RECENT DOCUMENTS

OPINION OF THE SECRETARY OF JUSTICE
No. 183, Series of 1956

5th Indorsement
June 14, 1956

Respectfully returned, through the Secretary of Commerce and Industry, to the Director of Commerce, Manila.

Opinion is requested as to whether or not retail business establishments inside United States Naval and Army bases and reservations are covered by the provisions of Republic Act No. 1180, otherwise known as the Retail Trade Nationalization Law.

In Opinion No. 2, s. 1956, this Office, answering a query on whether the Minimum Wage Law was applicable to Filipino employees of civilian concessions operating inside United States Military reservations, ruled in the affirmative, saying:

> "It is well settled that sovereignty over areas comprised in all military and naval reservations rests in the Republic of the Philippines, as such areas constitute integral parts of its territorial domain. These reservations are 'not foreign territory in any sense of the term' (Ops. of the Sec. of Jus., No. 300, s. 1955). 'The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory' (People v. Aclerto, 49 Off. Gaz. 518).
>
> "It follows that the Constitution and general laws of the Philippines are applicable and operative in the base areas. Legislative enactments operate, *propio vigore*, upon all persons and things within the territorial limits of the sovereignty from which their authority is derived (Hilton v. Guyot, 159 U.S. 113; Walbridge v. Robinson, 43 IRA [NS] 240). The only exceptions are laws the enforcement of which inside the bases is incompatible with the provisions of the Military Bases Agreement. x x x"

Enforcement of the Retail Trade Nationalization Act inside the bases, like that of the Minimum Wage Law, in respect of business establishments not owned and operated by the United States Government, is not incompatible with any provision of the Bases Agreement nor with the purpose for which the bases were established. As a matter of fact, Article XIX of the Agreement (under which the business establishments here involved have been allowed to operate [See Note No. 0380 of the United States Embassy, dated September 26, 1955] expressly makes the granting to "commercial concerns" of rights to the use of any base or facility therein subject to the consent of the Philippines and, more importantly, permits such privileges to be granted only to "commercial concerns owned or controlled by citizens of the Philippines or of the United States." Retail business as defined by Republic Act No. 1180 (Sec. 4) comes literally within the broad term "commercial concern" and, in my opinion, also within its spirit. If, under the Bases Agreement itself, aliens other than United States citizens may not be allowed to engage in the retail trade busi-

ness inside the bases, and if, notwithstanding this prohibition, such aliens have been permitted to operate retail businesses within a reservation, I think it quite plain that the Philippine Government should, in the exercise of its sovereign authority, at least apply Republic Act No. 1180 to alien commercial establishments.

Accordingly, I answer the query in the affirmative.

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION OF THE SECRETARY OF JUSTICE
No. 188, Series of 1956

Republic of the Philippines
DEPARTMENT OF JUSTICE
Manila

June 22, 1956

The Commissioner of Customs
Manila

Sir:

This is with reference to your request for reconsideration of the opinion of this Department, dated September 11, 1937, which holds that "fishing is not a part of the coastwise trade" and, consequently, that vessels engaged in fishing are not obliged to pay the license fee imposed under Section 1207 of the Revised Administrative Code, which provides:

> "Sec. 1207. *License for coastwise trade.* — All vessels engaged in the coastwise trade except boats of five tons or less must be duly licensed."

The above-mentioned opinion states: "No (Philippine) decisions have been found supporting the statement...that fishing is a part of the general coastwise trade. On the contrary, in the United States there are authorities to the effect that fishing is not a part of the coastwise trade" (citing the cases of The Active v. U.S., 3 L. ed. 282 and The Eliza, 8 F. Cas No. 4, 346).

The first statement has lost its validity, while the second is inaccurate.

In 1946, the Supreme Court declared that "the term 'coastwise and interisland trade' does not have such a narrow meaning as to confine it to the carriage for hire of passengers and/or merchandise on vessels between the ports and places in the Philippines, because *while fishing is an industry, if the catch is brought to a port for sale, it is at the same time a trade*". (Abueg et al., v. San Diego, 44 O. G. No. 1, p. 80.)

We are not aware of any decision by courts in the United States to support the view that fishing is not a part of the coastwise trade.

The cases of *The Active* and *The Eliza* are not in point. The question, which was resolved in the negative by these two cases, was whether or not the privilege to fish conferred by a fishing license included the privilege to carry freight or passengers for hire.

From the foregoing, I am of the opinion that vessels engaged in fishing, weighing more than five tons, may be required to secure a license for coastwise trade under Section 1207 of the Administrative Code. This supersedes the opinion mentioned at the outset of this letter.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION OF THE SECRETARY OF JUSTICE
No. 203, Series of 1956

2nd Indorsement
July 16, 1956

Respectfully returned to the Commissioner of Immigration, Manila.

In Opinion No. 216, s. 1955, we said that the alleged citizenship of the wife, WONG YUNG YIM, and the children (PING YI HING @ Chen Wu Liang, WOO YON CHAN, JUAN P. TECSON, JOSE P. TECSON, ASUNCION P. TECSON, ANTONIO P. TECSON, GEORGE P. TECSON, and SANTOS P. TECSON) of PAULINO TECSON @ Chan Hing, a Filipino citizen, hinges on the existence of a lawful marriage between said Paulino Tecson and his wife. Uncorroborated testimonial evidence thereon merely indicates that they were married "in 1921 in Quiapo, Manila", by a Chinese consul in accordance with Chinese customs. Further investigation conducted by that Office, in line with the suggestion made in the opinion cited, has disclosed that Paulino and his wife were married by Chinese Consul General Kwei Chek, in accordance with Chinese customs, sometimes in December 1921 at a clubhouse at Calle Barbosa, Quiapo.

Conceding that there is satisfactory proof that such a marriage took place, the important question to consider is the validity of the marriage under our laws. It is not shown, and we are not aware, that Chinese consular representatives here in the Philippines had the requisite legal authority to celebrate marriages between Chinese nationals inside the Chinese consulate, much less to do so outside its premises. Altho marriages so celebrated might be recognized as valid by the Chinese Government, the validity of such marriages in the territory of the receiving state is a matter that must be determined according to the laws of the latter. In the Basiliadis case, for instance, a marriage contracted by two Greek subjects in the Greek Legation in Paris was declared void by the Court of Appeals of Paris for want of conformity with French laws. It was pointed out that

while the premises of the legation may be regarded as inviolable, said premises constitute an integral part of the French territory and a marriage there contracted was not contracted in a foreign country. (Opinion No. 249, s. 1955.) Considering, moreover, that Paulino was not a Chinese national that he thought he was when he contracted the marriage in question, but was a Filipino citizen as held by this Office in Opinion No. 216, s. 1955, his said marriage to Wong Yung Yim is, to say the least, of doubtful validity.

However, it appears from additional documents submitted to this Office that Paulino Tecson married his wife in accordance with our laws on February 23, 1956, "to ratify" their union and "to obviate any doubts and/or questions regarding the validity of our marriage" (see joint affidavit of said spouses, dated February 23, 1956). Parenthetically, it should also be mentioned here that their son Ping Yi Hing @ Chen Wu Liang was baptized Wilfredo Chen Tecson on December 24, 1955, in accordance with the rites of the Chapel of the Holy Faith. Upon the celebration of this marriage, there is no longer any question regarding the Philippine citizenship of Paulino's wife. It is also beyond question that by reason of said marriage, Paulino's children, who were illegitimate because of the apparent invalidity under our laws of Paulino's first marriage, became legitimated children. The Civil Code of the Philippines provides that "children who are legitimated by subsequent marriage shall enjoy the *same rights* as legitimate children" (Art. 272) and that "legitimation *shall take effect* from the time of the *child's birth*" (Art. 272). Since by their legitimation Paulino's children must be deemed to have acquired all the rights of legitimate children from the time of their respective births, it is believed that their acquisition of the citizenship of their Filipino father, pursuant to section 1(3), Article IV of the Constitution, is one of the consequences of their legitimation.

Premises considered, the petition for the cancellation of the alien certificates of registration of the wife and children of Paulino Tecson may be granted.

(*Sgd.*) JESUS G. BARRERA
Undersecretary