

[G. R. No. 19206. November 10, 1922]

PRIBHDAS ASSUDOMAL, PETITIONER AND APPELLANT, VS. VICENTE ALDANESE, AS INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

This is an appeal from a decision of the Court of First Instance of the City of Manila, denying a petition for the writ of habeas corpus.

It appears from the record that on or about the 1st day of November, 1920, the appellant arrived at the port of Manila on the steamship *Loonsang* and asked permission to enter the Philippine Islands upon the ground that he was a merchant. His right to enter the territory of the United States was inquired into by a board of special inquiry, which board, after an examination of the evidence submitted by the appellant, denied his right to enter for the reason that "he could not show any paper that he is a merchant or he ever was a merchant in India as required by Rule 8 of the Rules of May 8, 1917, of the Department of Labor of the Bureau of Immigration of the United States." From the decision of the board of special inquiry an appeal was taken to the Collector of Customs and there affirmed. Later, a petition for the writ of habeas corpus was presented in the Court of First Instance of the City of Manila, which petition was, in a very carefully prepared opinion by the Honorable C A. Imperial, judge, denied and the petitioner was remanded to the custody of the Collector of Customs, and ordered that the order of deportation theretofore rendered might be carried into effect. From that decision the petitioner appealed.

The appellant contends that the department of customs abused its power, authority, and discretion in denying the petition for the right to land and, further, in denying the petitioner's application for the writ of habeas corpus. It has been decided in so many cases, that it is no longer necessary to cite authority, that the courts have no right or authority to change or modify the decision of the department of customs in immigration cases until it is

shown that that department did abuse its power, authority, and discretion in the premises.

Section 3 of the Act of Congress of February 5, 1917, provides that a large class of aliens shall be excluded from admission into the territory of the United States. Said section further provides that: "unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States." The same section (section 3) further provides that the same "shall not apply to persons of the following status or occupations:

- (1) Government officers,
- (2) ministers or religious teachers,
- (3) missionaries,
- (4) lawyers,
- (5) physicians,
- (6) chemists,
- (7) civil engineers,
- (8) teachers,
- (9) students,
- (10) authors,
- (11) artists,

(12) merchants, and

(13) travelers for curiosity or pleasure,

nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States, contrary to law, and shall be subject to deportation as provided in section 19 of this Act.”

The appellant contends that he is a merchant and is, therefore, under the exception quoted above, entitled to enter the territory of the United States. Said Act of Congress, however, authorizes the Bureau of Immigration of the Department of Labor to make rules and regulations for the admission of the classes of persons mentioned in the exception above. It is admitted that the appellant is a British Indian subject coming from the geographically defined territory mentioned in said Act of Congress, Even admitting therefore that he is a merchant, he must comply with the rules and regulations of the Bureau of Immigration in order to be entitled to enter the territory of the United States, Subsection 3 of Rule 8 of the rules and regulations of said Bureau provides that: “Natives of the geographically defined territory who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions to the geographically excluding clause, shall *present in support of such a claim evidence procured in the place of their domicile, showing what their status or occupation has been during at least the two preceding years.* Such evidence must be of a convincing nature and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile.”

In the present case the evidence presented by the appellant, procured in the place of his domicile, showing what his status had been during the two years preceding, was not of such a convincing nature as to convince the department of customs that he belonged to any of the exempted classes mentioned in the law. Did the department of customs abuse its authority, power, and discretion in not accepting such evidence? The appellant presented a certificate purporting to have been signed by the city magistrate of Hyderabad Sind; a certificate of the consul of the United States of America at Karachi, India; a passport issued by order of the viceroy and governor-general of India; and articles of copartnership between him and certain other person, purporting to have been executed on the 22d day of April, 1920, in the city of Manila before Mr. Hartford Beaumont as a notary public.

The certificate referred to above of the city magistrate of Hyderabad Sind simply states that the appellant is a merchant and nothing more. It makes no statement of the time that he has been a merchant, nor of the character of his mercantile employment. The certificate of the consul of the United States at Karachi simply certifies that the city magistrate of Hyderabad Sind is a first-class magistrate and as such is authorized to administer oaths. The passport which the appellant presents, simply states that he is a merchant without any reference to the time he has been a merchant or the character of his business. The alleged articles of copartnership, it will be noted, were executed in the city of Manila in the month of April, 1920, while he did not arrive at Manila until the 1st of November, 1920. Evidently the articles of copartnership were prepared for the very purpose, and no other, of proving that he would be a merchant at the time of his arrival in the territory of the United States. Under the law, he must show that he is and has been a merchant "during at least two preceding years." There is no sufficient proof in the record to sustain that fact. The theory of the law (Act of Congress of February 5, 1917) is, that aliens who desire to enter the territory of the United States shall be permitted to enter because they are and have been merchants in the country whence they came, for a period of two years preceding, and not because they desire to enter the territory of the United States in order to become merchants. Upon the theory of the appellant all aliens belonging to the prohibited class might enter the territory of the United States. Aliens, even of the merchant class, who belong to the prohibited class, must furnish the evidence required by law before they can enter the territory of the United States.

The appellant has not furnished the evidence required by law. The department of customs was therefore fully justified in denying his right to enter. There being no abuse of the power, authority, or discretion conferred upon the department of customs, the judgment appealed from is hereby affirmed, and it is hereby ordered and decreed that the petitioner be returned to the custody of the Collector of Customs in order that the order of deportation heretofore made by him may be carried into effect, with costs against the appellant. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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