

**K. D. LAW, PLAINTIFF AND APPELLANT, VS. JOAQUIN NATIVIDAD,
COLLECTOR OF CUSTOMS IN AND FOR THE PORT OF CEBU,
DEFENDANT AND APPELLEE.**

G.R. No. 23760, December 02, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu denying a petition for a writ of mandamus to compel the respondent Collector of Customs to issue a license to the petitioner as immigration broker at the port of Cebu.

The case was tried upon the following stipulation of facts:

"Come now McVean & Vickers, attorneys for plaintiff herein, and Gervasio Diaz, provincial fiscal of Cebu, attorney for the defendant herein, and stipulate and agree that the facts creating the issue in the foregoing action are as follows:

"1. That plaintiff is of legal age, a citizen of the Republic of China, and a resident of the municipality and Province of Cebu, Philippine Islands.

"2. That the defendant Joaquin Natividad is of legal age and a resident of the municipality and Province of Cebu and duly qualified Collector of Customs of the port of Cebu.

"3. That on December 8, 1908, the Insular Collector of Customs of Manila, Philippine Islands, issued Chinese Immigration Circular No. 218 which was to become effective 30 days after promulgation at each port and that paragraph 16 of said circular provided as follows:

" 'PAR. XVI. Nothing in this circular shall be construed to permit any person not a citizen of the Philippine Islands or of the United States to act as an immigration broker nor to give any employee in the office of an attorney at law greater rights than such employee would have before the Courts of First Instance, nor to give to any employees in the office of a duly licensed broker any right to appear before immigration officers in any other capacity than as a messenger.'

"4. That said circular was issued under authority of paragraph 5, section 19, Act No. 355, as amended, under which licenses for customs immigration brokerage shall be granted and revoked.

"5. That on the 23d day of February, 1909, the Collector of Customs at the port of Cebu issued General Order No. 3 which reads as follows:

" 'February 23, 1909.

" '

PROMULGATING CHINESE AND IM-

" 'GENERAL ORDER

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MIGRATION CIRCULAR NO. 218 AND

NO. 3

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APPOINTING BOARD FOR EXAMINA-

TION

" 'Paragraph I. Chinese and Immigration Circular No. 218 issued by the Insular Collector of Customs, Manila, P. I., December 8, 1908, is hereby promulgated to take effect at this port March 22, 1909, with the provision that persons not citizens of the Philippine Islands or the United States may apply for license as immigration broker, the provision contained in paragraph XVI of Chinese and Immigration Circular No. 218 to the contrary notwithstanding.

" 'Par. II. Persons desiring to obtain the license provided for in said circular should make due application in writing within the next ten days.

" 'Par. III. Mr. Harold Homan, acting deputy collector of customs, Mr. Sidney C. Schwarzkoff, chief immigration division, and Mr. Manuel Santibañez, inspector of customs, are hereby appointed a board as provided for by paragraph IV of C. I. Circular No. 218.

" 'Par. IV. The Board shall meet at such time and place as may be found convenient and carry out the instructions contained in paragraph V in said Chinese and Immigration Circular.

" 'COLLECTOR OF CUSTOMS'

"6. That pursuant to said General Order No. 3 above set forth, the plaintiff herein did within ten days of February 23, 1909, make application for a license to conduct an immigration broker's business and during the month of May, 1909, successfully passed an examination for qualification as an immigration broker and plaintiff, having thereafter executed the required bond in the amount of two thousand pesos, was issued a license to act as immigration broker on or about the 1st day of June, 1909.

"7. That the plaintiff continued to act as an immigration broker from the 1st day of June, 1909, until June 1, 1918, when his license was cancelled by the Collector of Customs of the port of Cebu on the ground that he was not a citizen of the Philippine Islands or of the United States of America.

"8. That thereafter on the 31st day of March, 1923, the plaintiff was reinstated and relicensed as an immigration broker by defendant herein as appears by a true copy of Exhibit A, filed herewith and made a part hereof, and continued to act as such until the 31st day of March, 1924, when the defendant herein refused to reissue a license to this plaintiff on the ground that he was not a citizen of the United States nor of the Philippine Islands as appears by a true copy of Exhibit B, filed herewith and made a part hereof.

"9. That the plaintiff is a person of good moral character and his general reputation is good; nor has plaintiff failed at any time to comply with the immigration laws and regulations; nor has he in any manner exceeded his authority

as an immigration broker; nor has he made misrepresentation in any manner to his clients, prospective clients, or the Government of the Philippine Islands; nor has he been guilty of illegal acts or objectionable methods in securing and transacting business; nor has he been guilty of irregularities; nor has he performed or committed any act which would justify the cancellation of his license.

"10. That the refusal on the part of the defendant herein to issue an immigration broker's license in favor of plaintiff on March 31, 1924, was pursuant to instructions from the Insular Collector of Customs at Manila based on a ruling on a protest filed by one Januario Ch. Veloso against the plaintiff herein on the ground that plaintiff was not a citizen of the United States or of the Philippine Islands and that the refusal on the part of the defendant, the Hon. Joaquin Natividad, was not based on his own decision but on orders from a superior officer, the Insular Collector of Customs.

"11. That it is within the province of this Honorable Court after a review of the law and facts involved in this case to determine whether or not the supervision over customs and immigration brokers practicing at the port of Cebu is by law conferred on the Insular Collector of Customs in Manila or the Collector of Customs at the port of Cebu.

"It is hereby agreed that the attorneys for the plaintiff shall file a written memorandum in support of their contention and one week after the fiscal shall file a written memorandum in support of the defendant's contention in this case."

Upon the facts so stipulated the court below held that the issuance of a license to the petitioner as immigration broker is a matter of discretion and cannot be enforced by mandamus; that paragraph 16 of Chinese Immigration Circular No. 218 was issued by authority of paragraph 5, section 19, of Act No. 355 and is still in force; and that General Order No. 3 issued by the Collector of Customs could not have the effect of repealing or modifying the prohibition contained in said Circular No. 218.

The appellant presents the following assignments of error:

"I. The court erred in holding that paragraph XVI, Chinese Immigration Circular No. 218, is applicable to the present case. II. The court erred in holding mandamus not the proper remedy. III. The court erred in refusing to grant the order of mandamus."

Under the first assignment, it is in substance argued that an immigration broker is not a customs house broker; that subsection 5 of section 19 of Act No. 355 relates only to customs house brokers and not to immigration broker; that therefore the Insular Collector of Customs, in undertaking to prescribe the conditions under which licenses for immigration brokers should be granted, exceeded his authority; and that under section 1157 of the Administrative Code, the granting of licenses for immigration brokers is entirely under the jurisdiction of the collector of customs of the port and is not subject to the control of the Insular Collector of Customs.

We cannot accept the appellant's view. Act No. 355 was expressly repealed by the final article of the Administrative Code, but that Code contains several provisions which in our opinion give the Insular Collector of Customs full supervisory control over the official acts of his subordinates, the collectors of the ports.

Section 550 of the Administrative Code provides that the "Director or other chief official in each Bureau or Office shall exercise the functions of chief executive and administrative officer thereof. It shall be his duty, under the immediate executive control, direction, and supervision of the proper Department head, to exercise general authority in all matters embraced within the jurisdiction of the Bureau or relating to the operation thereof and to see to the enforcement of all laws and regulations pertaining to it."

Section 1139 reads in part as follows:

"The general duties, powers, and jurisdiction of the Bureau of Customs shall include:

* * * * *

"(g) The enforcement of the customs laws and other laws of the United States or Philippine Islands relating to customs, commerce, navigation, immigration, and Chinese exclusion in and for said Islands, and the enforcement of the lawful quarantine regulations for vessels entering Philippine ports."

Section 1152 reads:

"At each principal port of entry there shall be a collector of customs who, under the supervision and control of the Insular Collector, shall be the official head of the customs service in his port and district and shall there exercise the functions of captain of the port.

"At Manila the Insular Collector and the Insular Deputy Collector shall respectively discharge the duties of collector of customs and deputy collector of customs for the said port."

In refusing to grant the license in question, the Collector of Customs of the port of Cebu acted under the instructions of the Insular Collector, the chief official of the Bureau of Customs, and under the provisions above quoted from the Administrative Code, there can be no doubt that he was in duty bound to obey such instructions.

In regard to the second and third assignments of error, it is sufficient to say that the granting of licenses to customs house or immigration brokers is left in the discretion of the customs authorities, and it is an elementary principle that discretionary action cannot be controlled by mandamus.

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

Avanceña, C. J., Street, Malcolm, Johns, and Romualdez, JJ., concur.

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