

ANTONIO CHUA CHIACO, IN BEHALF OF ONG TIO, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 30601. March 21, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

The Attorney-General cites and relies on Rule 10, subdivision 1, paragraph 1, of the Rules of October 1, 1926, governing the admission of Chinese, issued by the Bureau of Immigration of the United States Department of Labor, which provides:

"Alien Chinese wives of American citizens are not admissible to the United States because of the marital relationship, and obviously cannot be permitted to enter otherwise than of their own individual status under the Immigration Act of 1924. Alien wives of citizens of the Chinese race, who are themselves of races eligible to citizenship, are admissible in certain instances as non-quota immigrants (sec. 4, Immigration Act of 1924), in others as entitled to preference under the quota allotted to the country of their nationality (sec. 6, Immigration Act of 1924), and, in the absence of these exceptions, as immigrants under the general quota allotted to the country of their nationality. (See pp. 47 and 58 of the pamphlet entitled "Treaty, Laws, and Rules governing the Admission of Chinese)".

And then say& that the Immigration Act of February 5, 1917, which is the law in these Islands, was amended by the Immigration Act of 1924, section 25 of which now reads as follows:

"ACT TO BE IN ADDITION TO IMMIGRATION LAWS

"SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act."

He cites the case of *Chang Chan vs. Nagle*, Commissioner of Immigration (268 U. S., 346, 347), decided on May 25, 1925, in which that court held:

"1. Chinese women, being themselves ineligible to citizenship, do not become citizens of the United States by marrying American citizens. (Rev. Stats., sec. 2169; Act of Sept. 22, 1922, c. 411, 42 Stat., 1022, p. 351.)

"2, Chinese women who, before the date of the Immigration Act of 1924, married American citizens of the Chinese race permanently domiciled in this country, were debarred by the Act from coming here to join their husbands (no treaty right being involved), since section 13 (c) forbids admission of aliens ineligible to

citizenship, with certain exceptions which do not include such wives. (Page 352.)

"3. Such Chinese wives, coming here to join their husbands, are immigrants as defined by section 3 of the Act. (Page 352.)

"4. That consular officers must issue them visas does not signify that such wives must be admitted—in view of section 2 (g) of the Act, expressly declaring that an immigration visa shall not entitle an immigrant to enter if upon arrival he is found inadmissible under the immigration laws. Id,

"5. The provision of section 4 of the Immigration Act, 1924, classifying wives and minor children of citizens of the United States residing here, etc., as non-quota immigrants, cannot be incorporated among the exceptions of section 13 (c) upon the theory that it was omitted by oversight. Id.

"6. The hardships of a case, and suppositions of what is rational and consistent in immigration policy, cannot justify a court in departing from the plain terms of an immigration act. (Page 353.)"

Based thereon, he contends that the judgment of the lower court should be reversed.

The petitioner contends that in applying for admission Ong Tio does not claim Filipino citizenship; that she came here to live with her husband and to enjoy his company, care and attention; that the Immigration Act of 1924, cited by the Attorney-General does not apply to the Philippine Islands, and points out that section 28 of Act of 1924, among other things, provides:

'SEC. 28. As used in this Act.—

(a) The term 'United States' when used in a geographical sense, means the territories of Alaska and Hawaii, the District of Columbia, Porto Rico, and the Virgin Islands; and the term 'Continental United States' means, the States and the District of Columbia;"

And points out that the immigration laws now in force in these Islands are "Chinese and Exclusion Laws" as reenacted and extended by the Act of Congress of April 29, 1902, and the Immigration Act of February 5, 1917, and that the Immigration Act of 1924 is not enforceable.

Rule 9a, subdivision 1, of the Rules of May 1, 1917, governing the admission of Chinese, issued by the Department of Labor, provides:

"The lawful wife of an American citizen of the Chinese race may be admitted for the purpose of joining her husband, and the lawful children of such a citizen partake of his citizenship and are therefore entitled to admission. In every case convincing proof of citizenship and relationship shall be exacted."

Section 5 of the Organic Act, known as the Jones Law provides:

"That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

We agree with the respondent that the Act of the United States Congress of 1924 does not apply to the Philippine Islands, and that the "Chinese and Exclusion Laws" now in force here are those which were reenacted and extended by the Act of Congress of April 29, 1902, and the Immigration Act of February 5, 1917.

It is very significant that section 28 of the Act of 1924 above quoted does not mention or refer to the Philippine Islands, and that section 5 of the Jones Law above quoted specifically provides that the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands when their application is not specifically provided for in the act.

It follows that the Chinese wife of a Filipino citizen of the Chinese race has the legal right to admission and to

reside with her husband in this country, not on the theory that by reason of the marriage, she is a citizen of this country, but by reason of the fact that her husband is a citizen of this country.

The decision of the board from which the appeal was taken finds in substance, and the brief of the Attorney-General assumes, that the petitioner and Ong Tio are husband and wife. The only proof on that point is the oral testimony of the petitioner and Ong Tio, both of whom testified that they were legally married according to the Chinese customs in Teng Tang, China, on February 10, 1927. That is the only evidence of their marriage, the legal proof of which is not contested by the Attorney-General. Be that as it may, in this class of cases, to prevent fraud and collusion, the evidence of the contracting parties should be corroborated by that of some other person or some official certificate. In other words, there should be some other competent evidence of a convincing nature which corroborates that of the contracting parties as to the existence of the marriage. If in truth and in fact there is a valid marriage in China under the laws and customs of that country, it would be a very simple and easy matter for the petitioner to produce clear and convincing proof of that fact by either oral or documentary evidence, in addition to that of the contracting parties.

The judgment of the lower court, granting the writ, is affirmed, without costs. So ordered.

Johnson, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Street, J., concurs in the result.

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