(2) May it be assumed that the lifting of sequestration operated to relieve the holders of stock in the coconut levy companies — affected with public interest — of the obligation of proving how that stock had been legitimately transferred to private ownership, x x x ?[109]

The Court said "No", thus virtually reversing its March 3, 1992 resolution on the right of stockholders of record to vote as owners of the sequestered shares. The lifting of sequestration, according to the Court, has no relevance to the nature of the "coconut-levy companies" or their stock or property, or to the legality of the acquisition by private persons of their interest therein, or tot he latter's capacity or disqualification to acquire stock in the companies or any property.

This being so, the Court denied the alleged "owner's right" of the majority stockholders of record to vote the stocks in their names, even if the sequestration thereon had been lifted. That right, according to the Court, has to be established before the Sandiganbayan. "Until that is done, they cannot be deemed legitimate owners of UCPB stocks and cannot be accorded the right to vote them."[110]

This development in jurisprudence is relevant to this paper insofar as the equity aspects of PCGG sequestration are concerned. The new jurisprudence has affirmed the PCGG's takeover or control of UCPB through the voting rights of the majority of the stocks of UCPB, even with the lifting of the writs of sequestration over the shares.

The author would like to venture that this latest development in jurisprudence rests on "equity considerations." The coconut case involves coconut levy funds belonging to the humble tillers of the soil — the millions of coconut farmers. The coconut case became highly affected with public interest because the coconut farmers whose meager contributions to the coconut levy fund became a vast source of wealth of the Marcos cronies.

The realization of the Supreme Court's role in furthering the mandated tasks of the PCGG to recover "ill-gotten wealth" and to preserve the same pending judicial determination of ownership still remains to be seen. Jurisprudence has not yet exhausted all the space available in the PCGG horizon. But jurisprudential equity arguments in this paper have finally seen a little of the dawn in the coconut case.

[109] *Republic of the Philippines v. Sandiganbayan*, et.al., G.R. No. 96073, Adv. Sh. at 5 (February 10, 1993).

[110] *Id.* at 5 - 6.

A BATTLE NOT WON: FORGING THE FILIPINO WORLD WAR II VETERANS' CLAIM FOR BENEFITS AGAINST THE UNITED STATES OF AMERICA

MA. CRISTINA MAGDALENA F. VILLANUEVA*

Some fifty years ago, the Filipinos, as citizens of an unincorporated territory of the United States, fought in an American war. By virtue of the United States Constitution and later enactments, they were called into active service by the U.S. President and promised the same benefits given and to be given their American comrades-in-arms. But these promises were not only forgotten. They were altogether abandoned with the enactment of the U.S. Rescission Act of 1946. The latter explicitly provided that the Filipino veterans were deemed not to have been in the active service of the United States and, therefore, were not eligible for benefits under U.S. laws.

Then, in 1990, the US Immigration Act was amended to provide for the American naturalization of Filipino World War II veterans. Nevertheless, no veterans' benefits were granted.

The case of the Filipino World War II veterans had existed for half a century now, but it is, unfortunately, alien to many. The present plight of these war heroes necessitate action on the part of the Philippine government to afford adequate protection to the veterans who availed or would avail of the naturalization grant, and also, to once and for all call for the possible resolution of their claim for veterans' benefits against the United States.

INTRODUCTION

None can speak more eloquently for peace than those who have fought in war. The voices of war veterans are a reflection of the longing for peace of people the world over who within a generation have twice suffered the unspeakable catastrophy of world war. Humanity has earned the right to peace. Without hope, man is lost.

– UN Undersecretary Ralph Bunche

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General MacArthur once said, "Old soldiers never die... they just fade away." And fade away they do indeed, with blurring shadows soon to vanish in oblivion. Truly, it is only for those whose eyes have seen "the glory of the passing of the day," that old soldiers can never fade away. Much has been said about the brave men and women of the Second World War. Vignettes of courage telling of their heroic tales overflow in number. Yet, little has been told of the injustice that befell them after the victory of their sacrifices.

It is now almost half a century after the surrender of Japan. The same men and women, who, in the prime of their youth, offered their strength and gallantry for the cause of freedom, wallow in desolation; while their countrymen bask under the warmth of the same freedom they have relentlessly fought for.

The war was not of their own doing. But the danger to their motherland was real and the only logical thing to do was defend it. When the war broke out, the United States of America exercised its sovereignty over the Philippines. The conflict, therefore, was in truth and in fact an American war. They fought for the United States of America and in exchange, they were promised the same benefits given their American comrades-in-arms. Indeed, promises were made to be broken.

It was only on November 29, 1990, when Section 405 of the Immigration Act of the United States[1] was amended, that one of their pleas was heeded. The amendment made them eligible for American citizenship. But for what?

This thesis will study the case of the Filipino World War II veterans. It will show who called them to active military service, what promises were made to them, and what they got in comparison with what their American comrades-in-arms received. It will likewise ruminate on what US citizenship under Section 405 of the Immigration Act of 1990 offers and entails. Lastly, it will present recommendations for a possible resolution of the issue.

I. HISTORICAL BACKGROUND
THE CLAIM FOR WARTIME BENEFITS AGAINST THE UNITED STATES OF AMERCICA

A. The Philippines as U.S. Territory: The U.S. President as Commander-in-Chief of the Filipino Forces

The termination of the Spanish-American war on May 1, 1898 paved the way for American supremacy over the Philippines.[2] Manila was formally occupied by the United States expeditionary force on August 13, 1898,[3] with the articles of capitulation of the City of Manila concluding in these words:

[1] Public Law 101-649, 104 STAT. 4978 (1990).

[2] V. PACIS, J. ARUEGO, E. DE OCAMPO, C. QUIRINO, J. CASTRO, M. GARCIA, I. PETIZOZ, D.H. SORIANO, FOUNDERS OF FREEDOM—THE HISTORY OF THE THREE PHILIPPINE CONSTITUTIONS 174 (1971) [hereinafter cited as PACIS].

[3] *Id.* at 174.

> This city, its inhabitants, its churches and religious worship, its educational establishments, and its private property of all descriptions are placed under the special safeguard of the faith and honor of the American Army.[4]

By the Treaty of Paris, signed on December 10, 1898, Spain ceded to the United States sovereignty over the Philippine Archipelago.[5] Then United States President Mckinley, on December 21, 1898, instructed General Otis, the second American Military Governor in the Philippines, to

> announce and proclaim in the most public manner that we come not as invaders or conquerors, but as friends, to protect the natives in their homes, in their employments, and in their personal and religious rights.[6]

Territory, as one of the fundamental attributes of a state, gives rise to the exercise of sovereignty.[7] By way of cession, the Philippines became a territory of the United States.[8] The American colonial rule, however, did not make the Philippines part of the United States of America. Instead, it was regarded as an unincorporated territory.[9] The Tydings-McDuffie Law lends credence to this proposition, by providing that:

> Sec. 8 (a) (1) x x x For such purposes, the Philippine Islands shall be considered a separate country x x x.
>
> (4) x x x, the Philippine Islands shall be considered to be a foreign territory.[10]

This absence of incorporation, nevertheless, did not forestall the United States from wielding its powerful hand over the Philippines. Organic acts making provisions for this were passed. No less than the Tydings-McDuffie Law in Section 2(a)(1) thereof and the Ordinance appended to the 1935 Philippine Constitution in Section 1(1) thereof, explicitly provided that:

> x x x pending the final and complete withdrawal of the sovereignty of the United States over the Philippines x x x
>
> (1) All citizens of the Philippines shall owe allegiance to the United States.[11]

The United States Congress, by the passage of the Tydings-McDuffie Law, declared that full independence would be granted within ten (10) years.[12]

[4] *President McKinley's Instructions to the Board of Commissioners to the Philippine Islands, April 7, 1900*, BLUE BOOK OF THE INAUGURATION OF THE COMMONWEALTH OF THE PHILIPPINES 196 (1935).

[5] Treaty of Paris, art. III (1898).

[6] PACIS, *supra* note 2, at 174-175.

[7] J. COQUIA AND M.D. SANTIAGO, PUBLIC INTERNATIONAL LAW 291 (1984).

[8] *Id.* at 308.

[9] *Dorr v. United States*, 195 U.S. 138 (1904).

[10] Tydings-McDuffie Law, Public Law No. 127, secs. 8 (a) (1) and (4) (1934).

[11] *Id.*, sec. 2(a)(1) (1934); Ordinance Appended to the Philippine Constitution, sec. 1(1) (1935).

[12] Tydings-McDuffie Law, sec. 10(a)(1934).

This much-awaited occasion, however was delayed due to the outbreak of World War II. Philippine independence was finally proclaimed on July 4, 1946 with the Inauguration of the Republic of the Philippines. It was only then that United States sovereignty over the Philippines ceased.[13]

B. In the Service of the United States of America

The implantation of American rule in the Philippine Archipelago laid the foundation for the Filipino World War II Veterans' claim for benefits against the United States of America. As General Marshall elucidates: "the Philippines, being a small military outpost of the United States, would always have to be sacrificed in a fight with a first-class power x x x".[14] As it were, Clark Field, an American military base in the Philippines, was attacked by Japan one day after "the date which will live in infamy," as President Roosevelt described the moment Pearl Harbor was bombed. Truly, the Filipinos were left with no alternative but to fight.

This historical backdrop is the basis of the Filipino World War II veterans' claim for wartime benefits against the United States of America. Material to a complete understanding of this claim is a discussion of the enactments made and the military orders issued by the government of the United States of America.

1. THE UNITED STATES CONSTITUTION

The United States Constitution empowers the United States Congress to "declare war",[15] "raise and support armies,"[16] "provide and maintain a navy".[17] The United States President, on the other hand, was designated as "the commander-in-chief of the army and navy of the United States, and the militia of the several states, when called into the actual service of the United States".[18]

By virtue of the U.S. Constitution, therefore, the U.S. President had the mandate to maneuver the fate of the Philippine military force soon to be created.

2. TYDINGS-MCDUFFIE LAW

More than three decades after the signing of the Treaty of Paris, the Tydings-McDuffie Law, otherwise known as the Philippine Commonwealth Independence Law, evolved from a number of organic laws enacted by the United States to fulfill its promise of independence. Signed into law by

[13] PACIS, *supra* note 2, at 287.

[14] S. MEDALLA, GUIDEBOOK OF THE UNRESOLVED CLAIMS OF THE FILIPINO VETERANS OF WORLD WAR II, 28 (1990).

[15] UNITED STATES CONST., art. I, sec. 8, par.11 (1788, as amended 1933).

[16] *Id.*, art. I, sec. 8, par. 12.

[17] *Id.*, art. I, sec. 8, par. 13.

[18] *Id.*, art. II, sec. 2(1).

President Franklin Delano Roosevelt on March 24, 1934, the Tydings-McDuffie Law provided:

> The Philippine Islands recognizes the right of the United States x x x to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine Government.[19]

This provision once and for all confirmed and recognized the authority of the U.S. President as Commander-in-Chief of all the armed forces of the Philippines.

3. NATIONAL DEFENSE ACT

November 15, 1935 marked a momentous event in Philippine history with the establishment of the Philippine Commonwealth. Among its achievements was the passage of the National Defense Act[20] on December 21, 1935, which organized the Philippine Armed Forces.[21]

4. MILITARY ORDERS

As early as July 26, 1941, preparations for war were already under way as President Roosevelt issued Military Order No. 1 as follows:

> ORGANIZED MILITARY FORCES OF THE COMMONWEALTH OF THE PHILIPPINES CALLED INTO SERVICE OF THE ARMED FORCES OF THE UNITED STATES.
>
> Under and by virtue of the authority vested in me by the Constitution of the United States by Section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (45 Stat. 475), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, *I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a general officer, United States Army, to be designated by the Secretary of War from time to time all the organized military forces of the government of the Commonwealth of the Philippines* x x x. (emphasis supplied)
>
> This Order shall take effect *with relation to all units and personnel of the organized forces of the Government of the Commonwealth of the Philippines from and after the days and hours, respectively, indicated in orders to be issued from time to time by the general officer* United States Army, designated by the Secretary of War. (emphasis supplied)[22]

[19] Tydings-McDuffie Law, sec.2 subsection (a)(12) (1934).

[20] Commonwealth Act No. 1 (1935).

[21] MEDALLA, *supra* note 14, at 23.

[22] *Id.* at 24, US President Military Order No.1, 6 Fed. Reg. 3825 (1941).

The order was transmitted by American Army Chief of Staff General George C. Marshall to General Douglas MacArthur. The communication mentioned the establishment of the United States Army Forces of the Far East (USAFFE) and the designation of General Douglas MacArthur as Commanding General of the newly-created force. The forces of the Commonwealth of the Philippines which were called into the service of the armed forces of the United States for the period of the existing emergency, and "such other forces as may be designated to it" were to comprise the USAFFE.[23]

On December 18, 1941, pursuant to the authority given him by the President of the United States, Lieutenant General MacArthur issued General Order No. 46, calling into the service of the U.S. Armed Force in the Philippines:

1. x x x all the personnel of the Philippine Army on active duty and all active units of the Philippine army, less personnel and units already accepted for service with the United States Army forces, and

2. x x x personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated.[24]

These military orders indicate a clear intention to include in the "military call of the United States" not only the Philippine Army units formed at the time President Roosevelt issued his order but also all other units that subsequently became component units of the Philippine Army. A conclusion can therefore be drawn. Members of the Philippine Army, USAFFE on December 8, 1941 and those who thereafter became members thereof until the surrender of Corregidor on May 6, 1942 were called into the military service of the United States.[25]

After units of the USAFFE were disbanded as a result of their defeat in Bataan and Corregidor, the Filipino armed resistance to the Japanese did not cease. Former USAFFE members rekindled their pledge to defend the country and the American flag by joining guerilla forces in various parts of the country.[26] General MacArthur himself gave his approval to the reorganization and operation of these Philippine Army guerillas.[27] President Osmeña subsequently issued Executive Order No. 21[28] incorporating the guerilla units as components of the United States Army.[29] The formal reorganization of the guerilla resistance forces by their recognition and incorporation into the United States Army played an important role in the dissemination of supplies. MacArthur revealed that after said formalization, he was able to send vitally-needed supplies in prodigious quantities, by four submarines committed exclusively for that purpose, through Philippine coastal contacts.[30]

From President Roosevelt's July 26, 1941 military order, the Philippine Army was in the military service of the United States. It was only on June 29, 1946, when President Harry S. Truman issued another military order, that the Philippine Army was released from the service. For a span of three years, 11 months and three days, members of the Philippine Army were soldiers serving under the American Flag.[31]

5. U.S. APPROPRIATION ACTS

The enactment of several appropriation laws by the United States to finance the war activities andoperations of the armed forces of the Philippine Commonwealth further buttresses the claim. On December 17, 1941, P.L. 353 was initially passed by the 79th Congress of the United States appropriating the sum of $269,000.000 for the fiscal period ending June 30, 1943:

> *[F]or expenses necessary for the mobilization, operation, and maintenance of the Army of the Philippines,* including expenses connected with the call into active service of the Armed Forces of the Government of the Commonwealth of the Philippines, and expenditures incidental to the pay, allowance, operation, maintenance, and other activities of units and personnel of said military forces,and for the emergent mobilization and training of such forces...(emphasis supplied)

It further provided that the amount shall be available for payment to the Commonwealth Government for all expenses authorized by the USAFFE Commanding General.[32]

Subsequently, Executive Order No. 9011 was issued by President Roosevelt on January 3, 1942. This administrative order prescribed the manner of conducting the expansion and accounting of funds appropriated for the Philippine Army. It authorized disbursing officers of the U.S. Army to make the necessary expenditure notwithstanding any restrictive provisions of law so long as it was well accounted for.[33]

These appropriation measures signify U.S. recognition of the fact that members of the Philippine Army were part of the Armed Forces of the United States. The basis of the claim is that since the Filipino soldiers were called to active service by the United States when the latter exercised sovereignty over the Philippines, the Filipino soldiers actually fought as soldiers of the United States of America.

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[23] MEDALLA, *supra* note 14, at 24.

[24] *Id.* at 26.

[25] *Id.*

[26] PACIS, *supra* note 2, at 247.

[27] MEDALLA, *supra* note 14, at 26.

[28] Executive Order No. 21 was approved and published by General MacArthur in his November 17, 1944 Circular (No. 100, Headquarters, USAFFE).

[29] MEDALLA, *supra* note 14, at 26.

[30] *Id.* at 28.

[31] *Id.*

[32] *Id.* at 28-29.

[33] *Id.* at 29.

C. The Promises

"Equal pay for equal risk," was the USAFFE Commanding General Douglas MacArthur's promise to the Philippine Army at the height of the Battle of Bataan.[34] The statement intimates an admission that members of the Philippine Army were equally entitled to the rights and privileges granted to American soldiers of World War II by the Servicemen's Readjustment Act of 1944, as amended, otherwise known as the G.I. Bill of Rights. However, not only was this promise forgotten, it was altogether abandoned.[35]

Barely five months before the Philippines gained independence or on February 1946, the Rescission Act of 1946 (Public Law 79-301) was signed into law by President Harry S. Truman. The law contained a controversial rider which provided:

> that service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, *shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any such person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof,* except under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore entered into, and (2) laws administered by the Veterans Administration providing for the payment of pensions on account of service-connected disability or death; *Provided further,* That such pensions shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such pensions; x x x (emphasis supplied).

A communication between the Chairman of the Sub-Committee of the Senate Committee on Appropriations and U.S. Veterans Administration Director Omar Bradley preceded the passage of this Act. The former requested information concerning the status of the Filipino servicemen and the potential cost of their veterans benefit coverage. General Bradley expressed the view that those who served in the active military or naval forces of the United States:

> x x x did include persons who were part of the organized forces of the Commonwealth of the Philippines called into the service of the Armed Forces of the United States, pursuant to the Military Order of the President dated July 26, 1941.

General Bradley's estimate amounted to over US$3.0 Billion. The threat of a huge expenditure outlay triggered the inclusion of a "rider" which deprived the Filipino veterans of their rights, benefits and privileges under the G.I. Bill of Rights.[36]

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[34] L. LEWIS, HOW THE FILIPINO VETERAN OF WORLD WAR II CAN BECOME A U.S. CITIZEN ACCORDING TO THE IMMIGRATION ACT OF 1990 97 (1991).

[35] MEDALLA, *supra* note 14, at 28.

[36] Besinga, *US LOBBY: The Architects of Injustice to Filipino Veterans*, GOLDEN KRIS, Oct. 1992, at 50.

While appropriating US$200 Million to the Philippine Army, the US Rescission Act[37] did not recognize nor entitle any Filipino veteran to the benefits under the G.I. Bill of Rights and other U.S. laws unless he was maimed or disabled during the service.[38] Before signing the Rescission Act into law, President Harry S. Truman took exception to the aforementioned legislative rider and delivered a statement in this wise:

> The effect of this rider is to bar Philippine Army veterans from all benefits under the G.I. Bill of Rights, with the exception of disability and death benefits, which are made payable on the basis of 1 peso for every dollar of eligible benefits. I realize, however, that certain practical difficulties exist in applying the G.I. Bill of Rights to the Philippines.
>
> However, the passage and approval of this legislation do not release the United States from its moral obligation to provide for the heroic Philippine veterans who sacrificed so much for the common cause during the war.
>
> Philippine Army veterans are nationals of the United States and will continue in that status until 4 July 1946. They fought, as American nationals, under the American Flag, and under the direction of our military leaders. They fought with gallantry and courage under most difficult conditions during the recent conflict. Their officers were commissioned by us. Their official organization, the Army of the Philippine Commonwealth, was taken into the Armed Forces of the United States by the Executive Order of the President of the United States on July 26, 1941. *That order has never been revoked or amended.*
>
> I consider it a moral obligation of the United States to look after the welfare of the Philippine Army veterans.[39] (emphasis supplied)

It was the Chief Executive of the United States himself who declared that the Philippine Commonwealth Army "was taken into" the Armed Forces of the United States. This statement deserves no other interpretation than the plain meaning that it connotes: members of the Philippine army during the second world war were members of the United States Army entitled to the rights and benefits under the G.I. Bill of Rights. Unfortunately, the United States President recognized the "moral obligation" but was unwilling to make a legal commitment.

II. EFFORTS AT RESOLVING THE CLAIM

For the rest of the world, the end of the devastating war beckoned the start of restructuring and renewal, but for the Filipino war heroes, a new

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[37] U.S. Rescission Act, P.L. 301, 79th Congress (1946).

[38] Besinga, *supra* note 36, at 50.

[39] Statement of US President Harry Truman, Hearings before the Subcommittee of the Committee on Appropriations, United States Senate, 79th Congress, 2d Session on House Resolution No. 5604, March 25, 1946, at 60.

battle had just begun. Vigorously asserting their right as members of the United States Army who had fought side by side with their American counterparts, the Filipino World War II veterans, through various organizations and concerned individuals, launched a series of attempts to prosecute their claim for wartime benefits against the United States of America. Several cases were filed in United States Federal courts. Likewise, missions to the United States Congress were sent for the same purpose. Their efforts, however, proved futile because the party at the end of the line was unyielding. Up to the present, the appeal of the Filipino World War II veterans is for justice and fair play.

A. U.S. Citizenship for Filipino Veterans

The naturalization of Filipino World War II veterans is not something new. Even while the Philippines was under Japanese occupation, approximately 7,000 Filipino soldiers were granted U.S. citizenship outside the Philippines pursuant to the Nationality Act of 1940.[40] This liberal naturalization process, however, never reached the ears of the great majority of Filipino soldiers in the country. Then, in the close of the world war, or in August of 1945, naturalization applications of those who were able to hear by word of mouth the existence of the privilege, were received by Vice-Consul George Ennis. But this move did not benefit the veterans as the naturalization cases already filed with Vice-Consul Ennis were left unattended. His authority to approve aapplications for naturalization was unfortunately revoked by Atty. General Clark following complaints by the Commonwealth government that "it would be a political embarassment and a drain of manpower to have a mass exodus of the young Filipino ex-fighting men and women going to the United States on the eve of the independence of the new nation".[41]

In August, 1946, another opportunity for naturalization was given. The U.S. government designated another American officer to resume the naturalization proceedings of the Filipino veterans who wanted to become U.S. citizens. The time was however too short for the veterans to even learn about the resumption of the proceedings, much less take advantage of it. Four months later or on December 31, 1946, the right to naturalization granted by the Nationality Act of 1940 expired. Only around 4,000 Filipinos became American citizens pursuant to this post-war naturalization process.[42]

Cases were filed in Federal courts of the United States seeking to extend the application of the naturalization provision. The plaintiffs contended that

[40] Secs. 701 and 702 of the Nationality Act of 1940, as amended, provided for the naturalization of non-citizens who served honorably in the U.S. Armed Forces during World War II. Sec. 701 exempted qualified alien servicemen who served outside the continental limits of the United States from some of the usual requirements for naturalization, (*ie.*, a minimum period of residence in the United States and literacy in English). All petitions for naturalization under this law were required to be filed not later than December 31, 1946.

[41] Lewis, *supra* note 34, at 4-6.

[42] *Id.* at 7.

the arbitrary withdrawal of the privilege amounted to deprivation of procedural due process which they, as subjects of the United States at the time of the aforementioned withdrawal were entitled to under the U.S. Constitution. But success was not realized. In no instance did the Filipino veterans succeed in their endeavors. The U.S. Supreme Court was adamant in its position that the Filipino veterans lost their right when the law providing for it expired.[43] In upholding the governmental action, the U.S. Supreme Court, in the leading case of *United States Immigration and Naturalization Service v. Marciano Haw Hibi*, ruled that Atty-General Clark's action of stopping the naturalization of Filipino veterans from October 1945 up to August 1946 did not constitute such "affirmative misconduct" as to bar the INS from denying naturalization rights to the Filipino veteran Hibi.[44] Three justices dissented. Justice Douglas, with whom Mr. Justice Brennan and Justice Marshall concurred, opined:

> The Court's opinion ignores the deliberate— and successful—effort on the part of agents of the Executive Branch to frustrate the congressional purpose and to deny substantive rights to Filipinos such as respondent by administrative fiat, indicating instead that there was no affirmative misconduct involved in this case.[45]

In 1975, during the administration of President Jimmy Carter, a beam of hope appeared. Judge Renfrew in the Northern District of California granted naturalization to 68 Filipino World War II veterans who were able to prove that they filed or tried to file for naturalization between October 1945 and August 1946, but were unsuccessful due to the absence of a designated officer. The Federal judge, in ruling against the U.S. government, held that the unceremonious withdrawal of the U.S. Consul's authority:

> x x x had demonstrated such governmental misconduct as to estop the government from relying on the expiration date for such applications; that failure of the government to have an appropriate person stationed in the Philippines during the entirety of the statutory time constituted denial of due process.[46]

The case was not appealed and became final.[47]

1984 was again a year of defeat for the Filipino veterans when the United States Supreme Court ruled against veteran Mendoza, holding that the finality of Judge Renfrew's decision did not foreclose the right to question his decision in other cases before federal courts.[48] Alas, in 1988, the United States Supreme Court unanimously ruled that although the Filipino veterans deserved natu-

[43] *Id.*

[44] *U.S. Immigration and Naturalization Service v. Hibi*, 414 U.S. 5; 38 L.Ed. 2d 7; 94 S.Ct. 19 (1973).

[45] *Id.* at 12.

[46] *In the Matter of Petitions for NATURALIZATION OF 68 FILIPINO WAR VETERANS Pursuant to Sections 701-702, Nationality Act of 1940*, 406 F. Supp. 931 (1975)

[47] Lewis, *supra* note 34, at 8.

[48] *Id.* at 9.

ralization, only another Congressional act can bring the lapsed law back to life. The Court declared that respondents were not entitled to individualized notice of any statutory rights and to the continuous presence of a naturalization officer in the Philippines from October 1945 until July 1946.[49]

The adverse United States Supreme Court decisions necessitated a shift in strategy. Focus was eventually transferred to the United States Congress. In this political arena, the Filipino veterans were not alone in their fight for justice. There were various groups in the United States who lent them assistance and support. On October 21, 1970, the American Legion passed Resolution No. 28 seeking amendment to the United States Immigration and Nationality Act. The resolution provided:

> WHEREAS, Section 101 (a) (27) (E) of the Immigration and Nationality Act provides for admission into the United States for permanent residence on a special non-quota status of non-veteran alien employee or an honorably retired alien non-veteran alien employee of the United States abroad who has served even during peace time conditions for a total of 15 years, or more; and
>
> WHEREAS, Section 316 (a) (d) and Section 309 (a) of the Immigration and Nationality Act provides that an alien or a non-citizen of the United States who has served honorably at any time, however briefly, or for a period or periods aggregating three years or five years, as the case may be, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized only, if such petition is filed while the petitioner is still in the active service or within six months after the termination of such service;
>
> WHEREAS, the inadequacy of the above-mentioned provisions of the United States Immigration and Nationality Act, failed to afford former United States nationals and veterans, *especially the Filipino veterans who were also born under the American flag*, the equal opportunity with certain non-veteran aliens for purposes of permanent residence in the United States, now therefore, be it
>
> RESOLVED x x x That the American Legion *strongly recommend to the Congress of the United States that legislation be enacted which would amend the United States Immigration and Nationality Act with the end in view of giving Filipino United States veterans and other United States alien veterans, with their spouses and children, the privileges herein set forth."*[50] (emphasis supplied)

Consequently, on June 1, 1971, Representative McFall introduced House Resolution No. 8801, a bill seeking "to amend the Immigration and Nationality Act to classify as 'special immigrants' alien veterans who served honorably in the United States Armed Forces, together with their spouses and children, for purposes of lawful admission into the United States." The bill sought to effect the amendment by inserting a new subsection, to wit:

[49] *Immigration and Naturalization Service v. Pangilinan; Immigration Naturalization Service v. Manzano*, 56 L.W. 4645 (1988).

[50] American Legion, Proceedings of the National Executive Committee, Oct. 21-22, 1970, at 45.

> (F) An immigrant who served in the Armed Forces of the United States during any period in which the Nation was at war or in an armed conflict with an enemy nation, and his accompanying spouse and children, providing that such service in the United States Armed Forces was for ninety consecutive days or more duration and terminated under honorable conditions.[51]

Senator Daniel K. Inouye, a wounded World War II veteran himself, filed counterpart bills in the U.S. Senate and had unremmittingly done so for the past few years. Later on, Congressman Mervyn Dymally followed suit by introducing similar bills in the House of Representatives.[52] Then, in 1989, Senator Daniel Inouye filed another bill seeking to allow the naturalization of Filipino Veterans of World War II provided they had rendered honorable service in the military, air, or naval forces of the United States during the period of Sept. 1, 1939 up to December 31, 1946.[53] The Inouye bill was incorporated into another bill sponsored by Senators Edward Kennedy and Alan Simpson in the United States Senate.[54]

It was only on October 27, 1990 that the 101st Congress of the United States gave its approval to overhaul the Immigration Law of 1965, incorporating at the same time the House version of the Filipino veterans' naturalization. On November 29, 1990, Section 405 of the U.S. Immigration Act of 1990, providing for the naturalization of World War II veterans came into place.[55]

B. The Unresolved Claims

The hope of finding a better life in the wake of economic difficulties in the Philippines may perhaps account for the desire of many Filipinos, veterans and non-veterans alike, to migrate to the supposed "land of milk and honey." The appeal of the Filipino veterans, however, does not stop at naturalization. Foremost is the claim for full benefits as members of the U.S. Army. Besides, naturalization would be an idle grant without the corresponding grant of benefits. Not all Filipino veterans desire to become U.S. citizens, but all of them certainly welcome any move from the United States to pay what are rightfully due them.

In 1965, formal negotiations respecting these claims began. Pursuant to the Agreement entered into between then President Diosdado Macapagal and U.S. President Lyndon B. Johnson, the RP-US Joint Panel on Veterans Affairs was formed. The body convened in Manila in July 1966. Discussed were Filipino veterans' claims presented by the R.P. panel. The U.S. panel subsequently recommended favorably the settlement of some claims. The sessions of the body culminated in the Congressional appropriation of US$31

[51] House Resolution No. 8801, United States House of Representatives (June 1, 1971).

[52] Lewis, *supra* note 34, at 9.

[53] Veterans Naturalization Bill, GOLDEN KRIS, Aug.- Sept., 1989, at 36.

[54] *Id.* at 36-37.

[55] Lewis, *supra* note 34, at 10.

Million as "partial" payment of the claims.[56] The U.S. panel, however, deferred for future discussions certain unresolved claims which it referred to various U.S. government agencies for research, study and recommendations.[57]

Twenty years later, pressure could be felt once more from various Filipino veterans organizations in the Philippines and in the United States. Resolution after resolution was passed[58] requesting the President of the Philippines and the Batasang Pambansa to ask the U.S. President to reconvene the RP-US Joint Panel on Veterans Affairs and to resume negotiations for the purpose of resolving remaining claims and other issues affecting Filipino World War II veterans left pending by the 1966 sessions.[59] Up to the present, however, no resumption of talks materialized.[60]

In his June 16, 1971 Report, Col. Simeon C. Medalla, who was then President of the Veterans Federation of the Philippines and at the same time head of the Mission to the U.S. Congress, reiterated the Mission's request for representation by the Philippine government on the matter of the Filipino veterans' claims against the United States. The Mission asked then President Ferdinand Marcos to consider the matter on a government-to-government level as recommended by the Philippine Embassy in Washington, D.C.[61] Unfortunately, his suggestion was not given serious consideration by the Philippine government.[62]

Undeterred by the reluctant attitude of the U.S. government, the veterans continue their struggle. Despite difficulty in obtaining financial support, the lobby in the United States Congress goes on. Unfortunately, however, the veterans are not getting any younger.

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[56] 1 Equalization of Pay under Executive Order No. 22
2 Refund of Guerilla Notes
3 Unpaid Quarter Allowances
4 Refund of Deduction made for Clothing Issue
5 Refund of Claims which were Canceled by AGRD after said claims Had Been Approved by RPD
6 Arrears-in-Pay not Given to Veterans Suspended from Duty Because of Criminal Charges filed but were later cleared.
7 Deduction from Arrears-in-Pay for failure to report to Military Control on time
8 Non-casualty Status under the Missing Persons Act
9 Restoration of Rights, Privileges and Benefits denied (Rescission Act)
10 Restoration of Recognition of the deleted Veterans.

[57] MEDALLA, *supra* note 14, at 54.

[58] Resolution of the Department Executive Committee, American Legion-Philippine Department, March 8, 1986; Resolution of the Disabled American Veterans, Philippine Chapters, March 5, 1986; Resolution of the Executive Committee, Veterans Federation of the Philippines, March 5, 1986.

[59] MEDALLA, *supra* note 14, at 51-55.

[60] Interview with Col. Simeon Medalla, Past President and Presently an Adviser of the Veterans Federation of the Philippines, January 20, 1993. [hereinafter cited as *Medalla Interview*]

[61] VFP President Simeon C. Medalla's Report, *Mission to the United States Congress*, GOLDEN KRIS, June 20, 1971, at 6.

[62] *Medalla Interview*, *supra* note 60.

III. SECTION 405 OF THE US IMMIGRATION ACT OF 1990

A. Conditions for Naturalization

The basic law that grants U. S. citizenship to Filipino World War II veterans is Section 405 of the U.S. Immigration Act. It was signed into law on November 29, 1990 but took effect only on May 1, 1991.[63]

1. WHO ARE ELIGIBLE

Eligible for naturalization under the law are Filipinos who have been in active-duty service during World War II.[64] Moreover, the applicant who is qualified under the preceding requirement must establish that he was born in the Philippines and was residing therein before the aforementioned service.[65] Therefore, a Filipino World War II veteran who was not born in the Philippines or was not residing therein before his service in any of the units mentioned by the law during the period of the hostilities, is not eligible for American naturalization under Section 405.

2. ACTIVE-DUTY SERVICE

A Filipino veteran is considered to have been in active duty service during World War II if he served honorably in any of the following units at any time during the period of hostilities which began on September 1, 1939 and ended on December 31, 1946:[66]

(a) United States Armed Forces in the Far East, or
(b) Philippine Army, or
(c) Philippine Scouts, or
(d) Recognized Guerilla Units.

The aforementioned period is considered by the law to be the period of World War II hostilities.[67] The law clearly states that the active-duty service referred to should be rendered within said period. Consequently, those who were discharged or whose service was terminated before the start of the period, are not covered by the law.

Active service is further described as "service in an active-duty status in the military, air or naval forces of the United States".[68] The application of Section 329 of the Immigration Act with respect to the proof of this service

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[63] United States Immigration Act of 1990, sec. 408 (f).

[64] *Id.*, sec. 405 (a) (B).

[65] 8 USC 1440(s).

[66] Lewis, *supra* note 34, at 18.

[67] United States Immigration Act, sec. 405 (a) (B) (1990).

[68] *Id.*, sec. 405 (a) (2) (1990).

is called for. Accordingly, active service may be proved by a duly authenticated certification from the "executive department" under which the applicant served. The certification will state whether the applicant served honorably in an active duty status during the period provided by the law and was separated from such service under honorable conditions.[69] The executive department referred to is the U.S. Armed Forces. The certification will come from the National Personnel Records Center of the U.S. Armed Forces in St. Louis, Missouri, U.S.A.[70] Thus, the power to determine whether or not an applicant is a Filipino World War II veteran eligible for naturalization is lodged with the United States. Since this was viewed as unjust by some veterans' groups, a bill entitled the "Filipino Veterans Equity Act of 1992" was introduced in the US Congress. Once this bill is signed into law, military service records authenticated by the appropriate agency of the Government of the Philippines may serve as sufficient certification of the period of active service and the nature of the discharge from such service.[71]

3. WAIVER OF CERTAIN NATURALIZATION REQUIREMENTS

The usual naturalization requirements of lawful permanent residence[72] and physical presence in the United States are waived.[73] The applicant, therefore, need not be a green card holder. Nor is he required to have visited the United States or have lived therein before he applied for naturalization. Section 405, in addition, waives the requirement that the applicant must intend to reside in the United States after naturalization.[74]

4. PERIOD FOR FILING APPLICATION

Section 405 originally required that all applications for naturalization be filed within 2 years after the date of the new law's enactment which was November 29, 1990.[75] Again, the period would be too short considering that the authority to naturalize pursuant to Sec. 405 did not become effective until May 1, 1991.[76] U.S. Senator Inouye, perceiving the impracticability of the limited period provided by the law, filed H.R. 5678 extending the filing of applications up to February 3, 1995. H.R. 5678 was signed into law by

[69] United States Immigration Act, as amended, sec. 329, 8 USC 1440 (1952).

[70] Lewis, *supra* note 34, at 19.

[71] House Resolution No. 5877 introduced by Ms. Pelosi in the United States Congress entitled *The Filipino Veterans' Equity Act of 1992*, sec. 2 (b).

[72] United States Immigration Act, sec. 405 (b) (1990).

[73] *Id.*, sec. 405 (a) (1990).

[74] *Id.*

[75] *Id.*, sec. 405 (a)(1)(D).

[76] *Id.*, sec. 408.

President Bush on October 6, 1992.[77] A new bill, H.R. 5877 further seeks to extend the period up to November 29, 1995.[78]

B. Stages of the Naturalization Process

The naturalization process is divided into four: (1) filing of the application; (2) processing of the application; (3) interview; and (4) oath-taking and issuance of Certificate of Naturalization.[79]

1. FILING OF THE APPLICATION

The immigration forms needed in applying for naturalization may be obtained from the American Embassy in Manila from 8:00 A.M. to 3:00 P.M. and from the American Consulate in Cebu. They are also being distributed by the United States Information Service at Cebu and Davao, as well as by every American Legion post in the country. The four forms that make up an application packet are: (1) Form N-400, an application to file a petition for naturalization; (2) FD-258, a fingerprint chart; N-426, a request for certification of military or naval service; and Form G-325B, a bio-data form. These forms are issued free of charge.[80]

The immigration forms to be submitted should be supported by certain documents. According to the Implementing Rules and Regulations issued on March 15, 1991 by the U.S. Immigration and Naturalization Service, the following documents are required to accompany the application packet:

a. Proof of birth in the Philippines;

b. Police clearance for any place of residence for more than six months in the previous five years if such residence was not in the United States; and

c. Proof of identity.[81]

Three unglazed photographs of the applicant's face, taken within 30 days prior to submission of the application packet to the INS are also required. A cover letter with US$90.00 bank draft payable to the US INS as filing fee plus a statement indicating where the applicant prefers to be interviewed must also be sent.[82]

[77] Public Law 102-395, sec. 113 (c).

[78] House Resolution No. 5877, sec. 2(a).

[79] H. Acosta, Chief, United States Immigration and Naturalization Service, United States Embassy, Manila, *Guidelines on Naturalization of Filipino World War II Veterans* released during his Seminar to the Department Executive Committee (DEC) Meeting, Dec. 12, 1992.

[80] Guidelines released by United States Immigration and Naturalization Service, Manila, June 10, 1991.

[81] Implementing Rules and Regulations (sec. 405 of Immigration Act of 1990), United States Immigration and Naturalization Service, March 15, 1991.

[82] Lewis, *supra* note 34, at 23.

All forms and supporting documents must then be filed by sending them through registered airmail with return card to the Director of the Northern Service Center, U.S. I.N.S., Federal Bldg. and US Courthouse, Room B26, 100 Centennial Mall North, Lincoln, Nebraska 68505-1619, U.S.A. Applications sent to the U.S. I.N.S. office at the U.S. Embassy will be referred to Lincoln, Nebraska since all processing of applications are made there.[83]

2. PROCESSING OF THE APPLICATION

After receiving the application packet, the clerical staff of the INS will check whether the applicant already has an alien registration number in the INS record system. If the applicant has an alien registration number on record already, the application documents will be added to the old file and forwarded to the Naturalization Service of the INS where the applicant will be interviewed. Otherwise, a new file with a new alien registration number will be created for the applicant. The new file then goes to the Naturalization Section for the required paperwork.[84]

During the processing of the applications, the documents are verified by the INS to check whether or not the applicant is truly qualified. The fingerprint chart is sent to the FBI with the applicant's biographic information. Two copies of the Immigration Form N-426 are sent to the U.S. Army Records Depository at St. Louis, Missouri, for verification of Military Service. A copy of the G-325B will be sent to the U.S. Army Investigative Records Repository at Fort Meade, Maryland.[85]

3. INTERVIEW

After all the paperwork has been accomplished, the applicant will receive a notice for interview directing him to appear before the INS at the time, date and place designated in the notice. The harsh requirement of having to go to the United States to follow-up the naturalization process has been removed following vehement objections from veterans' groups both in the Philippines and in the U.S.[86] Interviews may now be conducted at the U.S. Embassy in Manila.[87] Applications for naturalization may continue, however, to be processed, necessary interviews conducted and oaths of allegiance taken in the United States.[88]

The notice will contain a list of questions and answers focusing on the subjects of U.S. Government and U.S. History. The applicant will be tested on his English proficiency and will likewise be asked on matters respecting his

[83] *Id.*

[84] *Id.* at 59-60.

[85] *Id.*

[86] *Filipino WWII Veterans Denounce US Procedures*, Balita Today, Nov. 5, 1991, at 6.

[87] Inouye Law (Amendment to sec. 405 of the Immigration Act of 1990), Public Law 102-395, sec. 113 (a) (1) (A) (1992).

[88] *Id.*, sec. 113 (a) (2).

application and supporting documents. He will not be assessed any interview fee. After passing the interview, the applicant will be requested to sign a certificate and will be advised when and where the oath-taking will take place.[89]

4. OATH-TAKING

The last step in the procedure for naturalization is the taking of the Oath of Allegiance to the United States is the last stage of naturalization. The applicant will be required to recite it in these words:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion, so help me God.[90]

Once an applicant has taken his oath, he is already considered an American citizen. The Certificate of Naturalization will serve as evidence of his American citizenship.

The United States Attorney-General, also the Secretary ofthe Department of Justice, himself or through his designated employees of the Immigration and Naturalization Service, has the authority to grant naturalization to persons as citizens of the United States. Before the enactment of the US Immigration Act of 1990, the authority to naturalize was vested with the U.S. District Courts.[91] Nevertheless, under the present law, the decision of the Attorney-General or the INS denying or rejecting an application may be reviewed by the U.S. District Federal Court, whose decision is final.[92]

IV. BENEFITS GRANTED BY SEC. 405

A. Rights and Privileges of an American Citizen

After being conferred U.S. citizenship pursuant to Section 405 of the Immigration Act of 1990, the naturalized veteran is now entitled to the rights and privileges accorded to every American citizen by the United States

[89] E. Golez, Department Commander of the American Legion, *Guidelines on Naturalization of Filipino Veterans* as amended by the Inouye Law, Dec. 1992, at 2.

[90] *Oath of Allegiance of the United States*, as contained in the Application Form for American Naturalization.

[91] United States Immigration Act, sec. 401 (a) (1990).

[92] Golez, *supra* note 89, at 1.

Constitution and laws.[93] Among these rights and also the most important are:

a. the right to vote during U.S. elections which includes the right to become a candidate for public office;[94]

b. the right to live anywhere in the world;[95]

c. the right to receive benefits given to any American civilian.[96]

These benefits include the privilege:

1) To apply for U.S. Passport for travel;

2) To apply for and be issued Social Security (SS) Membership card needed to apply for work and other SS benefits;

3) To be issued Medicare and Medicaid cards for free doctor, medicine and hospital services;

4) To apply and be given the Supplementary Social Security Income (SSI) Monthly cash pension if over 65 years old and with no income;

5) To apply and be issued a Senior Citizen Card used for discounts to those over 60 years old;

6) To petition his wife, children and other relatives to immigrate to the United States; and

7) To have his minor children become U.S. citizens.[97]

All the foregoing benefits will be received by the naturalized veteran who proceeds to the United States and establishes permanent residence there. For the naturalized veteran who decides to remain in the Philippines, however, the privilege to apply for and be given medicare and medicaid, SSI and Senior citizen card as well as the right to vote, are unavailing.[98] He will furthermore be subject to the immigration laws of the Philippines.[99]

As pointed out by Rep. Jose Ramirez in House Resolution No. 214 which he introduced in the Philippine Congress,[100] a Filipino veteran who becomes an American citizen, under INS procedures, can file for his children's

[93] UNITED STATES CONST., Fourteenth Amendment, sec. 1.

[94] *Supra* note 89, at 3.

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *See* Chapter V, *D. Non-Quota Immigrant Status*, of this thesis.

[100] House Resolution 214 is entitled, "Urging the Department of Foreign Affairs to Make Representations to the Government of the United States to Consider Remedial Measures to Ensure that the US Immigration Reform Act of 1990 Truly Benefits the Filipino Veterans the Regular Soldiers and Guerrillas Inducted Into the USAFFE — Who Courageously Fought in the Philippines under the American Flag During the Second World War".

immigration. But considering that most of these children are already married, the petitions will be classified under an immigration quota category which will take ten to fifteen years to fill because of "existing backlog". He stressed on the fact that many of these veterans will be dead before the immigration petitions for their children are finally approved. One critical fact, Ramirez mentions, is that a petition automatically dies when the petitioner dies. He adds:

> In essence, the children of these veterans will, in many cases be cheated out of the citizenship that their parents earned for them. If these Filipino veterans had not been illegally deprived of the naturalization process in 1945, their children, who are then minors, would be U.S. citizens today.[101]

United States Congress House Resolution No. 5877[102] offers a solution to the problem. Section 3 thereof seeks to amend Sec. 101 (a) (27) of the Immigration and Nationality Act[103] by providing "special immigrants status for spouses and sons and daughters of certain Filipino veterans of World War II" who applied for American naturalization under Section 405 of the Immigration Act of 1990.[104] This amendment, however, is still awaiting approval in the U.S. Congress.[105]

B. Veterans' Benefits

United States veterans' laws confer benefits and privileges to persons who have been members of the Armed Forces of the United States.[106] These benefits include pension for service or non-service connected disability or death, educational benefits and vocational rehabilitation privileges for the disabled, orphans' educational assistance, burial benefits, full hospitalization and medical care privileges, social security credits, housing privileges to

[101] House Resolution No. 214, at 3.

[102] Bill filed with the United States Congress entitled, "The Filipino Veterans Equity Act of 1992".

[103] 8 USC 1101 (a) (27).

[104] Sec. 3. Special Immigrant Status for Spouses and Sons and Daughters of Certain Filipino Veterans of World War II.

(a) In GENERAL. — Sec. 101 (a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(27)) is amended

x x x x

(3) by adding at the end the following new subparagraph:

"(L)(i) an immigrant who is the spouse or the surviving spouse of a person described in subparagraphs (A) and (B) of section 405 (a)(1) of the Immigration Act of 1990, (ii) an immigrant who is the son or daughter of a person described in subparagraphs (A) and (B) of section 405(a)(1) of the Immigration Act of 1990, or (iii) an immigrant who is the child of an individual described in clause (ii) if accompanying or following to join such individual."

[105] *Medalla Interview, supra* note 60.

[106] Am. Jur. 2d *Veterans and Veterans' Laws* 953 (1975).

include home mortgage insurance and *"wheelchair"* homes, automobiles and other conveyances and loans for homes, farms and business.[107]

The matter of veterans' compensation was not included in Section 405 of the Immigration Act of 1990. A bill filed by Congressman Dymally giving full disability and death benefits to Filipino World War II veterans similar to that received by American veterans of World War II was unfortunately dropped.[108]

1. THE RESCISSION

Section 405 speaks of naturalization alone. The equalization of veterans' benefits, which for almost half a century now, has been the subject of veterans organizations' lobbying efforts, is not included in the law. Standing in the way of complete rectification by the United States is the U.S. Rescission Act of 1946. The controversial rider mentioned earlier is reproduced as follows:

> *Provided,* That service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, *shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any such person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof,* except under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore entered into, and (2) laws administered by the Veterans Administration providing for the payment of pensions on account of service-connected disability or death; *Provided further,* That such pensions shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such pensions; x x x[109]

Subsequent laws gave effect to this statutory mandate. Section 217 of the Social Security Act of 1950 expressly excluded the Filipino veterans from coverage inasmuch as their services were not deemed service in the United States Army.[110] Then, Section 107, Title 38 of the United States Code was amended[111] to give an express declaration that service of all members of the USAFFE, the recognized guerillas,[112] and the new

[107] Servicemen's Readjustment Act of 1944, 38 U.S.C.; Veterans Federation of the Philippines, *An Appeal for Justice and Fair Play,* A Position Paper submitted to the U.S. Congress signifying support for H.R. 2545 calling for the Repeal of the Rescission Act, at 7.

[108] Lewis, *supra* note 34, at 97.

[109] Rescission Act, P.L. 301 (1946).

[110] United States Social Security Act, sec. 217 (1950).

[111] The amendatory laws were P.L. 85-857 (1958); P.L. 87-268 (1961); and P.L. 89-641 (1966).

[112] Sec. 107. Certain service deemed not to be active service.

(a) Service before July 1, 1946 in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces

Philippine Scouts was not active service in the Armed Forces of the United States.[113]

Another consequence of the Rescission Act of 1946 was the amendment of Section 101 (2) of Title 38 of the United States Code. This provision defined the term "veteran" as a "a person who served in the *active* military, naval, or air services, and who was discharged or released therefrom under conditions other than dishonorable." With this definition, the Filipino veteran cannot even be called "veteran" under the said definition considering that he was deemed not to have rendered active military service in the Armed Forces of the United States by the Rescission Law.

Thus, with this barrage of U.S. Congressional Acts, the Filipino veteran was denied the benefits accorded by the United States to those who had been part of its armed forces. Indeed, a sudden turnabout from the promises made a few years back.[114] Undeniably, the Rescission Law has to be repealed or amended in order to give life to the idle grant of U.S. citizenship.

of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerilla forces under commander appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, *shall not be deemed to have been active military, naval or air service* for the purpose of any law of the Unites States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the Armed Forces, except benefits under: (1) contracts of National Service Life Insurance entered into before February 18, 1946; (2) the Missing Persons Act; and (3) chapters 11, 13 (except section 412(a), and 23 of this title (referring to service-connected death and disability compensation and burial expenses).

Payments under such chapters shall be made at a rate in pesos as is equivalent to $0.50 for each dollar authorized and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate in Philippine pesos as is equivalent to $0.50 for each dollar. Any payments made before February 18, 1946, to any such member under such laws conferring rights, benefits, or privileges shall not be deemed to have been invalid by reason of the circumstance that his service was not service in the Armed Forces or any component thereof within the meaning of any such law.

[113] Sec. 107. Certain service deemed not to be active service.

(b) Service in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 shall *not be deemed to have been active military, naval, or air service* for the purposes of any of the laws administered by the Veterans Administration except: (1) with respect to contract of National Service Life Insurance entered into (A) before May 27, 1946, (B) under section 620 or 621 of the National Service Life Insurance Act of 1940, or (C) under section 722 of this title (38 USCS 722); and (2) chapters 11 and 13 (except section 412(a)).

Payments under such chapters shall be made at rate in pesos as is equivalent to $0.50 for each dollar authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate in Philippine pesos as is equivalent to $0.50 for each dollar.

[114] The veterans' benefits available to the Commonwealth Army veterans, recognized guerrillas and their dependents are limited to the following:

1. Living Veterans and Dependents' Benefits for Service-Connected Disability

   a. Service-Connected Disability Compensation:

      Compensation payment at the rate of $0.50 for each $1.00 authorized by law

It is for this reason that Filipino World War II veterans who have long settled in the United States sought the aid of Federal courts to have this unjust Congressional act struck down. On the theory that they, as members of the United States Army and natives of a United States territory, are protected by the U.S. Constitution, the Filipino World War II veterans challenged the constitutionality of the subject legislation. They invoked due process and equal protection of the laws.

2. FEDERAL COURT DECISIONS

a. *1974: Filipino American Veterans Association v. United States of America*[115]

1) FACTS OF THE CASE

Former residents of the Philippines who became either residents or citizens of the United States, together with a Filipino-American veterans association, filed a class action against the United States. Claiming to be members of the Philippine Army called into active service by the United States during the last world war, plaintiffs sought benefits from the United States for their service. They challenged the constitutionality of 38 U.S.C Section 107 which limited Filipino veterans' benefits. Central to their claim was the argument that no rational basis can be found in the differentiation made under the statute in question. They stressed that no recognizable difference may be drawn between the Filipino serviceman, on the one hand, and other enlisted or inducted servicemen, as both became "part" of the active armed forces of the United States, being the same in kind and of equal military value.[116]

For its part, the U.S. government argued that the "call into the service of the armed forces of the United States" directed to the members of the

b. Hospitalization and Outpatient Treatment

c. Educational Assistance for Sons and Daughters of Disabled Veterans

d. National Service Life Insurance

2. Survivors' Benefits for Service-Connected Death

a. Dependency and Indemnity Compensation

b. Educational Assistance for Orphans

c. National Service Life Insurance

3. Burial Allowance: Payable to person who bore expenses of funeral and burial of deceased veteran, amount not to exceed $200 payable in peso at the current rate Peso exchange rate.

4. Burial Flag: Given to next-of-kin of veteran.

United States Veterans Administration, Regional Office, Manila, *Benefits Available to Commonwealth Army Veterans, Recognized Guerrillas and their Dependents*, April 1, 1975.

[115] *Filipino American Veterans Association v. USA*, 391 F. Supp. 1314 (1974).

[116] *Id.* at 1322.

organized military of the Phlippines did not thereby make them "part" of the active military or naval forces of the United States in the same manner as other enlisted or inducted servicemen. It added that any differentiation established between the two kinds of servicemen for purposes of allowance of veterans' benefits was based not upon ground of race or alienage, or merely to cut expenses. Pointed out by the U.S. Government as accountable for said differentiation were several factors. One was the difference in their military status within the armed forces. Another concerned "practical difficulties" involved in making certain kinds of veterans' benefits available in the Philippines. And still another referred to the "difference in monetary and living standards" between the United States and the Philippines.[117]

2) THE ADVERSE RULING

(a) No Automatic Application of U.S. Constitution to Unincorporated Territories of the United States

The Court, citing *Hooven v. Evatt*,[118] declared the Philippine Archipelago an unincorporated territory of the United States. In this light, the district judge had occasion to rule that the United States Constitution did not automatically and wholly apply to the Philippines, even though it had been given an organized government. Upon the strength of the doctrine laid down in *Downes v. Bidwell*[119] and relevant cases, the court held:

> x x x the Congress, when exercising its powers over such territory under Art. IV, Section 3,[120] is not subject to the same constitutional limitations as when it is legislating for the United States.[121]

The court recognized, however, that the Congress would be subject to certain fundamental limitations in favor of personal rights such as deprivation of life, liberty or property without due process of law or "principles which are the basis of all free government which cannot with impunity be transcended". It welcomed, therefore, the question as to whether, under some circumstances, certain constitutional limitations would be applicable to restrict the Congress. Addressing this issue, the court held:

[117] *Id.*

[118] *Hooven v. Evatt*, 324 U.S. 650 (1944).

[119] *Downes v. Bidwell*, 182 U.S. 244; 21 S. Ct. 770; 45 L. Ed. 1088 (1901).

[120] Art. IV, sec. 3 of the United States Constitution provides:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

[121] *Filipino American Veterans and Dependents Association v. USA*, 391 F. Supp. 1322 (1974).

> Subject, however, to this implied humanitarian qualification, Constitutional guarantees extend to such unincorporated territories only as the Congress, exercising its Art. IV, Sec. 3 powers, makes them applicable and "large powers" and "the widest latitude of discretion" are entrusted to the Congress when dealing with territories which are not incorporated into the United States, e.g. the Philippines.[122]

The District Court enumerated instances wherein certain constitutional guarantees applicable to the United States were not made to apply in the Philippines.[123] The Constitutional guarantees of jury trial under Article III and under the 5th and 7th Amendments, for example, did not apply to the Philippines. The Constitutional restrictions upon Congress in dealing with merchandise brought into the United States did not apply when dealing with merchandise brought from the Philippines.[124] The Fifth Amendment requiring a Grand jury indictment did not apply to the Philippines.[125] Lastly, Filipinos were regarded as aliens within the meaning of the Alien Registration Act.[126]

Stress was made on the fact that since even United States citizens and residents did not have any constitutional or fundamental right to receive veterans' benefits at all, such a limited exclusion of Filipino veterans certainly did not involve "fundamental personal rights or principles, affecting life, liberty or property" within the context of the aforecited cases.[127]

(b) Legislation Limiting Filipino Veterans' Benefits: Consistent with Equal Protection and Due Process of Law

Assuming nevertheless that constitutional limitations upon Congress were deemed applicable to the legislation in question, the District Court still stood firm on its position that the equal protection component of constitutional due process of law was not violated. The law was declared constitutional.

(i) PRACTICAL DIFFICULTIES

The District Court joined the Executive through President Harry Truman and the 1946 Congress in saying that "practical difficulties" would be involved in attempting to make available to Filipino World War II veterans in the Philippines the additional G.I. benefits in question. Problem areas identified were in the administration and facilities in the Philippines for handling such benefits as G.I. education, vocational, civil service, etc.[128]

[122] *Id.* at 1321.

[123] *Dorr v. US*, 195 U.S. 138, at 149; 24 S.Ct. 808; 49 L.Ed. 128 (1903).

[124] *Hooven*, 324 U.S. at 672-678; *Downes*, 182 U.S. 244.

[125] *Virgin Islands v. Rijos*, 285 F. Supp. 126 (1958).

[126] *US v. Gancy*, 54 F. Supp. 756 (1944).

[127] *Id.* at 1321-1322.

[128] *Id.* at 1323.

(ii) DIFFERENCE IN STANDARDS OF LIVING AND IN MONETARY PURCHASING POWER

Addressing the issue of the fifty percent reduction in the compensation for service-connected death or injury to Filipino veterans, the District Court identified economic diversity between the United States and the Philippines as a rational basis for such reduction. Emphasis was made on the fact that standards of living and monetary purchasing power in the Philippines were wholly different from those in the United States. The absence of the reduction, according to the court, would in effect entitle the Filipino veteran to receive more than the U.S. veteran in terms of buying power.[129]

(iii) DIFFERENCES IN CONDITIONS

From an analysis of the cases mentioned earlier, the District Court held that conditions in the United States greatly differed from those in the unincorporated territories like the Philippines. This factor, as observed, was responsible for the concession to Congress of wide discretion when legislating under Art. IV, Sec. 3 for distant, unincorporated territories. The court, however, no longer went so far as to enumerate or identify these differences.[130]

(c) No Special Allowance to Plaintiffs Although Already U.S. Residents and Citizens

No special allowance was extended to plaintiffs notwithstanding their status either as U.S. resident citizens or U.S. resident aliens. Their eligibility for veterans benefits was viewed as dependent upon a military status already declared by Congress as not a basis for granting veterans' benefits. A constitutionally valid classification, the District Court held, cannot suddenly become unconstitutional just because the plaintiffs voluntarily decided to become American citizens or residents. To so hold, in the words of the court "would amount to a rewriting of the statute and to legal bootstrapping that might prove to be an embarassing judicial precedent."[131]

3) THE DISSENT

The plaintiffs found favor in the dissenting opinion of Circuit Judge Kilkenny. According to the latter, Congress justified the monetary limitation placed on benefits to Filipino veterans by concluding that certain economic differences existed between the United States and the Philippines. Judge Kilkenny was of the opinion that this basis, although rational and valid with respect to Filipino veterans still living in the Philippines, would have no

[129] *Id.*

[130] *Id.*

[131] *Id.* at 1324.

rational application to Filipino veterans living in the United States, such as the plaintiffs.[132]

Judge Kilkenny further struck at the vague assertions made by the Congress respecting the differentiation it created between the Filipino servicemen being merely "in the service of..." but " not part of the Armed Services" and the American soldiers of World War II. He elucidated:

> In my opinion, this is not a rationally-based distinction. It is here agreed that as the Bataan Campaign wore on whatever distinction there may have been between those serving in the Philippine Commonwealth Army and those serving in the service of the Armed Forces of the United States gradually disappeared. If there ever was a distinction, it was one without a difference as the battered armies of both the Commonwealth and the States crawled through the last bitter and blood-stained miles on their way to eventual surrender at Corregidor.[133]

The critique went further:

> The distinctions Congress attempted to draw in placing limitations on the benefits to the Filipino veterans were an obvious effort on the part of the government to reduce the overall cost of veterans' benefits by refusing any longer to recognize that Filipino servicemen were in fact—for all practical purposes—part of the active Armed Services of the United States within the meaning of the United States Veterans' Benefits statutes.[134]

Although he expressed his grave doubt as to the constitutionality of the challenged legislation, Judge Kilkenny opined that Congress never intended said legislation to apply to a Filipino veteran who later became an American citizen or a Filipino veteran legally residing in the United States. He nevertheless avoided the constitutional challenge altogether by invoking judicial restraint.[135]

b. 1989: Domingo P. Quiban v. United States Veterans Administration[136]

1) FACTS OF THE CASE

Plaintiff was the widow of a deceased Philippine Army veteran who had served with the American forces during World War II pursuant to President Roosevelt's famous military order. She sought veterans' survivors' benefits from the United States Administrator of Veterans Affairs. The latter concluded that her husband's death was not service-connected. Upon the strength of 38 U.S.C. Section 107(a) which limits the veterans' benefits available to

[132] *Id.* at 1325.

[133] *Id.* at 1325.

[134] *Id.*

[135] *Id.* at 1327.

[136] 713 F. Supp 436 (1989).

Philippine Army veterans who served with the United States Army in World War II to enumerated service-connected death and disability benefits, her application was denied.

Plaintiff, as a pauper litigant, sought the aid of the United States District Court of Columbia claiming that 38 U.S.C Section 107(a) ran counter to the equal protection clause of constitutional due process. Consistent with the prohibitions of 38 U.S.C. Section 211(a) which preclude judicial review of the decisions of the Administrator of Veterans Affairs on questions of law or fact under any law administered by the Veterans Administration for veterans' benefits, the District Court dismissed the complaint. Upon appeal, however, the Court of Appeals for the District of Columbia Circuit vacated the dismissal and remanded the case for the consideration of the legislation in question. The prohibitions against judicial review of the Administrator's decisions, according to the Court of Appeals, do not extend to actions challenging the constitutionality of laws providing veterans' benefits as was held in the case of *Johnson v. Robinson* [415 U.S. 361, 94 S Ct. 1160, 39 L. Ed 2d 389 (1974)].[137]

The *amicus curiae* for the plaintiff contended, on one hand, that since the only veterans affected by Section 107 are Filipinos, the classification made was one based on race, national origin or citizenship and as such should be subject to strict scrutiny. Defendant, on the other hand, argued that only the rational basis test and not strict scrutiny[138] was appropriate for two reasons:[139]

> First x x x the Fifth Amendment's Due Process Clause does not apply to a congressional determination as to the appropriate level of benefits for Philippine veterans because of Congress' '[P]ower to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States' U.S. Const. Article IV, Sec. 3.
>
> Second x x x the classification does not discriminate on basis of race, national origin or alienage, instead the classification is based on the *'time, terms and conditions of service'* with the American and Allied military forces in the Philippines during World War II.[140]

2) THE FAVORABLE DECISION

After a thorough examination of the events which led to the passage of the questioned statute, the District Court, on May 12, 1989, through Chief Judge Audrey Robinson, Jr., declared 38 U.S.C.S. 107(a) unconstitutional.

[137] *Id.* at 437.

[138] *Id.* at 443-444: Under the *Rational Basis Test*, "the legislature lacks the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the object of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantive relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike'."

Under the *Strict Scrutiny Test*, "a statute is examined whether the exclusion is based on impermissible considerations of race or national origin."

[139] *Id.* at 440.

[140] *Id.*

(a) Application of Due Process Clause to Unincorporated Territories

In footnote 17 of the decision, the court pointed out that the analysis of the due-process clause in the *Filipino-American Veterans* decision Court's analysis of whether the due process clause applies to the Philippines missed the mark. The issue was not whether an individual has a "property right" to receive benefits.[141] The real issue, the District Court stressed, is whether the equal protection component of the due process clause limits Congress power to exclude otherwise similarly situated Filipino veterans from receiving benefits on an equal basis with other veterans.[142] A corollary issue, therefore, is whether Philippine Army World War II veterans are similarly situated with other veterans who receive full benefits.

As was held in the *Filipino American Veterans* case, Congress' power over unincorporated territories is not absolute and fundamental limitations in favor of personal rights are imposed by the Constitution. The due process clause in itself, by its very terms and historical function, according to the *Quiban* decision, is a fundamental limitation in favor of personal rights. Thus, the power of Congress to make arbitrary and irrational classifications in benefit programs affecting residents of unincorporated territories is limited by the due process clause, irrespective of whether a governmental benefit is at issue or not.[143] The District Court, in footnote 18 of its decision, recognized:

> The basic principle is even more compelling here: The United States had the power, and exercised that power, to call plaintiff's spouse into the military and make life and death decisions affecting members of the Philippine Army; Aside from enforcing the criminal law, this is probably a sovereign's ultimate power over an individual. Certainly plaintiff has the right to insist that the government have a rational basis for treating differently those over whom it exercises that power.[144]

A case in point mentioned by the Court was *Harris v. Rosario*.[145] In this case, a federal legislation providing for lower payments to Puerto Rico, an unincorporated territory like the Philippines, than to States in connection with the Aid to Families with Dependent Children Program was challenged. The United States Supreme Court rejected the contention that a strict scrutiny was appropriate as there was a rational basis for Congress' decision.[146] But, requiring a rational basis in itself, the *Quiban* decision pointed out, is an implicit recognition of the fact that Congress' power over unincorporated territories is not absolute and is limited by the Due Process clause.[147]

[141] *See* the case of *Filipino-American Veterans and Dependents' Association v. U.S.*, 391 F. Supp. 1314, at 1322 (1974) where the Court declared:

"Since even United States citizens and residents have no constitutional or fundamental right, as such, to receive veterans' benefits at all, such a limited exclusion of Filipino veterans certainly does not involve fundamental personal rights or principles, affecting life, liberty or property x x x"

[142] *Quiban*, 713 F. Supp. 436, at 440 (1989).

[143] *Id.* at 440-441.

[144] *Id.* at 441.

[145] *Harris v. Rosario*, 446 U.S. 651; 100 S.Ct. 1929; 64 L.Ed. 2d 587 (1980).

[146] *Id.* at 651-52, 110 S.Ct. at 1930.

(b) Similarly Situated

The rational basis test, as described by the District Court, requires that a classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. The nature and objectives of the questioned legislation are therefore very important.[148]

The District Court struck down the government's contention that the statute's classification is based on the time, terms and conditions of service. It noted that there was no indication that the purported differences in "time, terms and conditions of service" were given any consideration by Congress as justifying the disparate treatment mandated by Section 107(a). The court observed that no significant differences in the command structure of the two units justified disparate treatment. It made the following observations:

> x x x The plain terms of the President's Order passed command to officers of the U.S. Army. The government concedes that de facto command passed to the U.S. Army personnel. And most of the Philippine Army divisions were commanded by U.S. Army officers, similarly, even in those divisions commanded by Philippine officers, U.S. Army personnel filed various staff and command positions.[149]

> There is nothing to indicate that the length of service for Philippine Army members and Old Philippine Scouts was considered determinative in allocating benefits. The relevant time of service for status as World War II veteran and eligibility for benefits for that service is service on or after December 7, 1941, and before termination of hostilities incident to the war. x x x For relevant purposes then, the time of service of Philippine Army members was the same as veterans entitled to full benefits.[150]

Kilkenny's dissenting opinion in the *Filipino-American Veterans' Association* case was cited by the District Court in holding that no differences which justified disparate treatment can be gleaned from the "conditions" of service between the Filipino veterans and those entitled to full benefits. The court declared that:

> x x x Rations and other supplies were virtually identical x x x. And, of course, on the field of battle they were subject to the same conditions of war. x x x x ('As far as the fighting and other military operations

[147] *Quiban*, 713 F.Supp. at 442 (1989).

[148] *Id.* at 443.

[149] *Id.* at 443.

[150] *Id.* at 444.

> on Bataan were concerned the PA [Philippine Army] units were doing exactly the same thing as were the U.S. Army (including the Philippine Scouts) units on the peninsula'.[151]

The only difference in the "time, terms and conditions of service" referred to by Congress and invoked by the government as justifying the classification made by Section 107(a) concerned rates of pay.[152] According to the government, the fact that members of the Philippine Army did not actually receive the pay of an American soldier supports the principle that said army was not a part of the United States Armed Forces.[153] This contention, the District Court declared, was very misleading. As observed by the Court:

> What is perhaps equally important, there is no apparent connection between the amount of pay and status as a member of the United States Armed Forces. What should be all important is the 'sources' of payment, which was the United States. Although there may very well have been rational reasons for paying members of the Philippine Army (and Old Philippine Scouts) less than members of the United States Army, this has no bearing on their status as members of the Armed Forces. Discrimination in pay rates, even if justified, does not by itself justify discrimination in benefits. At most, the reasons supporting lower pay rates support only lower benefit rates; it does not support denying benefits altogether.[154]

Although the enlisted men of the Philippine Army received less pay than enlisted men of the United States Army, they received the same pay as enlisted men in the Philippine Scouts who are considered veterans of the United States Army and received full veterans' benefits.[155] The rate of pay issue, therefore, the District Court concluded, did not support the classification made by S.107(a). As a matter of fact, an opposite conclusion was in order: Members of the Philippine Army were members of the Armed Forces of the United States.[156]

3) CRITIQUE OF THE "FILIPINO-AMERICAN VETERANS ASSOCIATION" CASE

The District Court discussed and hit point by point the *Filipino-American Veterans Association* Court's decision. The three reasons supporting the limitation

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.* at 445.

[155] *Id.*, Old Philippine Scouts: "From the very beginning of American rule in the Philippines, the United States maintained a military presence there consisting of Filipino natives. The U.S. President, pursuant to the Act of February 2, 1901, ch. 192, sec. 36, 31 Stat. 748, 757, authorized 12,000 men among whom were Filipino natives, to enlist for service in the Army. These personnel were called Philippine Scouts. They are considered veterans of the U.S. Armed Forces and are entitled to full veterans' benefits on the same basis as any other veteran. They are not subject to the limitations of sec. 107."

[156] *Id.* at 445.

imposed by S.107(a) raised by the government[157] and upheld in the aforementioned case were believed to be insufficient to support the classification imposed by S.107(a).[158]

First, the government did not describe what the practical difficulties that prevented the full administration of veterans' benefits programs in the Philippines were, yet the *Filipino-American Veterans Association* decision accepted them as the rational basis. The District Court even went so far as to state that "it seems readily apparent that 'practical difficulties' is simply a code-word for additional expense." Secondly, the Court did not accept as rational basis the difference in monetary standards considering that Old Philippine Scouts who were subject to the same monetary and living standards, as the members of the Philippine Army were paid at the regular rate. Lastly, the court agreed with the dissent of Judge Kilkenny in the *Filipino-American Veterans Association* case that the existence of other forms of aid to the Philippine government cannot sustain S.107(a) as the said "other forms of aid" did not benefit members of the Philippine Army. The majority's failure to discuss this rational perhaps implied its weakness.[159]

The District Court also noted that the government's contention that granting full benefits would entail "enormous burden" on the Treasury cannot by itself sustain S.107(a)'s constitutionality. The District Court cited the cases of *Harris v. Rosario*[160] and *Califano v. Torres*.[161] In *Califano*, the United States Supreme Court allowed budgetary considerations to serve as the rational basis for not extending social welfare programs to Puerto Rico on an equal basis. It was noted that Puerto Rico residents did not contribute to the Federal Treasury and therefore, unlike the residents of the U.S., did not defray the cost of the programs. The Court, however, emphasized the different nature of these programs to the issue of veterans' benefits.[162] It held:

> Veterans programs have a fundamentally different threshold requirement than what is required for AFDC and SSI benefits. Entitlement is based on past service to the sovereign rather than present relation to the sovereign. Once this hurdle is passed, a veteran's entitlement to a pension and other benefits does not depend on the veteran remaining in and a citizen of the United States.[163]

[157] The reasons given by the US government were: "practical difficulties in administering benefit programs in the Philippines; differences in monetary and living standards; and the existence of other forms of aid in the Philippines."

[158] *Quiban*, 713 F.Supp., at 445.

[159] *Id.*

[160] *Harris*, 446 U.S. 651; 100 S.Ct. 1929; 64 L.Ed. 2d 587.

[161] 435 U.S. 1; 98 S.Ct. 906; 55 L.Ed. 2d 65 (1978).

[162] *Id.* at 446.

[163] *Id.* at 447.

4) THE REVERSAL

The decision in the *Quiban* case was not the only favorable decision rendered by a federal court. A similar case, *Quizon v. United States Veterans Administration* was decided in the same manner.[164] Then in 1990, the court in *Narisma v. U.S.* declared in no uncertain terms that Section 107(b) of 38 U.S.C. insofar as it deprives veterans of the new Philippine Scouts and their dependents of benefits administered by the Veterans Administration and requires that benefits available to said veterans and their dependents be paid at a reduced rate, is unconstitutional.[165] It was the *Quiban* decision, however, which presented the most comprehensive discussion of the matter.

The victories brought by these decisions were unfortunately short-lived. On March 29, 1991, the U.S. Court of Appeals for the District of Columbia Circuit reversed all three decisions and ruled in favor of the appellant U.S.V.A. The doctrine enunciated in a binding U.S. precedent *Harris v. Rosario*[166] was responsible for the reversal. The Appellate Court, citing the foregoing case which resolved important legal issues without full briefing or oral argument, pronounced that the challenged legislations stood the test of rationality. It refused to concur with the proposition that the veterans' benefits at issue were so sharply distinguishable from other social welfare or insurance benefits.[167]

This judicial turnabout was truly disappointing for the Filipino veterans involved. The disappointment, coupled with the financial constraints in maintaining a suit in the United States allowed the said reversal to determine the fate of the Filipino veterans' claims against the United States. No appeal was made.[168]

V. THE DRAWBACKS: IMPORTANT LEGAL IMPLICATIONS OF AMERICAN NATURALIZATION UNDER SECTION 405

The naturalization law was deemed a supposed benefit. Yet, for the few who would avail of it, the enjoyment of the benefit would be too costly. Were they to abandon now the structures which took them half a century to build while they waited for the blessings of America? And if they would want to avail of the benefits under U.S. laws as American citizens, a number of disqualifications await them in their very own country. Because the grant of U.S. citizenship to Filipino veterans has long been delayed, the change in citizenship at this point in time is fraught with inescapable disadvantages. The Filipino

[164] *Quizon v. USVA*, 713 F. Supp. 449 (1989).

[165] *Narisma v. U.S.*, 738 F. Supp. 548 (1990).

[166] *Harris*, 446 US 651; 64 L.Ed.2d 587; 100 S.Ct..

[167] *Quiban v. U.S.V.A.*, Nos. 89-5250 & 89-5251; *Quizon v. U.S.V.A.*, No. 89-5263; *Narisma v. U.S.V.A.*, No. 90-5193 (U.S. Court of Appeals for District of Columbia Circuit, 1991).

[168] *Medalla Interview, supra* note 60.

veteran is now faced with the dilemma of whether or not to avail of the benefit. His naturalization would definitely have unexpected legal implications.

A. The Right to Exercise a Profession or Calling

One factor that has prevented some Filipino veterans from taking advantage of the naturalization process granted by Section 405 of the new Immigration Act is the constitutional provision nationalizing the exercise of profession in the Philippines. The difficulty is that acceptance of a supposed benefit compels them to abandon a profession that has earned for them a certain amount of prestige and honor.

Article XII, Section 14 of the 1987 Constitution provides:

> x x x The practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law.[169]

The constitutional mandate is clear. The practice of profession in the Philippines is reserved for Filipino citizens except only when provided otherwise by law.

On September 8, 1967, Republic Act No. 5181 entitled "an act prescribing permanent residence and reciprocity as qualifications for any examination or registration for the practice of any profession in the Philippines" was enacted. The law explicitly prohibits any alien from practicing any profession in the Philippines unless he is a permanent resident therein and his country of origin permits Filipinos to practice their respective professions within its territories. The "permanent residency and reciprocity" clause as an exception, however, does not apply when the practice of the profession is specifically limited by law to citizens of the Philippines.[170] Among the nationalized professions are: customs brokerage, dental hygiene, the legal profession and marine officers on Philippine vessels under Section 829 of Republic Act No. 1937.[171]

Republic Act No. 5181 provides a further exception to the nationalization provision, to wit:

> x x x Provided, further, that Filipinos who become American nationals by reason of service in the Armed Services of the United States during the Second World War x x x shall be exempted from the restriction provided therein.[172]

On its face, the *proviso* seemed clear, but its coverage is blurred by the fact that it took effect in 1967 when Sec. 405 was yet inexistent. The question is thus posed. Would this proviso apply to the Filipino veterans who were naturalized under the Immigration Act of 1990? Would it be interpreted to

[169] PHILIPPINE CONST., art. XII, sec. 14.

[170] Republic Act No. 5181, sec. 1 (1967).

[171] 6th Congress of the Republic, 4th Special Session, 2 RECORD OF THE SENATE 383 (1967).

[172] Republic Act No. 5181, sec. 1.

mean that a lawyer who became an American citizen by virtue of Section 405 thereof be allowed to continue practicing law in the Philippines?

The text of Republic Act No. 5181 originated from House Bill No. 81 introduced by Congressman Laurel which was consolidated with Senate Bill No. 686 sponsored by Senator Liwag.[173] The original text did not include the proviso exempting the naturalized World War II Filipino veterans from the restriction contained in the law. It was only incorporated upon recommendation of Senator Jovito Salonga during the deliberations for approval on second reading of Senate Bill No. 686. On the floor of the Senate, on June 19, 1967, the following discussion transpired:

> Senator SALONGA. I would like to find out how Filipinos who became American citizens by virtue of their services either in the army or navy of the United States during the Second World War, if they should come back to the Philippines without renouncing their American nationality, whether they would be allowed to practice under this bill.
>
> Senator LIWAG. They are entitled to permanent residence here. I believe that there is an existing law to that effect which we passed during the last session.
>
> Senator SALONGA. That is not yet passed. But the point I would like to dwell on here is that some of the Filipinos x x x —who because of their service in the navy of the United States, became American citizens, and some of them would like to come back and practice their occupation or profession in the Philippines. Now under this law they would be precluded if under California, and many of them are in California — there are 48 jurisdictions in the United States and every state has its own restrictions — Filipinos cannot practice there, these Filipinos who become American citizens, fighting during the second world war, cannot practice their profession in the Philippines. Does not your Honor think that we should make a provision for such cases? There are real Filipino nationals. They became American nationals because at that time we were a dependence of the United States.
>
> Senator LIWAG. I am agreeable to any amendment that will reserve to them the right to exercise their professions here although by citizenship they have become American nationals.[174]

A cursory reading of the foregoing Senate deliberations would readily give rise to the conclusion that what was contemplated by Senator Salonga was the naturalization of Filipino World War II veterans under the Nationality Act of 1940. The lawmakers did not envision future naturalization.

It seems, therefore, that a Filipino veteran who is a lawyer or engaged in any other profession nationalized by Philippine laws stands to lose the practice of his profession the moment he takes his oath of allegiance to the

[173] HISTORY OF BILLS AND RESOLUTIONS (1967).

[174] 6th Congress of the Republic, 4th Special Session, 1 RECORD OF THE SENATE 386-387 (1967).

United States. This is truly unfortunate for the naturalized veteran who wishes to come back to the Philippines or continue permanent residence there. Yes, he may be old, but like any other Filipino similarly situated, he may still find comfort in the pursuit of the noble profession he so dearly holds.

The practice of profession in the Philippines was nationalized to foster the ideals embodied in the Philippine Constitution's preamble: that of preserving the national patrimony; promoting the general welfare; and assuring success to the efforts of Filipinos to secure for themselves and their posterity the blessings of independence under a regime of justice and liberty.[175] It was devised precisely to protect the Filipino, to put him on a ground higher than that of strangers to his land. Consequently, it cannot operate to the disadvantage of the very persons who offered their own lives for the cause of freedom and independence in this country, just because they would like to collect an old debt. Besides, no substantial distinction exists between the Filipino veterans who became American citizens pursuant to the Nationality Act of 1940 and those who were naturalized under Sec. 405 of the Immigration Act of 1990. The proviso of RA 5181 should therefore be interpreted to include the latter. This interpretation is in keeping with the equal protection requirement laid down by the Supreme Court in the leading case of *People v. Cayat* (68 Phil. 12) to the effect that a classification, to be reasonable, must not be limited to existing conditions only, but should apply to future conditions as well.

B. The Right to Acquire Land and to Utilize Natural Resources

The belated U.S. recognition of the Filipino veterans' war efforts faces another problem: the right to acquire land and to utilize natural resources of the Philippines.

1. ACQUISITION OF PUBLIC LANDS AND UTILIZATION OF NATURAL RESOURCES

All the natural resources of the Philippines belong to the State. With the exception of agricultural lands, all other natural resources cannot be alienated. Thus, the exploration, development, and utilization of natural resources are specifically placed by the Constitution under the full control and supervision of the State. Likewise, the foregoing activities are reserved for Filipino citizens, or corporations and associations at least sixty per centum of the capital of which is owned by Filipino citizens. The use and enjoyment of marine wealth, however, is reserved exclusively to Filipino citizens.[176]

The 1987 Constitution classifies lands of the public domain into agricultural, forest or timber, mineral, and national parks. Agricultural lands may be further

[175] RECORD OF THE HOUSE OF REPRESENTATIVES, at 53 (1967).

[176] PHILIPPINE CONST., art. XII, sec. 2, pars. 1 and 2.

classified by law according to the uses to which they may be devoted.[177] They are also classified according to ownership: private or public. The agricultural lands referred to under Section 1 of Article XIII of the 1973 Constitution which is substantially reproduced in Section 3 of Article XII are owned by the State.[178] On the other hand, the agricultural lands referred to under Section 5, Article XIII of the 1973 Constitution which was the predecessor of Section 7, Article XII of the 1987 Constitution are those belonging to the citizens[179] or those considered as patrimonial property of the State or of municipal corporations.[180]

These constitutional provisions present a further disqualification to the naturalized Filipino veteran. After becoming a U.S. citizen, he can no longer be allowed to acquire or hold public agricultural lands as well as utilize natural resources of the Philippines. This matter should be taken in the light of the 1987 Constitution, which provides:

> The State shall provide immediate and adequate care, benefits, and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and *due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.*[181] (emphasis supplied)

This is a new provision. Its inclusion in the 1987 Constitution is a recognition of the State's duty to provide adequate care and assistance to a neglected lot. The word "immediate" was placed therein, in the words of Delegate de Castro, precisely because the "veterans are already old, maimed and needing care", and "it is possible that many of them would die already before the care can be given to them."[182] The proposed provision contained "preferential" rather than "due" consideration. Delegate de Castro, stressing on the importance of the proposal, said:

> x x x We will recall that under Republic Act No. 1363, approved by our Congress on June 18, 1955, war veterans and their widows and orphans were given the preference in the acquisition of public lands. It is unfortunate that this act was terminated 25 years thereafter; that is, on June 18, 1980. But we have thousands and thousands of war veterans who fought for their country to make this a democracy and yet we will deny them the right, the preferential right, to acquire public lands.[183]

[177] *Id.*, art. XII, sec. 3.

[178] 2 L. TAÑADA AND E. FERNANDO, CONSTITUTION OF THE PHILIPPINES 1217 (1953).

[179] *Id.*

[180] J. BERNAS, THE 1987 PHILIPPINE CONSTITUTION, A REVIEWER-PRIMER 332 (1987).

[181] PHILIPPINE CONST., art. XVI, sec. 7.

[182] 5 RECORD OF THE 1987 CONSTITUTIONAL CONVENTION 167 (1966).

[183] *Id.* at 101.

The final provision, however, did not contain the word "preferential". This is because what is involved here is an unaugmentable resource and it will be prejudicial to the public interest to set a limit on the State as to manner of its disposition. The consideration to be given, according to Fr. Bernas should be based not on the status or profession, but on need. Thus, the phrase "due consideration" was perceived as more appropriate.[184]

It should be stressed that the provision in question was conceptualized and reduced into a specific section in the 1987 Constitution. This recognizes the need to alleviate the plight of the country's freedom fighters. But, foremost is the recognition of the past services rendered to the country by these veterans. The benefits offered by Section 7 of Article XVI of the 1987 Constitution therefore does not cease notwithstanding their acquisition of a new citizenship. However, the application of the benefit with respect to the "due" consideration afforded by the State to the veterans in the disposition of agricultural lands of the public domain and the utilization of natural resources in the Philippines, is limited by the nationalization provisions (Sec. 2 and 3, Article XII) of the Constitution. The veterans should therefore be Filipino citizens in order to enjoy this benefit.

2. ACQUISITION OF PRIVATE LANDS

Private land is any land of private ownership, not otherwise considered timber nor mineral land.[185] As held in the leading case of *Krivenko v. Register of Deeds*,[186] private land or private agricultural land, as referred to by the 1935 Philippine Constitution, includes residential and commercial land. The purpose of the ruling was to close the only remaining avenue through which agricultural resources may leak into aliens' hands. As Justice Moran had occasion to say, "It would certainly be futile to prohibit the alienation of public agricultural lands to aliens, if, after all they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens."[187] Thus, under the 1987 Constitution:

> Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public domain.[188]

The capacity to acquire private lands depends upon the capacity to acquire or hold lands of the public domain. The aforementioned constitutional provision, in effect, bars aliens, whether individuals or corporations, from acquiring private lands because they are disqualified from acquiring

[184] *Id.* at 170.

[185] 2 J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES - A COMMENTARY 439 (1988).

[186] 79 Phil. 461 (1947).

[187] TAÑADA, *supra* note 178, at 1216-1217.

[188] PHILIPPINE CONST., art. XII, sec.7.

or holding lands of the public domain. They may only lease private land or acquire it if the mode of acquisition is by intestate succession.[189]

The nationalization of private land acquisition goes as far back as 1935, in Section 5 of Article XIII of the Philippine Constitution from which the provision in question was substantially lifted. The debates of the 1935 Constitutional Convention discussed the basis of this provision. Delegate Ledesma, the Chairman of the Committee on Agricultural Development of the Constitutional Convention, said:

> The exclusion of aliens from the privilege of acquiring public agricultural lands and of owning real estate is a necessary part of the Public Land Laws of the Philippines to keep pace with the idea of preserving the Philippines for the Filipinos.[190]

Delegate Montilla, in the same manner, said:

> With the complete nationalization of our lands and natural resources it is to be understood that our God-given birthright should be one hundred per cent in Filipino hands * * * Lands and natural resources are immovable and such can be compared to the vital organs and a person's body, the lack of possession of which may cause instant death or the shortening of life. * * * If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born. Our independence will be just a mockery, for what kind of independence are we going to have if a part of our country is not in our hands but in those of foreigners?[191]

The 1973 Constitutional Convention, realizing that strict application of the restriction would be disadvantageous to natural-born citizens who have lost their Philippine citizenship, created an exception in their favor. This exception was carried on to the 1987 Constitution which provides:

> Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.[192]

Unlike its 1973 counterpart, this provision deleted the further requirement that the private land is used for residential purposes.[193] It is thus apparent that the 1987 Constitution allows natural-born citizens who have lost their Philippine citizenship to have dominion over private lands even for non-residential purposes. This exception is nevertheless still subject to

[189] BERNAS, *supra* note 185, at 439 - 440.

[190] TAÑADA, *supra* note 178, at 1218.

[191] *Id.*

[192] PHILIPPINE CONST., art. XII, sec. 8.

[193] Sec. 15, art. XIV of the 1973 Philippine Constitution provides: "Notwithstanding the provisions of Section 14 of this Article, a natural-born citizen of the Philippines who has lost his citizenship may be a transferee of private land, *for use by him as his residence*, as the Batasang Pambansa may provide." (emphasis supplied)

certain limitations. Batas Pambansa Blg. 185 was enacted to define the limits of the exception provided by the 1973 Constitution. The law restricts the ownership of land covered by the exception to one thousand square meters of urban land and one hectare of rural land. This law is still in effect today. There is now a pending bill in the House of Representatives introduced by Congressman Miguel Romero, seeking to amend the aforementioned law. The bill allows the transfer of land for residential as well as investment purposes, and increases the area that may be acquired from one thousand square meters of urban land and one hectare of rural land, to three thousand square meters of urban land and three hectares of rural land, respectively.[194]

The Filipino veterans are natural-born citizens[195] and as such may come within the ambit of the foregoing exception. Therefore, those who choose to avail of naturalization under Sec. 405 of the U.S. Immigration Act of 1990 are eligible to acquire private lands for whatever purposes after their naturalization. This acquisition, however, is subject to the limitation that it is not original but merely derivative and that the size of the land will not exceed the maximum prescribed by Batas Pambansa Blg. 185.

Thus, while a naturalized Filipino veteran may acquire private land in the Philippines or may continue holding the private lands he acquired before his naturalization, the size of the land should not exceed the maximum prescribed by law. The maximum area prescribed by law, however, is relatively small, especially so if the land is being used for agricultural purposes. When the only income of the Filipino veteran comes from the land which he is proscribed by law to hold, insofar as the excess is concerned, the benefits of American naturalization will truly be rendered nugatory.

The difficulty of adjustment which goes with the change in citizenship all the more necessitates the existence of a means of livelihood which the Filipino veteran can fall back on. The application of the limitation provided by law would have the effect of depriving the Filipino veteran of this support system. Hence, making it more difficult for him rather than beneficial. As earlier mentioned, the nationalization of private land ownership is rooted in the desire of the State to preserve the country's patrimony for the Filipinos. The naturalized Filipino veterans are Filipinos. What sets them apart from the other natural-born citizens who lost their Philippine citizenship due to naturalization pursuant to foreign laws is the fact that their naturalization is in recognition of their heroism during the second world war.

[194] House Bill No. 122, July 15, 1992, introduced by Congressman Miguel L. Romero, entitled: "An Act Amending Batas Pambansa Blg. 185 entitled 'An Act to Implement Section Fifteen of Article XIV of the Constitution and for Other Purposes', so as to Allow Natural-Born Citizens of the Philippines who have Lost their Citizenship to be Transferred of Land for Residential and Investment Purposes, Increasing the Area that they may Acquire, and for Other Purposes".

[195] Sec. 2 of art. IV of the 1987 Philippine Constitution defines natural-born citizens, to wit:

"Sec. 2. Natural -born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens."

CONCLUSION

For years, the case of the Filipino veterans had been treated with indifference. The enactment of Section 405 of the Immigration Act of 1990 after almost half a century of broken promises and rejected claims is proof of this. The United States had virtually become a formidable enemy with the injustice it had spawned. The Philippine government, on the other hand, did no better. The unresolved claims of the Filipino veterans against the United States dragged on because the Philippine government would not assume the responsibility to champion their cause.

The vagaries of war removed all difference which may have existed between the American soldier on one hand, and the Filipino soldier on the other. Both fought as brothers in defeating a common enemy and suffered under the same conditions of war. Bataan and Corregidor will long be remembered as inspiring names, as symbols of courage, loyalty, fortitude, sacrifice, and of all noble and patriotic virtues. Even in defeat, the defenders of Bataan and Corregidor were looked up to as personifications of valor.[196] As England's wartime Prime Minister observed: *"... the Filipino soldier is second to none."*[197] But the comforts of peace drew an imaginary line between these two soldiers with the passage of the Rescission Act. The Filipino soldier was arbitrarily denied recognition due to certain unexplained practical difficulties. Then again, it may be because Filipino soldiers comprised the largest single group of aliens who served under the American flag, the recognition of whom would cost the United States a staggering sum of US$3 billion?

This disparate treatment clearly runs counter to the constitutional injunction against arbitrary discrimination amounting to denial of equal protection and due process of law or "principles which are the basis of all free government" and "which cannot with impunity be transcended."[198] No rational basis can be drawn from such differentiation. It is inconceivable that two soldiers who were called upon by the same sovereign and subjected to the same vicissitudes and rigors of the emergency would suddenly be set apart by legislation after the battle was won. No adjective can more aptly describe this situation than "unjust"!

If section 405 of the Immigration Act of 1990 seeks to remedy this unjust situation by providing for the naturalization of Filipino World War II veterans, then it is certainly inadequate. The grant stops at naturalization. No veterans benefits accompany the provision for U.S. citizenship. A benefit, in ordinary parlance, refers to what is advantageous to persons, to whatever promotes their prosperity, happiness or enhances the value of their property rights, or rights as citizens as contradistinguished from what is injurious.

[196] Antonio Nieva, *Remembering Bataan and Corregidor*, GOLDEN KRIS, Aug.-Sept. 1989, at 23.

[197] Nicanor Jimenez, *Courage in War, Betrayal in Peace*, GOLDEN KRIS, Aug.-Sept. 1989, at 21.

[198] *Quiban*, 713 F.Supp., at 1321.

[199] JAMES BALLANTINE LAW DICTONARY (1948).

When the enjoyment of a supposed benefit, therefore, becomes costly because certain disqualifications accompany it, then it is no benefit at all. Authorities agree that there are important legal implications that accompany the loss of Philippine citizenship which cannot be taken lightly. These implications have become impediments to the availment of the naturalization grant. For those who already chose to be naturalized, these implications have become real.

Perhaps, the amendment will reap bountiful harvest for those veterans who have already settled long in the United States. They will now have a chance to receive the benefits the United States government hands down to its citizens. But what about those who remained in the Philippines and are living in penury? Their naturalization will merely cast disqualifications that will make their life in the Philippines more difficult. Not even their families are assured of the benefits offered by the new law considering that the processing of their petitions for American citizenship may mean ten to fifteen years of waiting. It is a fact that the Filipino veterans are already in the twilight years of their lives and the intervention of death during such time closes the door towards an awaited naturalization. This is because the Code of Federal Regulations mandates that relative petitions filed by an American citizen for his family member/s shall be revoked by the U.S. Immigration and Naturalization Service upon his death.[200]

What makes Section 405 a mere ostensible benefit is the fact that only a few would choose to avail of it. As Mr. Alex Exclamado pointed out:

> These forgotten heroes of world war II do not want to be American citizens of their personal benefit alone. In reality, they may be better off living the twilight years of their lives in the Philippines, where senior citizens lives are not as lonely and helpless as those of the aging in America; the family support system in the Philippines is enviable.[201]

Thus, after almost two (2) years following the enactment of the new Immigration Law or as of October 8, 1992, only approximately 19,000 Filipino veterans[202] out of the estimated 250,000 eligible Filipino veterans[203] have applied for U.S. citizenship.

If the case of the Filipino World War II veterans were to be studied in its whole perspective, it can be fairly concluded that the vindication offered by Section 405 of the Immigration Act of 1990, if at all, is merely illusory than real.

A genuine vindication of the Filipino veterans' claim against the United States is the restoration of their rights under the G.I. Bill of Rights. This will only be possible if the Rescission Act of 1946 is repealed and a corresponding legislation from the United States appropriating the amount necessary to cover the outlay is finally put in place.

[200] Lewis, *supra* note 34, at 103.

[201] Excerpts from the letter of Mr. Alex Exclamado, National President, FAPA, to U.S. President George Bush dated March 17, 1991.

[202] Privilege Speech of Sen. Alberto Romulo in the Senate, October 8, 1992.

[203] Manila Bulletin, May 15, 1991, at 1.

RECOMMENDATIONS

After all that has been said and done, the ardent task of making sure that the dreams of the Filipino war heroes are realized and their claims finally vindicated, belongs to the Philippine government. Veterans leaders have attempted to perform the task but somehow, their efforts were short of successful. Col. Simeon Medalla, past president and present adviser of the Veterans Federation of the Philippines, recalls:

> I have worked for the resolution of the Filipino veterans' claims since 1955 with all expenses coming from my own pocket. I am already tired and want to rest.[204]

An active representation by the Philippine government to the United States for the resolution of these claims may once and for all do the trick. One concrete step would be a manifestation of support to the Gilman Bill calling for the repeal of the Rescission Act which was introduced on June 6, 1989.[205] Another would be a persistent follow-up for the resumption of talks regarding matters the resolution of which was deferred for further discussion by the 1966 Joint RP-US Panel on Veterans Affairs.

There are now pending bills before the Philippine Congress which may help. House Bill No. 1043 introduced by Rep. Jaime Lopez[206] appropriating the sum of ten million pesos and declaring it the policy of the government to "pursue the claims of Filipino veterans of World War II and work for the full restoration of their rights, privileges and benefits in the U.S. government".[207] A House Resolution introduced by Hon. Jose Ramirez urges the "Department of Foreign Affairs to make representations with the government of the United States to consider remedial measures to ensure that the US Immigration Reform Act of 1990 truly benefit the Filipino veterans."[208] These are short proposals, but their early passage and eventual enactment would definitely clear the way for a genuine vindication of the Filipino veterans' claims against the United States. The government of the Philippines should therefore signify its support for these proposals.

Active representation on the part of the Philippine government, however, does not ensure success. For almost fifty years, the United States had managed to reject the claims. No significant reason exists why a change of heart should now be forthcoming. In this light, the Philippine government must adopt measures to make sure that the veterans who wish to avail or have availed of the naturalization process pursuant to Section 405 of the

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[204] *Medalla Interview, supra* note 60.

[205] House Resolution No. 2545, Gilman (U.S. Congress).

[206] An Act to Maintain an *ad hoc* Organization in the Philippine Embassy in the United States of America for Veterans Affairs, Prescribing its Functions and Duties, Providing Funds Therefor and for Other Purposes.

[207] House Bill No. 1043, Lopez, Philippine Congress-1st Regular Session.

[208] House Resolution No. 214, Jose Ramirez.

Immigration Act of 1990 are protected. Senator Alberto Romulo, in a speech delivered in the Senate on October 8, 1992, had occasion to say:

> We prefer of course that the Filipino veterans retain their Filipino citizenship. On the other hand, we do not want them to lose the opportunity, if they so desire, to avail of the benefits available under U.S. laws.[209]

In order to give strength to the spirit behind this declaration, legislation providing for certain exemptions to Filipino veterans should be enacted. This will obviate the disadvantages brought about by American naturalization.

Indeed, the Filipino veterans were American nationals who served in the Armed Forces of the United States when the world was at war. But let it not be forgotten that they, above all, are Filipino veterans, who should be protected, defended and cared for by the Philippine government. Their legacy, that of peace, freedom and democracy, is now enjoyed by all Filipinos. Time is running out. It is therefore imperative for the Philippine government to act quickly. It should not close its eyes until the appeal of the Filipino veterans for justice and fair play is hearkened and at last served. Only then can it be truly said that the battle was won!