EN BANC

G.R. No. 221697 *(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections and Estrella C. Elamparo)*

G.R. Nos. 221698-700 *(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras, and Amado D. Valdez)*

Promulgated:

March 8, 2016

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CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the *ponencia* and will add the following only for emphasis.

On Residency

It is established that to acquire a new domicile one must demonstrate three things: (1) residence or bodily presence in the new locality; (2) an intention to remain there (*animus manendi*); and (3) an intention to abandon the old domicile (*animus non revertendi*).

There is no issue as to Sen. Poe's actual bodily presence in the Philippines since May 24, 2005, whence she, per her 2015 Certificate of Candidacy, reckons her residency in the country. What has been questioned is the *animus to* stay in the Philippines and to abandon the domicile in the United States of America (US) since then. As the *ponencia* explained, the facts recited, and the evidence presented by Sen. Poe sufficiently portrays her intent to stay in the Philippines and to abandon the US since May 2005, to wit:

> 35. As a result of the untimely demise of her father, and her desire to be with and to comfort her grieving mother, Petitioner and her husband, sometime in the first quarter of 2005, decided to return to the Philippines for good. They consulted their children, who likewise expressed their wish to relocate permanently to the Philippines. The children also wanted to support their grandmother and Petitioner.
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> 36. In 2004, petitioner had already resigned from her work in the U.S.A. and she never again sought employment there. In early 2005, Brian (Poe's son) and Hanna's (Poe's eldest daughter) schools in Virginia,

U.S.A., were likewise notified that they would be transferring to Philippine schools for the next semester.

37. As early as March 2005, Petitioner and her husband began obtaining quotations and estimates from property movers regarding the total cost of relocating to Manila all of their household goods, furniture, and cars then in Virginia, U.S.A. One of these property movers was Victory Van International, a private freight forwarding company, with whom Petitioner and her husband had a series of email correspondence from 2005 to 2006. The spouses also intended to bring along their pet dog and they inquired with Philippine authorities on the procedure to accomplish this in August 2005.

38. On 24 May 2005, or shortly before the start of the academic year in the Philippines, Petitioner returned to the country. Her three (3) children also arrived in the country in the first half of 2005. Petitioner's husband, on the other hand, stayed in the U.S.A. to finish pending projects, and to arrange for the sale of the family home there.

39. After their arrival in the Philippines from the U.S.A., Petitioner and her children initially lived with Petitioner's mother in x x x San Juan City. The existing living arrangements at the house of Petitioner's mother even had to be modified to accommodate Petitioner and her children, Petitioner's mother also assigned to Petitioner her father's long-time driver, because Petitioner and her family would henceforth be based in the Philippines. Meanwhile, Petitioner and her children prepared for the start of the school year, with Brian and Hanna attending Philippine schools starting June 2005. x x x

40. Shortly after arriving in the Philippines, Petitioner immediately submitted herself to the local tax jurisdiction by registering and securing a TIN from the BIR.

x x x x

42. In the meantime, in the second half of 2005, Petitioner and her husband had acquired Unit 7F of One Wilson Place Condominium (and its corresponding parking slot), located at x x x San Juan, Metro Manila, to be used as the family's temporary residence.

42.1 On 20 February 2006, the Register of Deeds for San Juan City issued to Petitioner and her husband CCT No. x x x covering Unit 7F of One Wilson Place, and CCT No. x x x covering the parking slot for Unit 7F.

42.2 On 25 April 2006, Unit 7F of One Wilson Place and its corresponding parking slot were declared, for real estate tax purposes, in Petitioner's and her husband's names.

42.3 Petitioner and her family lived at One Wilson Place until the completion of their family home at Corinthian Hills, Quezon City. x x x

43. On 14 February 2006, Petitioner briefly travelled to the U.S.A. for the purpose of supervising the disposal of some of the family's remaining household belongings. Around this time, Petitioner's and her family's furniture and other household goods were still in the process of being packed for collection, storage and eventual transport to the

Philippines. Petitioner donated to the Salvation Army some of the family's personal properties which could no longer be shipped to the Philippines. Petitioner returned to the Philippines shortly after, or on 11 March 2006.

44. In late March 2006, petitioner's husband officially informed the United States Postal Service of the family's change, and abandonment, of their former address in the U.S.A. The family home in the U.S.A. was eventually sold on 27 April 2006.

45. In April 2006, Petitioner's husband resigned from his work in the U.S.A., and on 4 May 2006, he returned to the Philippines. Beginning July 2006, he worked in the Philippines for a major Philippine company.

46. Meanwhile, in early 2006, Petitioner and her husband acquired a vacant 509-square meter lot at x x x Corinthian Hills, Bagong Ugong Norte, Quezon City (the "Corinthian Hills Lot") where her family could finally establish their new family home.

46.1 On 1 June 2006, the Register of Deeds for Quezon City issued to Petitioner and her husband Transfer Certificate of Title ("TCT") No. 290260 covering the *Corinthian Hills Lot*.

46.2 Petitioner and her husband eventually built a house on the *Corinthian Hills Lot*. To this day, this house is their family home.

47. After Petitioner and her family settled themselves, she turned her attention to regaining her natural-born Filipino citizenship. She was advised that she could legally reacquire her natural-born Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines, pursuant to the provision of R.A. No. 9225, otherwise known as the "Citizenship Retention and Re-Acquisition Act of 2003."

48. On July 7, 2006, Petitioner took her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225, to wit: x x x

49. On 10 July 2006, petitioner filed with the B.I. a sworn petition to reacquire her natural-born Philippine citizenship pursuant to R.A. No. 9225 and its implementing rules and regulations. Upon advice, and simultaneous with her own petition, petitioner filed petitions for derivative citizenship on behalf of her three children who were all below eighteen (18) years of age at that time. x x x

50. On 18 July 2006, the B.I. issued an Order granting Petitioner's applications x x x.

51. On 31 July 2006, the B.I. issued Identification Certificates ("I.C.") in Petitioner's name and in the name of her three children x x x.

52. On 31 August 2006, the COMELEC registered Petitioner as a voter at Barangay Santa Lucia, San Juan City.

53. On 13 October 2009, or over two (2) years before her U.S.A. Passport was set to expire (on 18 December 2011), Petitioner secured from the DFA her new Philippine Passport with No. x x x (which was valid until 12 October 2014).

54. On 6 October 2010, President Benigno S. Aquino III appointed Petitioner as Chairperson of the MTRCB, a post which requires natural-born Philippine citizenship. Petitioner did not accept the appointment immediately, because she was advised that before assuming any appointive public office, Section 5(3), R.A. No. 9225 required her to: (a) take an Oath of Allegiance to the Republic of the Philippines; and (b) renounce her U.S.A. citizenship. She complied with the requirements before assuming her posts as MTRCB Chairperson on 26 October 2010.

55. On 20 October 2010, Petitioner executed before a notary public in Pasig City an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" of even date. x x x

56. On 21 October 2010, in accordance with Presidential Decree No. 1986 and Section 5 (3) of R.A. No. 9225, Petitioner took her oath of office as Chairperson of the MTRCB, before President Benigno S. Aquino III. x x x

57. To ensure that even under the laws of the U.S.A., she would no longer be considered its citizen, Petitioner likewise renounced her U.S.A. citizenship in accordance with the laws of that country. However, Petitioner was not legally required under Philippine law to make another renunciation, as her earlier renunciation of U.S.A. citizenship on October 20, 2010 was sufficient to qualify her for public office.

57.1 On 12 July 2011, Petitioner executed before the Vice Consul at the U.S.A. Embassy in Manila, an Oath/Affirmation of Renunciation of Nationality of the United States.

57.2. On the same day, Petitioner accomplished a sworn "Questionnaire" before the U.S. Vice Consul, wherein she stated that she had taken her oath as MTRCB Chairperson on 21 October 2010, with the intent, among others, of relinquishing her U.S.A. citizenship.

57.3 In the same *Questionnaire*, Petitioner stated that she had resided "Outside of the United States," i.e., in the "Philippines," from 3 September 1968 to 29 July 1991 and from "05 2005" to "Present." On page 4 of the *Questionnaire*, Petitioner stated:

> I became a resident of the Philippine once again since 2005. My mother still resides in the Philippines. My husband and I are both employed and own properties in the Philippines. As a dual citizen (Filipino-American) since 2006, I've voted in two Philippine national elections. My three children study and reside in the Philippines at the time I performed the act as described in Part I item 6.

58. On 9 December 2011, the U.S.A. Vice Consul issued to petitioner a "Certificate of Loss of Nationality of the United States." Said Certificate attests that under U.S.A. laws, Petitioner lost her U.S.A. citizenship effective 21 October 2010, which is when she took her oath of office as MTRCB Chairperson. This fact is likewise reflected on the last page of Petitioner's former U.S.A. Passport.

59. On 27 September 2012, Petitioner accomplished her COC for Senator, which she filed with the COMELEC on 2 October 2012. Section 12 of the COC was, again, an affirmation of the Oath of

> Allegiance to the Republic of the Philippines which Petitioner had taken on 7 July 2006 (and which she had reaffirmed on 21 October 2010 when she took her oath of office as MTRCB Chairperson). x x x
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> 60. During the 13 May 2013 National Elections, petitioner ran for and was overwhelmingly elected as Senator. She garnered over 20 million votes, the highest among her fellow Senatorial candidates, and a record in Philippine election history. On 16 May 2013, Petitioner was proclaimed Senator of the Republic of the Philippines.
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> 61. On 19 December 2013, the DFA issued to Sen. Poe Diplomatic Passport No. x x x (valid until December 2018), and on 18 March 2014, the DFA issued in her favor Philippine Passport No. x x x. Like her earlier Philippine passports, these two (2) most recent passports uniformly state that Sen. Poe is a "citizen of the Philippines."
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> 62. On 15 October 2015, Sen. Poe filed with COMELEC her COC as President ("COC for President") in the 9 May 2016 national and local elections. In her COC, she stated that she is a "NATURAL-BORN FILIPINO CITIZEN" and that her "RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 09, 2016" would be "10" years and "11" months (counted from 24 May 2005).

As "intent" is basically a "state of mind" that exists only in idea;[1] its existence can only be determined by the overt acts that translate it to fact. The realization of such intent need not be made in one fell swoop by the execution of a single formal act. Rather, the fulfillment of the intent to change domicile can be made via a series of steps through what the Court adverts in *Mitra v. COMELEC*[2] and *Sabili v. COMELEC*[3] as an "incremental process" or the execution of "incremental transfer moves."

The facts of the case suggest that Sen. Poe's change of domicile and repatriation from the US to the Philippines was, to borrow from *Mitra*, "accomplished, not in a single key move but, through an incremental process"[4] that started in early 2005. Specifically, Sen Poe took definite albeit incremental moves to reacquire her domicile of origin as shown by the repatriation of her children and their pet, if I may add, from the US to the Philippines; the enrollment of her children in Philippine schools; the sale of their family home in the US; the repatriation of her husband and his employment in the Philippines; the transfer of their household goods, furniture, cars and personal belongings from the US to the Philippines; the purchase of a residential condominium in the Philippines; the purchase of a residential lot; the construction of her family home in the country; her oath of allegiance under RA 9225; her children's acquisition of derivative Philippine citizenship; the renunciation of her US citizenship; her service as chairperson of the MTRCB; and her candidacy and service as a senator of the Philippines. All these acts are indicative of the intent to stay and serve in the country permanently, and not simply to make a "temporary" sojourn.

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[1] Black's Law Dictionary, 9th Ed., for the iPhone/iPad/iPod touch. Version 2.1.2 (B13195), p. 883 *citing* John Salmond, Jurisprudence 378 (Glanville L. Williams ed., 10th ed. 1947).

[2] G.R. No. 191938, July 2, 2010 and October 19, 2010.

[3] G.R. No. 193261, April 24, 2012.

[4] *Mitra*, supra.

Indeed, the foreknowledge of Sen. Poe's repatriation and her desire for it, i.e., her intent to go back to and reestablish her domicile the Philippines, is readily discernible from her acts executed even before her return to the country in May 2005.

The foregoing indicia of Sen. Poe's intent to reestablish her domicile in the country cannot be frivolously dismissed as insufficient on the pretext that "this case involves relocation of national domicile from the US to the Philippines by an alien, which requires much stronger proof, both as to fact and intent."[5]

The suggestion that Sen. Poe's *animus manendi* only existed at the time she took her oath of allegiance under RA 9225 in July 2006 and that her *animus non revertendi* existed only in October 2010 when she renounced her US citizen is simply illogical. The fact that what is involved is a change of national domicile from one country to another, separated as it were by oceans, and not merely from one neighboring municipality to another like in *Mitra* and *Sabili*, it is with more reason that the teachings in *Mitra* and *Sabili* are applicable.

It should be of judicial cognizance that even a temporary travel from one country to another is no easy feat. It takes weeks or even months to plan and execute. By no means is the permanent transfer of residence in one country to another an easier undertaking. Like in petitioner's case, it would be a long process that will take months, if not years, to accomplish from the initial inquiry with the movers and the concerned government agencies in both countries, to the actual packing and transportation of one's belongings, the travel of the children and the pet, their enrollment in schools, the acquisition of a new family home, and the reintegration to Philippine society. The intent to reestablish national domicile cannot be plausibly determined by one isolated formal act or event but by a series of acts that reveal the preceding desire and intent to return to one's country of origin.

Sen. Poe is not an ordinary "alien" trying to establish her domicile in a "foreign country." She was born and raised in the Philippines, who went through the tedious motions of, and succeeded in, reestablishing her home in the country. **She is, by no means, foreign to the Philippines nor its people.** She maintained close ties to the country and has frequently visited it even during the time she was still recognized as a US citizen. Her parents lived in the country, her friends she grew up with stayed here. In a manner of speaking, her past, her roots were in the Philippines so that it should not be rendered more burdensome for her to establish her future in the country.

After all, the residence requirement was in context intended to prevent a stranger from holding office on the assumption that she would be

[5] Justice Del Castillo's Opinion.

insufficiently acquainted with the conditions and needs of her prospective constituents.[6] Having helped her father during his presidential campaign and having served as a senator and before that an MTRCB chairperson, it cannot be contested that she has more than enough knowledge of the country, its people, and the many issues and problems that beset them. The mischief that the residency requirement was designed to prevent is clearly not present in this case.

The Court's pronouncements in *Coquilla v. Commission on Elections*,[7] *Caballero v. Commission on Elections*[8] and *Japzon v. Commission and Elections and Jaime S. Ty*[9] did not establish an absolute rule that a Filipino who became naturalized under the laws of a foreign country can only re-establish his or her domicile in the Philippines from the moment he or she swears allegiance to the country under RA 9225. Instead, the Court considered the acquisition of dual-citizenship under RA 9225 or the application for a residency permit as one of many possible, not the only, evidence of *animus manendi.* The Court did not state that any evidence of residence before the acquisition of a residence visa or the reacquisition of citizenship must be ignored.

Unfortunately, in these three cases, the concerned candidates had presented negligible or no evidence of reestablishment of domicile in the Philippines before their repatriation. As Sen. Poe pointed out, the only pieces of evidence in *Coquilla* showing that he might had had the intent to reside in the Philippines were: (a) his Community Tax Certificate; and (b) his verbal declarations that he intended to run for office. In *Japzon*, there was absolutely no evidence of the candidate's residence before he reacquired his citizenship and all the evidence pertained to events after his repatriation. Finally, in *Caballero*, the candidate failed to show that his residence had been for more than a year prior to the May 2013 elections. On the contrary, he admitted that he had only 9 months "actual stay" in Uyugan, Batanes.

Thus, the Court had no choice but to reckon the residency of the concerned candidates in *Coquilla*, *Japzon*, and *Caballero* either from the time they reacquired their citizenship or the time they procured a resident visa because there was simply insufficient proof offered by the candidates before such event. The same cannot be said of Sen. Poe in the instant case.

As previously discussed, Sen. Poe presented overwhelming evidence of her permanent relocation to the Philippines, her actual residence, and intent to stay in the Philippines since May 2005, i.e., even before she took her oath of allegiance under RA 9225 in July 2006. Hence, *Jalosjos v.*

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[6] *Gallego v. Vera*, 73 Phil. 453, 459 (1941); cited in *Fernandez v. HRET*, G.R. No. 187478, December 21, 2009.

[7] G.R. No. 151914, July 31, 2002, 385 SCRA 607.

[8] G.R. No. 209835, September 22, 2015.

[9] G.R. No. 180088, January 19, 2009, 596 SCRA 354..

Commission on Elections[10] is the better precedent. In *Jalosjos*, the Court reckoned the candidate's domicile in the Philippines even before he reacquired his citizenship under RA 9225, without mentioning the need for a residence visa, because he was able to satisfactorily prove that he had lived with his brother prior to taking his oath of allegiance. The Court held, thus:

> But it is clear from the facts that Quezon City was Jalosjos' domicile of origin, the place of his birth. It may be taken for granted that he effectively changed his domicile from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice.
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> On the other hand, **when he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good**. He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay.
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> To hold that Jalosjos has not establish a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that **a man must have a domicile or residence somewhere**.[11]

Yet, it has also been advanced that Sen. Poe has not positively shown an intent to abandon the US, or *animus non revertendi*, prior to her formal renunciation of her American citizenship in October 2010. To this is added that she even acquired a house in the US in 2008 as proof of her alleged intent not to abandon that country. Proponents of this argument cite *Reyes v. Commission on Elections*.[12] However, *Reyes* was on a starkly different factual milieu. Unlike Sen. Poe, the petitioner therein had not reacquired her Philippine citizenship under RA 9225 or renounced her American citizenship.[13] In fact, the only proof she offered of her residency was her service as a provincial officer for seven (7) months.

The alleged fact that Sen. Poe acquired a house in the US in 2008, cannot be taken as an argument against her *animus non revertendi* vis-à-vis the evidence of her manifest intent to stay, and actual stay, in the

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[10] G.R. No. 191970, April 24, 2012.

[11] Emphasis supplied.

[12] G.R. No. 207264, June 25, 2013, 699 SCRA 522.

[13] Regina O. Reyes admitted in her submissions under oath before the COMELEC in SPA 13-053 that RA 9225 does not apply to her as she claims to be a dual citizen of the United States of America and the Philippines by virtue of her marriage to a US citizen. Belatedly, Reyes attempted to show that she availed of RA 9225, in a volte face, before the Court in G.R. No. 207264, entitled *Reyes v. COMELEC*, by presenting a questionable Identification Certificate allegedly issued by the Bureau of Immigration.

Philippines. Certainly, the element of intent to abandon an old domicile does not require a complete and absolute severance of all physical links to that country, or any other country for that matter. It is simply too archaic to state, at a time where air travel is the norm, that ownership of a secondary abode for a temporary visit or holiday negates an intent to abandon a foreign country as a legal domicile.

On Citizenship

There is no question that Sen. Poe has no known biological parents and was found on September 3, 1968 in Jaro, Iloilo when she was but a newborn. She was then adopted by spouses Ronald Allan Kelly and Jesusa Sonora Poe in May 1974. The nagging question is: Is Sen. Poe a natural-born Filipino citizen?

Article IV, Section 1 of the 1935 Constitution merely provides:

> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> 3. Those whose fathers are citizens of the Philippines.
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
> 5. Those who are naturalized in accordance with law.

The term "natural-born" Filipino does not even appear in the above-quoted provision. This Court, however, has construed the term to refer to those falling under items one to four of the section, as opposed to those who underwent naturalization under item number 5. But Sen. Poe was not born before the adoption of the 1935 Constitution so that the first item is inapplicable. That being said, her status as a foundling does not foreclose the likelihood that either or both of her biological parents were Filipinos rendering her a natural-born Filipino under items 3 and/or 4 of Section 1, Article IV of the 1935 Constitution.

Indeed, while it is not denied that Sen. Poe was abandoned by her biological parents, her abandonment on the date and specific place above indicated does not obliterate the fact that she had biological parents and the private respondents had not shown any proof that they were not Filipino citizens.

Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. The private respondents had not presented even an iota of proof to show that Sen. Poe

was not born to Filipino parents. Thus, it was grave abuse of discretion for the COMELEC to conclude that Sen. Poe was not a natural-born Filipino and had deliberately misrepresented such fact.

To shift the burden of proof to foundlings like, Sen. Poe, to prove the citizenship of their parents who had abandoned them is as preposterous as rubbing salt on an open bleeding wound; it adds insult to injury. The State cannot allow such unconscionable interpretation of our laws. Instead, the judiciary, as the instrumentality of the State in its role of *parens patriae*, must ensure that the abandoned children, the foundlings, those who were forced into an unfavorable position are duly protected.

As pointed out by petitioner, the same view was shared by the framers of the 1935 Constitution. A delegate to the 1934 Constitutional Convention, Sr. Nicolas Rafols, proposed to explicitly include "children of unknown parentage" in the enumeration of *jus sanguinis* Philippine Citizens in Section 1, Article IV of the 1935 Constitution. The suggestion, however, was not accepted but not on the ground that these children are not Philippine citizens. Rather, that the cases of foundlings are "few and far in between," as pointed out by delegate Manuel Roxas, and that citing a similar Spanish Law, they are already presumed to have been born to Filipinos.[14]

An alternative construction of the 1935, not to say the present Constitution, presents dire consequences. In such a scenario, abandoned children with no known parents will be considered stateless. This violates the rights of a child to immediate registration and nationality after birth, as recognized in the United Nation's Convention on the Rights of a Child. Thus, I cannot subscribe to the proposal that foundlings, like Sen. Poe, are not natural-born Filipino citizens.

PRESBITERO J. VELASCO, JR.
Associate Justice

[14] Per the interpellation of Delegate Ruperto Montinola.