

LAO HU NIU, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 12379. March 14, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

This case involves the exclusion from the Philippine Islands of a Chinese woman and her minor children. She claims to be the wife of a former resident Chinese merchant who, prior to the attempt of the appellant to enter, died in the Philippine Islands owning property therein and leaving as his only heirs at law and next of kin his widow, the appellant herein, and her minor children.

The board of special inquiry refused them permission to enter and that refusal was affirmed by the Court of First Instance of Manila. This appeal is from the action taken by the Court of First Instance.

Counsel for appellant says in his brief that: "The question involved here is a double one: First, as to the right of the widow and the legitimate minor children of a deceased resident Chinese merchant to enter the Philippine Islands as such widow and children; and, second, the right of such widow, as a merchant and the successor to her husband, to enter the said Islands and to bring her children with her."

Counsel then says: "It would appear that the first part of the foregoing questions has been resolved by this honorable tribunal against such right of entrance." This statement is true. We have held in the case of *Ng Hian vs. Collector of Customs* (34 Phil. Rep., 248) that the widow and minor children of a deceased Chinese merchant resident and doing business in the Philippine Islands at the time of his death are not entitled to enter the Philippine Islands solely by reason of such relationship. Counsel for the appellant asks us to overrule that decision and admit the applicants in this case, setting forth with ability arguments to that end. We must say, however, that, after a careful consideration of such arguments, we are unable to see our way clear to overrule the former decision and accordingly decline to do so.

With regard to the second question, it may be said that it does not appear in the record of this case that the applicant is a merchant. It appears simply that her husband was, at the time of his death, a resident Chinese merchant doing business in the Philippine Islands, and that he died leaving property including a mercantile business. The assumption of the appellant is that the mere fact of the death of a merchant makes his wife and children also merchants, as it leaves to them as heirs and next of kin a mercantile business as a part of their inheritance. We do not believe that this necessarily follows. But if it does, the fact remains that she is not a resident merchant. She is still outside of the Philippine Islands and has never held the status of a resident merchant. She must, therefore, establish her right to enter as a merchant in the first instance. This she did not do. She did not present the section six certificate which is the only evidence upon which her right to enter can be based.

From these observations it necessarily follows that the applicant is not entitled to enter the Philippine Islands upon the status of her deceased husband; and that when she seeks to enter upon her own personal status she must

produce the evidence which the law requires to establish that status. Not having done this her application to enter was properly denied.

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

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

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