the benefit of the lawyer, which would have to be turned over by the client to his counsel." In the opinion of said Court, the requisites of legal compensation, namely, that the parties must be creditors and debtors of each other in their own right (Art. 1278, Civil Code) and that each one of them must be bound principally and at the same time be a principal creditor of the other (Art. 1279), are not present in the instant case, since the real creditor with respect to the sum of ₱500 was the defendant's counsel.

This is not an accurate statement of the nature of an award for attorney's fees. The award is made in favor of the litigant, not of his counsel, and is justified by way of indemnity for damages recoverable by the former in the cases enumerated in Article 2208 of the Civil Code.[1] It is the litigant, not his counsel, who is the judgment creditor and who may enforce the judgment by execution. Such credit, therefore, may properly be the subject of legal compensation. Quite obviously it would be unjust to compel petitioner to pay his debt for ₱500 when admittedly his creditor is indebted to him for more than ₱4,000.

WHEREFORE, the judgment of the Court of Appeals is reversed, and the writ of execution issued by the Court of First Instance of Manila in its Civil Case No. 49535 is set aside. Costs against respondent.

Reyes, J.B.L., Actg. C.J., Dizon, Zaldivar, Sanchez, Fernando and *Capistrano, JJ.*, concur.

Teehankee and *Barredo, JJ.*, did not take part.

Concepcion, C.J., and *Castro, J.*, are on leave.

Judgment reversed.

No. L-22581. May 21, 1969.

THE COMMISSIONER OF IMMIGRATION, petitioner, *vs.* JUAN GO TIENG and SZE SAU CHIEN (alias Benita Sy Pa), husband and wife, personally, and in behalf of their minor children GO KIM CHONG and GO SIONG LIM, and THE COURT OF APPEALS, respondents.

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[1] Fores vs. Miranda, 105 Phil. 268, 272; Necesito, et al. vs. Paras, et al., 104 Phil. 75, 86.

Administrative law; Judicial review; Where administrative tribunal has not heard nor decided case.—A suit filed in court to review the actuations of an administrative tribunal is premature where no hearing has been conducted and no conclusion reached therein.

Civil actions; Special civil action; Prohibition; When available.—Prohibition is a remedy against proceedings that are without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law.

Same; Same; Mandamus; When available.—Mandamus is a recourse to compel the performance of an act which the law specifically enjoins as a duty — when there is no other plain, speedy and adequate remedy in the ordinary course of law.

Political law; Citizenship; Marriage; Effect of marriage to Filipino.—The fact of marriage alone by an alien to a Filipino would not make the alien wife automatically a Filipino citizen. The same rule applies to their minor children. Their citizenship must be determined in an appropriate proceeding by a showing that the alien wife "might herself be naturalized" as Filipino citizen.

PETITION for review by certiorari of a decision of the Court of Appeals.

The facts are stated in the opinion of the Court.

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Antonio A. Torres and *Solicitor Sumilang V. Bernardo* for petitioner.

Mary Concepcion for respondents.

MAKALINTAL, *J.*:

This is a petition for review by certiorari of the decision of the Court of Appeals vacating the judgment of the Court of First Instance of Manila in its Civil Case No. 47845 (Juan Go Tieng, et al. vs. Emilio L. Galang, etc.) and remanding the same for further proceedings.

The antecedent facts are set forth in the appealed decision as follows:

"From the record of the case we gather that on the strength of a falsified certificate of birth, whereby it was made to appear that petitioner Juan Go Tieng was an illegitimate son of one Virginia Tomas, a Filipino citizen, with a certain chinaman by the name of Go Tin, said petitioner was able to obtain

an order from the Bureau of Immigration on June 29, 1960, cancelling his registration in the Philippines as an alien (Exhibit A, Original Record, p. 40), and on June 30, 1960, the issuance in his favor of Identification Certificate No. 11916 (Exhibit B, Orig. Record, p. 41), both of which declared him to be a Filipino citizen by birth.

By virtue of her supposed marriage to Juan Go Tieng, the other petitioner herein, Sze Sau Chien, also succeeded in securing from the same Bureau an order dated September 8, 1960, cancelling her registration as an alien in the Philippines (Exhibit C, Orig. Record, pp. 42-43), and the issuance in her favor on the same date of Identification Certificate No. 12888 (Exhibit D, Orig. Record, p. 44), both of which also declared her to be a Filipino citizen by reason of her alleged marriage to said Juan Go Tieng.

However, on July 21, 1961, after the falsity of the birth certificate of Juan Go Tieng had been discovered, respondent Commissioner of Immigration issued two orders, one revoking the order dated June 29, 1960, which declared Juan Go Tieng a Filipino citizen by birth, cancelling his Identification Certificate No. 11916 and revalidating his ACR and IRC, and the other likewise revoking the order dated September 8, 1960, which declared Sze Sau Chien a Filipino citizen by marriage, cancelling her Identification Certificate No. 12888, revalidating her ACR and requiring her to leave the country within five days from notice considering that her stay herein was authorized as a temporary visitor and the period of her stay had already expired (Exhs. F & G, Orig. Record, pp. 48-49).

Meanwhile, petitioners Go Kim Chong and Go Siong Lim, claiming to be the children of Juan Go Tieng, arrived in the Philippines on July 15, 1961, aboard a PAL plane from Hongkong and sought admission into the country as Filipino citizens, but they were ordered excluded and returned to the country from whence they came, on the ground that their alleged father is not a Filipino citizen (Exh. H, Orig. Record, p. 50)."

On July 25, 1961 a deportation proceeding under Section 37(a) in relation to Section 45(f) of the Philippine Immigration Act of 1940, as amended, was instituted against Juan Go Tieng for having knowingly made false statements and representations in connection with his application for the cancellation of his alien certificate of registration and the certificate of registration of Sze Sau Chien. The deportation case was assigned to the Law and Investigation Division of the Bureau of Immigration for hearing and recommendation. Before it could be heard, however, Juan

Go Tieng, Sze Sau Chien, Go Kim Chong and Go Siong Lim filed in the Court of First Instance of Manila a petition for prohibition and mandamus against the Commissioner of Immigration. They prayed the court to restrain him from carrying out his order requiring Sze Sau Chien, Go Kim Chong and Go Siong Lim to depart from the Philippines and from confiscating their cash bonds; to restrain the Law and Investigation Division of the Bureau of Immigration from hearing the deportation case filed against Juan Go Tieng; and to declare all of them citizens of the Philippines.

After due hearing, the trial court rendered its decision dated February 8, 1962, dismissing the petition. It found that "there is no complete evidence on record upon which petitioner Juan Go Tieng relies (for) his claim to be a Filipino citizen"; that Sze Sau Chien could not claim Filipino citizenship by marriage; and that as a consequence their minor children could not claim to be Filipinos by birth. Upon receipt of a copy of the decision on February 14, 1962 counsel for petitioners below (respondents here) immediately filed a notice of appeal to the Supreme Court. However, on March 1, 1962 counsel withdrew their appearance with the conformity of their clients; and the next day, March 2, said petitioners themselves withdrew their appeal.

The following March 12 another set of lawyers entered their appearance in the trial court and filed a motion for reconsideration and new trial on the following grounds: (1) that they had discovered new evidence regarding Go Tieng's parentage; (2) that former counsel had committed a mistake in admitting Go Tieng's certificate of birth without presenting him to testify regarding the circumstances of his parentage; and (3) that the decision was contrary to the facts of the case. The Commissioner of Immigration opposed the motion, alleging in effect that the decision had become final and executory, and that said motion did not contain any valid grounds for reopening the case. By way of rejoinder petitioners below prayed that their motion be considered as a petition for relief from judgment. On September 24, 1962 the trial court issued an order to the effect that while the motion for

reconsideration and new trial had no legal basis as such, it might be considered as a petition for relief from judgment. Accordingly, the decision dated February 8, 1962 was set aside and the case was reopened exclusively for the reception of the testimony of Juan Go Tieng. The hearing was held, and on September 27, 1962, holding that there was no valid reason to disturb its original findings, the trial court reaffirmed its previous decision. Thereupon petitioners below appealed to the Court of Appeals.

On January 16, 1964 the appellate court rendered the following judgment:

"WHEREFORE, The appealed judgment is hereby vacated, and let this case be returned to the court of origin for that court to conduct further proceedings on the matter of the citizenship of Juan Go Tieng, and thereafter, the trial court is instructed to render another decision as the evidence presented may justify. Meanwhile, action on the petition of Sau Sze Chien, Go Kim Chong and Go Siong Lim is held in abeyance until final determination by the trial court of the citizenship of Juan Go Tieng, without any special pronouncement as to costs."

His motion for reconsideration having subsequently been denied, the Commissioner of Immigration elevated the case on the instant petition for review, assigning several errors in the decision of the Court of Appeals. It is first alleged that when herein private respondents filed their motion for reconsideration and new trial in the court *a quo* its decision had already become final, and that if the motion be considered as a petition for relief from judgment the grounds relied upon were not valid for that purpose. Petitioner then contends that private respondents should have exhausted the administrative remedies available to them before coming to Court, by allowing the deportation proceeding to continue and then appealing to the Secretary of Justice from the decision, if adverse, of the Commissioner of Immigration. Finally, petitioner maintains that the Court of Appeals committed a grave abuse of discretion amounting to lack of jurisdiction in entertaining the appeal of private respondents and in remanding the case for further proceedings.

We first take up the issue posed in the second and third of the foregoing recapitulation of errors. It should be noted that the basic petition in the Court of First Instance was for prohibition and mandamus (1) to restrain the Commissioner of Immigration from carrying out his order for then petitioners (respondents here) Sze Sau Chien, Go Kim Chong and Go Siong Lim to depart from the Philippines; (2) to stop the hearing of the deportation proceeding against Juan Go Tieng; and (3) to declare all the petitioners (respondents here) Filipino citizens.

To begin with, it should be stated that as far as the records of the Bureau of Immigration are concerned respondent Juan Go Tieng is a Chinese citizen, the order of the Commissioner of Immigration dated June 29, 1960 cancelling his alien certificate of registration and declaring him a Filipino citizen having been revoked in the subsequent order of July 21, 1961. The only basis of the first order was the falsified certificate of birth of Juan Go Tieng and hence the second order was necessary and logical upon the discovery of the falsification. After Go Tieng was thus reverted to his former status as an alien in the records of the Bureau of Immigration. the Commissioner, on July 25, 1961, instituted the deportation proceeding against him for having used a falsified certificate of birth in obtaining the order of June 29, 1960. It was to secure a judicial declaration of Filipino citizenship and to utilize such declaration to stop the investigation which was to be conducted in connection with the deportation proceeding that Go Tieng went to Court on a petition for prohibition and mandamus.

We do not see that prohibition and mandamus are proper vehicles for such purpose. The first is a remedy against proceedings that are without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law. The second is a recourse to compel the performance of an act which the law specifically enjoins as a duty—again when there is no other plain, speedy and adequate remedy in the ordinary course of law. The Commissioner of Immigration neither exceeded his authority nor abused his disc tion in insti-

tuting a deportation proceeding against Go Tieng and ordering the corresponding investigation. It was a proceeding sanctioned by Section 37(a) in relation to Section 45 of the Immigration Act of 1940. The question of Go Tieng's Filipino citizenship was and should have been addressed in the first instance to the Commissioner, and his authority to hear the evidence and pass upon the said question to enable him to decide whether or not Go Tieng should be deported cannot be preempted by the courts in a suit for prohibition. In other words, as pointed out by the Solicitor General, the suit was premature, no hearing having yet been conducted and no conclusion reached concerning the deportability of Go Tieng. Orderly procedure requires that the matter be threshed out where the law assigns it in the first place.

As matters now stand, despite the two chances given to petitioners below to establish the basis alleged by them for the suit for prohibition in the Court of First Instance, they have failed to do so. "After having reviewed at length the entire evidence adduced by both sides," said the Court of Appeals in its decision, "we find the same quite deficient to warrant a sound and judicious pronouncement that Juan Go Tieng is or is not a Filipino citizen." If for this reason alone the denial by the trial court of the basic petition should have been affirmed, since after all the burden of making out their case rested upon the said petitioners.

With respect to Sze Sau Chien, it appears that she came to the Philippines on April 16, 1960 as a temporary visitor, and was permitted to enter and stay for a period of only one month. To guarantee that she would leave upon the expiration of the permit, Juan Go Tieng put up a cash bond of ₱1,000. The evidence referred to by the Commissioner of Immigration in the instant petition shows that in her application for a passport visa as a non-immigrant she stated she was married to a certain Co Cheng Guan, a resident of Rangoon, and that she had no close relatives in the Philippines. The clear implication, of course, is that she is not the wife at all of Juan Go Tieng. But assuming that she is, the fact of the marriage alone even conceding the possibility that her husband

may be able to establish his Filipino citizenship after he is heard in the deportation proceeding, would not make her automatically a Filipino citizen. This is the doctrine already settled by this Court in a number of decisions. The citizenship of an alien woman who marries a Filipino husband must be determined in an appropriate proceeding by a showing that she "might herself be naturalized" as a Filipino citizen.* Consequently, the order of the Commissioner of Immigration for Sze Sau Chien to depart, the period of her authorized stay having long expired, cannot be said to be in excess of jurisdiction or a grave abuse of discretion. The same conclusion holds true with respect to the two minor children, allegedly of her marriage to Go Tieng.

Apropos is the decision of this Court in the case of Sy Ha vs. Galang (April 27, 1963, 7 SCRA 797), from which we quote:

"It should be borne in mind this is a petition for mandamus to compel respondent to recognize the validity of an order of Associate Commissioner Felix Talabis which declared petitioners citizens of the Philippines and to restore their identification certificates as such citizens after respondent commissioner had exercised his authority to re-examine and re-evaluate the evidence then extant in his office as submitted in the administrative investigation, and yet the court a quo had acted on the matter without giving said respondent an opportunity to examine and evaluate the evidence on which it predicated its amended decision. We consider this action unfair and improvident for it is tantamount to overruling the decision of respondent on evidence which he himself did not have occasion to consider. It is like overruling him on a matter which was never submitted to him for consideration.

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* Sec. 15, Commonwealth Act No. 473; Cua vs. Board of Immigration Commissioners, 101 Phil. 521; Lee Suan Ay, et al. vs. Galang, et al., 106 Phil. 706; San Tuan vs. Galang, L-18775, Nov. 30, 1963; Sun Pek Young vs. Commissioner of Immigration, L-20784, Dec. 27, 1963; Tan Siok Sy vs. Vivo, L-21136, Dec. 27, 1963; Lao Chay vs. Galang, L-19977, Oct. 30, 1964; Austria vs. Conchu, L-20716, June 22, 1965; Choy King Tee vs. Galang, L-18351, March 26, 1965; Brito vs. Commissioner of Immigration, L-16829, June 30, 1965; Lee Giok Ha, et al. vs. Galang, et al., L-21332, March 18, 1966; Co Pek, et al. vs. Vivo, L-21775, Dec. 17, 1966; Lo Beng Ha Ong vs. Republic, L-24503, Sept. 28, 1968.

"Another point we should consider here is the nature of the proceeding before us. It should be recalled that this is a petition for mandamus which will only lie to compel an officer to perform a ministerial duty — not a discretionary duty, for, as it was aptly held, mandamus will not issue to control the exercise of discretion of a public officer where the law imposed upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court."

In view of what has been set forth above we deem it unnecessary to pass upon the procedural questions raised by petitioner herein, namely, whether or not the original decision of the trial court dated February 8, 1962 had become final and unappealable; whether or not the motion for reconsideration and new trial dated March 12, 1962, was correctly considered as a petition for relief from judgment; and whether or not such petition was granted on justifiable grounds.

The judgment of the Court of Appeals is reversed and set aside, and that of the Court of First Instance dismissing the basic petition is affirmed, with costs.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Sanchez, Fernando, Capistrano and *Barredo, JJ.*, concur.

Teehankee, J., did not take part.

Judgment reversed.

Notes.—An alien, who, in order to simplify his application to come to the Philippines, falsely stated under oath before the immigration authorities that he was single, is liable for deportation under section 25(f) of Commonwealth Act 613, as amended. (*Shiu Shun Man vs. Galang*, 3 SCRA 871)

On the ground of deportation, see *Lao Tan Bun vs. Fabre*, 81 Phil. 682; *Borovsky vs. Commissioner of Immigration*, 84 Phil. 161; *Mejoff vs. Director of Prisons*, 84 Phil. 218; *People vs. Tin Ua*, 51 O.G. 1863; *Ang It vs. Commissioner of Immigration*, 102 Phil. 532; *Sy Hong vs. Commissioner of Immigration*, 101 Phil. 1207 (unreported).