

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LI SUI WUN, DEFENDANT AND APPELLANT.

G.R. No. 10670. November 04, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the city of Manila, on the 24th day of December, 1914. Its purpose was to deport the defendant and appellant from the Philippine Islands, by virtue of the provisions of Act No. 702 of the United States Philippine Commission.

It appears from the record that the defendant and appellant arrived at the port of Manila on the steamship Loongsang on the 28th day of February, 1911; that he presented the "section six certificate" and was admitted without objection. It is now alleged that he is a laborer within the Philippine Islands, without having been registered as a Chinese laborer and should, therefore, be deported.

The question was finally submitted to the Court of First Instance. After hearing the respective parties, the Honorable Simplicio del Rosario, judge, reached the conclusion that the defendant should be deported. From that decision the defendant appealed to this court and made several assignments of error.

It is admitted that when the defendant arrived at the port of Manila in the month of December, 1911, he was admitted into the Philippine Islands without objection by reason of the fact that he presented the "section six certificate." The main question presented by the appellant is whether or not he may be deported from territory of the United States, having been admitted by virtue of said "section six certificate."

Just how long a Chinese alien who has been admitted into territory of the United States without objection, by virtue of the "section six certificate," may remain therein, has never been directly decided.

In the case of *Gan Bun Cho vs. Collector of Customs*, (30 Phil. Rep., 614), we said, in discussing that question, that:

"The question of the length of time a Chinese person may remain in the territory of the United States, who enters under the 'section six certificate' seems never to have been brought directly before the Federal courts. There is considerable dicta, however, upon the question, most of which indicates that the 'section six certificate' not only permits Chinese persons of the class entitled to enter, to enter the 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 rightly admitted into the 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 the territory of the United States. A certain class of Chinese persons, under the treaty between the United States and China, are 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. It simply requires the Chinese persons who are permitted to enter the territory of the United States to provide them selves, in advance, with the proper

evidence of their right so to do. 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 of their own free will and accord. No case has been called to our attention, and we believe there is none, which limits their going and their coming to any particular period of time. (*Lau Ow Bew vs. U. S.*, 144 U.S., 47.)"

In accordance with the foregoing doctrine, the following rules have been laid down from time to time by the Federal courts:

First. That the minor son of a resident Chinese merchant, having been admitted as such, can not be deported, if, after he reaches his majority, he becomes a laborer in territory of the United States. (*U. S. vs. Tan Chuy Ho*, 31 Phil. Rep., 383; *U. S. vs. Foo Duck*, 172 Fed. Rep., 856; *U. S. vs. Yee Quong Yuen*, 191 Fed. Rep., 28; *U. S. vs. Lim Yuen*, 211 Fed. Rep., 1001; *Ex parte Lew Lin Shew*, 217 Fed. Rep., 317.)

Second. That a Chinese person admitted into territory of the United States as a student, and who later becomes a laborer, cannot be deported. Having entered legally he cannot be deported because he later becomes a laborer. A Chinese person admitted into territory of the United States, as a student may remain after ceasing to be a student, and may earn his living in any lawful manner, without subjecting himself to deportation. (*U. S. vs. Lee You Wing*, 208 Fed. Rep., 166; *U. S. vs. Lee You Wing*, 211 Fed. Rep., 939; *U. S. vs. Horn Lim*, 214 Fed. Rep., 456; *In re Tan Chung*, 223 Fed. Rep., 801.) In said case (*In re Tan Chung*) the court said:

"That a Chinese person lawfully entering this country can lawfully change his vocation, and can labor of right and not of privilege granted by some immigration officer, and that without incurring the penalty of deportation by executive orders or otherwise, is the rule of twenty years⁹ unbroken current of authority, (*U. S. vs. Sing Lee*, 71 Fed. Rep., 680; *Ex parte Lew Lin Shew*, 217 Fed. Rep., 317; *Ex parte Lam Puy*, 217 Fed. Rep., 456.)"

Generally speaking, alien Chinese are prohibited from entering territory of the United States. This rule is absolute only; first, with reference to laborers; and second, with reference to those who are paupers or liable to become a public charge, or who are suffering from some contagious or obnoxious disease.

To the foregoing rule, Congress has made some exceptions. These exceptions include students, merchants, tourists, and others who belong to a special class. Those who are exempt from the class who are prohibited absolutely from entering may enter, provided they present what is known as the "section six certificate." The United States Government has not attempted to prohibit any other nationality from entering the territory of the United States, except paupers and those who have some obnoxious or contagious disease. It is believed that when a Chinaman obtains the "section six certificate," he stands on the same footing with any other alien, with reference to his right to enter and remain in the territory of the United States. Any other alien who is permitted to enter the territory of the United States may remain therein during his own pleasure, so long as he conforms with the laws thereof. It is believe that when a Chinese alien enters by virtue of the "section six certificate" he stands upon exactly the same footing as any other alien, and has a right to remain in the territory of the United States, exactly as any other alien may remain therein, and may not be deported simply because, after his entrance, he becomes a laborer.

The treaty (article 2, 22 Statutes at Large, 827) between the United States and China declares that a Chinese merchant may bring his body and household servants into the country, and they shall be accorded all the rights, privileges, immunities and exemptions which are accorded to citizens and subjects of the most favored nations. (*U. S. vs. Yee Quong Yuen*, 191 Fed. Rep., 28.)

In the present case, when the defendant and appellant arrived at the port of Manila, the customs authorities took

possession of his "section six certificate" and the same was lost. It was admitted, however, that the defendant brought with him the "section six certificate;" that the same gave his occupation as that of a merchant. That fact is not denied; it is admitted by the plaintiff and appellee.

It is contended, however, that the "section six certificate" presented by the appellant only permitted him to enter the Philippine Islands for the purpose of visiting the carnival, and that, therefore, at the close of the carnival he was without right to remain longer. With reference to that argument, it may be said that the "section six certificate" always contains a statement of the purpose for which or the condition upon which it is issued. For example, if the holder is entering the territory of the United States as a student, the certificate says so. If the holder is entering the territory of the United States as a tourist, that fact is stated upon 'the face of the certificate. If the Chinaman's right to enter the territory of the United States is based upon the fact that he is a merchant, a statement of that fact is found in the certificate. Whatever the ground upon which the certificate is issued as stated in the certificate it is only an indication that the Chinese alien possesses the requisite qualifications to enter the territory of the United States, and is in no sense a limitation upon his right to remain therein after entrance, providing we are right in our contention that the "section six certificate" has the effect of putting the holder thereof upon the same basis, with exactly the same rights and privileges, as aliens of the other most favored nations.

Applying the rule which we think is analogous and which the Federal courts of the United States have applied to merchants, students, wives, and minor children, we are forced to the conclusion that when a Chinese alien enters the territory of the United States lawfully, without objection, and armed with the "section six certificate," he has a right to remain therein exactly as if he belonged to the most favored nation.

The Attorney-General asks that the judgment of the lower court be reversed and that the defendant and appellant be permitted to remain in the Philippine Islands. For all of the foregoing reasons we agree with the Attorney-General in his request. It is therefore ordered and decreed that the judgment of the lower court be reversed, and that the defendant and appellant be given his liberty, and without any finding as to costs, it is so ordered.

Torres, Moreland, and Araullo, JJ., concur.

DISSENTING

CARSON,

I dissent. I think the weight of the evidence shows that the appellant was permitted to enter the Islands as a tourist, a mere visitor to the Philippine Exposition, and that he did not and could not lawfully acquire the right to remain permanently in the Philippine Islands, merely upon the ground that he had succeeded in securing entry into the Islands as a tourist.

Whatever may be said or has been said in favor of the right of a Chinese person who has established a permanent or quasi-permanent domicile in the Philippines to continue in the country indefinitely despite his loss of the status by virtue of which he gained admission—the reasoning of those cases is not applicable where the ground on which admission to the country is gained is inherently and necessarily in conflict with an intent to secure a domicile in the country.

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