

RI TONG (ALIAS NG BENG TONG) AND CHUA SIU NA, PETITIONERS AND APPELLEES, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 32160. February 17, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

<!--This appeal is taken by the Insular Collector of Customs from the judgment of the Court of First Instance of Manila granting the petition for the writ of habeas corpus filed by Ri Tong (alias Ng Beng Tong), and Chua Siu Na, ordering that they be set at liberty, and holding that they are entitled to enter and remain in the Philippine Islands.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below:

"1. The trial court erred in holding that Ri Suy was entitled to bring in the petitioners, as his minor son and wife, respectively, without the 'section six certificate.'

"2. The trial court erred in granting the writ of habeas corpus."

The following facts were proved at the trial without dispute: Ri Tong (alias Ng Beng Tong), and Chua Siu Na, both of Chinese nationality, arrived in these Islands on October 21, 1927 and applied for admission as the minor son and the wife, respectively, of Ri Suy, an alleged Chinese merchant residing here. The investigation made by the Customs Board of Special Inquiry on March 1, 1929 showed that on October 10, 1919, the chief of the immigration division of the Bureau of Customs issued in favor of Ri Suy a certificate of landing and residence, duly approved by the Collector of Customs of the Port of Manila, as the 18-year old minor son of a resident Chinese merchant, not a laborer. According to internal revenue tax certificate, Exhibit C-1, issued by the Bureau of Internal Revenue, Ri Suy began business only during the second quarter of 1918, and withdrew on December 31, of the same year. On the same date, March 1, 1929, Ri Suy applied under oath to the Insular Collector of Customs, for an indorsement showing that he is a resident Chinese merchant entitled to admission into the Philippine Islands, after a temporary absence therefrom, in accordance with section 6 of the Act of Congress of November 3, 1893. The application having been denied by the chief of the division having charge of the matter, on the ground that he had been engaged in business for less than one year, Ri Suy appealed to the Insular Collector of Customs. Upon the strength of the denial of the application for indorsement filed by Ri Suy as a merchant, the board of special inquiry denied the application for admission filed by Ri Tong (alias Ng Beng Tong) and Chua Siu Na, as minor son and wife, respectively, of Ri Suy. On appeal from this decision of the board of special inquiry to the Insular Collector of Customs, the latter confirmed said decision on April 2, 1929. Later on, that is, on August 12, 1929, the Insular Collector of Customs sustained the appeal with respect to the indorsement, and indorsed Ri Suy as a Chinese merchant (Exhibit C).

The only questions to be decided in this appeal are: (1) Whether the wife and a minor child of a Chinese merchant who was not a merchant at the time said wife and minor child arrived in these Islands and applied for their

admission, may be admitted without the certificate required by section 6 of the Act of Congress of July 5, 1884; and (2) whether the Insular Collector of Customs abused his power, discretion, or authority in denying the petition for admission filed by the appellees.

Section 6 of the Act of Congress of July 5, 1884, provides:

"SEC. 6. That in order to the faithful execution of the provisions of this Act, every Chinese person, other than a laborer, who may be entitled by said treaty or this Act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued and that such person is entitled by this Act to come within the United States. If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: Provided, That nothing in this Act nor in said treaty shall be construed as embracing within the meaning of the word 'merchant', hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation. If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired. The certificate provided for in this Act, and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be vided by the indorsement of the diplomatic representatives of the United States in the foreign country from which said certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same. Such certificate vided as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities."

This court, construing this legal provision in the case of *Tan Guan Sien vs. Collector of Customs* (31 Phil., 56), held:

"Aliens; Chinese Exclusion and Deportation; Change of Status after Attempt to Enter.—The right of a Chinese alien to enter territory of the United States depends upon his status at the time of his application. If he was not a merchant at that time, he is not permitted to enter on the theory that he became a merchant during the time when he was waiting for the decision of the proper authorities."

As we have seen, Ri Suy, father and husband of Ri Tong (alias Ng Beng Tong), and Chua Siu Na, respectively, had been engaged in business only during the three last quarters of the year 1928. Therefore, when the applicants arrived at the port of Manila, and filed their petition for admission on October 21, 1927, Ri Suy was not yet a merchant, and, according to the law and ruling above quoted, his wife and his minor child, respectively, were not entitled to enter the Philippine Islands. The fact that he afterwards became a merchant does not cure the defect,

nor does it give his wife and son the right to enter the Philippine Islands under the original application without the certificate required by section 6 of said Act of Congress of July 5, 1884.

As to the second question, in view of the fact that Ri Suy has not been indorsed as a merchant by the Insular Collector of Customs when the investigation was made in connection with the petition for admission filed by the appellants, nor when the board of special inquiry denied said petition on March 1, 1929, nor when said decision of the board was confirmed by the Insular Collector of Customs on April 2, 1929, the latter did not abuse his discretion, for the reason that, although on August 12, 1929, the Collector of Customs sustained the appeal of Ri Suy and indorsed him as merchant, he had at that time already lost jurisdiction over the petition, because the applicants had asked for a writ of habeas corpus from the Court of First Instance of Manila.

There can be no doubt that as Ri Suy subsequently acquired the character of a Chinese merchant residing in the Philippine Islands, and was so indorsed by the Insular Collector of Customs, his wife and child also acquired the right to be admitted into the Philippine Islands.

For the foregoing considerations, we are of the opinion and so hold: (1) That the wife and minor child of a Chinese resident of the Philippine Islands, who was not a merchant at the time said wife and minor child filed their petition for admission, are not entitled to be admitted upon such petition, notwithstanding the fact that said Chinaman was later on indorsed as merchant after the denial of the petition; and (2) that the Insular Collector of Customs did not abuse his discretion in denying said application under such circumstances.

By virtue whereof, the judgment appealed from is reversed, without prejudice to the applicants' right to renew their petition for admission, without costs. So ordered.

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

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