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## Articles, continued

# CITIZENSHIP RIGHTS OF FILIPINO VETERANS AND THEIR CHILDREN

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The 1975 **Renfrew** decision in the case of **68 Filipino War Veterans**[1] recently made final by withdrawal of the appeal from the Court of Appeals by the Immigration and Naturalization Service evokes several questions. This paper shall deal with some of the questions which the author thinks may be essential to the implementation of the decision, at the same time other questions which the decision has left unanswered and may open possible grounds for litigation. Who are directly covered by the decision aside from the members of the Philippine Scouts? Does the benefit of citizenship extend to their spouses? Does it extend to their offsprings, at least those who in 1946 would have been legally benefited by the naturalization of their fathers? Is the decision an act of "judicial naturalization"? Or is it an adjudication of rights under Sections 701-705 of the Nationality Act of 1940.[2]

The purpose then of this article is to probe into these questions by discussing the pertinent law and cases in point. Both affirmative and negative sides are to be explored in the hope of reaching feasible and reasonable as well as authoritative answers. The **Renfrew** decision shall, of course, be a focal point of reference without necessarily making this article appear as a mere commentary.

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[1] In the Matter of Petitions for Naturalization of 68 Filipino War Veterans 406 F.Supp. 931 (1975) hereafter to be referred as Renfrew.

[2] Section 701 provided in pertinent part: "(A)ny person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and (w)ho shall have been at the time of his enlistment or induction a resident thereof and who (a) was lawfully admitted into the United States, including its Territories and possessions, or (b) having entered the United States, including its Territories and possessions, prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyond the continental limits of the United States or has so served may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention, no certificate of arrival for those described in group (b) hereof, and no period of of residence within the U.S. or any state shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own writing, or meet any educational test; ...**Provided, however,** That...(3) the petition shall be filed not later than December 31, 1946..." Section 702 provided in pertinent part: "During the present war any person entitled to naturalization under section 701 of this Act, who while serving honorably in the military...forces of the United States is not within the jurisdiction of any court authorized to naturalize aliens, may be naturalized in accordance with all the applicable provisions of section 701 without appearing before a naturalization court. The petition for naturalization of any petitioner under this section shall be made and sworn to before and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner or Deputy Commissioner, which designated representative is hereby authorized to receive such petition in behalf of the Service, to conduct hearings thereon, to take, testimony concerning any matter touching or in any way affecting the admissibility of any such petitioner for naturalization, to call witnesses, to administer oaths, including the oath of the petitioner and his witnesses to the petition for naturalization and the oath of renunciation and allegiance prescribed by section 335 of this Act, and to grant naturalization, and to issue certificates of citizenship..."
Section 705 provided in pertinent part: "The Commissioner, with the approval of the Attorney General, shall prescribe and furnish such forms, and shall make such rules and regulations, as may be necessary to effect the provisions of this Act." Ch. 199, 56 Stat. 182 et seq as amended, 8 U.S.C. § 1001-1005 (1940).

[3] United States Immigration and Naturalization Service v. Hibi, 414 U.S. 5 (1975).

[4] Renfrew, supra, at 938.

### I.

### A. The Renfrew Decision and the Hibi Case

One important consideration in the **Renfrew** decision is whether it goes against the Supreme Court decision in **Hibi**. Judge Renfrew answers this question in the negative. He categorically emphasizes that the Court is "bound" by **Hibi** and "welcomes that decision as an indication of how the Supreme Court viewed the question of estoppel of the government in the particular factual context of that case."[4]

However, he notes that **Hibi** couldn't be dispositive of all other cases which may not be falling in the same factual context as **Hibi**. Hence, it is the duty of the district court to determine the factual circumstances of each case for the purpose of establishing whether the Government had committed acts which misled the petitioners into changing their original positions and which had actually been detrimental to an otherwise free exercise of an existing right.[5]

In **Hibi**, the Government was not guilty of affirmative misconduct by simply failing to inform petitioner of his right to become an American citizen and to post a naturalization officer in the Philippines during the statutory time period.[6] **Hibi** never argued that he tried to avail of the right but was barred by Government action.[7]

In **Renfrew**, two petitioners filed applications for naturalization while in military service and received Government replies returning their application and stating that no action could be taken on these applications. Another petitioner had written to the Attorney General immediately before discharge from the service inquiring how he could be naturalized without getting any positive reply. Four other petitioners testified under oath that they filed applications to no avail.[8]

### B. The Constitutional Issue

A more important consideration in **Renfrew** which was not raised in **Hibi** is the constitutional question of due process. Petitioners in **Hibi** contend that they were deprived of their rights to become American citizens without due process of law. Reference to the equal protection clause of the Constitution is likewise made.[9] The Government argues inter alia that after the passage of the Philippine Independence Act of March 24, 1934, the due process and equal protection clause of the U.S. Constitution did not extend to the Philippines.[10] The Court dismisses this contention by pointing out that even after the passage of this Act, the Philippines still owed allegiance to the United States. The Filipinos, although considered aliens for immigration quota and other limited purposes, were nevertheless "nationals" of the United States and therefore should have enjoyed the privileges under the due process and equal protection clause of the Constitution.[11]

But was there really in fact a deprivation of right without due process of law? The Court finds that there was a denial of due process because the Government "has not met its burden of justifying the discriminatory executive conduct involved here..."[11a] no matter how well intentioned it was.

Another constitutional question raised in **Renfrew** is whether the case is non-justiciable. The Government argues that the revocation by the Attorney General of the Vice Consul's authority to process naturalization was based upon information received from the State Department affecting Philippine American relations and was clearly taken in furtherance of foreign policy objectives.[12]

Recognizing the separation of powers between the branches of government upon which the argument is based and conceding that the conduct of foreign policy properly belongs to the executive branch, the district court points out however, that not every question involving foreign affairs is non-justiciable.[13] There is no lack of "judicially discoverable and manageable standards" because "judicial standards of due process and equal protection are well developed and familiar"[14] Likewise, Congress had already defined the underlying policy in Sections 701-705 of the Nationality Act and the District Court will not engage in the formulation of an initial policy which does not belong to judicial discretion.[15] Lastly, judicial adjudication of the alleged political question will not result in an embarassment to the executive branch.

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## II.

### A. Who Are Covered?

There is not doubt that the members of the Philippine Army or Philippine Scouts are directly covered. The question is whether members of guerrilla bands in the Phillipines during the war are also covered.

In the **Petition of Agustin**, 62 F. Supp. 832, the petitioner was a member of a guerrilla group which was known as "Yay regiment, Markings Fil-Americans" which became part of the 43rd Division of the U.S. Army.[16] Recognition was important because it signified integration into the U.S. armed forces in the Far East (USAFFE). In Agustin, recognition was made in an order of the 6th Army Headquarters on May 16, 1945, the order being signed by a certain Capt. W. W. Stuart, Assitant Chief of Staff. Express recognition was found in the text of the order which read as follows:

> "...The following guerrilla units are recognized by the Commander in Chief, Southwest Pacific Area, as authorized elements of the United States Army Forces in the Far East, effective as of the date specified after each unit listed..."[17]

Additional recognition was made of the Yay regiment in a document signed by Maj. General Leonard Wing, Commanding General of the 43rd Division, by Brig. General A.N. Stark, executive officer, by Lt. Col. Lyod E. Barron, Commander of the First Battalion of said Regiment, certifying that: "Marcos V. Agustin, Col Infantry, (Marking), Commanding officer of 'Marking's Guerrillas' is now personally commanding the "Yay regiment, his crack combat unit now attached to the 43rd Division, U.S. Army."[18]

In October, 1944 the President of the Philippine Commonwealth issued an executive order giving official status to guerrilla fighters and declaring them in the active service of the Philippine Army and further fixed the annual pay and quarter allowances of the officers according to the same schedule prevailing in the U.S. Army.[19] A similar order was issued by the Office of the Secretary of War on July 7, 1942 which read as follows:

> "1l Appointment or enlistment in the Army of the United States of

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[5] Id. at P. 938.

[6] Id. at p. 937.

[7] Id. at p. 937.

[8] Id. at p. 938.

[9] Id. at p. 940.

[10] Id. at p. 940

[11] Id. at pp. 941-942.

[11a] Id. at pp. 950-951.

[12] Id at p. 943.

[13] Id. at p. 944.

[14] Id. at p. 946.

[15] Id. at p. 946.

[16] at p. 834.

[17] Id. at p. 834.

[18] Id. at p. 834.

[19] Id. at p. 834

officers and enlisted men in Philippine Army.

"1. That appointment or enlistment in the Army of the United States of those officers and enlisted men of the Philippine Army who are serving with the United States armed forces is authorized.

"2. Appointment or enlistments will be made in grades commensurate with the grades held in the Philippine Army at time of transfer."[20]

On July 26, 1945, President Roosevelt issued an order calling and ordering all organized forces of the Philippines into the service of the United States for the duration of the war.[21]

Section 701 of the Nationality Act provided for the naturalization of "any person not a citizen...who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who shall have been at the time of his enlistment or induction a resident thereof..."[22] **Agustin, supra** ruled that the words "enlistment" and "induction" as used in this section was intended merely to fix in point of time the period of commencement of service, and was not intended to make enlistment or induction as prerequisite for the bestowal of citizenship.[23]

Similarly, in **Petition of Munoz**, 156 F.Supp. 184, petitioner who was a member of a recognized guerrilla band of the underground that for naturalization purpose, service in the guerrilla band constituted honorable service in the U.S. armed forces.[24] However, in **Petition of Escalona**, 311 F.Supp. 648 (1970), the petitioner failed to show convincing evidence that the guerrilla unit to which he belonged for a brief period during the war was duly recognized. Referring to **Logronia v. United States**, 133 F.Supp. 395, the Court observed that a "recognized force as used herein, is defined as a force under a commander who has been appointed, designated or recognized by the Commander in Chief of the Southwest Pacific Area."[25]

Questions may be raised as to whether the members of the HUKBALAHAP [**Hukbong Bayan Laban sa Hapon** or People's Army Against the Japanese) which was actually the military arm of the old Communist Party of the Philippines, would qualify. The author believes that even assuming that certain units of this organization may have gained recognition by the Commanding General of the Southwest Pacific Area, their communist affiliation necessarily disqualifies them from availing the right to become American citizens.[26]

### B. Are the Veterans' Spouses and Children Covered?

The author believes that the spouses are not covered. In 1946, the citizenship rule in the Philippines as found in Commonwealth Act (C.A.) 63.[27] enumerated the grounds for the loss of Philippine citizenship and provided that the marriage of a Filipino woman to a foreigner did not automatically divest her of Philippine citizenship (Section 1). Whether she followed automatically the citizenship of her husband depended on whether according to the law of the husband, she automatically acquired his citizenship. The reason for the Philippine rule was to safeguard against the Filipino woman becoming stateless, if the husband's national law didn't provide for automatic acquisition. This rule was later superseded by the 1973 Philippine Constitution which provides that "a female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or ommission she is deemed, under the law, to have renounced her citizenship."[28]

**In October, 1944, the President of Philippine Commonwealth issued an executive order giving official status to guerrilla fighters.**

The rule in the United States in 1946 and up to the present has been that the marriage of an alien woman to an American citizen does not automatically make her an American citizen. She has to comply with residence and other requirements to be eligible.[29]

Insofar as the offsprings are concerned, the problem assumes a more complex situation. There is no doubt that if the veterans were able to exercise their option in 1946, their minor children and those born subsequently would have followed U.S. citizenship by descent. There was no Philippine law directly governing the situation. Commonwealth Act 63 enumerates **inter alia** naturalization in a foreign country and express renunciation of citizenship as among the grounds for the loss of Philippine citizenship. The veterans would have therefore lost their Philippine citizenship upon naturalization. Does it automatically mean that the minor children and those born subsequently also lost their Philippine citizenship? Section 1 of the same Commonwealth Act provides that "subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty one years of age or more" will result in a loss of citizenship. Also, since the spouses of the veterans remained Filipinos, their children would have the right to elect Philippine citizenship upon reaching the age of twenty one.[30] The author believes that the minor child or one born subsequent to 1946 necessarily follows his father's citizenship unless upon reaching the age of twenty one elects Philippine citizenship. This conclusion becomes even more authoritative by looking at the constitutional provision which enumerates who are Philippine citizens. Among them are "those whose fathers are citizens of the Philippines" and "...those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship."[31] Those excluded in the enumerations would necessarily be non-citizens.

Under U.S. law, reference should be made to the law governing the offsprings of an American father and an alien mother born abroad. Because the Filipino war veterans were deprived of the option to become American citizens from October 26, 1945 to August, 1946[32], the time period

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[20] Id. at p. 836.

[21] Id. at p. 836 see footnote 3. in decision.

[22] Id. at p. 832.

[23] Id. at p. 832.

[24] at p. 186.

[25] at p. 651.

[26] Even for admission, Communists are restricted, see Sections 212 (a)(28)(D) and (G)(v) and sections 212 (d)(3)(A) of the Immigration and nationality Act of 1952, 66 Stat. 182, 8 U.S.C. sections 1182 (a)(28)(D) and (G)(v) and section 1182 (d)(3)(A) superceding the Nationality Act of 1940.

[27] See Board of Immigration v. Go Gallano, 25 Philippine SCRA at p. 901.

[28] See Text of Philippine Constitution, Section 2, Art. III.

[29] See Gordon and Rosenfeld, Immigration Law and Procedure, Vol. 3, section 17.3.

[30] See Section 1 (4) of the 1936 Philippine Constitution.

[31] Id.

[32] See Renfrew at pp. 935, 936, note that a total of 2 years and 9 months was the exact period during which the veterans could not have their applications processed because from 1943 to 1945 the Philippines was an occupied territory of the Japanese (during this period Judge Renfrew observed: "Between 1943 and 1946, these officers traveled from post to post through England,

to reckon the effect of naturalization if it were made available would be this period also. Therefore, children who were minor and those born during this period up to December 23, 1952 (when other amendments were introduced governing offsprings) should be governed by rules governing children born between January 13, 1941 and December 23, 1952 for purposes of determining their citizenship under U.S. law.

The Nationality Act of 1940 made several changes as to acquisition of U.S. citizenship by descent of children born abroad. This Act was made effective January 13, 1941 and was subsequently repealed by the Nationality Act of 1952 which took effect on December 24, 1952. Among the categories laid down during this period were children born outside the U.S. of an American father who had previously resided in the U.S. (note that this residence was waived to veterans) and an alien mother.[33] While citizenship descended to the child upon birth, he should reside in the U.S. or its outlying possessions for a period or periods totaling 5 years between the ages of 13 and 21 years to retain American citizenship, with the stipulation that said citizenship would cease if the child did not establish residence on his 16th birthday or his continued residence abroad otherwise made it impossible to comply with the residence requirement to retain citizenship.[34] A 1946 Amendment covering conditions precedent for offsprings of citizens who had served honorably in the U.S. armed forces during World War II specifically provided that the foregoing residence requirements should be complied with by such offsprings.[35] Those born after December 24, 1952 should come to the U.S. before their 23rd birthday and after the age of 14, continuously residing therein for at least 5 years before their 28th birthday.

Obviously, only children of veterans who would be born after 1978 when the **Renfrew** decision gets to be implemented could possibly avail of citizenship by descent at the same time comply with the residence requirement. Could those born in 1946 and subsequently but before 1978 allege the fact that the Government prevented them from availing of their right to citizenship by descent at the same time making it impossible for them to comply with the residence requirements of the law? This particular situation has not been specifically resolved either by the **Renfrew** decision nor any cases. In **Rogers v. Patokoski**, 271 F. 2d 858, the petitioner-appellee entered the United States only on his 40th birthday, had served in the Finnish Government and Army and had voted in Finnish elections, was adjudged to have retained his American citizenship which he acquired by descent on the ground that he voluntarily performed those acts, not to expatriate his American citizenship, but due to ignorance of the fact that he was an American citizen. However in the case of **Ramos-Hernandez v. INS**, 566 F.2d 638 (1977), ignorance by the petitioner who was born in Mexico of an American father and who went to the U.S. at the age of thirty two (or thirty three) did not retain his American citizenship.36 This case draws its strength from the case of **Rogers v. Bellei**, 401 U.S. 815 (1971) which held that petitioner born in Italy of an American mother and an alien father and who had come to the U.S. on five different occasions but did not take up residence before his 23rd birthday, was adjudged to have lost his American citizenship. The Court made a distinction between "Fourteenth Amendment-first-sentence citizens" or "those born in or naturalized in the United States" and those whose citizenship was bestowed by section 301 and its predecessors, the former was held to be beyond the power of the government to destroy and could only be taken away with the individual's consent. **Bellei, supra** and **Ramos-Hernandez, supra**. The question now is whether the child of the veteran could have been a Fourteenth Amendment-first-sentence citizen, if his father was not precluded from exercising his option to become an American citizen? Even assuming or granting they are not, for the sake of argument, there is reason to believe that the **Bellei** case should not control negatively the veteran's child-case which is totally in a different factual context from that of **Bellei**. One should carefully note that in **Bellei**, the Court merely established the constitutionality of the residence requirements as provided in the nationality statute and even took cognizance of the fact that Bellei "asserts no claim of ignorance or of mistake or hardship. He was warned several times of the provision of the statute and of his need to take up residence in the United States prior to his 23rd birthday." **Bellei, supra** 401 U.S. at 836. The veteran's child would have been an American citizen by operation of law. Whether he would have retained his citizenship by complying with the residence requirement is not even a hypothetical question by an "impossibility" deliberately imposed by the Government's act of withdrawing the administrative remedy to enforce his father's right. The author therefore believes that the veteran's child should now be given the opportunity to comply with the statute even if he could no longer comply with the age requirement.

> Not every question involving foreign affairs is non justiciable.

> ...the marriage of an alien woman to an American citizen does not automatically make her an American citizen.

Also, there is a question of whether the INS can make the present option under the **Renfrew** decision available to Filipino veterans who are in the Philippines by authorizing an officer in the U.S. embassy in the Philippines to process applications. The author believes that there should be no legal barrier to this. In fact, the INS had been authorized by Section 705 to formulate rules and regulations to implement the law. Likewise, if we have to bring a little justice to vindicate a gross injustice committed in the past, we should at least try to approximate the original situation. The INS should not make it more difficult than it should for the **bona fide** Filipino veterans by making the right available only in the United States, for this again, may be another injustice.

Lastly, there is the question whether the **Renfrew** decision is an act of "judicial naturalization" which has derived its authority from Sections 701 to 705 of the Nationality Act of 1940 and therefore in implementing it, one should only look prospectively and disregard all considerations of possible past options. On the other hand, it could be interpreted as giving effect to Sections 701-705 of the Nationality Act of 1940, in which case, due consideration should be given to past possible options which could have been available to the veterans and their children. The author believes that the latter is more judicious than the former view.

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Iceland, North Africa, and the Islands of the Pacific, naturalizing thousands of foreign nationals) plus the period from October 26, 1945 to August, 1946 when the authority was actually withdrawn.

[33] Section 201 (d) Nationality Act of 1940, 54 Stat. 1138; see Gordon and Rosenfeld, op. cit. Section 13.9.

[34] See Gordon and Rosenfeld, op. cit., Section 13.5a; Section 201 (g), Nationality Act of 1940, 54 Stat. 1139.

[35] Section 201 (i), Nationality Act of 1940, added by Act of July 31, 1946, 60 Stat. 721; See Gordon and Rosenfeld, op. cit. Section 13.5a.