

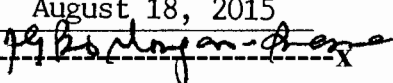
EN BANC

G.R. No. 210164 – *Rommel C. Arnado v. Commission on Elections and Florante Capitan*

Promulgated:

August 18, 2015

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CONCURRING OPINION

SERENO, CJ:

In *Moy Ya Lim Yao v. Commissioner of Immigration*,<sup>1</sup> we emphasized the variable nature of a person's citizenship, which cannot be determined with finality or become the basis of rules that can be applied to any and all proceedings thereafter. We said:

Everytime 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.<sup>2</sup>

In election contests, this pronouncement gains significance, as elective local officials are constitutionally allowed to run and serve for three consecutive terms.<sup>3</sup> While citizenship is a continuing requirement that must be possessed not only at the time of election or assumption of office, but also during the entire tenure of the official,<sup>4</sup> it is not a continuing disqualification to run for and hold public office.<sup>5</sup>

As such, each case involving the question of an elective official's citizenship must be treated anew in accordance with the surrounding relevant facts and applicable laws.

In this regard, I agree with some of the statements of J. Brion in his Dissenting Opinion. Indeed, the Court's ruling in *Maquiling v. COMELEC*<sup>6</sup> went only so far as to determine whether Rommel C. Arnado (Arnado) was qualified to run for public office in the 2010 elections. It did not operate as, nor was it intended to be, a final determination of Arnado's citizenship that would forever derail his career as a public official.

In *Maquiling*, we reiterated that natural-born citizens of the Philippines who have lost their citizenship by reason of their naturalization

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<sup>1</sup> 148-B Phil. 773 (1971).

<sup>2</sup> *Id.* at 855.

<sup>3</sup> CONSTITUTION, Article X, Section 8.

<sup>4</sup> *Republic v. De La Rosa*, G.R. Nos. 104654, 105715 & 105735, 6 June 1994, 232 SCRA 785; *Labo, Jr. v. COMELEC*, 257 Phil. 1 (1989); *Frialdo v. COMELEC*, G.R. No. 87193, 23 June 1989, 174 SCRA 245.

<sup>5</sup> *Frialdo v. COMELEC*, 327 Phil. 521 (1996).

<sup>6</sup> G.R. No. 195649, 16 April 2013, 696 SCRA 420.



as citizens of a foreign country may qualify to run for public office upon taking the Oath of Allegiance<sup>7</sup> and making a sworn renunciation of their foreign citizenship.<sup>8</sup> Arnado subjected his citizenship to attack when he continued to use his United States (US) passport to travel in and out of the country despite previously renouncing his US citizenship. The Court ruled that his use of his US passport nullified the effect of his previous renunciation of US citizenship. While he did not lose his Philippine citizenship in the process, he reverted to his status as a dual citizen and remained as such at the time that he filed his Certificate of Candidacy for the position of mayor of Kauswagan, Lanao del Norte in the 2010 elections. Under Section 40(d) of the Local Government Code, those with dual citizenship are disqualified from running for any elective local position.

Considering that the Court had pinpointed the defect in Arnado's oath of renunciation, the simple act of taking the oath anew would have been enough compliance with the requirement of the law.

The Decision found that from the time Arnado used his US passport to travel in and out of the country up to the filing of his Certificate of Candidacy for the succeeding elections in 2013, there had been no change in his circumstances.<sup>9</sup> He still had not made a sworn renunciation of his US citizenship. Thus, the ruling in *Maquiling* still applies: that Arnado had dual citizenship when he filed for his candidacy on 1 October 2012.

It did not matter that *Maquiling* was promulgated months after Arnado had filed for candidacy. Since he was not totally unaware that the use of his US passport might have adverse consequences on his candidacy for the 2013 elections, the Decision concludes that he should have been prudent enough to remedy whatever defect there might have been in his citizenship.<sup>10</sup>

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<sup>7</sup> Section 3 of Republic Act No. 9225 (Citizenship Retention and Re-acquisition Act of 2003) states: Section 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I \_\_\_\_\_, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

<sup>8</sup> Section 5(2) of Republic Act No. 9225 provides:

Section 5. *Civil and Political Rights and Liabilities.* — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

<sup>9</sup> Decision, G.R. No. 210164, p. 14.

<sup>10</sup> Id. at 15.

Even *J. Brion* concedes that Arnado could have been more circumspect in order to secure his qualification to run for public office.<sup>11</sup> However, it is insisted that the members of this Court should remove the present case from the shadow of *Maquiling* and arrive at its resolution based merely on the attendant factual and legal considerations specific to it.<sup>12</sup>

It cannot be denied that by virtue of its being a decision of the Court that joins the country's body of laws as jurisprudence, *Maquiling* serves as a "legal consideration" in the resolution of the present case. *Maquiling's* application cannot be helped, especially since the Decision therein hinged not only on relevant laws, but largely on the facts then presented before the Court. Thus, while the legal conclusion in *Maquiling* was not a final determination of Arnado's citizenship – as it applied only for purposes of the 2010 elections – the facts on which its legal conclusion was founded cannot be totally ignored.

A person's citizenship may be "threshed out again and again"<sup>13</sup> in every proceeding as long as it becomes relevant and necessary. Except for some clearly unmeritorious cases, it is always a good idea to decide on the merits, especially in election controversies in which the law is sometimes placed at odds with the will of the people. At the same time, the Court puts a premium on economy, and where previous declarations of one's citizenship become pertinent, those cases may be used as a take-off point if only to emphasize the differences and similarities, as well as the measures that were taken in the interim.

One point of contention between the Decision and the Dissenting Opinion is the finding that Arnado used his US passport for his travels in and out of the country on 12 January 2010 and 23 March 2010.

*Maquiling* indeed made a finding that Arnado used his US passport for travel on those dates. In the Court Resolution dated 2 July 2013, we said:

Well-settled is the rule that findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence. They are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that the administrative body had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated.

Nevertheless, it must be emphasized that COMELEC First Division found that Arnado used his U.S. Passport at least six times after he renounced his American citizenship. This was debunked by the COMELEC En Banc, which found that Arnado only used his U.S. passport four times, and which agreed with Arnado's claim that he only used his U.S. passport on those occasions because his Philippine passport

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<sup>11</sup> Dissenting Opinion of *J. Brion*, G.R. No. 210164, p. 22.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Moy Ya Lim Yao v. Commissioner of Immigration*, *supra*.

was not yet issued. The COMELEC En Banc argued that Arnado was able to prove that he used his Philippine passport for his travels on the following dates: 12 January 2010, 31 January 2010, 31 March 2010, 16 April 2010, 20 May 2010, and 4 June 2010.

None of these dates coincide with the two other dates indicated in the **certification issued by the Bureau of Immigration showing that on 21 January 2010 and on 23 March 2010, Arnado arrived in the Philippines using his U.S. Passport No. 057782700 which also indicated therein that his nationality is USA-American. Adding these two travel dates to the travel record provided by the Bureau of Immigration showing that Arnado also presented his U.S. passport four times (upon departure on 14 April 2009, upon arrival on 25 June 2009, upon departure on 29 July 2009 and upon arrival on 24 November 2009), these incidents sum up to six.**

The COMELEC En Banc concluded that “the use of the US passport was because to his knowledge, his Philippine passport was not yet issued to him for his use.” This conclusion, however, is not supported by the facts. Arnado claims that his Philippine passport was issued on 18 June 2009. **The records show that he continued to use his U.S. passport even after he already received his Philippine passport. Arnado's travel records show that he presented his U.S. passport on 24 November 2009, on 21 January 2010, and on 23 March 2010. These facts were never refuted by Arnado.**

Thus, the ruling of the COMELEC En Banc is based on a misapprehension of the facts that the use of the U.S. passport was discontinued when Arnado obtained his Philippine passport.<sup>14</sup> (Emphases supplied)

It is important to clarify that the certification from the Bureau of Immigration indicated that Arnado arrived in the country using his US passport on **12** January 2010 and 23 March 2010.<sup>15</sup> The Court gave full credence to the certification, not only because it carried with it the presumption of regularity, but more important, Arnado never bothered to refute the contents thereof.

On the basis of this finding, the Court rejected the claim that Arnado’s use of his US passport several times were mere isolated acts that were done only because he was not yet issued his Philippine passport.<sup>16</sup>

To my mind, this is the turning point of *Maquiling* that regrettably still applies in this case: that whatever professions of faith and allegiance to

<sup>14</sup> *Maquiling v. COMELEC*, G.R. No. 195649, 2 July 2013, 700 SCRA 367, 377-378.

<sup>15</sup> *Maquiling v. COMELEC*, supra note 6. The certification from the Bureau of Immigration dated 23 April 2010 certifies that the name “Arnado, Rommel Cagoco” appears in the Computer Database/Passenger Manifest/IBM Listing on file as of 21 April 2010 with the following pertinent travel records:

DATE of Arrival	:	01/12/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700
DATE of Arrival	:	03/23/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700

<sup>16</sup> Supra note 14.

the Republic that Arnado claims when his citizenship is in question, the fact remains that during the instances that he used his US passport despite having a Philippine passport in his possession, those same professions became hollow. And, that up to the filing of Arnado's Certificate of Candidacy for the 2013 elections, he failed to remedy the fatal blow that such repeated use of his US passport dealt on his electoral qualifications.

I therefore concur with the **DISMISSAL** of the **PETITION**.



**MARIA LOURDES P. A. SERENO**  
Chief Justice