

JOSE FELIPE BRACA, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G.R. No. 13122. September 27, 1917*

Ponente: JOHNSON, J.

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This was a petition for the writ of, habeas corpus presented in the Court of First Instance. The appellant claimed the right to enter the territory of the United States. That right having been denied by the Insular Collector of Customs the present proceedings were instituted. After having considered the record of the department of customs, which was presented in the habeas corpus proceedings, the Hon. George R. Harvey, in a very carefully prepared opinion, reached the conclusion that the appellant was not entitled to enter the territory of the United States, denied the petition for the writ of habeas corpus, and remanded the petitioner to the custody of the Insular Collector of Customs, with costs. From that judgment the petitioner appealed.

It appears from the record that on the 19th day of April, 1917, the appellant arrived at the port of Manila on the steamship Tean and asked permission to enter the Philippine Islands. His right to enter was based upon the pretension that he was the son of a Chinese father and a Filipino mother. In support of that contention several witnesses were called. In addition to the declaration of the witnesses a baptismal certificate was presented, which shows that on the 5th day of January, 1902, there was baptized in the church of the "Parroquia de la Ermita, Arrabal de Manila" a child by the name of Jose Felipe, the natural son of one Justa Braca, a native of the municipality of Malabon. And further that D. Felipe Calderon was its godfather. The said Justa Braca appeared as a witness and testified that the petitioner was her son; that she had lived with the alleged father of the petitioner, Tan Kio; and that two children were born of that relation, the petitioner who was 17 years of age and one called Rosario who was 15 years of age; that she was a native of the Philippine Islands and of the municipality of Malabon; that she was a Chinese mestiza; that she had lived in China for one year and a half. The petitioner testified that he went to China when he was 5 years of age; that he went there with his uncle; that his mother returned to the Philippine Islands with him.

The hearing before the board of special inquiry took place on the 22d day of June, 1917, and the petitioner stated that he was then 17 years of age. If the facts stated in the baptismal certificate were true, and that he was born on the 5th day of January, 1902, he was at the time of the hearing but a little over 15 years of age, or to be exact, was 15 years, 5 months, and 17 days of age. The board of special inquiry, after hearing the evidence and seeing the witnesses and having examined them, and taking into consideration the personal appearance of the petitioner, reached the conclusion that he was not the person mentioned in said baptismal certificate; for the reason that he appeared to be a person of between 21 and 25 years of age. The board of special inquiry further found that he was not the person he represented himself to be, but a Chinese person coming to the Philippine Islands without the section six certificate required by law for the admission of Chinese, and refused him the right to enter. From that judgment an appeal was taken to the Collector of Customs. The Collector of Customs found from the evidence that the petitioner Jose Felipe Braca was not the son of Justa Braca, but was a Chinese person coming to the

Philippine Islands without the certificate required by law.

The department of customs, in the exercise of its power and discretion in determining whether or not immigrants have a right to enter the Philippine Islands, may take into consideration the personal appearance of such immigrants for the purpose of determining whether they are aliens or not. (Tan Beko vs. Collector of Customs, 26 Phil. Rep., 254; De la Cruz vs. Collector of Customs, 26 Phil. Rep., 270; Chua Yeng vs. Collector of Customs, 28 Phil. Rep., 591; Leong Guen vs. Collector of Customs, 31 Phil. Rep., 417; Sing Jing Talento vs. Collector of Customs, 32 Phil. Rep., 82; Que Quay vs. Collector of Customs, 33 Phil. Rep., 128; U. S. vs. Kong Fong, 33 Phil. Rep., 234; Go Paw vs. Collector of Customs, 33 Phil. Rep., 278; Valdezco Sy Chiok vs. Collector of Customs, 33 Phil. Rep., 406; Guevara vs. Collector of Customs, 34 Phil. Rep., 394; See Chiat and See Huan vs. Collector of Customs 34 Phil. Rep., 865; Co Puy vs. Collector of Customs, p. 409, ante; Laurencio vs. Collector of Customs, 35 Phil. Rep., 37.)

The customs authorities may also determine from the personal appearance of the immigrant what his age is. The person of a Chinese alien seeking admission into the Philippine Islands is evidence in an investigation by the board of special inquiry to determine his right to enter; and such body may take into consideration his appearance to determine or assist in determining his age and a finding that the applicant is not a minor based upon such appearance is not without evidence to support it. (Tan Beko vs. Collector of Customs, 26 Phil. Rep., 254; De la Cruz vs. Collector of Customs, 26 Phil. Rep., 270; Ex parte Chooley Dee Ying, 214 Fed., 873; Leong Guen vs. Collector of Customs, 31 Phil. Rep., 417; Guevara vs. Collector of Customs, 34 Phil. Rep., 394; U. S. vs. Hing Chang, Circuit Court of Appeals Reports, 19.)

If the department of customs may examine the immigrant for the purpose of determining his age, then no error nor abuse of power or discretion was committed in the present case in that respect. And if the petitioner was a person of from 21 to 25 years of age, as the department of customs found, then the baptismal certificate presented did not refer to him, and, of course, he was not the person whom he represented himself to be.

There is nothing in the record' which shows that the department of customs acted arbitrarily or capriciously. Under the provisions of section 25 of the Act of Congress, known as the Chinese Exclusion Act, the courts cannot review an order of the immigration authorities excluding a Chinese person, when there is some evidence to support such order. (Ex parte Ng Kwack Kang, 233 Fed., 478.)

There is nothing in the record which shows that the department of customs abused its power or discretion in denying the appellant the right to enter the Philippine Islands. The judgment appealed from is, therefore, hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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