

YU CHI AY AND CHUA SENG, PETITIONERS AND APPELLEES, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.*G. R. No. 32075. February 17, 1930*

Ponente: ROMUALDEZ, J.

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<!--The immigrants Yu Chi Ay and Chua Seng, applied on April, 1927, for admission into the Philippines as daughter and wife, respectively, of Yu Ak. The board of special inquiry, and later, the Insular Collector of Customs, denied their application for lack of proof that Yu Ak was a merchant.

The petitioners resorted to the Court of First Instance of Manila for a writ of habeas corpus, which was granted by said court. The Insular Collector of Customs appealed to this court from the judgment granting said relief, and now contends that the lower court erred in holding, in view of the facts of record, that Yu Ak is entitled to bring in his aforesaid daughter and wife, without the proper certificate.

This resident, Yu Ak, was not a merchant on April 1, 1927, when the appellees arrived and filed their application, although he then had a certificate of customs wherein he was classified as a person other than laborer. Such a certificate does not place him among the exempted class, which comprises government officials, ministers or teachers of religion, missionaries, attorneys, physicians, chemists, civil engineers, teachers, students, writers, artists, merchants, travellers for curiosity or pleasure (*Singh vs. Collector of Customs*, 38 Phil., 867), without including those persons classified under the general negative denomination of "persons other than laborers."

Counsel for the appellees cites the case of *Tan vs. Collector of Customs* (G. R. No. 15465)[1]; but it must be taken into account that in that case the court said:

"We think it must be held that the petitioner is a merchant, and that as such he is fully authorized to bring his wife and infant daughter into the country."

It follows, therefore, that said decision was based on the finding that the petitioner was a merchant, while in the present case, neither the appellees nor their father and husband, respectively, upon whose qualifications for admissibility they depend, are merchants.

It has been proved, however, that said Yu Ak became a merchant after the appellees arrived in the Islands. Although this character of merchant does not support the admission of said appellees into the Philippines on April 1, 1927, because that condition did not then exist, it would now be sufficient ground for granting a petition for admission, should they desire to file it, provided, however, that said condition exists at the time of said petition.

Wherefore, the judgment appealed from is reversed, without prejudice to the appellees' right to reiterate their petition for admission into the Philippines. Without express pronouncement of costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa- Real, JJ., concur.

[1] Promulgated May 29, 1919, not reported.

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