportation may be effected under clauses 2, 7, 8, 11, and 12 of paragraph (a) of this section at any time after entry, but shall not be effected under any other clause unless the arrest in the deportation proceedings is made within five years after the cause of deportation arises. Deportation under clauses 3 and 4 shall not be effected if the court or judge thereof, when sentencing the alien, shall recommend to the Commissioner of Immigration that the alien be not deported." (As amended by Sec. 13, R.A. No. 503). (Italics supplied).

Note that the five-year period applies only to clauses other than 2, 7, 8, 11 and 12 of paragraph (a) of the Section. In respect to clauses 2, 7, 8, 11 and 12, the limitation does not apply. These clauses read as follows:

"(2) Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry;

.....

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

"(8) Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government, or who advises, advocates, or teaches the assault or assassination of public officials because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;

.....

"(11) Any alien who engages in profiteering, hoarding, or blackmarketing, independent of any criminal action which may be brought against him;

"(12) Any alien who is convicted of any offense penalized under Commonwealth Act Numbered Four Hundred and Seventy-Three, otherwise known as the Revised Naturalization Laws of the Philippines, or any law relating to acquisition of Philippine citizenship; . . ."

Mr. Gatchalian is covered by clause (2); besides, the warrant for his exclusion was issued within a period of five years following his entry.

Lam Shee vs, Bengzon (93 Phil. 1065) is not applicable to Mr. Gatchalian. In issue in that case was the deportation of a minor whose mother fraudulently entered the Philippines by using the name of a resident Chinese merchant who is not her lawful husband but against whom no deportation proceedings was initiated within five years following her entry. Said mother did in fact acquire permanent residence status. Furthermore, the minor's mother never claimed to be a Filipino citizen.

IN VIEW OF ALL THE FOREGOING, I vote to GRANT the petition in G. R. Nos. 95122-23, SET ASIDE the questioned orders of respondents Judge Joselito Dela Rosa and Judge Teresita Dizon Capulong as having been issued beyond their jurisdiction, ORDER the DISMISSAL of Civil Case Nos. 90-54214 of the Regional Trial Court of Manila and 3431-V-90 of the Regional Trial Court of Valenzuela, Metro Manila and to DISMISS for

lack of merit the COUNTER-PETITION.

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