

EN BANC

G.R. No. 257453 – *Mariz Lindsey Tan Gana-Carait y Villegas v. Commission on Elections, et al.*

Promulgated:

August 9, 2022

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CONCURRENCE

LAZARO-JAVIER, J.:

I concur.

Petitions<sup>1</sup> for disqualification were filed against Mariz Lindsey Tan Gana-Carait y Villegas (Gana-Carait) for acquiring American citizenship without renouncing it prior to seeking an elective post in the 2019 National and Local Elections (2019 NLE).<sup>2</sup> *Inter alia*, private respondents alleged that Gana-Carait applied for and used an American passport to travel to and from the Philippines and the United States.<sup>3</sup> They asserted that these acts negated Gana-Carait's claim that she was a Filipino citizen when she filed her Certificate of Candidacy (CoC).<sup>4</sup> Thus, her representation in her CoC that she is a Filipino citizen eligible to run for public office is false.<sup>5</sup>

Gana-Carait countered that she did not commit any material misrepresentation in her CoC because as a "dual citizen," she is not precluded from seeking elective office. She did not have to perform any voluntary or positive act for the acquisition of her American citizenship because she was born in the United States.<sup>6</sup> Accordingly, Republic Act No. (RA) 9225<sup>7</sup> is not applicable to her. Her possession of an American passport is not a basis for disqualification.<sup>8</sup>

<sup>1</sup> Draft Decision, p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3.

<sup>7</sup> Otherwise known as the Citizenship Retention and Re-acquisition Act of 2003.

<sup>8</sup> Draft Decision, p. 3.

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The Commission on Elections (COMELEC) First Division found that Gana-Carait was born in the Philippines in 1991 and that she acquired American citizenship as evidenced by a Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA). She also obtained an American passport, which she used between 2010 and 2018.<sup>9</sup>

The COMELEC concluded that Gana-Carait is a “dual citizen” who committed a material misrepresentation in her CoC because she declared that she was eligible to run for public office.<sup>10</sup> As a natural-born Filipino citizen who became an American citizen *via naturalization* after the effectivity of RA 9225, she had to comply with the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship at the time of filing of her CoC.<sup>11</sup> Because the records showed that she failed to comply with the twin requirements, the COMELEC First Division cancelled her CoC for the 2019 NLE.<sup>12</sup> The COMELEC *En Banc* subsequently affirmed under Resolution dated September 23, 2021.<sup>13</sup>

Notably, the COMELEC considered Gana-Carait a “dual citizen” by naturalization because she executed a positive act to acquire her American Citizenship, *i.e.*, her CRBA indicated that she submitted documentary evidence to the Consular Service of the United States of America in Manila.<sup>14</sup> Further, Act 322 of the United States Immigration and Nationality Act<sup>15</sup> characterized her acquisition of American citizenship as a “naturalization.”<sup>16</sup>

Black’s Law Dictionary defines naturalization as “the act of adopting a foreigner and clothing him or her the privileges of a native citizen.”<sup>17</sup> In *Garcia v. Recio*,<sup>18</sup> the Court defined naturalization as a legal act of adopting an alien and clothing him or her with the political and civil rights belonging to a citizen. It implies the renunciation of a former nationality and the fact of entrance into a similar relation towards a new body politic.

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<sup>9</sup> Id.

<sup>10</sup> Id. at 4.

<sup>11</sup> Id. citing *Cordora v. COMELEC*, 599 Phil. 168 (2009) [Per J. Carpio, *En Banc*].

<sup>12</sup> Id. at 5.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> 8 USC § 1433.

<sup>16</sup> Draft Resolution, p. 3.

<sup>17</sup> BLACK’S LAW DICTIONARY, p. 1178 (1968)

<sup>18</sup> 418 Phil. 723, 734 (2001) [Per J. Panganiban, Third Division].



Therefore, naturalization is a process through which a State confers an **outsider**, *i.e.*, a non-citizen/alien/foreigner, with rights enjoyed by its citizens. Based on the definition of naturalization, an **insider**, *i.e.*, a citizen, is disqualified from undergoing naturalization proceedings. In this regard, the Court recognizes that naturalization is superfluous for persons who are already citizens of a particular State<sup>19</sup> and that it is absurd for a State to issue a certificate of naturalization to its own citizens.<sup>20</sup>

As for Gana-Carait, it can hardly be said that the CRBA amounts to an act of naturalization. Notably, two official documents prove U.S. citizenship: (a) a passport issued by the Secretary of the U.S. Department of State; and (b) a CRBA issued by the State Department's consular officer.<sup>21</sup> A CRBA is issued to U.S. citizens born abroad "[u]pon application and submission of satisfactory proof of birth, identity and nationality."<sup>22</sup> CRBA Form FS-240<sup>23</sup> explicitly states that the holder of the CRBA "**acquired United States CITIZENSHIP at birth as established by documentary evidence.**"<sup>24</sup> Being a citizen of the United States at birth, it would be absurd to construe Gana-Carait's submission of documents to the Consular Service of the United States of America in Manila to be akin to one's avilment of the naturalization process for the purpose of becoming an American citizen which petitioner herself has already been since her birth. In fact, the document itself acknowledges Gana-Carait's citizenship as American at birth.

As it was, the CRBA merely confirmed Gana-Carait's status as an American citizen. In *Cordora v. COMELEC*,<sup>25</sup> which had a similar factual backdrop, the Court explained:

Tambunting does not deny that he is born of a Filipino mother and an American father. Neither does he deny that he underwent the process involved in INS Form I-130 (Petition for Relative) because of his father's citizenship. Tambunting claims that because of his parents' differing citizenships, he is both Filipino and American by birth. Cordora, on the other hand, insists that Tambunting is a naturalized American citizen.

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. **Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth.**<sup>26</sup> (Emphasis supplied)

<sup>19</sup> See *Lam Swee Sang v. Commonwealth of the Philippines*, 73 Phil. 309, 310 (1941) [Per J. Laurel].

<sup>20</sup> *Id.*

<sup>21</sup> *Sabra as next friend of Baby M v. Pompeo*, 453 F.Supp.3d 291, April 2, 2020.

<sup>22</sup> *Chacoty v. Pompeo*, 392 F.Supp.3d 1, July 17, 2019; 22 USCA § 2705; 22 C.F.R. § 50.7.

<sup>23</sup> Immigr. Empl. Compliance Handbook § 9:54.

<sup>24</sup> See also Draft Resolution, p. 4.

<sup>25</sup> *Supra* note 11 [Per J. Carpio, *En Banc*].

<sup>26</sup> *Id.* at 175–176.

Because Gana-Carait was an American citizen at birth, and because she did not become a naturalized citizen of the United States or any other country, she is not required to comply with the twin requirements of swearing an Oath of Allegiance, and executing a Renunciation of Foreign Citizenship under RA 9225.<sup>27</sup>



AMY C. LAZARO-JAVIER  
Associate Justice

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<sup>27</sup> Id.