

TAN BOC, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 23154. March 23, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant arrived at the port of Manila on July 17, 1922, and applied for permission to enter and reside in the Philippines as a minor child of Tang Tieng, a Chinese merchant residing in the City of Manila. On August 20, 1924, that is to say, two years and thirty-two days after the arrival of the applicant, the board of special inquiry of the Bureau of Customs held the proper investigation and resolved that the applicant had no right to enter or to remain in the Philippines, not having proven that he was a minor child of Tang Tieng, and must be deported to the port of origin. The decision of the board was appealed to the Insular Collector of Customs who affirmed it.

On September 17, 1924, the applicant filed a petition in the Court of First Instance of Manila, praying for the issuance of a writ of habeas corpus. After a hearing upon the petition, the lower court held that it was not proven that the board had committed an abuse of discretion in the exercise of its powers, and denied the relief prayed for. From this judgment of the lower court this appeal was taken by the applicant.

On account of the appellant having been sick for the period of six months since his arrival, the investigation was not carried out for the determination of the question whether or not he had the right to enter and remain in the Philippines, until August 20, 1924, more than two years after his arrival. According to the evidence introduced by the appellant at the investigation, his father by the name of Tang Tieng returned to China on August 8, 1923, and there died on June 5, 1924. The father of the applicant was a Chinese merchant resident of the City of Manila when his son Tan Boc arrived, who was then a minor. Under such circumstances, did the plaintiff have any right to enter and remain in the Philippines? The Attorney-General maintains that upon the death of the father of the applicant before the latter was able to prove his right to enter the Philippines, said right ceased to exist, it being founded only on the fact that he was a minor child of Tang Tieng. He further says that had his father lived on the day when his right to enter these Islands was inquired into, the appellant should have been entitled to enter the Philippines, by virtue of the juridical condition that should have been transmitted to him as a minor child of a resident Chinese merchant. (*Tan Lin Jo vs. Collector of Customs*, 32 Phil., 78.)

The object of the law in granting a minor child of a resident Chinese merchant the privilege to enter the Philippines is to give said minor child the opportunity to enjoy the company and protection of his father (*Lo Po vs. McCoy*, 8 Phil., 343), and according to the jurisprudence of this court, the minor children of a resident Chinaman, who having left the Philippines died in China, said children not having resided in these Islands, cannot enter the Philippines after the death of their father. (*Lee Jua vs. Collector of Customs*, 32 Phil., 24.) But in the instant case the father of the applicant was a Chinese merchant resident of the City of Manila when he arrived a minor. According to the doctrine laid down in the case of *Lo Po vs. McCoy*, supra, the applicant has the right to enter the Philippines. His right must be determined as at the time of his arrival in these Islands. The fact that his father returned to China where he died one year after the arrival of his child, does not affect the question. If under

the circumstances of this case the applicant may be deprived of his right because the board of special inquiry of the customhouse did not make the investigation of the application but two years after his arrival, another immigrant 20 years old, a child of a Chinese merchant and resident of the Philippine Islands, might likewise be deprived of the right to enter and remain here through a dilatory proceeding of the board in charge of the investigation of his application. This would be highly unjust. In the instant case, the fact of the board of special inquiry having delayed the investigation up to two years after the arrival of the applicant, and the denial of the application based on facts which took place one year after the arrival of the applicant constitute an abuse of discretion on the part of the board of special inquiry of the customhouse in the determination of the right of the appellant.

The judgment appealed from is reversed, and it is ordered that the applicant be released, for in our opinion he has the right to enter and remain in the Philippines as a minor child of a Chinese merchant resident of the City of Manila at the time of his arrival. No special pronouncement as to costs is made. So ordered.

Johnson, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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