

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

G. R. No. 16406. September 13, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

The appellant is a Chinese person. He arrived at the port of Manila on the 23d day of September, 1919, on the steamship Taisang, and asked permission to enter the Philippine Islands as the minor son of a resident Chinese merchant. A board of special inquiry was appointed for the purpose of ascertaining the right of the appellant to enter the territory of the United States. After hearing the evidence adduced by the appellant, the board of special inquiry found that he was not a minor but was very much over 21 years of age, and denied him the right to enter the Philippine Islands. From that order he appealed to the Collector of Customs, who affirmed the decision of the board of special inquiry. Thereupon he presented a petition for the writ of habeas corpus in the Court of First Instance of the city of Manila.

The Attorney-General answered the said petition and the cause was submitted to the Honorable George R. Harvey upon the record made in the department of customs. Judge Harvey, after a careful statement of the procedure in the department of customs, decided that there was no evidence before him showing abuse of authority or discretion on the part of the customs officials and no substantial error of law had been brought to his attention, and denied the petition for the writ of habeas corpus. From that decision an appeal was taken to this court.

The appellant alleges that the lower court committed an error in holding (a) that there was no abuse of discretion or authority on the part of the department of customs; (b) that there was no abuse of discretion on the part of the customs authorities in refusing to believe the testimony of the petitioner and his witnesses; and (c) in denying him the right to enter the Philippine Islands.

While the appellant makes the above assignments of error, practically his entire argument is devoted to the allegation that the department of customs committed an error in deciding that the appellant was not a minor son of a resident Chinese merchant. Upon the question of the age of the appellant the board of special inquiry said: "It appears from an examination of the applicant that his mustache is fully developed and his face is tough, with the appearance of one very much over 21." The board of special inquiry, commenting upon the testimony of the alleged expert witnesses presented by the appellant for the purpose of proving his age, said: "Indeed the board handles about 200 Chinese cases a month and about 75 cases of the character of the case under consideration. So the board has a reason to be quite slow in giving way to the opinions of witnesses in these matters," relating to the age of aliens.

It has been decided in cases without number that the customs authorities, in the exercise of their power and discretion in determining whether or not an immigrant has a right to enter the Philippine Islands, may take into consideration the personal appearance of such immigrant for the purpose of ascertaining (a) whether he is an alien, and (b) his age. (*Braca vs. Collector of Customs*, 36 Phil., 929; *Tan Beko vs. Collector of Customs*, 26 Phil.,

254; De la Cruz vs. Collector of Customs, 26 Phil., 270; Chua Yeng vs. Collector of Customs, 28 Phil., 591; Leong Guen vs. Collector of Customs, 31 Phil., 417; Sing Jing Talento vs. Collector of Customs, 32 Phil., 82; Que Quay vs. Collector of Customs, 33 Phil., 128; U. S. vs. Kong Fong, 33 Phil., 234; Go Paw vs. Collector of Customs, 33 Phil., 278; Valdezco Sy Chiok vs. Collector of Customs, 33 Phil., 406; Guevara vs. Collector of Customs, 34 Phil., 394; See Chiat and See Huan vs. Collector of Customs, 34 Phil., 865; Co Puy vs. Collector of Customs, 36 Phil., 409; Laurencio vs. Collector of Customs, 35 Phil., 37.)

An alien seeking admission into the territory of the United States is an evidence, as an exhibit, in the investigation by the board of special inquiry to determine his right to enter. The board of special inquiry may take into consideration his personal appearance to determine or to 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 the conclusion of the board. (Braca vs. Collector of Customs, 36 Phil., 929, 932; Tan Beko vs. Collector of Customs, 26 Phil., 254; De la Cruz vs. Collector of Customs, 26 Phil., 27(5); Ex parte Chooey Dee Ying, 214 Fed., 873; Leong Guen vs. Collector of Customs, 31 Phil., 417; Guevara vs. Collector of Customs, 34 Phil., 394; U. S. vs. Hing Chang, Circuit Court of Appeals Reports, 19.)

It has also been decided in cases without number that the mere fact that the Collector of Customs refused to believe the witnesses presented by an alien applicant for permission to enter the territory of the United States is not of itself an abuse of authority or discretion. (Tan Chin Hin vs. Collector of Customs, 27 Phil., 521; Gñilo vs. Collector of Customs, 32 Phil., 100; Ekiu vs. U. S., 142 U. S., 651.)

The immigration officials are not required to accept, as true, statements made to them by applicants for admission into the territory of the United States, nor the witnesses presented in their behalf, even though such testimony should be given under oath. (Jao Igco vs. Shuster, 10 Phil., 448; Tan Puy vs. Collector of Customs, 36 Phil., 900, 02; Lee Jua vs. Collector of Customs, 32 Phil., 24; Chin Low vs. U. S., 18 Sup. Ct. Rep., 201.)

The appellant, not having proved to the satisfaction of the department of customs that he was the minor son of a resident Chinese merchant, and not having presented the "section-six certificate," which is made by law the sole evidence of his right to enter the territory of the United States, has not established his right to enter the Philippine Islands. (Lau Ow Bew vs. U. S., 141 U. S., 583, 587; Wan Shing vs. U. S., 140 U. S., 424, 428.)

For the foregoing reasons, the judgment of the lower court is hereby affirmed, and it is hereby ordered and decreed that the appellant be returned to the department of customs in order that the order of deportation heretofore made may be carried into effect. It is so ordered, with costs.

Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur..

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