

LAM SHEE, PETITIONER AND APPELLANT, VS. HONORABLE JOSE P. BENGZON, ACTING COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.*G.R. No. L-5300. October 30, 1953*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for a writ of habeas corpus filed by Lam Shee in the Court of First Instance of Manila against respondent in which, among other things, she prays that the latter be ordered to produce the person of her minor son Mah Shu Fong and that, after the necessary hearing, he be set at liberty and be returned to the custody of petitioner.

Respondent answered the petition stating in substance that said minor is subject to deportation it appearing that "he was not lawfully admissible at the time of entry" pursuant to section 37—a, paragraph 2, of the Philippine Immigration Act (Commonwealth Act No. 613). After due hearing, the court rendered decision denying the petition, with costs against petitioner. From this decision petitioner has appealed.

In 1936, petitioner came to the Philippines as the wife of a resident Chinese merchant and was issued landing certificate of residence No. 122881, dated June 25, 1936. When she came she brought along her second child, having left behind in China her oldest son, minor Mah Shu Fong, and since then up to the death of her husband in 1944 three more children were born to them who are now living with her. On September 24, 1947, her oldest son, Mah Shu Fong, then 17 years of age, arrived in the Philippines bringing with him the requisite travel papers bearing a visa of the Philippine Vice-Consul at Hongkong. After an investigation conducted by the Board of Special Inquiry of the Bureau of Immigration, said minor was allowed to land as a preference quota immigrant in a decision rendered by said board and was issued immigrant certificate of residence No. 26143.

On July 14, 1949, a warrant was issued for his arrest on the ground that when he entered the Philippines on September 24, 1947, his mother, petitioner herein, was not lawfully admitted into the Philippines for permanent residence. Upon being arrested, the Board of Commissioners of Immigration caused an investigation to be made of the charge during which said minor was represented by counsel, and upon the evidence submitted in said investigation the board found that the charge was well founded and rendered a decision decreeing his deportation. And acting upon the recommendation of the board, respondent herein, then Acting Commissioner of Immigration, issued a warrant for his deportation. This gave rise to the present petition for a writ of habeas corpus.

The evidence shows that the herein minor Mah Shu Fong is a Chinese citizen who was admitted into this country on October 14, 1947 by virtue of a preference quota visa issued to him by the Philippine Vice-Consul at Hongkong; that said preference quota visa was issued to him upon the claim that he is the minor child of Lam Shee, petitioner herein, who was in turn admitted into this country for permanent residence on the strength of the representation made by her before the immigration officials that she was the wife of a resident merchant named Ham E; that it turned out that Lam Shee was not the real wife of Ham E, but of another Chinese by the name of

Mah Sek; and on the strength of such misrepresentation which disqualifies Lam Shee to land as the lawful wife of a Chinese resident merchant, the court concluded that her minor son, Mah Shu Fong, "was not lawfully admissible at the time of entry" under section 37-a, paragraph 2, of the Philippine Immigration Act of 1940.

We agree with the lower court that the law applicable to the case at bar is section 37—a, paragraph 2, of the Philippine Immigration Act of 1940, because there is no question under the facts then proven before the immigration officials that said minor was not lawfully admissible to the Philippines when he came on September 24, 1947 because of the admission made by her mother Lam Shee that she gained entrance through misrepresentation. The phrase "not lawfully admissible" used in said section 37—a, paragraph 2, is broad enough to cover all cases of illegal entry, not necessarily those referred to in section 29—a of the same Act. If this were the intention of the law, paragraph 2 above adverted to would have contained an express reference to said section 29—a. If such reference has not been made the clear intention must have been to include in said phrase not only all those cases belonging to the "excluded classes" mentioned therein. However, granting *arguendo* that the claim of counsel for petitioner is correct, still we believe that the case at bar comes under section 29—a, paragraph 17, which refers to persons not properly documented under the Act because it cannot be disputed that the credential of the minor when he came to this country was tainted with some irregularity.

There is however an important circumstance which places this case beyond the reach of the resultant consequence of the fraudulent act committed by the mother of the minor when she admitted that she gained entrance into the Philippines by making use of the name of a Chinese resident merchant other than that of her lawful husband, and that is, that the mother can no longer be the subject of deportation proceedings for the simple reason that more than 5 years had elapsed from the date of her admission. Note that the above irregularity was divulged by the mother herself, who in a gesture of sincerity, made an spontaneous admission before the immigration officials in the investigation conducted in connection with the landing of the minor on September 24, 1947, and not through any effort on the part of the immigration authorities. And considering this frank admission, plus the fact that the mother was found to be married to another Chinese resident merchant, now deceased, who owned a restaurant in the Philippines valued at P15,000 and which gives a net profit of P500 a month, the immigration officials then must have considered the irregularity not serious enough when, in spite of that finding, they decided to land said minor "as a properly documented preference quota immigrant" (Exhibit D). We cannot therefore but wonder why two years later the immigration officials would reverse their attitude and would take steps to institute deportation proceedings against the minor.

Under the circumstances obtaining in this case, we believe that much as the attitude of the mother should be condemned for having made use of an improper means to gain entrance into the Philippines and acquire permanent residence there, it is now too late, not to say unchristian, to deport the minor after having allowed the mother to remain even illegally to the extent of validating her residence by inaction, thus allowing the period of prescription to set in and to elapse in her favor. To permit his deportation at this late hour would be to condemn him to live separately from his mother through no fault of his thereby leaving him to a life of insecurity resulting from lack of support and protection of his family. This inaction or oversight on the part of the immigration officials has created an anomalous situation which, for reasons of equity, should be resolved in favor of the minor herein involved.

Wherefore, the decision appealed from is reversed. Petition is granted, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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