531 Phil. 407

THIRD DIVISION

[G.R. NO. 125793, August 29, 2006]

JOEVANIE ARELLANO TABASA, PETITIONER, VS. HON. COURT OF APPEALS, BUREAU OF IMMIGRATION AND DEPORTATION AND WILSON SOLUREN, RESPONDENTS.

D E C I S I O N

VELASCO, JR., J.:

Citizenship is a priceless possession. Former U.S. Chief Justice Earl Warren fittingly emphasized its crowning value when he wrote that "it is man's basic right for it is nothing less than to have rights."[1] When a person loses citizenship, therefore, the State sees to it that its reacquisition may only be granted if the former citizen fully satisfies all conditions and complies with the applicable law. Without doubt, repatriation is not to be granted simply based on the vagaries of the former Filipino citizen.

The Case

The instant petition for review[2] under Rule 45 of the 1997 Rules of Civil Procedure contests the denial by the Court of Appeals (CA) of the Petition for *Habeas Corpus* interposed by petitioner Joevanie Arellano Tabasa from the Order of Summary Deportation issued by the Bureau of Immigration and Deportation (BID) for his return to the United States.

The Facts

The facts as culled by the CA from the records show that petitioner Joevanie Arellano Tabasa was a natural-born citizen of the Philippines. In 1968,[3] when petitioner was seven years old,[4] his father, Rodolfo Tabasa, became a naturalized citizen[5] of the United States. By derivative naturalization (citizenship derived from that of another as from a person who holds citizenship by virtue of naturalization[6]), petitioner also acquired American citizenship.

Petitioner arrived in the Philippines on August 3, 1995, and was admitted as a "balikbayan" for one year. Thereafter, petitioner was arrested and detained by agent Wilson Soluren of the BID on May 23, 1996, pursuant to BID Mission Order No. LIV-96-72 in Baybay, Malay, Aklan; subsequently, he was brought to the BID Detention Center in Manila.[7]

Petitioner was investigated by Special Prosecutor Atty. Edy D. Donato at the Law and Investigation Division of the BID on May 28, 1996; and on the same day, Tabasa was accused of violating Section 8, Chapter 3, Title 1, Book 3 of the 1987 Administrative Code, in a charge sheet which alleged:

1. That on 3 August 1995, respondent (petitioner herein [Tabasa]) arrived in the Philippines and was admitted as a balikbayan;

2. That in a letter dated 16 April 1996, Honorable Kevin Herbert, Consul General of [the] U.S. Embassy, informed the Bureau that respondent's Passport No. 053854189 issued on June 10, 1994 in San Francisco, California, U.S.A., had been revoked by the U.S. Department of State;

3. Hence, respondent [petitioner Tabasa] is now an undocumented and undesirable alien and may be summarily deported pursuant to Law and Intelligence Instructions No. 53 issued by then Commissioner Miriam Defensor Santiago to effect his deportation (Exhibit 3).[8]

The pertinent portion of the Herbert letter is as follows:

> The U.S. Department of State has revoked U.S. passport 053854189 issued on June 10, 1994 in San Francisco, California under the name of Joevanie Arellano Tabasa, born on February 21, 1959 in the Philippines. Mr. Tabasa's passport has been revoked because he is the subject of an outstanding federal warrant of arrest issued on January 25, 1996 by the U.S. District Court for the Northern District of California, for violation of Section 1073, "Unlawful Flight to Avoid Prosecution," of Title 18 of the United States Code. He is charged with one count of a felon in possession of a firearm, in violation of California Penal Code, Section 12021(A)(1), and one count of sexual battery, in violation of California Penal Code, Section 243.4 (D).[9]

The BID ordered petitioner's deportation to his country of origin, the United States, on May 29, 1996, in the following summary deportation order:

> Records show that on 16 April 1996, Mr. Kevin F. Herbert, Consul General of the U.S. Embassy in Manila, filed a request with the Bureau to apprehend and deport the abovenamed [sic] respondent [petitioner Tabasa] on the ground that a standing warrant for several federal charges has been issued against him, and that the respondent's Passport No. 053854189 has been revoked.
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> By reason thereof, and on the strength of Mission Order No. LIV-96-72, Intelligence operatives apprehended the respondent in Aklan on 23 May 1996.
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> In Schonemann vs. Commissioner Santiago, et al., (G.R. No. 81461 [sic, "81461" should be "86461"], 30 May 1989), the Supreme Court ruled that if a foreign embassy cancels the passport of an alien, or does not reissue a valid passport to him, the alien loses the privilege to remain in the country. Further, under Office Memorandum Order No. 34 issued on 21 August 1989, summary deportation proceedings lie where the passport of the alien has expired.
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> It is, thus, apparent that respondent has lost his privilege to remain in the country.[10]

Petitioner filed before the CA a Petition for *Habeas Corpus* with Preliminary Injunction and/or Temporary Restraining Order[11] on May 29, 1996, which was docketed as CA-G.R. SP No. 40771. Tabasa alleged that he was not afforded due process; that no warrant of arrest for deportation may be issued by immigration authorities before a final order of deportation is made; that no notice of the cancellation of his passport was made by the U.S. Embassy; that he is entitled to admission or to a change of his immigration status as a non-quota immigrant because he is married to a Filipino citizen as provided in Section 13, paragraph (a) of the Philippine Immigration Act of 1940; and that he was a natural-born citizen of the Philippines prior to his derivative naturalization when he was seven years old due to the naturalization of his father, Rodolfo Tabasa, in 1968.

At the time Tabasa filed said petition, he was already 35 years old.[12]

On May 30, 1996, the CA ordered the respondent Bureau to produce the person of the petitioner on June 3, 1996 and show the cause of petitioner's detention, and restrained the Bureau from summarily deporting him. On June 3, 1996, the BID presented Tabasa before the CA; and on June 6, 1996, the CA granted both parties ten (10) days within which to file their memoranda, after which the case would be considered submitted for decision.[13] Meanwhile, the Commissioner of Immigration granted the petitioner's temporary release on bail on a PhP 20,000.00 cash bond. [14]

However, on June 13, 1996, petitioner filed a Supplemental Petition alleging that he had acquired Filipino citizenship by repatriation in accordance with Republic Act No. 8171 (RA 8171), and that because he is now a Filipino citizen, he cannot be deported or detained by the respondent Bureau.[15]

The Ruling of the Court of Appeals

The CA, in its August 7, 1996 Decision,[16] denied Tabasa's petition on the ground that he had not legally and successfully acquired—by repatriation—his Filipino citizenship as provided in RA 8171. The court said that although he became an American citizen by derivative naturalization when his father was naturalized in 1968, there is no evidence to show that he lost his Philippine citizenship "on account of political or economic necessity," as explicitly provided in Section 1, RA 8171—the law governing the repatriation of natural-born Filipinos who have lost their citizenship. The affidavit does not state that political or economic necessity was the compelling reason for petitioner's parents to give up their Filipino citizenship in 1968. Moreover, the court *a quo* found that petitioner Tabasa did not dispute the truth of the April 16, 1996 letter of the United States Consul General Kevin F. Herbert or the various warrants issued for his arrest by the United States court. The court *a quo* noted that after petitioner was ordered deported by the BID on May 29, 1996, he successively executed an Affidavit of Repatriation on June 6, 1996 and took an oath of allegiance to the Republic of the Philippines on June 13, 1996—more than ten months after his arrival in the country on August 3, 1995. The appellate court considered petitioner's "repatriation" as a last ditch effort to avoid deportation and prosecution in the United States. The appellate court concluded that his only reason to want to reacquire Filipino citizenship is to avoid criminal prosecution in the United States of America. The court *a quo*, therefore, ruled against Tabasa, whose

petition is now before us.

The Issue

The only issue to be resolved is whether petitioner has validly reacquired Philippine citizenship under RA 8171. If there is no valid repatriation, then he can be summarily deported for his being an undocumented alien.

The Court's Ruling

The Court finds no merit in this petition.

RA 8171, "An Act Providing for the Repatriation of Filipino Women Who Have Lost Their Philippine Citizenship by Marriage to Aliens and of Natural-Born Filipinos," was enacted on October 23, 1995. It provides for the repatriation of only two (2) classes of persons, viz:

> **Filipino women who have lost their Philippine citizenship by marriage to aliens and natural-born Filipinos who have lost their Philippine citizenship,** including their minor children, on account of political or economic necessity, may reacquire Philippine citizenship through repatriation in the manner provided in Section 4 of Commonwealth Act No. 63, as amended: Provided, That the applicant is not a:
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> (1) Person opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing organized government;
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> (2) Person defending or teaching the necessity or propriety of violence, personal assault, or association for the predominance of their ideas;
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> (3) Person convicted of crimes involving moral turpitude; or
>
> (4) Person suffering from mental alienation or incurable contagious diseases.[17] (Emphasis supplied.)

Does petitioner Tabasa qualify as a natural-born Filipino who had lost his Philippine citizenship by reason of political or economic necessity under RA 8171?

He does not.

Persons qualified for repatriation under RA 8171

To reiterate, the only persons entitled to repatriation under RA 8171 are the following:

a. Filipino women who lost their Philippine citizenship by marriage to aliens; and

b. Natural-born Filipinos including their minor children who lost their Philippine citizenship on account of political or economic necessity.

Petitioner theorizes that he could be repatriated under RA 8171 because he is a *child* of a natural-born Filipino, and that he lost his Philippine citizenship by derivative naturalization when he was still a minor.

Petitioner overlooks the fact that the privilege of repatriation under RA 8171 is available *only* to natural-born Filipinos who lost their citizenship on account of political or economic necessity, and to the *minor* children of said natural-born Filipinos. This means that if a parent who had renounced his Philippine citizenship due to political or economic reasons later decides to repatriate under RA 8171, his repatriation will also benefit his minor children according to the law. This includes a situation where a former Filipino subsequently had children while he was a naturalized citizen of a foreign country. The repatriation of the former Filipino will allow him to recover his natural-born citizenship and automatically vest Philippine citizenship on his children of *jus sanguinis* or blood relationship:[18] the children acquire the citizenship of their parent(s) who are natural-born Filipinos. To claim the benefit of RA 8171, however, the children must be of minor age at the time the petition for repatriation is filed by the parent. This is so because a child does not have the legal capacity for all acts of civil life much less the capacity to undertake a political act like the election of citizenship. On their own, the minor children cannot apply for repatriation or naturalization separately from their parents.

In the case at bar, there is no dispute that petitioner was a Filipino at birth. In 1968, while he was still a minor, his father was naturalized as an American citizen; and by derivative naturalization, petitioner acquired U.S. citizenship. Petitioner now wants us to believe that he is entitled to automatic repatriation as a child of natural-born Filipinos who left the country due to political or economic necessity. This is absurd. Petitioner was no longer a minor at the time of his "repatriation" on June 13, 1996. The privilege under RA 8171 belongs to children who are of minor age **at the time of the filing of the petition for repatriation.**

Neither can petitioner be a natural-born Filipino who left the country due to political or economic necessity. Clearly, he lost his Philippine citizenship by operation of law and not due to political or economic exigencies. It was his father who could have been motivated by economic or political reasons in deciding to apply for naturalization. The decision was his parent's and not his. The privilege of repatriation under RA 8171 is extended directly to the natural-born Filipinos who could prove that they acquired citizenship of a foreign country due to political and economic reasons, and extended indirectly to the minor children at the time of repatriation.

In sum, petitioner is not qualified to avail himself of repatriation under RA 8171. However, he can possibly reacquire Philippine citizenship by availing of the Citizenship Retention and Re-acquisition Act of 2003 (Republic Act No. 9225) by simply taking an oath of allegiance to the Republic of the Philippines.

Where to file a petition for repatriation pursuant to RA 8171

Even if we concede that petitioner Tabasa can avail of the benefit of RA 8171, still he failed to follow the procedure for reacquisition of Philippine citizenship. He has to file his petition for repatriation with the Special Committee on Naturalization (SCN), which was designated to process petitions for repatriation pursuant to Administrative Order No. 285 (A.O. No. 285) dated August 22, 1996, to wit: