Republic of the Philippines
Supreme Court
Manila



**THIRD DIVISION**

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| **JIMMY T. GO a.k.a. JAIME T. GAISANO,** | **G.R. No. 191810** |
| Petitioner, | **Present:** |
| - *versus* - | VELASCO, JR., *J.*, *Chairperson*,<br>PERALTA,<br>VILLARAMA, JR.<br>REYES, and |
| **BUREAU OF IMMIGRATION AND DEPORTATION and its COMMISSIONERS and LUIS T. RAMOS,** | JARDELEZA, *JJ.* |
| Respondents. | **Promulgated:** |
| x---------- | June 22, 2015 ----------x |

**DECISION**

**PERALTA, *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeking to nullify the October 28, 2009 Decision[1] and March 22, 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 88840, which affirmed as final and executory the April 17, 2002 Decision[3] of the Bureau of Immigration (BI) in BSI-D.C. No. ADD-01-117.

In June 1999, the Concerned Employees of Noah's Arc Group of Companies filed a letter-complaint against petitioner Jimmy T. Go a.k.a. Jaime T. Gaisano (Go) and his father, Carlos Go, Sr. a.k.a. Go Kian Lu (Go, Sr.). It was claimed that Go, Sr. was an undocumented alien who later

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1 Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Mario L. Guarina III and Mariflor P. Punzalan-Castillo concurring; *rollo*, pp. 29-43.

2 *Rollo*, pp. 45-50.

3 Signed by Commissioner Andrea D. Domingo and Associate Commissioners Arthel B. Caronongan, Daniel C. Cueto, and Orlando V. Dizon; *id.* at 51-69.

adopted the Filipino name "Carlos Go, Sr." Allegedly, Go. Sr. obtained for himself some basic education and married a Chinese woman named Rosario Tan. Their union produced ten (10) children, one of whom is petitioner Go. On the premise that Go, Sr. was an undocumented alien, petitioner Go is also an alien, being a child of a Chinese citizen.

A year after, in April 2000, a complaint-affidavit[4] for deportation of petitioner Go was initiated, this time by Luis T. Ramos (Ramos), before the Bureau of Immigration. Ramos alleged that while petitioner Go represents himself as a Filipino citizen, his personal circumstances and relevant records indicate that he is a Chinese citizen born in the Philippines to Chinese parents, which is in violation of Commonwealth Act (C.A.) No. 613, otherwise known as the *Philippine Immigration Act of 1940*, as amended. To prove his contention, Ramos presented the birth certificates of petitioner Go as well as that of his sister Juliet Go (Juliet) and older brother Carlos Go, Jr. (Carlos, Jr.). The birth certificate indicates petitioner Go as "FChinese." The pertinent page from the Registry of Births also states that the citizenship of Baby Jimmy Go is "Chinese." Further, the birth certificates of his siblings show that they were born of Chinese parents.

Petitioner Go refuted the allegations in his counter-affidavit. He alleged that his father, Go, Sr., who was the son of a Chinese father and Filipina mother, elected Philippine citizenship, as evidenced by his having taken the Oath of Allegiance on July 11, 1950 and having executed an Affidavit of Election of Philippine Citizenship on July 12, 1950. He added that Go, Sr. was a registered voter and actually voted in the 1952 and 1955 elections. As regards the entry in his siblings' certificates of birth, petitioner Go averred that Juliet and Carlos, Jr., were born on June 3, 1946 and April 2, 1949, respectively, or prior to their father's election of Philippine citizenship. Finally, petitioner Go asserted that his birth certificate states that his father's citizenship is "Filipino."

In October 2000, the National Bureau of Investigation (NBI) forwarded to the BI a copy of its Investigation Report and probe on the investigation conducted against petitioner Go and Go, Sr. pursuant to the letter complaint of the Concerned Employees of Noah's Arc Group of Companies. The findings of the Special Investigator, which were affirmed by the Chief of the SLPS-NBI, stated that the election of Philippine citizenship of Go, Sr. was in accordance with the provisions of the 1935 Constitution and that the erasure on the original birth certificate of petitioner Go could not be attributed to him or Go, Sr. because said document was on file with the local civil registrar of Iloilo City.

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4 *Rollo*, pp. 124-126.

Finding the evidence and report of the NBI as conclusive of the citizenship of petitioner Go and Go, Sr., BI Associate Commissioner Linda L. Malenab-Hornilla subsequently rendered a Resolution dated February 14, 2001 that dismissed the complaint for deportation filed against petitioner Go.[5]

However, on March 8, 2001,[6] the BI Board of Commissioners (Board) reversed the case dismissal, holding that the election of Philippine citizenship of Go, Sr. was made out of time. The Board then directed the preparation and filing of the appropriate deportation charges against petitioner Go.

On July 3, 2001, the corresponding Charge Sheet[7] was filed against petitioner Go for violation of Section 37(a)(9), in relation to Section 45(e) of C.A. No. 613, as amended, committed as follows:

> 1. That Respondent was born on October 25, 1952 in Iloilo City, as evidenced by a copy of his birth certificate wherein his citizenship was recorded as "Chinese";
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> 2. That Respondent through some stealth machinations was able to subsequently cover up his true and actual citizenship as Chinese and illegally acquired a Philippine Passport under the name JAIME T. GAISANO, with the use of falsified documents and untruthful declarations, in violation of the above-cited provisions of the Immigration Act[;] [and]
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> 3. That [R]espondent being an alien, has formally and officially represents and introduces himself as a citizen of the Philippines, for fraudulent purposes and in order to evade any requirements of the immigration laws, also in violation of said law.
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> CONTRARY TO LAW.[8]

In November 2001, petitioner Go and Go, Sr. filed a petition for *certiorari* and prohibition with application for injunctive reliefs before the Regional Trial Court (RTC) of Pasig City, Branch 167, docketed as SCA No. 2218, seeking to annul and set aside the March 8, 2001 Resolution of the Board and the Charge Sheet dated July 3, 2001.[9] Essentially, they challenged the jurisdiction of the Board to continue with the deportation proceedings.

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5 *Id.* at 48-50, 127-129.
6 *Id.* at 130-131.
7 *Id.* at 132.
8 *Id.*
9 *Id.* at 133-179.

In the interim, the Board issued a Decision dated April 17, 2002 in BSI-D.C. No. ADD-01-117, ordering the apprehension and deportation of petitioner Go. The dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the Board of Commissioners hereby Orders the apprehension of respondent JIMMY T. GO @ JAIME T. GAISANO and that he be then deported to CHINA of which he is a citizen, without prejudice, however, to the continuation of any and all criminal and other proceedings that are pending in court or before the prosecution arm of the Philippine Government, if any. And that upon expulsion, he is thereby ordered barred from entry into the Philippines.
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> SO ORDERED.[10]

The Board gave weight to the documents submitted against petitioner Go, to wit:

1. The Certificate of Birth of petitioner Go, issued on November 23, 1999 by the local civil registrar of Iloilo City, which showed that Baby Jimmy Go is "FChinese";
2. The Certificate of Live Birth of Juliet Go, which certified that her citizenship was Chinese. The same certificate also stated that Go, Sr. was a "Chinese" and the mother "Rosario Tan" was also "Chinese"; and
3. The Certificate of Live Birth of Carlos Go, Jr., whose citizenship was also certified as "Chinese."

The Board held that all documents submitted were *prima-facie* evidence of the facts regarding the nationality of petitioner Go pursuant to Article 410[11] of the Civil Code as they are considered public documents. Further, it was opined that petitioner Go's claim of being Filipino totally lacks merit since his father's election of Philippine citizenship was void for having been filed five (5) years after his attainment of the age of majority or when he was twenty-six (26) years old. The Board also observed that the certified true copy of the Oath of Allegiance of Go, Sr. appears to have been subscribed and sworn to before the Deputy Clerk of Court of Iloilo City on July 11, 1950 while his Affidavit of Election was subscribed and sworn to before the same public officer a day after. The Board considered this as irregular since Go, Sr. filed his Oath of Allegiance prior to his actual election of Philippine citizenship contrary to Section 1 of C.A. 625, which provides:

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[10] *Id.* at 69.

[11] Art. 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained.

> Election of Philippine Citizenship must be expressed in a statement before any officer authorized to administer oaths and filed with the nearest civil registry and accompanied by an Oath of Allegiance to the Philippine Constitution.

In view of the adverse judgment, petitioner Go and Go, Sr. filed before the Pasig RTC a supplemental petition to declare the nullity of the Board's April 17, 2002 Decision.[12]

The Pasig RTC issued a writ of preliminary prohibitory injunction pending litigation on the main issue, enjoining the BI from enforcing the April 17, 2002 Decision.[13] Later, however, it dissolved the writ in a Decision dated January 6, 2004, which dismissed the petition for lack of merit.[14] A motion for reconsideration was filed, but it was denied in an Order issued on May 3, 2004.[15]

Petitioner Go and Go, Sr. then questioned before the CA the RTC's January 6, 2004 Decision and May 3, 2004 Order by way of a petition for *certiorari* under Rule 65 of the Rules, which was docketed as CA-G.R. SP No. 85143.[16] The appellate court, however, dismissed the petition and denied the motion for reconsideration on October 25, 2004 and February 16, 2005, respectively.[17]

Meantime, on November 16, 2004, the Board issued a warrant of deportation, which led to the apprehension and detention of petitioner Go pending his deportation.[18]

Thereafter, petitioner Go and Go, Sr. filed before this Court a petition for review on *certiorari*, docketed as G.R. Nos. 167569 and 167570, assailing the CA decision and resolution in CA-G.R. SP No. 85143.

Petitioner Go also appealed to the Office of the President (OP), which, on September 29, 2004, concurred with the findings of the Board.[19] The OP likewise denied the motion for reconsideration on February 11, 2005.[20] As a result, petitioner Go elevated the case to the CA via petition for review under Rule 43 of the Rules.[21]

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12 *Id.* at 201-214.
13 *Id.* at. 217-218.
14 *Id.* at 219-224.
15 *Id.* at 235-236.
16 *Id.* at 237-279.
17 *Id.* at 282-294.
18 *Id.* at 312.
19 *Id.* at 70-73.
20 *Id.* at 74-76.
21 *Id.* at 335-357.

Meanwhile, the Court resolved G.R. Nos. 167569 and 167570 when *Go, Sr. v. Ramos*[22] was promulgated on September 4, 2009. The decision sustained the October 25, 2004 Decision and February 16, 2005 Resolution of the CA in CA-G.R. SP No. 85143.

More than a month after, on October 28, 2009, the CA dismissed the Rule 43 petition, holding that the April 17, 2002 Decision of the Board, which was the subject of appeal to the OP, had already become final and executory. The CA denied petitioner Go's motion for reconsideration on March 22, 2010; hence, this petition raising the issues as follows:

1. The Honorable Court erred in dismissing the instant petition;
2. The Honorable Court erred in declaring that the April 17, 2002 Decision of the Bureau of Immigration and Deportation in BSI-D.C. No. ADD-01-117 is final and executory; and
3. The Honorable Court erred in not ruling on the irregularity of the issuance of the Office of the President of its September 29, 2004 and February 11, 2005 Resolutions.[23]

We deny.

Petitioner Go presumes that the April 17, 2002 Decision of the Board has not yet attained finality due to the pendency of his Motion for Leave to Admit Attached Second (2nd) Motion for Reconsideration, which this Court allegedly failed to resolve. He is mistaken.

As a general rule, a second motion for reconsideration cannot be entertained. Section 2 of Rule 52 of the Rules of Court is unequivocal.[24] The Court resolutely holds that a second motion for reconsideration is a prohibited pleading, and only for extraordinarily persuasive reasons and after an express leave has been first obtained may such motion be entertained.[25] The restrictive policy against a second motion for reconsideration is emphasized in A.M. No. 10-4-20-SC, as amended (Internal Rules of the Supreme Court). Section 3, Rule 15 of which states:

> SEC. 3. *Second motion for reconsideration.* – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en*

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22 G.R. Nos. 167569, 167570 & 171946, September 4, 2009, 598 SCRA 266.

23 *Rollo*, p. 17.

24 Section 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

25 *League of Cities of the Philippines (LCP), et al. v. COMELEC, et al.*, 668 Phil. 120, 139 (2011), citing *Securities and Exchange Commission v. PICOP Resources, Inc.*, 588 Phil. 136 (2008); *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 662 Phil. 572 (2011); and *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483 (1996).

> *banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it. In the exercise of sound discretion, We may determine issues which are of transcendental importance. This case is definitely not an exception.

Upon examination of the records of G.R. Nos. 167569 and 167570, We found that on August 18, 2010 petitioner's Motion for Leave to Attach a Second Motion for Reconsideration and the Second Motion for Reconsideration were denied and noted without action, respectively. Thus, the CA is correct in ruling that the April 17, 2002 Decision of the Board may no longer be reviewed as it already attained finality and should remain so. Based on the principle of immutability of judgment, a decision must become final and executory at some point in time; all litigations must necessarily come to an end.

> x x x A definitive final judgment, however erroneous, is no longer subject to change or revision.
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> **A decision that has acquired finality becomes immutable and unalterable**. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And **this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law.** The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred. x x x[26]

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[26] *Gonzales v. Solid Cement Corporation*, G.R. No. 198423, October 23, 2012, 684 SCRA 344. (Emphasis ours)

Subject to certain recognized exceptions such as (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, which are not present in this case, the principle of immutability leaves the judgment undisturbed as nothing further can be done except to execute it.[27]

Notably, the subject matters of *Go, Sr.* and the present case are essentially the same as both involve identical facts and evidence. Necessarily, this case should be disposed in the same way that G.R. Nos. 167569 and 167570 in *Go, Sr.* were resolved.

In *Go, Sr.*, which was promulgated on September 4, 2009, the validity of the April 17, 2002 BI Decision that ordered the apprehension and deportation of petitioner Go was already passed upon with finality. Therein, one of the issues presented for resolution was whether the evidence adduced by petitioner Go and his father, Go, Sr., to prove their claim of Philippine citizenship is substantial and sufficient to oust the BI of its jurisdiction from continuing with the deportation proceedings in order to give way to a formal judicial action to pass upon the issue of alienage. While petitioner Go and Go, Sr. conceded that the BI has jurisdiction to hear cases against an alleged alien, they insisted that judicial intervention may be resorted to when the claim to citizenship is so substantial that there are reasonable grounds to believe that the claim is correct. They posited that the judicial intervention required is not merely a judicial review of the proceedings below but a full-blown, adversarial, trial-type proceedings where the rules of evidence are strictly observed. The Court disagreed and opined that the jurisdiction of the BI is not divested by mere claim of citizenship. It was held:

> There can be no question that the Board has the authority to hear and determine the deportation case against a deportee and in the process determine also the question of citizenship raised by him. However, this Court, following American jurisprudence, laid down the exception to the primary jurisdiction enjoyed by the deportation board in the case of *Chua Hiong v. Deportation Board* wherein we stressed that judicial determination is permitted in cases when the courts themselves believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct. Moreover, when the evidence submitted by a deportee is conclusive of his citizenship, the right to immediate review should also be recognized and the courts shall promptly enjoin the deportation proceedings.

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[27] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*, 665 Phil. __ (2011).

> While we are mindful that resort to the courts may be had, the same should be allowed only in the sound discretion of a competent court in proper proceedings. After all, the Board's jurisdiction is not divested by the mere claim of citizenship. Moreover, a deportee who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings. The decision of the Board on the question is, of course, not final but subject to review by the courts.
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> After a careful evaluation of the evidence, the appellate court was not convinced that the same was sufficient to oust the Board of its jurisdiction to continue with the deportation proceedings considering that what were presented particularly the birth certificates of Jimmy, as well as those of his siblings, Juliet Go and Carlos Go, Jr. indicate that they are Chinese citizens. Furthermore, like the Board, it found the election of Carlos of Philippine citizenship, which was offered as additional proof of his claim, irregular as it was not made on time.
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> **We find no cogent reason to overturn the above findings of the appellate tribunal. The question of whether substantial evidence had been presented to allow immediate recourse to the regular courts is a question of fact which is beyond this Court's power of review for it is not a trier of facts. None of the exceptions in which this Court may resolve factual issues has been shown to exist in this case. Even if we evaluate their arguments and the evidence they presented once again, the same conclusion will still be reached.**[28] (Emphasis supplied)

The Bureau of Immigration is the agency that can best determine whether petitioner Go violated certain provisions of C.A. No. 613, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[29] By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.[30]

Moreover, a petition for review under Rule 45 of the Rules generally bars any question pertaining to the factual issues. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions, among them, the lack of sufficient support in evidence of the trial court's judgment or the appellate court's

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28 *Go, Sr. v. Ramos*, G.R. Nos. 167569, 167570 & 171946, September 4, 2009, 598 SCRA 266, 291-293.

29 *Tze Sun Wong v. Kenny Wong*, G.R. No. 180364, December 3, 2014.

30 *Id.*

misapprehension of the adduced facts.[31] None of the exceptions was convincingly shown to be present in this case.

In addition, this Court cannot let it pass to declare that petitioner Go is guilty of forum-shopping

> Forum shopping is defined as:
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> [w]hen a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.
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> Forum shopping consists of the following elements:
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> (a) identity of parties, or at least such parties as represent the same interests in both actions;
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> (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and
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> (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[32]

In *Go, Sr.*, petitioner Go and Go, Sr. challenged in G.R. Nos. 167569 and 167570 the October 25, 2004 Decision and February 16, 2005 Resolution of the CA in CA-G.R. SP No. 85143, which affirmed the January 6, 2004 Decision and May 3, 2004 Order of the Pasig RTC in SCA No. 2218 that upheld the Charge Sheet dated July 3, 2001 and the April 17, 2002 Decision of the Board. We eventually affirmed the CA Decision and Resolution.

On the other hand, in this case, petitioner Go seeks to nullify the October 28, 2009 Decision and March 22, 2010 Resolution of the CA in CA-G.R. SP No. 88840 ruling that the April 17, 2002 Decision had already become final and executory in view of Our Decision in *Go, Sr.* To note, after filing G.R. Nos. 167569 and 167570 before this Court, petitioner Go still appealed the same April 17, 2002 Board Decision to the Office of the President. Unfortunately for him, the OP also denied his appeal and motion for reconsideration. With the denial, he filed a petition for review under Rule 43 before the CA, which, as aforesaid, sustained the BI Decision.

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31 *Id.*

32 *Ortigas & Company Limited Partnership v. Judge Velasco*, G.R. No. 109645, January 21, 2015.

We have held in *Tze Sun Wong v. Kenny Wong*[33] that from the denial of the motion for reconsideration by the BI Board of Commissioners, the aggrieved party has three (3) options: **(a)** he may file an appeal directly to the CA via Rule 43 provided that he shows that any of the exceptions to the exhaustion doctrine attend; **(b)** absent any of the exceptions, he may exhaust the available administrative remedies within the executive machinery, namely, an appeal to the Secretary of Justice and then to the OP, and thereafter, appeal the OP's decisions via Rule 43; ***or*** **(c)** he may directly resort to *certiorari* before the CA strictly on jurisdictional grounds, provided that he explains why any of the aforementioned remedies cannot be taken as "adequate and speedy."

Petitioner Go availed of remedies *(b)* and *(c)* above in his desire to obtain a favorable judgment. In *Go, Sr.*, petitioner Go, together with his father, elevated the case to the CA via Rule 65 petition. In this case, he immediately appealed to the OP, by-passing the Secretary of Justice.

Similar to *Go, Sr.*, ruling on whether petitioner Go is a Filipino citizen is not what We are called upon to do in this case. The Court does not even have to rule once more on the issue of citizenship to determine whether the BI proceedings may be enjoined to give way to a judicial determination of the same because the matter was already passed upon with finality in *Go, Sr.* At this moment, petitioner's Philippine citizenship claim cannot be settled before Us. There are factual issues that make his citizenship controversial; hence, must first be resolved before the BI and not before the Supreme Court, which is not a trier of facts.[34]

**WHEREFORE,** the foregoing considered, the instant petition for review on *certiorari* is **DENIED**. The October 28, 2009 Decision and March 22, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 88840, which affirmed as final the April 17, 2002 Decision of the Bureau of Immigration, are **AFFIRMED**.

**SO ORDERED.**

**DIOSDADO M. PERALTA**
Associate Justice

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33 G.R. No. 180364, December 3, 2014.

34 See *Magno v. Court of Appeals,* G.R. No. 101148, August 5, 1992, 212 SCRA 229, 234.

**WE CONCUR:**

I dissent.
(Please see Dissenting Opinion)
**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY
**WILFREDO V. LAPITAN**
Division Clerk of Court
Third Division

JUL 29 2015

**MARIA LOURDES P. A. SERENO**
Chief Justice