THIRD DIVISION

G.R. No. 191810 (*Jimmy T. Go vs. Bureau of Immigration and Deportation, et al.*)

Promulgated:

June 22, 2015

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DISSENTING OPINION

VELASCO, JR., *J.*:

The majority has resolved to dismiss the instant petition for review and thus effectively opens the way for the deportation of petitioner without giving utmost consideration to documents and circumstances evidencing his Filipino citizenship or at least affording him the right to prove his Filipino citizenship. This dissent particularly addresses the consequent situation that peremptorily denies one, who was born and has lived all his life in the country and is about to be deported, a review of his case prior to a possible mistaken deportation to another country.

The Facts

For perspective, the antecedent facts and proceedings, as gathered from the records and the parties' pleadings, are as follows:

In June 1999, a group calling itself Concerned Employees of Noah's Arc Group of Companies filed a complaint against Carlos Go, Sr. a.k.a. Go Kian Lu (Go, Sr.) and petitioner Jimmy T. Go a.k.a. Jaime T. Gaisano (Go) alleging that Go, Sr. was an undocumented alien who subsequently adopted the name "Carlos Go, Sr." Thereafter, Go, Sr. allegedly obtained some basic education and married a Chinese woman, Rosario Tan. Their union produced ten (10) children, among them Go. On the premise that Go, Sr. was an undocumented alien, Go, the letter-complaint deduced, must also be an alien, being a child of a Chinese citizen.

Meanwhile, in April 2000, one Luis T. Ramos (Ramos) filed before the Bureau of Immigration (BI) a deportation complaint against Go for allegedly misrepresenting himself as a Filipino citizen in violation of Commonwealth Act No. (CA) 613, or the Philippine Immigration Act of 1940, as amended. In his complaint, Ramos alleged that Go was: "1) a Chinese citizen having been born in the Philippines to Chinese parents; 2) that [he] represented himself as a Filipino in his personal and business deals

and transactions, but his personal circumstances and other records relevant thereto indicate that he was not a Filipino citizen x x x."[1]

To support his allegations, Ramos submitted a Certificate of Birth of Go, a page from the Registry of Births of the City of Iloilo and the Birth Certificates of his sister Juliet Go (Juliet) and his older brother Carlos Go, Jr. (Carlos, Jr.). In the aforementioned Certificate of Birth of Go, it was stated that Go was born as an "FChinese."[2] The relevant page from the Registry of Births also stated that the citizenship of Baby Jimmy Go is "Chinese."[3] On the other hand, the corresponding birth certificates of Juliet and Carlos, Jr. state that they were born of Chinese parents.[4]

In his defense, Go submitted that his father, Go, Sr., was born in Jaro, Iloilo City on April 26, 1924[5] of a Chinese father Go Yin An and a Filipino mother, Consolacion Trance, a native of Miagao, Iloilo. He alleged that Go, Sr. elected Philippine citizenship and took his Oath of Allegiance as a Filipino citizen on July 11, 1950. As to his siblings, Juliet and Carlos, Jr., who were born on June 3, 1946 and April 2, 1949 respectively, he claimed that since his father only elected Philippine citizenship on July 11, 1950 or after the birth of his siblings, thus their birth certificates would have in fact stated that Go, Sr. was Chinese, since they were born prior to the election. He further alleged that his father never thought of himself as Chinese as, being a registered voter, he in fact actually voted in the presidential and local elections of 1952 and 1955. Lastly, Go claimed that his birth certificate states that his father's citizenship is "Filipino."

On October 16, 2000,[6] the National Bureau of Investigation (NBI) forwarded to the BI a copy of its Investigation Report and probe on the investigation conducted against Go and Go, Sr. upon the complaint of the Concerned Employees of Noah's Arc Group of Companies. The findings of the Special Investigator (SI)-on-case Roberto B. Dupingay as affirmed by the Chief of SLPS Ricardo U. Morales II expressed the following:

> Investigator-on-case commented that the allegation against x x x CARLOS GO that he is not a Filipino citizen was shattered to pieces when the subject submitted documents proving otherwise. Our x x x (SI) further stressed that per record, it appears that as of January 7, 1950, when subject was still 21 years of age, he already elected Filipino citizenship, took his oath of allegiance and even participated/voted in the 1953 and 1955 Presidential and local elections respectively. Considering the foregoing facts, our SI-on-case opined that by operation of law, the citizenship of the children of subject Carlos Go, who were born before and after he elected Filipino citizenship follows that of their father CARLOS GO.

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[1] Records, p. 48, Annex "C."
[2] Id.
[3] Id.
[4] Id. at 49.
[5] Id. at 66, Annex "D."
[6] Id. at 58, Annex "D."

> We agree. **Records showed that Subject CARLOS GO's election of Filipino citizenship was in accordance with the provisions of the 1935 Philippine Constitution. Subject was born by a Filipino mother and that he complied with the procedures set forth by law.**
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> **Anent the issue touched by SI-on-case regarding (sic) erasure on the original birth certificate of JIMMY TAN GO. We also agree to the SI's opinion that although our QDD confirmed such erasure, the same could not be attributed to CARLOS GO or JIMMY GO as said document (birth certificate) was on file with the Local Civil Registrar of Iloilo City. Furthermore, the change if there is any, was just a correction**. Thus no falsification was committed.[7] (emphasis supplied)

Finding the evidence and the NBI report conclusive as to the citizenship of Go, Sr. and Go, BI Associate Commissioner Linda L. Malenab-Hornilla, by Resolution of February 14, 2001, dismissed the complaint,[8] thus:

> Finding that the evidence furnished by the NBI is conclusive of the citizenship of CARLOS GO and JIMMY TAN GO @ JAIME T. GAISANO, we are constrained to find for the respondent. Filipino citizens are not subject to deportation. Deportation is defined as the expulsion of a foreigner from the territory of the State. The respondent, not being a foreigner but a Filipino citizen cannot be deported.
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> **PREMISES** considered, the herein complaint for deportation of JIMMY TAN GO @ JAIME T. GAISANO is hereby **DISMISSED** for lack of merit.

On March 8, 2001, the BI Board of Commissioners (BI Board), however, by a Resolution[9] reversed the case dismissal, holding that Go, Sr.'s election of citizenship was made out of time. Pursuant thereto the Board directed the filing of appropriate deportation charges against Go.

On July 3, 2001, a Charge Sheet[10] was filed charging Go with violation of Sec. 37(a)(9) in relation to Sec. 45(e) of C.A. 613, as amended.

Thereafter, on November 7, 2001, Go, Sr. and Go filed a petition for certiorari and prohibition before the Regional Trial Court (RTC) of Pasig City, Branch 167, docketed as SCA No. 2218, seeking to nullify the Board's March 8, 2001 Resolution and the Charge Sheet dated July 3, 2001. In essence, the Gos challenged the jurisdiction of the BI to continue with the deportation proceedings.

Pending the resolution of SCA No. 2218, the BI Board rendered on **April 17, 2002** a Decision[11] for Go's apprehension and eventual deportation, disposing as follows:

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[7] Id. at 49, Annex "C."
[8] Id.
[9] Id. at 96.
[10] Id. at 97, BSI-D.C. No. ADD-01-842.
[11] Penned by then Commissioner Andrea D. Domingo and concurred in by then Associate Commissioners Arthel B. Caronoñgan, Daniel C. Cueto and Orlando V. Dizon.

> WHEREFORE, x x x the Board of Commissioners hereby Orders the apprehension of respondent JIMMY T. GO a.k.a. JAIME T. GAISANO and that he be then deported to CHINA of which he is a citizen, without prejudice however, to the continuation of any and all criminal and other proceedings that are pending in court or before the prosecution arm of the Philippine Government, if any. And that upon expulsion, he is thereby ordered barred from entry into the Philippines.

The BI Board gave weight to the pieces of evidence submitted against petitioner Go, i.e.:

1) The Certificate of Birth of Go, issued on November 23, 1999 by the Local Civil Registrar of Iloilo City[12] which showed that Baby Jimmy Go is "FChinese";
2) The Certificate of Live Birth of Juliet Go, which certified that her citizenship was Chinese. The same certificate also stated that Carlos Go was a "Chinese" and the mother "Rosario Tan" was also Chinese;[13] and
3) The Certificate of Live Birth of Carlos Go, Jr., whose citizenship was also certified as "Chinese."[14]

The BI Board held the adverted certificates to be prima facie proof of the facts regarding the nationality of Go pursuant to Article 410 of the Civil Code,[15] since they are considered public documents. Furthermore, the Board held that petitioner's claim of Filipino citizenship is devoid of merit since his father's election of citizenship was void for having been filed five (5) years after he attained the age of majority or when he was 26 years old. Also, the BI Board observed that the certified true copy of the Oath of Allegiance of Go, Sr. appears to have been executed and sworn to before the Deputy Clerk of Court of Iloilo City on July 11, 1950, while his Affidavit of Election was subscribed and sworn to before the same official on July 12, 1950. The Board found the election of Go, Sr. irregular as he filed his Oath of Allegiance before his election of citizenship contrary to Sec. 1 of C.A. No. 625[16] which provides that:

> Election of Philippine Citizenship must be expressed in a statement before any officer authorized to administer oaths and filed with the nearest civil registry and accompanied by an Oath of Allegiance to the Philippine Constitution.

Undeterred, Go filed in the pending petition for certiorari with the RTC, in SCA No. 2218, a supplemental petition to nullify the BI Board's Decision of April 17, 2002.

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[12] Records, p. 64, Annex "D."

[13] Id.

[14] Id.

[15] Article 410 of the Civil Code: "the books making up the Civil Registrar and all documents relating thereto shall be considered public documents and shall be prima-facie evidence of the facts therein contained."

[16] Enacted on June 7, 1941.

On January 6, 2004, the RTC dismissed SCA No. 2218 and dissolved the writ of preliminary prohibitory injunction it earlier issued, thus:

> WHEREFORE, the instant petition for Certiorari and Prohibition is, as it is hereby, DISMISSED for lack of merit and the injunctive relief granted the petitioners, as a consequence, is DISSOLVED.

Following the denial of his motion for reconsideration per the RTC's Order dated May 3, 2004,[17] Go went to the Court of Appeals (CA) via a petition for certiorari, docketed thereat as CA-G.R. SP No. 85143.[18] On October 25, 2004, the CA rendered a Decision affirming the assailed RTC decision and order. The CA, by resolution of February 16, 2010, would subsequently deny Go reconsideration. Meanwhile, on November 16, 2004, the Board issued a Warrant of Deportation against petitioner Go.[19]

From the adverted October 25, 2004 decision and February 16, 2005 resolution in CA-G.R. SP No. 85143, Go and Go, Sr. each interposed before the Court a petition for review, docketed as G.R. Nos. 167569 and 167570.

Go also appealed to the Office of the President (OP) which on September 29, 2004 dismissed the appeal:

> **WHEREFORE**, premises considered, the appeal of Jimmy T. Go a.k.a. Jaime T. Gaisano is hereby **DISMISSED** for lack of merit. Accordingly, the appealed judgment of the BI is hereby **AFFIRMED**.[20]

On February 11, 2005, the OP denied Go's motion for reconsideration, prompting him to repair to the CA on a petition for review under Rule 43[21] assailing the OP decision and order.

In the meantime, on **September 4, 2009**, in G.R. Nos. 167569 and 167570 (*Go, Sr. v. Ramos*),[22] the Court rendered a Decision affirming the CA Decision and Resolution dated October 25, 2004 and February 16, 2005, respectively in CA-G.R. SP No. 85143.

A little over a month after or on October 28, 2009, the CA dismissed the Gos' appeal from the OP's ruling, the appellate court holding that the April 17, 2002 decision of the Board subject of Go's appeal to the OP had already become final and executory. Again, the CA denied Go's motion for reconsideration in a Resolution dated March 22, 2010.[23]

Hence this petition for review on certiorari, petitioner Go ascribing on the CA the commission of errors which may be reduced into the following

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[17] Records, p. 100.

[18] Entitled *Jimmy T. Go, et al. v. Hon. Alfredo C. Flores, Presiding Justice of the Regional Trial Court, Branch 167, Pasig City, et al.*

[19] Records, p. 102.

[20] Id. at 70, Annex "E."

[21] Docketed as CA-G.R. SP No. 88840.

[22] 598 SCRA 266.

[23] Records, p. 105.

issues: *first*, whether or not the April 17, 2002 Decision of the BID in BSI-D.C. No. ADD-01-117 is final and executory; and *second* and most importantly, because his impending deportation would hinge on the resolution of the question, whether or not petitioner Go is a citizen of the Philippines.

The majority resolves the first issue in the affirmative. I agree with the disposition and the arguments underpinning the adjudication on the matter. I regret my inability, however, to go along with the *ponencia*'s reluctance, and its stated reasons to delve into the citizenship issue and the evidence for or against the claimant or consider granting him a judicial review of his claim of citizenship.

At every possible turn, the *ponencia* harks on the adverted September 4, 2009 Court ruling in *Go, Sr. v. Ramos*, a case indeed essentially involving the same factual antecedents as the present case. And as the *ponencia* observed, one of the issues presented in *Go, Sr.* relates to whether or not the evidence the Gos have adduced to support their claim of Filipino citizenship is sufficiently substantial to stop the BI from continuing with the deportation proceedings to give way to a formal judicial action or intervention to pass upon the issue of alienage.

It should be emphasized, however, that *Go, Sr. v. Ramos* basically revolves around the propriety of enjoining the continuation of the deportation proceedings commenced against Go in light of his claim of Filipino citizenship. But while the citizenship issue was tackled upon in passing in the *Go, Sr.* September 4, 2009 Decision of the Court, *Go, Sr.* was but a preliminary determination of the citizenship of Go and Go, Sr. It was not and could not have been the last word on their claim of Filipino citizenship. The Court said so in no uncertain terms that decision, thus:

> As Carlos and Jimmy neither showed conclusive proof of their citizenship nor presented substantial proof of the same, we have no choice but to sustain the Board's jurisdiction over the deportation proceedings. **This is not to say that we are ruling that they are not Filipinos, for that is not what we are called upon to do. This Court necessarily has to pass upon the issue of citizenship only to determine whether the proceedings may be enjoined in order to give way to a judicial determination of the same.** And we are of the opinion that said proceedings should not be enjoined.[24] (emphasis supplied)

As it were, the instant case was initiated fifteen (15) years ago and it may take several years more to finally determine petitioner's citizenship. Given this hard fact and in line with the doctrine permitting judicial determination in cases where there is substantial evidence to support a claim of citizenship, the Court can very well suspend the rules and finally pass upon and adjudge the citizenship of Go, Sr. and Go in the higher interest of substantial justice. In this regard, I note that petitioner Go, in the instant

[24] Supra note 22.

recourse, prays for the final adjudication of his citizenship which will ultimately settle whether he is indeed subject to deportation.

Citizenship Proceedings are Sui Generis

Cases involving issues on citizenship are *sui generis*, meaning; they are in a class of their own. Thus, in cases where the citizenship of a person is material or indispensable in a judicial or administrative case and whatever the corresponding court or administrative authority decides therein, citizenship is not considered as *res judicata* and can be retried again and again. *Res judicata* may only be applied in cases of citizenship when the following concur:

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.[25]

Since the abovementioned requisites for *res judicata* did not concur in the previous case[26] being a deportation case, the Court should, therefore, not be precluded from reviewing the findings of the BI through judicial review when present are substantial grounds and evidence which show the conclusiveness of the citizenship of a deportee.[27] The right to immediate review of the case of a deportee should be recognized to afford the deportee the chance to prove his or her citizenship prior to a possible mistaken deportation to another country.

Citizenship and Deportation

Citizenship is a "personal and more or less permanent membership in a political community. It denotes possession within that particular political community of full civil and political rights subject to special disqualifications such as minority."[28] An "alien," on the other hand, is "one owing allegiance to another country; a foreign-born resident who has not been naturalized and is still a subject or citizen of a foreign country."[29] While "deportation" is "the removal from a country of an alien whose presence in the country is unlawful or is held to be prejudicial to the public welfare."[30]

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[25] *Burca v. Republic*, No. L-24252, June 15, 1973, 51 SCRA 248, 259-260.

[26] *Go, Sr. v. Ramos*, supra note 22.

[27] *Department of Justice Secretary Raul M. Gonzalez , Bureau of Immigration Commissioner and Board of Commissioners Chairman Alipio F. Fernandez, Jr., and Immigration Associate Commissioners and Board of Commissioners Members Arthel B. Caronongan, Teodoro B. Delarmente, Jose D.L. Cabohan, and Franklin Z. Littua v. Michael Alfio Pennisi*, G.R. No. 169958, March 5, 2010.

[28] Bernas, Joaquin G., S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 609.

[29] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 52 (1993).

[30] Id.

In theory, deportation proceedings should only pertain to an alien; it should never apply to a citizen of the country from which a person is being deported. So after a person is adjudged as an alien, the BI can deport the alien to his or her country of origin. However, there might be some instances where a citizen is erroneously deported to another country. What then will happen if one is deported and later on found out to be a citizen? The deportee is uprooted from the country he was adjudged as an alien and shipped to a country where he owes no allegiance to nor have a family in. Hence, We should always be extremely vigilant in cases of deportation lest a deportee be an actual citizen deprived of his Constitutional rights. In fact, Chief Justice Warren, in his dissent in *Perez v. Brownell*,[31] said, "Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen." Accordingly, it would be best for Us to tread carefully on this matter so that the petitioner, an alleged alien, is accorded an opportunity to prove his citizenship prior his expulsion from our country. Therefore, when there is substantial evidence which show that the deportee is a citizen, the citizenship of said deportee should be determined first prior to an actual deportation.

In the instant case, the petitioner is subject to deportation pursuant to the Decision[32] of the BI summarily arrived finding him to be an alien. Alleging that his deportation is a serious mistake since he is in fact a Filipino citizen, he would like the Court to take cognizance of the issue regarding his citizenship.

Citizenship of Go, Sr. and Go

Drawing Our attention to the reality that petitioner Go's citizenship is derived from his father, Go, Sr.'s citizenship, it is important for Us to first ascertain whether Go, Sr. is in actuality a Filipino, and from this determination, We can then settle on the citizenship of petitioner Go.

In the abovementioned facts, Go claimed that on July 12, 1950, when his father elected Philippine Citizenship by filing his Oath of Allegiance, he, being a minor at that time, automatically became a Filipino Citizen.[33] On the other hand, the respondents contend that Go, Sr.'s election of Filipino Citizenship was defective since he failed to strictly comply with the Section 1 of Commonwealth Act No. 625 which provides:

> **Section 1.** The option to elect Philippine citizenship in accordance with subsection (4), section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid

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[31] 356 U.S. 44, 64 (1958).
[32] Supra note 11.
[33] *Rollo*, p. 57.

> statement with the oath of allegiance to the Constitution and the Government of the Philippines.[34]

Article IV, Sec. 1(3) of the 1935 Constitution provides that the citizenship of a legitimate child born of a Filipino mother and an alien father follows the citizenship of the father, unless, upon reaching the age of majority, the child elects Philippine citizenship. On the other hand, Sec. 1 of C.A. No. 625 provides for the procedure on the actual election of citizenship by the child which states that legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines."

Thus, under the 1935 Constitution, Go, Sr., being a son of Go Yin An, a Chinese citizen, and Consolacion Trance, a Filipino, had the option to elect Filipino citizenship upon reaching his age of majority. Petitioner Go claimed that his father was able to elect his Filipino citizenship and take his Oath as such within a reasonable time to make the election. However, the Solicitor General, citing the Decision[35] of the Board of Commissioners, said that Go, Sr. failed to strictly comply with the provisions of C.A. No. 625, thus:

> Respondent's final assertion in paragraph 4, B, pages 6-7 of his Counter-Affidavit is that his father CARLOS GO, Sr., '***Elected Philippine citizenship on July 11, 1950 when he took his Oath of Allegiance on the said date, ***before Eustaquio Logronio, Deputy Clerk of Court Iloilo City'; that '*** on July 12, 1950, my said father CARLOS GO, SR., also signed and executed an Affidavit of 'Election of Philippine Citizenship before Eustaquio Logronio, ***; and that '*** on September 11, 1956 my said father CARLOS GO executed an Affidavit explaining why he filed his Affidavit and Oath of Allegiance with the Office of the Civil Registrar of Iloilo City on September 11, 1956.' The Oath of Allegiance, Election of Philippine Citizenship, and the Affidavit are marked as Annexes "D", "E", and "F", respectively, of respondent's Counter-Affidavit.
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> Observedly, the certified true copy of the Oath of Allegiance of CARLOS GO, SR., appears to have been subscribed and sworn to before the Deputy Clerk of Court of Iloilo City on the '11th day of July, 1950, at the City of Iloilo, Philippines', and the Affidavit of Election of Philippine Citizenship was subscribed and sworn to by CARLOS GO, SR., before the same Deputy Clerk of Court on the '12th day of July 1950'.
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> At this juncture, the question that should be inquired into is: which should be first accomplished, or undertaken, the Oath of Allegiance, or the Election of Philippine Citizenship? The answer is obvious.

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[34] Commonwealth Act No. 625 or "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," June 7, 1941.

[35] BSI-D.C. No. ADD-01-117, April 17, 2002.

The law is clear and explicit. Section 1 of Commonwealth Act No. 625, enacted on June 7, 1941, provides that an Election of Philippine Citizenship must be expressed in a statement before any officer authorized to administer oaths and filed with the nearest civil registry and accompanied by an Oath of Allegiance to the Philippine Constitution. The words 'must be' in the law, likened to the word 'shall" (sic) in the statute, means imperative, and operates to impose a duty which should be enforced (Dizon v. Encarnacion, 9 SCRA 714, 715-716). And the word 'and' in the law, simply means a particle joining words and sentences, and expressing the relations of connection or addition. Section 1 of C.A. No. 625, thus imposes a duty on the part of the person who elects Philippine Citizenship to file the election statement, under oath, before the civil registry and must be accompanied by an oath of Allegiance.

Under those lights, the answer to the question at issues is that one, the likes of CARLOS GO, SR., must first elect to become a citizen of the Philippines before he can take his oath of allegiance. Nevertheless, what CARLOS GO, SR., did, accomplished and performed was first to execute the Oath of Allegiance on July 11, 1950, and then accomplished and/or filed his Election of Philippine Citizenship on the following day July 12, 1950, which is inexplicable. For, how could CARLOS GO, SR., take his Oath of Allegiance when he has not even executed his intention to elect or become a citizen of the Philippines! Certainly, the questionable Oath of Allegiance is NULL AND VOID ab initio and produced no legal force and effect.

And most importantly, likewise vital to appreciate, is that according to Annex "F: of the Counter Affidavit, CARLOS GO, SR., respondent's father, was born in Jaro, Iloilo City, on "April 26, 1924, yet he executed the Affidavit of Election of Philippine Citizenship on July 12, 1950. Hence, on that date of election, he was twenty-six years, two months and 16 days old (26, Yrs. 2 months, 16 days old), which is beyond 21 years of age- the age of majority- in violation of Section 1(4), Article IV, of the 1935 Constitution, now Section 1, (3), Article IV, of the 1987 Constitution, Thusly, Section 1(4), Article IV, of the 1935 Constitution, provides: "Those whose mothers are citizen of the Philippines and, upon reaching the age of majority, elect Philippine Citizenship." The 1935 Constitution, and 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, took effect on June 7, 1941.

Commonwealth Act no. 625 which was enacted pursuant to Section 1(3), Article IV of the 1935 Constitution, which outlines the procedure that should be followed in order to make a valid election of Philippine citizenship, however, does not provide for a time period within which the election should be made. Nevertheless, the option must be exercised within a reasonable period after reaching the age of majority (Department of Justice (DOJ) Opinions dated August 12, 1945, and June 26, 1947). And DOJ Opinion No. 20, s. of 1948, is to the effect that three (3) years is a reasonable period within which to make the Election of Citizenship. The DOJ Opinion No. 20 was cited with approval by the High Court in DY CUENCO V. SECRETARY OF JUSTICE. 5 SCRA 108, 110. While justifiable circumstances may justify an extension of the three-year (3) period (Dy Cuenco v. Secretary of Justice, supra), the Supreme Court, in LIM TECO V. COLLECTOR OF CUSTOMS, 20

> PHIL. 84, firmly declared that five (5) years is an unreasonable period within which to make the election.
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> In accordance with the applicable laws and the foregoing jurisprudence on the matter, the Affidavit of Election of Philippine Citizenship, executed by CARLOS GO, SR., the father of respondent on July 12, 1950, at the age of 26 years, two months, and 16 days old, is unmistakably beyond the allowance period within which the exercise of the privilege should be effectuated by any reasonable yardstick. (cf. Re: Application for Admission in the Philippine Bar, 316 SCRA). And, like the Oath of Allegiance of CARLOS GO, SR. the Affidavit of Election of Philippine Citizenship is likewise NULL AND VOID ab initio and produced no legal force and effect.
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> The Affidavit (Annex "F" of respondent's Counter-Affidavit), wherein the affiant, CARLOS GO, SR., tried to explain why he failed to have Affidavit of Election of Philippine Citizenship, and of the 'Oath of Allegiance *** registered with the Office of the Civil Registrar of the City of Iloilo; and that he executed the aforesaid affidavit *** to conform with the existing Laws and Regulations regarding the election of Philippine Citizenship, paying the corresponding fee of P10.00 at the same time", is a worthless piece of paper, it appearing that the Affidavit is not under oath, because it was not subscribed and sworn to before an officer authorized to administer.

The Republic would, thus, want Us to rule that pursuant to the BOC Decision, Go, Sr. failed to follow the proper procedure for the election of citizenship provided for in Section 1 of C.A. No. 625 and consequently cannot be considered a Filipino citizen. In its Comment,[36] it points out that Go, Sr. committed a critical error in filing his Oath of Allegiance with the Office of Civil Registrar of Iloilo City on September 11, 1956 prior to the filing of his Affidavit of Election of Philippine Citizenship which he filed belatedly, on July 12, 1950. Claiming that the law is clear and explicit in that the Election of Philippine Citizenship "must be expressed in a statement before any officer authorized to administer oaths and filed with the nearest civil registry and accompanied by an Oath of Allegiance to the Philippine Constitution," the Republic urges Us to rule that a person must *first* elect to become a citizen *before* he can take his oath of allegiance. It asserts that the Oath of Allegiance filed by Go, Sr. is null and void being filed prior to the election of citizenship.

I find Go, Sr. to have substantially complied with the procedure provided for by Sec. 1 of C.A. No. 625. Though the provision provided the words "must be" implying a mandatory order to perform a duty, the aforementioned provision did not specifically state that the Election of Citizenship must come *before* the filing of an Oath of Allegiance. Again, to reiterate, the pertinent portion of Section 1 states: *"an Election of Philippine Citizenship must be expressed in a statement before any officer authorized to administer oaths and filed with the nearest civil registry and accompanied by an Oath of Allegiance to the Philippine Constitution."* In Our mind, the mandatory command of the word "must" given by Section 1 pertains to the

[36] *Rollo*, p. 114.

filing of an Election of Citizenship and Oath of Allegiance in the nearest civil registry and not the *sequence* of filing of the Election of Citizenship and Oath of Allegiance of a person. This is so because the words "must be" is written immediately before the phrase "expressed in a statement before any officer authorized to administer oaths." Thus, the mandatory element relates to how an Election of Citizenship should be written. The word "and" pertains to where the Election of Citizenship and the Oath of Citizenship should be filed, which is at the "nearest civil registry." The Oath of Citizenship shall accompany the Election of Citizenship. In this case, Go, Sr. filed the Oath of Citizenship before the Election of Citizenship; hence, he substantially complied with the requirements of the Act.

In *Cabiling v. Fernandez, Jr.*,[37] the Court affirmed the petitioners' citizenship though they were able to register their documents of election only after thirty (30) years. In *Cabiling*, We looked at the intent of the framers of Our Constitution in modifying the 1935 rule on citizenship, to wit:

> FR. BERNAS. x x x Precisely, the reason behind the modification of the 1935 rule on citizenship was a recognition of the fact that it reflected a certain male chauvinism, and it was for the purpose of remedying that this proposed provision was put in. The idea was that we should not penalize the mother of a child simply because she fell in love with a foreigner. Now, the question on what citizenship the child would prefer arises. We really have no way of guessing the preference of the infant. But if we recognize the right of the child to choose, then let him choose when he reaches the age of majority. I think dual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. **We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control. But certainly it is within the jurisdiction of the Philippine government to require that [at] a certain point, a child be made to choose. But I do not think we should penalize a child before he is even able to choose.** I would, therefore, support the retention of the modification made in 1973 of the male chauvinistic rule of the 1935 Constitution.
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> MR. REGALADO. With respect to a child who became a Filipino citizen by election, which the Committee is now planning to consider a natural-born citizen, he will be so the moment he opts for Philippine citizenship. Did the Committee take into account the fact that at the time of birth, all he had was just an **inchoate right** to choose Philippine citizenship, and yet, by subsequently choosing Philippine citizenship, it would appear that his choice retroacted to the date of his birth so much so that under the Gentleman's proposed amendment, he would be a natural-born citizen?
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> FR. BERNAS. But the difference between him and the natural-born who lost his status is that the natural-born who lost his status, lost it voluntarily; whereas, this individual in the situation contemplated in Section 1, paragraph 3 never had the chance to choose. (emphasis supplied)

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[37] G.R. No. 183133, July 26, 2010, 625 SCRA 566.

In the case, We held that "having a Filipino mother is permanent. It is the basis of the right of the petitioners to elect Philippine citizenship. Petitioners elected Philippine citizenship in form and substance. The failure to register the election in the civil registry should not defeat the election and resultingly negate the permanent fact that they have a Filipino mother." Protecting and recognizing the citizenship of the petitioners' mother and subsequently the petitioners, We upheld their election which was done when they reached the age of majority though they belatedly registered the election documents in the nearest civil registry.

In the instant case, respondents never questioned the Filipino citizenship of Go, Sr.'s mother. Its sole issue being, Go, Sr.'s lateness in filing his Election of Citizenship. Go, Sr., in compliance with Sec. 1 of C.A. No. 625, filed his Election of Citizenship on July 12, 1950, merely a day after he filed his Oath of Allegiance, filed on July 11, 1950, with Deputy Clerk of Court Eustaquio Logronio. The fact that Go, Sr.'s Election of Citizenship was only filed a day after he filed his Oath of Citizenship shows his willingness and good faith to abide by the mandate of the law.

Respondents would also want Us to brush aside the compliance of Go, Sr. by pointing out that since he filed his Oath of Allegiance first, there was no real intention to comply with the law. This argument We find tenuous. The reason being is that an "oath" is defined as:

> A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.[38]

Thus defined, how can the respondent plausibly claim that Go, Sr. never really intended to elect his citizenship when he already made a solemn declaration that he is willing to defend the Constitution of the Philippines, obey its laws and the legal orders duly promulgated, that he recognizes and accepts the supreme authority of the Philippines and that he will maintain true faith and allegiance to it and that he rendered his oath voluntarily, without mental reservation or purpose of evasion?[39] The words of an Oath of Citizenship show a person's sincerity in his intention to claim his citizenship. Consequently, respondents' imputation of insincerity to Go, Sr.'s Election and Oath of Citizenship must fail.

Reasonable Time

The Republic would have the Court declare as invalid the Election of Citizenship by Go, Sr. because it was made five (5) years after he reached

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[38] BLACK'S LAW DICTIONARY (9th ed., 2009).
[39] Republic Act No. 9225, Sec. 3.

his age of majority. It contends that such election was not made in a "reasonable time" that the law prescribes.

Sec. 1 of C.A. No. 625 did not, however, prescribe a time period within which the election of the Philippine citizenship should be made. The 1935 Constitution only provides that the election should be made "upon reaching the age of majority." The age of majority during that period of time commenced upon reaching twenty-one (21) years of age. In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a "reasonable time" after attaining the age of majority.

The phrase "reasonable time" has been construed to mean that the election should be made within three (3) years upon reaching the age of majority. However, in *Dy Cuenco v. Secretary of Justice*,[40] We ruled that the three (3)-year period is not an inflexible rule. We staged that "it is true that this clause has been construed to mean a reasonable period after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino." There is a *caveat*—the extendable period to elect Philippine citizenship is not indefinite. It should not be extended beyond a period that cannot, by any stretch of imagination, be considered as "reasonable." In *Dy Cuenco*, We held that election made seven (7) years after a person has reached the age of majority is not considered as a "reasonable time" to elect citizenship. In *Re: Application for Admission to the Philippine Bar v. Vicente D. Ching*, We held that an election made fourteen (14) years after a person has reached the age of majority cannot be allowed because it was clearly made beyond the allowable period.[41]

Respondents also cited the case of *Lim Teco v. Collector of Customs*[42] wherein We allegedly denied the Election of Citizenship by Lim Teco for being filed five (5) years after the petitioner reached the age of majority. However, the circumstances surrounding *Lim Teco* is not on all fours with the present case. Lim Teco was a child of a Chinese and a Filipino mother. At age five, he was sent to China until he reached the age of majority. Five years after he reached the age of majority, he came back and sought entry in the Philippines since he wanted to claim his Philippine citizenship. We held that:

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[40] No. L-18069, May 26, 1962, 5 SCRA 108.
[41] Bar Matter No. 914, October 1, 1999.
[42] No. L-7071, January 15, 1913.

> It follows, therefore, that a child born of alien parents who goes to his father's native land at a tender age and remains there during minority, on becoming of age should, if he desires to retain his Filipino citizenship, indicate that desire by exercising his right of election; and a **failure to express such a desire within a reasonable time should be regarded as a strong presumption of his purpose to become definitely identified with the body politic of his father's country**. The length of time within this right must be exercised, as stated above, has never been the subject of legislation. The State Department of the United States has, however, repeatedly held that such **election must be made within a reasonable time and is best evidenced by an early return to the country of his birth**. In fact, the decisions of the Department of State have gone further and have held almost uniformly that a **return to the country of the child's birth at an early date after attaining majority is absolutely essential for him to retain citizenship therein**.
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> x x x x
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> Cases could readily be conceived where circumstances prevented the child from returning to the country of his birth immediately after attaining majority, and in such cases, upon a proper showing, the return at an early date would, no doubt, be waived, so far as the exigencies of the case required. No such claims have, however, been made in the case at bar, and the board of special inquiry having found as a fact that the appellee by his conduct had expatriated himself, we cannot entertain the idea that the appellee may, after a residence, under these circumstances, of five years in his father's native country after attaining majority, now elect to become a citizen of the Philippine Islands. He has irrevocably lost that right by his failure to exercise it within a reasonable time after becoming of age. He is no longer a citizen of the Philippine Islands.

Thus, in the *Lim Teco* case, We did not deny Lim Teco's citizenship based on his failure to file his Election of Citizenship five (5) years after he reached the age of majority, but because he did not grow up in the Philippines and he failed to return to the Philippines within a reasonable time to elect his citizenship. In fact, he stayed in China until 5 years after he reached the age of majority before deciding to go back to the Philippines to elect Philippine citizenship. The Court further stated that:

> In the first place, the environment of a child up to the age of 5 has little, if any, permanent influence upon his subsequent life if taken to another and very different environment. And a child born of an alien father, taken to his father's country at that age, and remaining there until he attains his majority, is, for all practical purposes, as much a resident of the latter country as a native born who has never left it. **Little trace of his foreign birth and residence is left upon such a child after a residence of several years in his father's country. He lapses into the manner of the native born as easily and as effectually as his father who sired him during a residence of a number of years in a foreign land. Again, having ceased to regard the country of his birth as his home, he is practically in the same position as an American citizen who has never lived in the United States**, and who is referred to in section 6 of the Act of 1907 (emphasis supplied)

Consequently, the Court looked into Lim Teco's circumstances as a minor who grew up in China during his formative years and acquired the manner of a Chinese native until he decided to return to the country of his birth, the Philippines. The crucial factor that led to the Court's Decision in the *Lim Teco* case is the fact that Lim Teco went back to the Philippines five years *after* he reached the age of majority and just then decided to elect Philippine Citizenship. In the mind of the Court, Lim Teco was no longer a Filipino since he no longer had any trace of his Filipino heritage in him. It took too long for him to go back to the land of his birth to claim an inchoate right given him by the Constitution. His very essence was in fact Chinese and he no longer retained any of his Filipino traits due to his long stay in China.

Carlos, on the other hand, was born to, and raised in the Philippines by, his Filipino mother. **He in fact always considered himself a Filipino, and did not even leave the Philippines.** This belief that he was a Filipino from the very beginning more than justifies the tardiness in his election of Philippine citizenship.

Further, Carlos was a registered voter and actually voted in presidential and local elections. He contributed to the economy of the Philippines by setting up businesses, ensuring employment to other Filipinos, and religiously paying his taxes. Likewise, there is no evidence of an Alien Certificate of Registration (ACR) issued to him, as, indeed, it would be impossible for Carlos to obtain an ACR since he in fact is not an immigrant, being born here in the Philippines. Even the public respondents fail to rebut the allegation that there are no records of Carlos' "entry" to the Philippines. Cumulatively, Carlos had done more than what was required of him to elect his Filipino citizenship. Any more requirements imposed upon him, which is not required by law, shall be judicial legislation which this Court is prohibited from doing.

Collateral Attack and Citizen by Election

The petitioner claimed that the deportation proceeding against him was void since it constitutes a collateral attack on the citizenship of his father. On the other hand, respondent BID, in its Comment, admitted that Go, Sr. was not impleaded in the deportation proceeding, but it maintained that Go, Sr. was aware of the pendency and "joined" the petitioner in almost all the cases he instituted to prevent the BID from proceeding with the case. It further contended that it would be "superfluous if the Bureau would again conduct another investigation just to hear the same arguments from Carlos Go, Sr. regarding the acquisition of his citizenship" since he would use the same set of arguments and defenses insofar as their citizenship is concerned.

This argument of the respondent is a grave violation of Go, Sr.'s right to defend his citizenship directly and is not permissible. The mere allegation by the respondent that it would be superfluous to include Go, Sr. in the

deportation proceeding since he would use the same set of arguments and defenses insofar as his citizenship is concerned should not be sanctioned, for to do so would allow collateral attacks against a person's citizenship without affording him due process. The fact that Go, Sr. was not impleaded as a party in the deportation proceeding shows the lack of care the BID displayed in handling the said proceeding. BID's consistent declaration that Go, Sr. is Chinese and its failure to even investigate him for deportation raise reservations in Our mind regarding the selective investigation and deportation proceeding against petitioner Go who was the only person in their family targeted for deportation. This places doubt in Our mind as to the true intention of the complainant in filing a complaint for deportation against petitioner.

Go, Sr. is, thus, considered a citizen by election under the Section 1(4), Article IV of the 1935 Constitution and Section 1 of Commonwealth Act No. 625. After such election, he is, for all intents and purposes, considered a natural-born Filipino citizen. For the respondents to collaterally attack Go, Sr.'s citizenship would do grave injustice against him since he was not afforded the opportunity to defend his right to be called a Filipino citizen. Even naturalized Filipino citizens are protected against such challenges, what more a person considered as natural-born citizen? In *Antonio Y. Co v. Electoral Tribunal of the House of Representatives*,[43] We said that:

> The petitioners question the citizenship of the father through a collateral approach. This cannot be done. In our jurisprudence, an attack on a person's citizenship may only be done through a direct action for its nullity (See Queto vs. Catolico, 31 SCRA 52 [1970]).
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> x x x x
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> To ask the Court to declare that grant of Philippine citizenship to Jose Ong Chuan as null and void would run against the principle of due process.

Thus, in *Co*, We held that an attack for the nullity of a person's citizenship may only be done directly. In the instant case, We note that during the deportation proceedings against the petitioner, the citizenship of his father, Go, Sr., has been continuously collaterally attacked and he was oftentimes conclusively declared to be a Chinese citizen and that, as a result thereof, the petitioner too was conclusively declared a Chinese citizen.

Petitioner Go

After due determination, I find petitioner Go to be a Filipino citizen being a minor at the time his father elected his Filipino citizenship, and he, by operation-of-law, automatically became a Filipino. This, coupled with the new evidence that petitioner submitted a Certificate of Live Birth[44] of "Baby Jimmy Go" issued by the National Statistics Office (NSO), Office of

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[43] G.R. Nos. 92191-92 & 92202-03, July 30, 1991, 199 SCRA 692.
[44] *Rollo*, p. 401.

the Civil Registrar General which indicate that both petitioner's parents, i.e., Rosario Tan and Carlos Go, as "Filipino," conclusively establishes petitioner Go's citizenship. Indeed, the Certificate of Live Birth issued by the NSO constitutes prima facie[45] evidence of the facts that are stated therein as regards the nationality of petitioner Go and his father, Go, Sr. The respondents, despite due notice on September 17, 2014 to comment on the Certificate of Live Birth submitted by the petitioner, failed to do so. Thus, We should dispense with the respondents' Comment and rule that petitioner Go is, indeed, Filipino. Thus:

> Filipino citizens are not subject to deportation. x x x The petitioners, not being foreigners but Filipino citizens cannot be deported." Thus, should deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In Chua Hiong vs. Deportation Board (96 Phil. 665 [1955]), the Supreme Court held that the issue of citizenship should be lodged before the proper regular courts x x x.[46]

> A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by deportation proceedings, 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. The legal basis of the prohibition is the absence of the jurisdictional fact, alienage.[47]

The denial of this petition ought not to bar petitioner from pursuing a legal action before a court of law to prove his citizenship pursuant to the Court's decision in *Go, Sr. vs. Ramos*.[48]

Petitioner should be allowed to prove his citizenship in another proceeding considering that he is the grandson of the Chinese immigrant, Go Yin An. His father was born in the Philippines, as was petitioner. Yet, no deportation proceeding was ever commenced against the father, who is even closer to the only indisputable Chinese immigrant in this saga. It seems that petitioner is sought to be punished for whatever sins his forebears committed, which should not be the case. In *Lam Shee v. Bengzon*,[49] the Court refused to deport the child of an immigrant despite the fact that his mother clearly was in the wrong. We held:

> 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

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[45] CIVIL CODE, Art. 410.
[46] *Board of Commissioners v. Dela Rosa*, G.R. Nos. 95122-23, May 31, 1991, 197 SCRA 853.
[47] *Chua Hiong v. Deportation Board*, 96 Phil. 665 (1955).
[48] G.R. Nos. 167569, 167570 & 171946, September 4, 2009, 598 SCRA 266, 297.
[49] 93 Phil. 1065 (1953).

> 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, in spite 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.
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> 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.

In *Lam Shee*, the person saved from deportation was born and raised in China, and came to the Philippines only when he was 17 years old. It is with more reason, therefore, that petitioner, who was born, raised, educated and had grown old in the Philippines, should be granted the same opportunity to prove his right to stay with his family in another proceeding.

For all the foregoing, I vote to partially grant the petition and declare petitioner JIMMY T. GO as a Filipino citizen. In the alternative, he should be at least be allowed to prove in an appropriate proceeding his Philippine citizenship.

PRESBITERO J. VELASCO, JR.
Associate Justice