

LIM YIONG, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 12117. March 14, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

The record on appeal in this case describes an attempt on the part of Lim Yiong, the appellant, to bring into the Philippine Islands from China one called Pedro Sy Pongco y Garrovillas who, it is alleged by Lim Yiong, was born in the Philippine Islands twenty-three years ago and is the legitimate son of Ines Garrovillas and Aniceto Tupas Sy Pongco, native Filipinos.

The board of special inquiry passed upon the application for admission to the country and denied it, the board saying with regard to the application for admission:

"His appearance is that of a full-blooded Chinese, and, although he claims to be only 23 years old, his personal appearance is that of a man 30 years of age or more. He states that he was taken to China by his father and mother when he was 5 years old; that he has lived there since with a Chinese mother; and that he has been engaged in business since he was 16 years old. His story is contradicted in nearly every particular by his alleged mother. One of the Chinese witnesses who appeared identified the wrong person in the room as being the detained; and the other Chinese witness said the detained's name was Sy Lim. The testimony presented by all three witnesses has been a mass of contradictions, their manner of testifying indicating that they knew little or nothing about the case, and the board considers them absolutely unworthy of belief."

The appellant charges in this court that the trial court erred in the following particulars:

"1. When it found that there was any legal evidence upon which the conclusion of the board of special inquiry could be lawfully based.

"2. When it found that Pedro Sy Pongco y Garrovillas had had a full, fair and impartial hearing before the customs authorities.

"3. When it did not find that the board of special inquiry and the Insular Collector of Customs on appeal therefrom had abused the discretion, power and authority in them reposed, when they refused Pedro Sy Pongco y Garrovillas a landing in the Philippine Islands.

"4. When it did not find that the customs authorities had committed an error of law when they refused to give to Pedro Sy Pongco y Garrovillas the benefit of every doubt as to his citizenship, instead of resolving all such doubts against him, as was done by them."

Even if we admit that the first error is well assigned it would not require a reversal of the judgment. In one aspect it is not necessary that the board of special inquiry have any legal evidence before it upon which its conclusion is based. A Chinese person or a person of Chinese descent applying for admission into the Philippine Islands has the burden of showing affirmatively his right to enter. If he fails to establish his right by evidence that is credible and satisfactory to the ordinary mind, the board of special inquiry has the right, and it is its duty, to deny the

application. In such case there is really no "legal evidence upon which the conclusion of the board of special inquiry could be lawfully based." It was a lack of evidence upon which the board based its decision. The Government is not obliged to establish the lack of right to enter; and, accordingly, the board has no evidence before it upon which to base affirmative action. Its action is largely negative; it hears the evidence of the applicant and then decides whether he has satisfactorily established his right to enter.

We may say with regard to the second error assigned that we find nothing in the record of the proceedings of the board of special inquiry which justifies the conclusion of counsel for the appellant to the effect that the applicant did not have "a full, fair, and impartial hearing before the customs authorities." It is true that in this case, as in most of the cases before the board of special inquiry, the proceedings were somewhat informal and some departures were made from the ordinary rules which would govern the asking and answering of questions. Sometimes, as in this case, questions are put sharply to a witness and some of them are at times charged substantially with telling falsehoods. Those charges, however, are made not for the purpose of browbeating a witness or preventing him from giving the testimony to which the applicant is entitled; but are made, so far as the record in this case shows, for the purpose of calling the attention of the witness sharply to his contradictions and to offer him an opportunity to make an explanation. From certain points of view it might appear more in accordance with dignified procedure and the proceedings would have, perhaps, a more judicial aspect if the members of the board of special inquiry refrained from certain expressions to which our attention is called; but those are matters for the members of the board themselves to determine, so long as they give the applicant a fair opportunity to be heard.

The observations already made make it unnecessary to consider especially the third error assigned. The record does not show an abuse of discretion or excess of authority on the part of the board of special inquiry. It gave full consideration to the testimony of the witnesses for the applicant; and its written decision on the case shows that it had good grounds upon which to base the denial of petitioner's application.

Discussing the fourth error assigned it may be said that, where a person comes direct from China who has the appearance of being a Chinese person or person of Chinese descent and, in his application for admission, admits that he has lived all his life in China, it is the duty of the board, before it admits the applicant, to satisfy itself that the person is entitled to enter. It can be satisfied only by the production of such evidence by the applicant as will demonstrate that he is entitled to enter under the Chinese Exclusion Acts. If the applicant alleges citizenship he must prove it; and he must prove it by evidence of a character which is ordinarily accepted in proving any other fact. The customs authorities have jurisdiction to determine the question of citizenship; and the procedure to determine that question is not different from that by which any other fact necessary to be established is proved. Usually in cases of this character citizenship becomes a question of law, the facts being generally admitted. Sometimes, however, it is a question of fact arising over the identity of the applicant with the person whose name he claims. In such case the question does not resolve itself primarily into citizenship, but identity, it being conceded that, if the applicant is the person he represents himself to be, his citizenship is admitted. In the case before us the board of special inquiry did not believe, on the evidence presented, that the applicant was the person he represented himself to be. Instead of being 23 years of age, as he claimed, it found from an examination of his person that he was more than 30 years of age. Instead of being a Filipino, as he claimed, the board was entirely satisfied from his personal appearance, dress, language, and customs, that he was a Chinese person of the full blood; and that, instead of being born in the Philippine Islands of Filipino parentage, he was in fact born in China of Chinese parentage. We cannot say from the record that the board of special inquiry abused its discretion in making these findings, if we may call them such, or that it exceeded its authority under the law. Indeed, from an examination of the record we cannot say that those findings are against the fair trend of the evidence offered by the applicant.

While it is true that the courts jealously guard the rights of a citizen of the United States, that does not mean that it will give no weight to the decision of the customs authorities on that question. They will scan the record closely, but will act only where it is clear that the customs authorities have not performed their duty in accordance with law.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Carson, and Araullo, JJ., concur.

Trent, J., concurs in the result.

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