

**THE UNITED STATES, PLAINTIFF AND APPELLEE VS. LIM KIU ENG,
DEFENDANT AND APPELLANT.***G.R. No. 10385. March 31, 1915*

Ponente: JOHNSON, J.

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It appears from the record that the defendant arrived in the Philippine Islands on the 4th day of June, 1909, and was permitted to enter as a clerk for the Chinese consulate in Manila. No question was raised concerning his right to enter. Later he left the employment of the Chinese consulate and engaged in mercantile business. A complaint was presented against him, charging him with being in the Philippine Islands without the necessary certificate of residence, and an effort was made to deport him.

After an investigation by the customs authorities, the question was referred to the Court of First Instance, where, after a consideration of the facts, the Honorable Simplicio del Rosario, judge, found that the defendant was illegally within the Philippine Islands and ordered him deported. From that judgment the defendant appealed to this court.

It is admitted that the defendant was not in the Philippine Islands during the period within which Chinese persons were required to register in accordance with the provisions of Act No. 702. Neither is there any dispute upon the question that at the time he entered the Philippine Islands he belonged to the exempt class under the law and was permitted to enter without objection. It is admitted that he was then within the territory of the Philippine Islands rightfully. The question presented for decision is whether or not, having entered the Philippine Islands rightfully, there being no charge of fraud, he may be deported? The defendant being rightfully within territory of the United States, has he a right to remain? The fact that the defendant was an employee of the Chinese consulate in the city of Manila, justified the authorities in permitting him to enter without the "section six certificate." In other words, such employment alone was a substitute for the "section six certificate." We believe, therefore, that his right to remain in territory of the United States is the same as that enjoyed by Chinese persons holding the "section six certificate."

No decisions have been called to our attention, and we believe there are none, in which this question has been raised and decided. There are considerable dicta, however upon the question, most of which indicates that the "section six certificate" not only permits Chinese persons of the class entitled thereto to enter territory of the United States, but to abide therein during their pleasure. There are numerous decisions of the Federal courts to the effect that if a Chinese person is rightfully admitted into territory of the United States, he may remain therein, even though subsequently he ceases to belong to the class to which he belonged at the time of entrance. It was not the purpose of the Act of Congress to exclude all Chinese persons from territory of the United States. A certain class, under the treaty between the United States and China, is permitted to enter without objection. The "section six certificate" was provided, not for the purpose of excluding the class entitled thereto, but simply for the purpose of facilitating their entrance. The "section six certificate" was not intended to be a restriction upon their right to enter. To hold otherwise would be to impute to Congress the purpose to disregard the treaty between the United

States and China. Chinese persons holding the "section six certificate" are allowed to come and go, to enter and depart from the territory of the United States at their own free will. No case has been called to our attention and we believe there are none, which limits their coming and their going to any particular period of time. (*Gan Bun Cho vs. Collector of Customs*, 30 Phil. Rep., 614; *Lau Ow Bew vs. U. S.* 144 U. S., 47; *U. S. vs. Lim Yuen*, 211 Fed. Rep., 1001; *U. S. vs. Yee Quong Yuen*, 191 Fed. Rep., 28.)

It has been frequently held that minor children who are permitted to enter territory of the United States in order to enjoy the company of their parents, may not subsequently be deported after they have reached their majority, even though they become laborers and members of the prohibited class. (*U. S. vs. Lim Yuen*, 211 Fed. Rep., 1001.) The defendant having been rightfully admitted into territory of the United States, we are of the opinion that the record contains nothing which would justify the authorities at this time in deporting him. Therefore the judgment of the lower court is hereby revoked, and without any finding as to costs, it is so ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

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