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INTERNATIONAL LAW-EFFECT OF PHILIPPINE INDEPENDENCE ON FILIPINO CITIZENS RESIDENT IN THE UNITED STATES

Donald S. Leeper S.Ed.
University of Michigan Law School

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INTERNATIONAL LAW—EFFECT OF PHILIPPINE INDEPENDENCE ON FILIPINO CITIZENS RESIDENT IN THE UNITED STATES—Appellant was born in the Philippine Islands in 1910 and lawfully entered the Territory of Hawaii in 1930, where he has resided ever since. In 1949 appellant applied for the issuance of a United States passport. Application was denied on the ground that the appellant became an alien under the Presidential Proclamation of Philippine Independence of July 4, 1946,¹ and hence was not entitled to a passport.² Appellant petitioned to have his status declared to be that of a national of the United States. This was resisted on the ground that the intention of the United States Government was to separate Filipinos, regardless of domicile or residence on the date of independence, from any phase of adherence to the United States. *Held*, that the appellant was no longer a national of the United States. *Cabebe v. Acheson*, (9th Cir. 1950) 183 F. (2d) 795.³

Upon the acquisition of the Philippines from Spain in 1896, the Filipinos became noncitizen nationals of the United States.⁴ As nationals, they were en-

¹ 60 Stat. L. 1352 (1946), 48 U.S.C. (1928) §1240n.

² "No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States." 14 Stat. L. 54 (1866), as amended 32 Stat. L. 386 (1902), 22 U.S.C. (1927) §212.

³ *Accord* (in dictum): Application of Vioria, (D.C. Hawaii 1949) 84 F. Supp. 584. McGovney in "Our Non-Citizen Nationals, Who are They?" 22 CALIF. L. REV. 593 at 626 (1934), anticipated the problem arising in the principal case and reached a contrary conclusion on the basis of precedent.

⁴ Some residents of the Philippine Islands did not become nationals, but the exceptions will not be considered in this note. See McGovney, "Our Non-Citizen Nationals, Who are They?" 22 CALIF. L. REV. 593 (1934); *Hidemitsu Toyota v. United States*, 268 U.S. 402, 45 S.Ct. 563 (1925); *Suspine v. Compania Transatlantica Centroamericana, S.A.*, (D.C. N.Y. 1940) 37 F. Supp. 263; *Alfajara v. Fross*, 26 Cal. (2d) 358, 159 P. (2d) 14 (1945); *Del Guercio v. Gabot*, (9th Cir. 1947) 161 F. (2d) 559; 1946 Op. Atty. Gen. 432.

titled to the diplomatic protection of the United States.⁵ It seems as though non-citizen nationals would not be included within the scope of treaties between the United States and foreign countries referring to "citizens." While there is little authority for this position, the determination of citizenship under international law is a matter of purely local concern of the states affected and under United States law such persons are not citizens.⁶ The terms "nationals" of the United States, the terminology used in the more recent treaties of the United States, would clearly include noncitizen nationals.⁷ The laws of the United States and the constitutional guarantees do not extend to the unincorporated territory of the Philippine Islands unless Congress so specifies.⁸ Constitutional provisions applicable to aliens and citizens resident in the United States were equally applicable to resident noncitizen nationals.⁹ Those privileges attaching to citizenship were denied to alien and noncitizen national alike.¹⁰ The application of state and federal statutes which did not specifically provide for resident noncitizen nationals was dependent upon the phrasing of the statutes. If it specified that "no alien . . .," then, since the noncitizen national was not an alien, it was not applicable.¹¹ But if it specified that "no one not a citizen . . .," the statute operated

⁵ This follows from their status as nationals under international law. McGovney, "Our Non-Citizen Nationals, Who are They?" 22 CALIF. L. REV. 593 at 604 (1934); Koessler, "Subject, 'Citizen,' 'National,' and 'Permanent Allegiance,'" 56 YALE L. J. 58 (1946). But Congress felt that it was necessary to state specifically that noncitizen nationals were entitled to the protection of the United States. 32 Stat. L. 691 (1902).

⁶ 3 HACKWORTH'S DECISIONS 1-3 (1942); United States (Hilson) v. Germany, Mixed Claims Commission, April 22, 1925, Decisions and Opinions 231; United States ex rel. Schwarzkopf v. Uhl, (2d Cir. 1943) 137 F. (2d) 898; Stoeck v. Public Trustee, [1921] 2 Ch. 67.

⁷ See United States (Hilson) v. Germany, Mixed Claims Commission, April 22, 1925, Decisions and Opinions 231; Nationality Act of 1940, 54 Stat. L. 1137 (1940), 8 U.S.C. (1942) §604.

⁸ According to the provisions of the Treaty of Paris, 30 Stat. L. 1754 (1899), whereby the United States acquired the Philippines, "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" of the United States. Thus the constitutional limitations upon the power of Congress to legislate with reference to civil rights and political status do not apply to unincorporated territories such as the Philippines and Puerto Rico. Dorr v. United States, 195 U.S. 138, 24 S.Ct. 808 (1904); Balzac v. Puerto Rico, 258 U.S. 298, 42 S.Ct. 343 (1922).

⁹ As to the constitutional protection afforded aliens, see Kohler, "Legal Disabilities of Aliens in the United States," 16 A. B. A. J. 113 (1930); Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886); Truax v. Raich, 239 U.S. 33, 36 S.Ct. 7 (1915); Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399 (1941).

¹⁰ U.S. CONST., Art. I, §2, 3; Art. II, §1; U.S. CONST. Amend XIV, §1, XV and XIX.

¹¹ Generally the benefits payable under workmen's compensation statutes are reduced when the beneficiary is a nonresident alien. See, for example, Ariz. Code Ann. (1939) §56-953; Idaho Code (1948) §72-304; Haw. Rev. Laws (1945) c. 77, §4412. In Zarate v. Allen & Robinson, 32 Haw. 118 (1931), the court held that a citizen of the Philippines who was a resident of the Philippine Islands was not a "non-resident alien" within the meaning of the act. Aliens are often denied the right to work on public works. See, for example, Cal. Code Ann. (Deering 1943) §1941; Ill. Ann. Stat. (Smith-Hurd 1941) c. 6, §10. Aliens are sometimes denied the right to participate in other activities. Ariz. Code Ann. (1939) §57-121 (trapping); Conn. Stat. (1949 Rev.) §4159 (own or possess a pistol) and §4888 (own or possess a rifle or shotgun or hunt); D.C. Code (1940) §20-101 (appointment as an

so as to exclude noncitizen nationals as well as aliens.¹² Often, in the latter type of statute, one who was eligible for naturalization, or who had declared his intention to become a citizen, was included in the citizen class,¹³ but, generally speaking, the Filipino was not eligible for naturalization prior to the 1946 amendment to the Nationality Act of 1940 because of racial restrictions.¹⁴ The organic act for eventual Philippine independence was passed in 1916¹⁵ and the first step in its implementation was the Act of 1934 permitting the formulation of a constitution for a new Philippine Republic, in which there was to be a provision that the Filipinos were to retain their allegiance to the United States until the granting of independence.¹⁶ There was no provision in either the act or the constitution which was adopted touching on the status of noncitizen national Filipinos residing in the United States. Likewise, the Proclamation of Independence on July 4, 1946, furnished no clue as to the status of such people. The

executor or administrator); Idaho Code (1948) §24-104 (appointment as a guardian unless eligible for citizenship).

¹² Statutes of this type generally refer to employment and the practice of certain professions. See, for example, Cal. Code Ann. (Deering 1943) §1941 (employment by the state); cf. with employment on public works, supra note 11; Haw. Rev. Laws (1945) c. 11, §451 (employment on public works); Ill. Ann. Stat. (Smith-Hurd 1941) c. 61, §188 (trapping); Cal. Code Ann. (Deering 1950) §1648.5(a) (license as an agent or broker unless a citizen or national); Ark. Stat. Ann. (1947) §72-601 (practice of medicine or surgery); Ga. Code Ann. (1935) §84-925 (medicine) and §84-1322 (pharmacy). See also Alaska Comp. Laws (1949) §39-2-4 (fishing in Bristol Bay); Conn. Stat. (1949 Rev.) §5067 (digging of clams) and §5092 (taking scallops); Ill. Ann. Stat. (Smith-Hurd 1941) c. 61, §187 (hunting); Fla. Stat. Ann. (1944) §732.47 (appointment as a personal representative). The court in *People v. Cordero*, 50 Cal. App. (2d) 146, 122 P. (2d) 648 (1942), held that a Filipino was within the prohibition of a statute saying that "no person not a citizen" shall own or have in his possession a pistol. The Emergency Relief Appropriations Act of 1937, 50 Stat. L. 352 (1937), stated that preference was to be given to "American citizens" in need of relief but native-born Filipino aliens resident in the United States were not included in that preference. 1938 Op. Atty. Gen. No. 62.

¹³ Many times such statutes deal with the right of the alien to acquire, hold and dispose of real property. For examples of those drawn in terms of eligibility for citizenship see Ariz. Code Ann. (1939) §71-201; Idaho Code (1948) §24-101; Wash. Rev. Stat. (Rem. 1931) §10581-88. In *De Cano v. State*, 7 Wash. (2d) 613, 110 P. (2d) 627 (1941), the court held that since a Filipino was not a citizen or eligible to become one, he was denied the right to acquire land by the Alien Land Law of Washington. For examples of those phrased in terms of declaration of intention to become citizens see D.C. Code (1940) §45-1501; Mo. Rev. Stat. Ann. (1939) §15230; Minn. Stat. Ann. (West 1947) §500.22 (cannot acquire interest in lands exceeding 90,000 square feet); Ind. Ann. Stat. (Burns 1943) §56-501. Statutes relating to the practice of professions are often phrased in terms of declaration of intention. See N.J. Stat. Ann. (1940) §45:14-9.1 (pharmacy); Cal. Code (Deering 1950) §2736 (nurse); D.C. Code (1940) §2-307 (dentistry) and §2-705 (podiatry).

¹⁴ See *Hidemitsu Toyota v. United States*, supra note 4; *United States v. Gancy*, (D.C. Minn. 1944) 54 F. Supp. 755, affd. 149 F. (2d) 788, cert. den. 326 U.S. 767, 66 S.Ct. 166, rehearing den. 326 U.S. 810, 66 S.Ct. 229; *Roque Espiritu De La Ysla v. United States*, (9th Cir. 1935) 77 F. (2d) 988, cert. den. 296 U.S. 575, 56 S.Ct. 138; *In re Rena*, (D.C. N.Y. 1931) 50 F. (2d) 606; *In re Ayson*, (D.C. Ill. 1936) 14 F. Supp. 488; *Suspense v. Compania Transatlantica Centro-Americana, S.A.*, supra note 4; *United States v. Javier*, 57 App. D.C. 303, 22 F. (2d) 879 (1927); *De Cano v. State*, supra note 13; *Application of Vilorio*, (D.C. Haw. 1949) 84 F. Supp. 584.

¹⁵ 39 Stat. L. 546 (1916), 48 U.S.C. (1940) §1002.

¹⁶ See cases in note 4 supra.

intention of Congress, which is controlling,¹⁷ must be garnered from its actions prior to and subsequent to the proclamation. Shortly after the adoption of the constitution by the Filipino people, Congress provided that native born Filipinos in the United States could be returned to the Islands at government expense.¹⁸ Since 1934 all Filipinos have been considered "as if they were aliens" for the purposes of immigration, exclusion, or expulsion of aliens.¹⁹ During the last war Filipinos were deemed to be "aliens" for the purposes of special war measures such as the Alien Registration Act of 1940.²⁰ No mention was made in the treaty with the Philippines of July 4, 1946²¹ of the status of citizens of the Philippines residing in the United States as being different from those residing elsewhere. Appropriation Acts passed by the Congress since 1946 have contained a specific provision against payment to citizens of the Philippine Islands even though in terms, if their status as noncitizens nationals continued, it would be applicable.²² All of the evidence points in the direction of saying that noncitizen nationals of the Philippines, wherever they resided at the time of independence, became aliens because of the proclamation. As aliens they are no longer entitled to diplomatic protection. The constitutional guarantees applicable to all persons, whether citizens or not, will be applied to the resident Filipino as before; those which attached only to the citizenship status have been interpreted not to include nationals or aliens. But Filipinos, as a class, are now eligible for naturalization as a result of independence²³ and hence may become members of the preferred latter class whereas they could not before. The greatest effect of alienage on the resident Filipino will be felt in the application of the state and federal statutes. He is now within the scope of statutes saying that "no alien . . .," while he was not before. His change of status will not affect the application of statutes drawn in terms of "no one not a citizen . . ." to exclude him. Statutes which include those eligible for citizenship, or those who have declared their intention to become a citizen, now include Filipinos as a result of the proclamation and the consequent amendment to the Nationality Act. Thus, in view of the fact that

¹⁷ See note 8 *supra*.

¹⁸ 49 Stat. L. 478 (1935), as amended 49 Stat. L. 1462 (1936), as re-enacted 50 Stat. L. 165 (1937).

¹⁹ 49 Stat. L. 462 (1934), 48 U.S.C. (1940) § 1238(a)(1). See also *Del Guercio v. Gabot*, (9th Cir. 1947) 161 F. (2d) 559.

²⁰ 54 Stat. L. 673 (1940), 8 U.S.C. (1940) §452. See *United States v. Gancy*, *supra* note 14. Cf. *Neutrality Act of 1939*, 54 Stat. L. 12 (1939), 22 U.S.C. (1940) §456.

²¹ The treaty does provide, however, that "all existing property rights of citizens and corporations of the United States of America in the Republic of the Philippines and of citizens and corporations of the Republic of the Philippines in the United States of America shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens and corporations of the Republic of the Philippines and of the United States of America respectively." 61 Stat. L. 1174 at 1176 (1946).

²² See *Appropriations Act of July 30, 1947*, 61 Stat. L. 608; *Appropriations Act of April 20, 1948*, 62 Stat. L. 193; *Appropriations Act of August 24, 1949*, 63 Stat. L. 661.

²³ 54 Stat. L. 1148 (1940), as amended 60 Stat. L. 416 (1946), 8 U.S.C. (1940) §721.

Filipinos are now eligible for naturalization, the alien Filipino resident in the United States is probably better off with his status as an alien than if he had retained his status as a noncitizen national.

Donald S. Leeper, S.Ed.