

## EN BANC

[ G.R. No. 151944, January 20, 2004 ]

**ENGR. ERNESTO T. MATUGAS, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROBERT LYNDON S. BARBERS, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

The Local Government Code of 1991<sup>[1]</sup> requires that an elective local official be a citizen of the Philippines.<sup>[2]</sup> Whether the incumbent Governor of Surigao del Norte is a citizen of the Philippines and, therefore, qualified to hold such office is the issue in this case.

On February 28, 2001, private respondent Robert Lyndon S. Barbers filed his certificate of candidacy for the position of Governor of Surigao del Norte for the May 14, 2001 elections. On April 10, 2001, petitioner Ernesto T. Matugas, himself a candidate for the same post, filed with the Commission on Elections (COMELEC) a *Petition to Disqualify* private respondent as candidate. The *Petition* alleged, among other grounds, that private respondent is not a Filipino citizen.

In support of this claim, petitioner offered in evidence a copy of a letter-request dated August 25, 2000 from a certain Jesus Agana, a "confidential agent" of the Bureau of Immigration, addressed to one George Clarke, purportedly of the United States Embassy. Below the request was the reply of said George Clarke stating that the "subject" was naturalized as an American citizen on October 11, 1991 in Los Angeles, California. The document<sup>[3]</sup> reads:

Dear Mr. Clark [sic]:

Per our phone conversation, may I request for [sic] a certification from your Embassy regarding the US citizenship of MR. ROBERT LYNDON S. BARBERS who was born on July 15, 1968.

Kindly fax your reply, addressed to the undersigned at Tel. No. (02) 3384456.

Thank you and regards.

Very truly  
yours,

(Sgd.)  
JESUS  
AGANA

Jesus Agana:

SUBJECT was naturalized on October 11, 1991 in Los Angeles, CA.

(Sgd.)

G.R. Clarke, INS/Manila

Petitioner also presented a *Certification*<sup>[4]</sup> issued by the Bureau of Immigration and Deportation (BID) dated 1 September 2000 containing Barbers' travel records and indicating in certain entries that private respondent is an American citizen. The *Certification* states:

#### **CERTIFICATION**

THIS IS TO CERTIFY THAT the name **BARBERS, ROBERT LYNDON S**, American, appears in our available Computer Database/Passenger manifest/IBM listing on file as of September 1, 2000 10:27 am with the following travel records:

**Date of Departure : 01/28/1997**

Destination : OSA-Osaka  
Flight No. : NWo26-Northwest Airlines  
Passport No. : 034354245  
Nationality : Filipino  
Date of Birth : 07/15/1968  
Phil. Address : 6 Hercules St. Bel Air II Makati  
Immig. Status : RP  
Immig. Officer : not stated

**Date of Arrival : 02/12/1998**

Origin : LON-London  
Flight No. : PR731-Phil. Airlines  
Passport No. : 034354245  
Nationality : American  
Date of Birth : American  
Phil. Address : 6 Hercules St. Bel Air II Makati  
Immig. Status : BB365  
Immig. Officer : REGALA

**Date of Arrival : 07/31/1998**

Origin : BKK-Bangkok  
Flight No. : TG620-Thai Airways  
Passport No. : OF006673  
Nationality : American  
Date of Birth : 07/15/1968  
Phil. Address : 16 Hercules St. Bel Air II Makati  
Immig. Status : BB365  
Immig. Officer : SOR

FURTHER, THIS IS TO CERTIFY THAT the name **BARBERS, ROBERT LYNDON SMITH**, American, appears in our Computer

Database/Passenger manifest/IBM listing on file with the following travel records:

**Date of Departure** : **07/27/1998**  
Destination : not available  
Flight No. : TG621-Thai Airways  
Passport No. : not available  
Nationality : Filipino  
Date of Birth : 07/15/1968  
Phil. Address : not available  
Immig. Status : not available  
Immig. Officer : RACHO

This certification is issued upon request of Mr. Bebot Pomoy for whatever legal purpose it may serve.

Verified by : Edilberto Orbase Computer Section  
Date & Time : September 1, 2000 10:27 am

(Sgd.)

**ATTY. FELINO C. QUIRANTE, JR.**

Acting Chief, Admin. Division

In addition, petitioner submitted a *Certification*<sup>[5]</sup> issued by the Special Committee on Naturalization of the Office of the Solicitor General stating that, based on their records, there is no pending petition by private respondent for repatriation. Neither has one been granted in his favor.

In the meantime, private respondent garnered the highest number of votes in the gubernatorial race. On May 17, 2001, petitioner filed a *Motion for Suspension/Annulment of Proclamation* of private respondent. The Motion, however, was overtaken by subsequent events when, on the following day, May 18, 2001, private respondent was proclaimed the duly elected governor of Surigao del Norte.

On July 5, 2001, the Second Division of the COMELEC issued a *Resolution* dismissing for lack of merit the *Petition to Disqualify*. The COMELEC found "little or no probative value" in the notation of George Clarke to Agana's letter-request.<sup>[6]</sup> While noting that the BID certification involving the travel records of Robert Lyndon S. Barbers stated that he was an American, the COMELEC held that "there is no other independent evidence... to justify petitioner's claim that respondent has renounced his allegiance to the Philippines at any time."<sup>[7]</sup>

Petitioner filed a *Motion for Reconsideration* with the COMELEC *En Banc*, which on January 8, 2002 dismissed the *Motion* and affirmed the *Resolution* of the Second Division.

Petitioner thus instituted these proceedings for certiorari, claiming that the COMELEC committed grave abuse of discretion in denying his *Petition to Disqualify*.<sup>[8]</sup> He maintains that private respondent was not a Filipino citizenship at the time of his election.

Basic in the law of evidence is that one who alleges a fact has the burden of proving it.<sup>[9]</sup> In administrative cases, the quantum of proof required is substantial evidence.<sup>[10]</sup> Petitioner did not overcome his burden. The documentary evidence he submitted fails to establish that private respondent is not a Filipino citizen.

The document containing the notation of George Clarke does not prove that private respondent is indeed a naturalized American citizen. For the purpose of their presentation in evidence, documents are either public or private. Public documents include the written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country.<sup>[11]</sup> The record of such public documents may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record. If the record is not kept in the Philippines, the attested copy should be accompanied by a certificate that such officer has custody thereof.<sup>[12]</sup>

The grant of United States citizenship by naturalization is an official act of the United States. The document containing the record of this act is, therefore, a public document and, following the rule cited above, this document can only be evidenced by its official publication or a copy duly attested by the officer having legal custody thereof.

The notation in the letter-inquiry of Jesus Agana is neither an official publication of the document that contains the record of private respondent's naturalization, nor a copy attested by the officer who has legal custody of the record. Petitioner did not show if Clarke, the notation's alleged author, is the officer charged with the custody of such record.

Furthermore, Section 7, Rule 130 of the Rules of Court states that when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, the contents of said document may be proved by a certified copy issued by the public officer in custody thereof. The subject letter-inquiry, which contains the notation, appears to be a mere photocopy, not a certified copy.

The other document relied upon by petitioner is the *Certification* dated 1 September 2000 issued by the BID. Petitioner submits that private respondent has declared that he is an American citizen as shown by said *Certification* and, under Section 26, Rule 130 of the Rules of Court, such declaration may be given in evidence against him.

The rule cited by petitioner does not apply in this case because the rule pertains to the admissibility of evidence. There is no issue here as to the admissibility of the BID *Certification*; the COMELEC did not hold that the same was inadmissible. In any case, the BID *Certification* suffers from the same defect as the notation from the supposed US Embassy official. Said *Certification* is also a photocopy, not a certified copy.

Moreover, the certification contains inconsistent entries regarding the "nationality" of private respondent. While some entries indicate that he is "American," other entries state that he is "Filipino."

Petitioner also attached in his *Memorandum* before this Court another document,<sup>[13]</sup> obviously a photocopy, which reads in full:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
U.S. COURTHOUSE  
312 NORTH SPRING STREET, SUITE 329  
LOS ANGELES, CALIFORNIA, 90012

August 1, 2001

The official Naturalization the United States District Court of California shows the following:

Name: Robert Lyndon Barbers  
Date of Birth: July 15, 1968  
Petition No.: 890573  
Alien No.: A40 460 660  
Certificate No.: 14738741  
Date of Naturalization: October 11, 1991

(Sgd.)  
Deputy Clerk Abel  
Martinez

The above document was attached to an "Authentication,"<sup>[14]</sup> also a photocopy, stating:

CONSULATE GENERAL OF THE PHILIPPINES)  
CITY OF LOS ANGELES )S.S.  
STATE OF CALIFORNIA, U.S.A.

#### **AUTHENTICATION**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CRISTINA G. ORTEGA, CONSUL at Los Angeles, California, duly commissioned and qualified, do hereby certify that ABEL MARTINEZ whose seal/signature appears on the annexed certificate was, at the time he signed the annexed certificate, A Deputy Clerk of the United States District Court, Central District of California and verily believe that his seal/signature affixed thereto is genuine.

For the contents of the annexed document, this Consulate General assumes no responsibility.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Consulate General of the Republic of the Philippines at Los Angeles, California, U.S.A., to affixed this day of 30 August 2001.

(Sgd.)  
CRISTINA G. ORTEGA