

EN BANC

[B.M. No. 914, October 01, 1999]

**RE: APPLICATION FOR ADMISSION TO THE PHILIPPINE BAR
VICENTE D. CHING, APPLICANT.**

R E S O L U T I O N

KAPUNAN, J.:

Can a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father validly elect Philippine citizenship fourteen (14) years after he has reached the age of majority? This is the question sought to be resolved in the present case involving the application for admission to the Philippine Bar of Vicente D. Ching.

The facts of this case are as follows:

Vicente D. Ching, the legitimate son of the spouses Tat Ching, a Chinese citizen, and Prescila A. Dulay, a Filipino, was born in Francia West, Tubao, La Union on 11 April 1964. Since his birth, Ching has resided in the Philippines.

On 17 July 1998, Ching, after having completed a Bachelor of Laws course at the St. Louis University in Baguio City, filed an application to take the 1998 Bar Examinations. In a Resolution of this Court, dated September 1998, he was allowed to take the Bar Examinations, subject to the condition that he must submit to the Court proof of his Philippine citizenship.

In compliance with the above resolution, Ching submitted on 18 November 1998, the following documents:

1. Certification, dated 9 June 1986, issued by the Board of Accountancy of the Professional Regulations Commission showing that Ching is a certified public accountant;
2. Voter Certification, dated 14 June 1997, issued by Elizabeth B. Cerezo, Election Officer of the Commission on Elections (COMELEC) in Tubao, La Union showing that Ching is a registered voter of the said place; and
3. Certification, dated 12 October 1998, also issued by Elizabeth E. Cerezo, showing that Ching was elected as a member of the Sangguniang Bayan of Tubao, La Union during the 12 May 1992 synchronized elections.

On 5 April 1999, the results of the 1998 Bar Examinations were released and Ching was one of the successful Bar examinees. The oath-taking of the successful Bar examinees was scheduled on 5 May 1999. However, because of the questionable status of Ching's citizenship, he was not allowed to take his oath. Pursuant to the

resolution of this Court, dated 20 April 1999, he was required to submit further proof of his citizenship. In the same resolution, the Office of the Solicitor General (OSG) was required to file a comment on Ching's petition for admission to the bar and on the documents evidencing his Philippine citizenship.

The OSG filed its comment on 8 July 1999, stating that Ching, being the "legitimate child of a Chinese father and a Filipino mother born under the 1935 Constitution was a Chinese citizen and continued to be so, unless upon reaching the age of majority he elected Philippine citizenship"^[1] in strict compliance with the provisions of Commonwealth Act No. 625 entitled "An Act Providing for the Manner in which the Option to Elect Philippine Citizenship shall be Declared by a Person Whose Mother is a Filipino Citizen." The OSG adds that (w)hat he acquired at best was only an inchoate Philippine citizenship which he could perfect by election upon reaching the age of majority."^[2] In this regard, the OSG clarifies that "two (2) conditions must concur in order that the election of Philippine citizenship may be effective, namely: (a) the mother of the person making the election must be a citizen of the Philippines; and (b) said election must be made 'upon reaching the age of majority.'" ^[3] The OSG then explains the meaning of the phrase "upon reaching the age of majority:"

The clause "upon reaching the age of majority" has been construed to mean a reasonable time after reaching the age of majority which had been interpreted by the Secretary of Justice to be three (3) years (VELAYO, supra at p. 51 citing Op., Sec. of Justice No. 70, s. 1940, Feb. 27, 1940). Said period may be extended under certain circumstances, as when a (sic) person concerned has always considered himself a Filipino (*ibid.*, citing Op. Nos. 355 and 422, s. 1955; 3, 12, 46, 86 and 97, s. 1953). But in *Cuenco*, it was held that an election done after over seven (7) years was not made within a reasonable time.

In conclusion, the OSG points out that Ching has not formally elected Philippine citizenship and, if ever he does, it would already be beyond the "reasonable time" allowed by present jurisprudence. However, due to the peculiar circumstances surrounding Ching's case, the OSG recommends the relaxation of the standing rule on the construction of the phrase "reasonable period" and the allowance of Ching to elect Philippine citizenship in accordance with C.A. No. 625 prior to taking his oath as a member of the Philippine Bar.

On 27 July 1999, Ching filed a Manifestation, attaching therewith his Affidavit of Election of Philippine Citizenship and his Oath of Allegiance, both dated 15 July 1999. In his Manifestation, Ching states:

1. I have always considered myself as a Filipino;
2. I was registered as a Filipino and consistently declared myself as one in my school records and other official document;
3. I am practicing a profession (Certified Public Accountant) reserved for Filipino citizens;
4. I participated in electoral process[es] since the time I was eligible to vote;

5. I had served the people of Tubao, La Union as a member of the Sangguniang Bayan from 1992 to 1995;
6. I elected Philippine citizenship on July 15, 1999 in accordance with Commonwealth Act No. 625;
7. My election was expressed in a statement signed and sworn to by me before a notary public;
8. I accompanied my election of Philippine citizenship with the oath of allegiance to the Constitution and the Government of the Philippines;
9. I filed my election of Philippine citizenship and my oath of allegiance to (sic) the Civil Registrar of Tubao La Union, and
10. I paid the amount of TEN PESOS (Ps 10.00) as filing fees.

Since Ching has already elected Philippine citizenship on 15 July 1999, the question raised is whether he has elected Philippine citizenship within a "reasonable time." In the affirmative, whether his citizenship by election retroacted to the time he took the bar examination.

When Ching was born in 1964, the governing charter was the 1935 Constitution. Under Article IV, Section 1(3) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship.^[4] This right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that "(t)hose who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five" are citizens of the Philippines.^[5] Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that "(t)hose born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority" are Philippine citizens.^[6] It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution.^[7] If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.^[8]

C.A. No. 625 which was enacted pursuant to Section 1(3), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship. Under Section 1 thereof, 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."

However, the 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching twenty-one (21) years.^[9] In