A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines *

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Inasmuch as citizenship is a privilege and not due of common right, every nation has the inherent right to determine, by its own constitution and laws, what classes of persons may acquire its citizenship. (U. S. v. Wong Kin Ark, 169 U. S. 649) Primarily, too, questions of citizenship are determined by municipal law and become important from the point of view of international law only when the right of protection is invoked or when there arises the question of obligation of individuals toward a state within whose jurisdiction they do not reside. (Hall, International Law, p. 41). Citizenship, says Moore on international law, strictly speaking is a term of municipal law and denotes the possession within the particular state of full civil and political rights subject to special disqualifications, such as minority, sex, etc. The conditions on which citizenship is acquired are regulated by municipal law. There is no such thing as international citizenship nor international law (aside from that which might be contained in treaties) by which citizenship may be acquired.

If the foregoing preliminary consideration of the terms used is given, it is only to elicit a proper understanding of adoption, as a relation created by fiction of law with the rights generally supposed to be incident thereto, and of the status of citizenship which, as a superior title to state membership and entailing as it does altogether different sets of rights and obligations from those arising out of membership of a lesser category in a state, is subject to determination only in accordance with the municipal laws of the state concerned. Knowing the concept, history, and underlying purposes of adoption will aid greatly in the determination of what effect, if any, may be occasioned on the status of citizenship of the adopted by the relationship created by adoption.

An examination of the corresponding provisions of our Constitution and Naturalization Law, on citizenship, and the provisions of the Rules of Court, on adoption, will readily show the state of the law in this jurisdiction. Quoted bodily is the following provision of Article IV, Section 1, of the Constitution of the Philippines: "The following are citizens of the Philippines: (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution; (2) Those born

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in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands; (3) Those whose fathers are citizens of the Philippines; (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship; and (5) Those who are naturalized in accordance with law." From this constitutional provision, we find that, except for those who are already considered citizens at the time of the adoption of the Constitution, there are only two general methods of acquiring Philippine citizenship recognized: (1) By blood relationship, either through the father or the mother either of whom must be a citizen of the Philippines; and (2) By naturalization according to law.

So also, Commonwealth Act No. 63 enumerates the following ways by which citizenship may be lost: (1) By naturalization in a foreign country; (2) by express renunciation of citizenship; (3) by subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more; (4) by accepting commission in the military, naval or air service of a foreign country; (5) by cancellation of the certificate of naturalization; (6) by having been declared, by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and (7) in the case of a woman, upon her marriage to a foreigner, if by virtue of the law in force in her husband's country, she acquires his nationality.

In both the above provisions, it is to be noticed, no express mention is made of adoption either as a mode of acquiring or losing citizenship.

On the other hand, we have the following provision of Section 3, Rule 100, of the Rules of Court of the Philippines, concerning the effect of adoption: "Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed, that the allegations of the petition are true, and that it is a proper case for adoption and the petitioner or petitioners are able to bring up and educate the child properly, the court shall adjudge that thenceforth the child is freed from all legal obligations of obedience and maintenance with respect to its natural parents, except the mother when the child is adopted by her husband, and is, *to all legal intents and purposes,* the child of the petitioner or petitioners, and that its surname is changed to that of the petitioner or petitioners. The child shall thereupon become the legal heir of its parents by adoption, and shall also remain the legal heir of its natural parents. In case of the death of the child, his parents and relatives by nature, and not by adoption, shall be his legal heirs, except as to property received or inherited by the adopted child from either of his parents by adoption, which shall become the property of the latter or their legitimate relatives, who shall participate in the order established

by the Civil Code for intestate estates."

In comparing the provisions of the Constitution and the Naturalization Law with that of the Rules of Court, a legal question, seemingly simple and innocuous but yet replete with uncertainty and doubt, is thus presented: Would an alien child *ipso facto* become a Filipino citizen by adoption? And conversely, would a Filipino child *ipso facto* lose his citizenship by being adopted by a foreigner? Here, we are faced with a dilemma—either we consider that the adoption has the effect of changing the citizenship of the adopted child to that of the adopting parent, running counter to the provisions of the Constitution and the Naturalization Laws which specify the ways by which citizenship may be acquired or lost; or we consider that adoption does not change the citizenship of the adopted child to that of the adopting parent and go against the provision of our Rules of Court which makes the adopted child, to all legal intents and purposes, the child and legal heir of the adopting parent, and the well-known principle that a child under parental authority follows the nationality of the parent. (Civil Code, Article 18, also Roa v. Collector of Customs, 23 Phil. 315).

Precedents directly in point are lacking and what provisions of law we have, as quoted before, sadly result in an apparent conflict. While the question in reality remains unsettled, either the affirmative or negative of the issue has been taken for granted without clear reasons why it should be so. Thus, in at least one case, Juan Co v. James Rafferty, 14 P. R. 1121, our Supreme Court could have squarely met the issue in question and set our minds at rest on this controversial point. Petitioner, a chinaman, sought entry into the Philippines. He was allowed to land under bond pending the investigation of his claim that he had the right to do so. While the investigation was thus pending, petitioner caused proceedings to be instituted having for their object the adoption of the petitioner by a *Filipino* citizen. Said proceedings were carried to a successful conclusion, and plaintiff was duly adopted. Thereafter, the results of the investigation as to the right of petitioner to enter the Philippines having been found adversely against him, deportation proceedings were instituted at the instance of the government. Petitioner, seeking to impugn the order of deportation, contended that, having been adopted by a person domiciled in the Philippines, he himself became a citizen of the Philippines in the sense that he was not subject to deportation but had a perfect right to remain in the Philippines regardless of the conditions under which he was allowed to land. Our Supreme Court, without deciding the effect of the adoption of the petitioner on his citizenship status, disallowed petitioner's claim on the ground that "the status and right of the petitioner to enter the Philippines under the circumstances of this case are to be determined as of the time when he presented himself for

entry and not by events that subsequently transpired. If he was not entitled to land in the Philippines of right at the time he was admitted under bond, he could not while under that bond do anything which would render valid and unconditional his original entry." Instead, therefore, of taking the opportunity to settle in a definitive manner the uncertain status of aliens who have been adopted by citizens of the Philippines, the Supreme Court deliberately refrained from committing itself on the issue.

In the United States, the position adhered to is that alien minor children do not acquire American citizenship by adoption by citizens of the United States. In a memorandum of September 8, 1928, the office of the solicitor for the Department of State referred to the decision of the Supreme Court of the State of Iowa in the case of Powers v. Harten et al, 183 Iowa 764, 167 N. W. 693, 694, holding that citizenship of the United States is not acquired through adoption of an alien minor child by a citizen, and to a note of November 20, 1917 to the Japanese Embassy which concluded that "there is no room for doubt that citizenship in the United States would not be acquired by Maru Yoshimoto (a Japanese subject) should she be adopted by a citizen of the United States," in a petition for admission as citizen filed by a person similarly situated. (M. S. Dept. of State, files 130/536; 130 Mowbray, Harry Siddons. See also 1906 For. Rel. pt. I. pp. 288-299; Cabvillos v. Augel et ux, 278 Fed. 174, 175) This view, however, could not be said to reflect the jurisprudence in the Philippines for the reason that the United States Exclusion Laws find no parallel in the Philippines.

That more cases of this nature would arise in this jurisdiction is not outside the domain of possibility, as may be seen from the fact that there exists no provision of law prohibiting the adoption of an alien child by a Filipino, and vice versa, a Filipino child by an alien or foreigner. Section 1, Rule 100, of the Rules of Court, in part, provides as follows: "A petition for leave to adopt a minor child may be filed by an unmarried resident of the Philippines or by a resident husband and wife jointly." No distinctions are made in the law as to the nationality or citizenship of the child to be adopted. As to the prospective foster parent, the law merely says "any unmarried resident of the Philippines" which may be taken to include foreigners resident in the Philippines. It is well-settled that a foreigner may acquire residence in a country without necessarily becoming a citizen therein. (Black's Constitutional Law, 3rd Ed. p. 633) The statutes, generally, though not necessarily, require the adopting person to be an inhabitant or resident of the state, and in some instances, this requirement, though not directly expressed in the statute, has been held to be implied. A temporary residence within the jurisdiction has been held, however, sufficient to authorize adoption. (1 Am. Jur. par. 645)

Having laid down the possible ways by which Philippine citizenship may be acquired, the feasibility of taking adoption as impliedly included in said ways, i.e., by blood relationship and by naturalization, remains to be considered. Other modes of acquisition of citizenship, such as by treaty or by change of sovereignty resulting from conquest or from sale or cession of a territory recognized in international law, are of no consequence in the treatment of the subject for "it follows from the independence of a state that it may grant or refuse the privileges of political membership, in so far as such privileges have reference to the status of the person invested with them within the country itself Primarily, therefore, it is a question for municipal law to decide whether a given individual is to be considered a subject or citizen of a particular state." (Hall, International Law, p. 233)

By a process of exclusion, we may eliminate the feasibility of taking adoption as implied in "by blood relationship" which is one of the general methods recognized in our Constitution for, as Manresa says, "natural children cannot be adopted because by adoption is meant a fiction by which a child not that of the adopting parent is to be his; hence if a natural child were adopted it would mean that he was not the child of his parent but a stranger to him." (2 Manresa, 71-82) Again, adoption, properly considered, refers to persons who are strangers by blood, legitimation, to persons where blood relations exist. (Blythe v. Ayres, 19 Cal. 532, 559, 19 L. R. A. 40) In other words, therefore, the difficulty lies in the inapplicability of the principle of *jus sanguinis* since the relationship existing between the adopted child and the foster parent cannot possibly be on the basis of blood relationship as it is only a fiction created by law.

Naturalization, by the same means, may be excluded because the provisions of our Revised Naturalization Law, while recognizing the implied naturalization in the case of a married woman following the citizenship of her husband and also in the case of natural children following the citizenship of their naturalized parent, make no mention of adoption even as a case of implied naturalization. (See Revised Naturalization Law, Commonwealth Act No. 473) When a statute makes specific provisions in regard to several enumerated cases or objects but omits to make any provision for a case or object which is analogous to those enumerated or which stands upon the same reason, and is therefore within the general scope of the statute, and it appears that such a case or object was omitted by inadvertence or because it was overlooked or unforeseen, it is *casus omissus* and the courts cannot supply the omission. (Black, Interpretation of Laws, p. 63)

But again it may be asked, May not the provision of sub-section 3, Section 1, of Article IV of the Constitution, which states as citizens of the Philippines those whose fathers are citizens thereof, be inter-

preted to include adoptive fathers? Apparently, no distinction is made in this constitutional provision. However, while it is true that the constitution does not distinguish in this regard, yet as aganist the inference that may arise out of that fact, there is the clear intention of the framers of our Constitution to make the acquisition of citizenship available on the basis of the principle of *jus sanguinis*. This view is made evident by the suppression from the Constitution of the principle of *jus soli,* formerly recognized in this jurisdiction, and further, by the fact that the Constitution has made definite provisions for cases not covered by the principle of *jus sanguinis,* such as may be found in subsection 1, Section 1, of Article IV, i.e., those who are citizens of the Philippines at the time of the adoption of the Constitution, and in subsection 2, Section 1, of the same article, i.e., those born in the Philippine Islands of foreign parents who, before the adoption of this constitution, had been elected to public office in the Philippines. It may also be important to note, in this connection, that even in Commonwealth Act No. 613, an act to control and regulate the immigration of aliens into the Philippines, the terms "child," "father," and "mother" as used therein do not include a child or parent by adoption. (See Interpretation clause, C. A. No. 613) Here, at least, we find that for purposes of immigration the relationship created by adoption is not given the same effect as that arising from a natural cause.

It is submitted, therefore, that an interpretation of the constitutional provision as would sustain the acquisition of citizenship by the mere fact of adoption is very doubtful. Moreover, such an interpretation would give rise to an anomalous situation wherein our laws would countenance the acquisition of Philippine citizenship but would not recognize the same means as a way of losing Philippine citizenship—a fact to be inferred from the provisions of Commonwealth Act No. 63 which enumerates the ways by which Philippine citizenship may be lost.

Again it may be said that the provision of Section 3, Rule 100, of the Rules of Court, in unmistakable terms, makes the adopted child "to all legal intents and purposes" the child and legal heir of the adopting parent and that, perforce, the adopted child must also necessarily acquire *ipso facto* the citizenship of the adopting parent. Literally, such a view would seem irresistible considering the clear provision of the law. However, there are authorities to the effect that "the adoptd child does not stand on the full footing of an actual child even as to his legal rights. He has only such rights as the statute clearly gives him"; (Morgan v. Reel 213 Pa. 81) and that "in fact it may be laid down as a general rule that while the statute of adoption must be read into the statute of inheritance and that of descent and distribution, it is with this singularity always to be observed, viz., that the adopted child is so let in only for the purpose of

preserving in full its right of inheritance from the adoptive parent and not otherwise." (Merritt v. Mortan, 143 Ky. 133; Van Derlyn v. Mack, 137 Mich. 146, 110 N. W. 2782; Hockaday v. Lynn, 200 Mo. 456) It should be remembered that under our laws although the adopted child becomes the child and legal heir of the adopting parent yet he still remains to be the legal heir of the natural parents who also inherit from the adopted child in case of the latter's death, with certain exceptions in cases of property coming from the adoptive parents provided by law. (See Section 3, Rule 100, Rules of Court)

Any thought that the right to inherit by an adoptive alien child will considerably be nullified if it should be held that the said child does not *ipso facto* acquire the citizenship of the adopting parent is purely conjectural and lacks force in this jurisdiction especially when it is considered that even in the prohibition, contained in our constitution, against the transfer and assignment of private agricultural land to individuals, corporations, or associations other than those qualified to acquire and hold lands of the public domain in the Philippines, a saving clause is made in cases of hereditary succession. (Section 5 Article 12, Constitution of the Philippines) It may safely be said then that an alien has almost the same rights as the citizen insofar at least as being an heir is concerned in our jurisdiction and that, therefore, the right of the adopted child to inherit from the foster parent which is the primordial purpose of all adoption statutes is not in the least affected even if the adopted child be considered as not having acquired the citizenship of his parents by adoption.

Thus far, in the foregoing discussion, we have attempted to resolve the apparent conflict in our laws on citizenship and adoption, by adhering on general principles in the absence of precedents. However, while that proposition may be granted as true in this jurisdiction, the contrary, i.e., that citizenship is acquired or lost by virtue of adoption, may hold true in other states or countries, depending upon the policy pursued by the municipal laws in each such state or country. It becomes obvious, then, that questions of dual citizenship or nationality may arise in much the same way that they do from the application of the principles of *jus sanguinis* and *jus soli*. Thus, for instance, State A may claim a child, whose natural parents are from State B, as its citizen by virtue of his having been adopted by a citizen of State A. On the other hand, the municipal laws of State B may hold the view that the citizenship of the child (which is that of State B) is not lost by his having been adopted by a citizen of State A. In such cases, there is evident danger of serious complications if each state should act upon its extremest rights. It becomes, on final analysis, a question for international law to decide, the application of the principles of which is, therefore, suggested. Difficulties of the nature above-stated

are generally avoided by the tacit consent of each state to attempt no exercise of its authority over such a person as long as he remains outside its borders, and to make no objection to the exercise of authority over him by the other while he resides within its borders or limits. And further, the laws of several countries give to persons of double nationality a right of choice on arriving at a certain age, though it is, of course, possible that the option may not be exercised. (Lawrence, Principles of International Law, p. 201) So also, a condition of statelessness may arise should the municipal laws of State A and State B, in the example just given, hold that the adopted child does not acquire, on the one hand, and loses, on the other, the respective citizenships in States A and B, such that the said child neither becomes a citizen of State A nor retains his citizenship in State B.

To meet the difficulties of dual citizenship and of statelessness resulting from adoption, the Hague Convention of April 12, 1930 was drafted and signed by several countries. Article 17, Chapter V, of said convention provides: "If the law of a state recognizes that its nationality may be lost as a result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the state of which the latter is a national relating to the effect of adoption upon nationality." (The Law of Nations, Documents, Cases and Notes, p. 352-360, Briggs.) This provision, while recognizing the right of each state or country to determine the effect of adoption on nationality or citizenship by its respective municipal laws, establishes a rule that should govern in case an application of said laws would result in dual citizenship or a condition of statelessness.

Having considered the various aspects of the problem which is the subject of this critical study, and taking into consideration both our municipal laws and certain principles of International Law, we submit the following conclusions:

1. That Philippine citizenship is neither acquired nor lost *ipso facto* by virtue of the proceeding known as adoption as may be deduced from the provisions of our Constitution and our Naturalization Laws.

2. That where the application of the preceding proposition would result in dual citizenship and statelessness, then the principles of international law, particularly the provision of the Hague Convention of 1930, heretofore cited, would apply. It is to be noted, in this connection, that the Philippines is not a signatory to the Hague Convention of 1930. However, since we have accepted the generally accepted principles of international law as part of the law of the nation under our Constitution, we cannot ignore a principle adhered to and accepted by a great many of the countries of the world.