

## FIRST DIVISION

[ G.R. No. 183133, July 26, 2010 ]

**BALGAMELO CABILING MA, FELIX CABILING MA, JR., AND VALERIANO CABILING MA, PETITIONERS, VS. COMMISSIONER ALIPIO F. FERNANDEZ, JR., ASSOCIATE COMMISSIONER ARTHEL B. CARONOGAN, ASSOCIATE COMMISSIONER JOSE DL. CABOCHAN, ASSOCIATE COMMISSIONER TEODORO B. DELARMENTE AND ASSOCIATE COMMISSIONER FRANKLIN Z. LITTAUA, IN THEIR CAPACITIES AS CHAIRMAN AND MEMBERS OF THE BOARD OF COMMISSIONERS (BUREAU OF IMMIGRATION), AND MAT G. CATRAL, RESPONDENTS.**

### DECISION

**PEREZ, J.:**

Should children born under the 1935 Constitution of a Filipino mother and an alien father, who executed an affidavit of election of Philippine citizenship and took their oath of allegiance to the government upon reaching the age of majority, but who failed to immediately file the documents of election with the nearest civil registry, be considered foreign nationals subject to deportation as undocumented aliens for failure to obtain alien certificates of registration?

Positioned upon the facts of this case, the question is translated into the inquiry whether or not the omission negates their rights to Filipino citizenship as children of a Filipino mother, and erase the years lived and spent as Filipinos.

The resolution of these questions would significantly mark a difference in the lives of herein petitioners.

#### *The Facts*

Balgamelo Cabiling Ma (Balgamelo), Felix Cabiling Ma, Jr. (Felix, Jr.), Valeriano Cabiling Ma (Valeriano), Lechi Ann Ma (Lechi Ann), Arceli Ma (Arceli), Nicolas Ma (Nicolas), and Isidro Ma (Isidro) are the children of Felix (Yao Kong) Ma,<sup>[1]</sup> a Taiwanese, and Dolores Sillona Cabiling, a Filipina.<sup>[2]</sup>

Records reveal that petitioners Felix, Jr., Balgamelo and Valeriano were all born under aegis of the 1935 Philippine Constitution in the years 1948, 1951, and 1957, respectively.<sup>[3]</sup>

They were all raised in the Philippines and have resided in this country for almost sixty (60) years; they spent their whole lives, studied and received their primary and secondary education in the country; they do not speak nor understand the Chinese language, have not set foot in Taiwan, and do not know any relative of their father; they have not even traveled abroad; and they have already raised their

respective families in the Philippines.<sup>[4]</sup>

During their age of minority, they secured from the Bureau of Immigration their Alien Certificates of Registration (ACRs).<sup>[5]</sup>

Immediately upon reaching the age of twenty-one, they claimed Philippine citizenship in accordance with Section 1(4), Article IV, of the 1935 Constitution, which provides that "(t)hose whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship" are citizens of the Philippines. Thus, on 15 August 1969, Felix, Jr. executed his affidavit of election of Philippine citizenship and took his oath of allegiance before then Judge Jose L. Gonzalez, Municipal Judge, Surigao, Surigao del Norte.<sup>[6]</sup> On 14 January 1972, Balgamelo did the same before Atty. Patrocinio C. Filoteo, Notary Public, Surigao City, Surigao del Norte.<sup>[7]</sup> In 1978, Valeriano took his oath of allegiance before then Judge Salvador C. Sering, City Court of Surigao City, the fact of which the latter attested to in his Affidavit of 7 March 2005.<sup>[8]</sup>

Having taken their oath of allegiance as Philippine citizens, petitioners, however, failed to have the necessary documents registered in the civil registry as required under Section 1 of Commonwealth Act No. 625 (*An Act Providing the Manner in which the Option to Elect Philippine Citizenship shall be Declared by a Person whose Mother is a Filipino Citizen*). It was only on 27 July 2005 or more than thirty (30) years after they elected Philippine citizenship that Balgamelo and Felix, Jr. did so.<sup>[9]</sup> On the other hand, there is no showing that Valeriano complied with the registration requirement.

Individual certifications<sup>[10]</sup> all dated 3 January 2005 issued by the Office of the City Election Officer, Commission on Elections, Surigao City, show that all of them are registered voters of *Barangay* Washington, Precinct No. 0015A since June 1997, and that records on previous registrations are no longer available because of the mandatory general registration every ten (10) years. Moreover, aside from exercising their right of suffrage, Balgamelo is one of the incumbent *Barangay* Kagawads in *Barangay* Washington, Surigao City.<sup>[11]</sup>

Records further reveal that Lechi Ann and Arceli were born also in Surigao City in 1953<sup>[12]</sup> and 1959,<sup>[13]</sup> respectively. The Office of the City Civil Registrar issued a Certification to the effect that the documents showing that Arceli elected Philippine citizenship on 27 January 1986 were registered in its Office on 4 February 1986. However, no other supporting documents appear to show that Lechi Ann initially obtained an ACR nor that she subsequently elected Philippine citizenship upon reaching the age of majority. Likewise, no document exists that will provide information on the citizenship of Nicolas and Isidro.

### ***The Complaint***

On 16 February 2004, the Bureau of Immigration received the Complaint-Affidavit<sup>[14]</sup> of a certain Mat G. Catral (Mr. Catral), alleging that Felix (Yao Kong) Ma and his seven (7) children are undesirable and overstaying aliens. Mr. Catral, however, did not participate in the proceedings, and the Ma family could not but believe that the complaint against them was politically motivated because they

strongly supported a candidate in Surigao City in the 2004 National and Local Elections.<sup>[15]</sup>

On 9 November 2004, the Legal Department of the Bureau of Immigration charged them for violation of Sections 37(a)(7)<sup>[16]</sup> and 45(e)<sup>[17]</sup> of Commonwealth Act No. 613, otherwise known as the *Philippine Immigration Act of 1940*, as amended. The Charge Sheet<sup>[18]</sup> docketed as BSI-D.C. No. AFF-04-574 (OC-STF-04-09/23-1416) reads, in part:

That Respondents x x x, all Chinese nationals, failed and continuously failed to present any valid document to show their respective status in the Philippines. They likewise failed to produce documents to show their election of Philippines (sic) citizenship, hence, undocumented and overstaying foreign nationals in the country.

That respondents, being aliens, misrepresent themselves as Philippine citizens in order to evade the requirements of the immigration laws.

### ***Ruling of the Board of Commissioners, Bureau of Immigration***

After Felix Ma and his seven (7) children were afforded the opportunity to refute the allegations, the Board of Commissioners (Board) of the Bureau of Immigration (BI), composed of the public respondents, rendered a Judgment dated 2 February 2005 finding that Felix Ma and his children violated Commonwealth Act No. 613, Sections 37(a)(7) and 45(e) in relation to BI Memorandum Order Nos. ADD-01-031 and ADD-01-035 dated 6 and 22 August 2001, respectively.<sup>[19]</sup>

The Board ruled that since they elected Philippine citizenship after the enactment of Commonwealth Act No. 625, which was approved on 7 June 1941, they were governed by the following rules and regulations:

1. Section 1 of Commonwealth Act No. 625, providing that the election of Philippine citizenship embodied in a statement sworn before any officer authorized to administer oaths and the oath of allegiance shall be filed with the nearest civil registry;<sup>[20]</sup> and Commission of Immigration and Deportation (CID, now Bureau of Immigration [BI]) Circular dated 12 April 1954,<sup>[21]</sup> detailing the procedural requirements in the registration of the election of Philippine citizenship.
2. Memorandum Order dated 18 August 1956<sup>[22]</sup> of the CID, requiring the filing of a petition for the cancellation of their alien certificate of registration with the CID, in view of their election of Philippine citizenship;
3. Department of Justice (DOJ) Opinion No. 182, 19 August 1982; and DOJ Guidelines, 27 March 1985, requiring that the records of the proceedings be forwarded to the Ministry (now the Department) of Justice for final determination and review.<sup>[23]</sup>

As regards the documentation of aliens in the Philippines, Administrative Order No. 1-93 of the Bureau of Immigration<sup>[24]</sup> requires that ACR, E-series, be issued to

foreign nationals who apply for initial registration, finger printing and issuance of an ACR in accordance with the Alien Registration Act of 1950.<sup>[25]</sup> According to public respondents, any foreign national found in possession of an ACR other than the E-series shall be considered improperly documented aliens and may be proceeded against in accordance with the Immigration Act of 1940 or the Alien Registration Act of 1950, as amended.<sup>[26]</sup>

Supposedly for failure to comply with the procedure to prove a valid claim to Philippine citizenship *via* election proceedings, public respondents concluded that Felix, Jr. Balgamelo, Arceli, Valeriano and Lechi Ann are **undocumented and/or improperly documented aliens**.<sup>[27]</sup>

Nicolas and Isidro, on the other hand, did not submit any document to support their claim that they are Philippine citizens. Neither did they present any evidence to show that they are properly documented aliens. For these reasons, public respondents likewise deemed them **undocumented and/or improperly documented aliens**.<sup>[28]</sup>

The dispositive portion<sup>[29]</sup> of the Judgment of 2 February 2005 reads:

1. Subject to the submission of appropriate clearances, **summary deportation** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma, Taiwanese [Chinese], under C.A. No. 613, Sections 37(a)(7), 45(e) and 38 in relation to BI M.O. Nos. ADD-01-031 and ADD-01-035 dated 6 and 22 August 2001, respectively;
2. **Issuance of a warrant of deportation** against Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma under C.A. No. 613, Section 37(a);
3. **Inclusion of the names** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma **in the Immigration Blacklist**; and
4. **Exclusion from the Philippines** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma under C.A. No. 613, Section 29(a)(15). (*Emphasis supplied.*)

In its Resolution<sup>[30]</sup> of 8 April 2005, public respondents partially reconsidered their Judgment of 2 February 2005. They were convinced that Arceli is an immigrant under Commonwealth Act No. 613, Section 13(g).<sup>[31]</sup> However, they denied the Motion for Reconsideration with respect to Felix Ma and the rest of his children.<sup>[32]</sup>

### ***Ruling of the Court of Appeals***

On 3 May 2005, only Balgamelo, Felix, Jr., and Valeriano filed the *Petition for*

*Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals, which was docketed as CA-G.R. SP No. 89532. They sought the nullification of the issuances of the public respondents, to wit: (1) the Judgment dated 2 February 2005, ordering the summary deportation of the petitioners, issuance of a warrant of deportation against them, inclusion of their names in the Immigration Blacklist, and exclusion of the petitioners from the Philippines; and (2) the Resolution dated 8 April 2005, denying the petitioners' Motion for Reconsideration.

On 29 August 2007, the Court of Appeals dismissed the petition<sup>[33]</sup> after finding that the petitioners "failed to comply with the exacting standards of the law providing for the procedure and conditions for their continued stay in the Philippines either as aliens or as its nationals."<sup>[34]</sup>

On 29 May 2008, it issued a Resolution<sup>[35]</sup> denying the petitioners' Motion for Reconsideration dated 20 September 2007.

To reiterate, a person's continued and uninterrupted *stay in the Philippines, his being a registered voter or an elected public official cannot vest in him Philippine citizenship as the law specifically lays down the requirements for acquisition of Philippine citizenship by election*. The prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and, thereafter, file the same with the nearest civil registry. The constitutional mandate concerning citizenship must be adhered to strictly. Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient. One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude.<sup>[36]</sup>

### ***Our Ruling***

The 1935 Constitution declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. The mandate states:

Section 1. The following are citizens of the Philippines:

(1) xxx;

x x x x

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.<sup>[37]</sup>

In 1941, Commonwealth Act No. 625 was enacted. It laid down the manner of