

JOSE FERNANDEZ UY TANA, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 35129. August 16, 1931

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Sia Pag, a 15-year old Chinese girl, instituted these habeas corpus proceedings through Jose Fernandez Uy Tana, to obtain the annulment of the decision rendered by the respondent Insular Collector of Customs ordering her deportation, and to obtain her liberty.

The court of origin found that the petitioner had not been given a fair, full and impartial hearing by the board of special inquiry, and that both the latter and the respondent exceeded their authority and discretion, and ordered both to grant the petitioner a new hearing. The respondent appealed, and the Attorney-General, who represents him in this instance, makes the following assignment of errors:

"I. The lower court erred in ordering a new hearing when such remedy was not even invoked by the appellee after the decision of the respondent-appellant was handed down confirming the recommendation of the board of special inquiry ordering the deportation of the Chinese girl, Sia Pag, on the ground that she had secured her landing in the Philippine Islands through fraudulent representations.

"II. The lower court erred in allowing, over the objection of counsel for respondent-appellant, attorney Ernesto Zaragoza to testify on facts not appearing in the record of the proceedings had before the board of special inquiry (Exhibit A), and in basing its decision on the said testimony of attorney Zaragoza to the effect that the said Sia Pag was not granted a full, complete, and impartial hearing.

"III. The lower court erred in not dismissing the petition for a writ of habeas corpus."

The material facts, as they appear from the agreed statement of facts made by both parties and from the proceedings of the board, are as follows:

On September 22, 1930, the petitioner arrived at the Port of Manila on board the steamship Susana from Amoy, China. On the 24th of the same month, a board of special inquiry passed upon her right to enter and found that she was entitled to reside in the country as the minor daughter of her father, Sia Hoat Lian, a Chinese merchant, with a certificate of residence, Exhibit E. On the 17th of December of the same year, having received complaints to the effect that the petitioner was engaged in prostitution, the respondent issued a warrant for her arrest, Exhibit B, and ordered the board of special inquiry to inquire into the truth of the charges. The petitioner was detained and submitted to an investigation during which she was represented by attorney Ernesto Zaragoza; evidence was taken, and as it failed to prove her guilty of the immoral conduct imputed to her, the board sought evidence within that investigation to show that she had obtained a certificate of residence through false representations or fraud; and, without first informing her of this new accusation or giving her an opportunity to defend herself and adduce rebuttal evidence, found her guilty of this new charge, and recommended that she be deported at the first opportunity. The respondent, as Insular Collector of Customs, adopted the recommendation, found the petitioner guilty of having obtained a certificate of residence

by fraud, and ordered her immediate deportation.

The objection of the petitioner's counsel to the consideration of any evidence tending to show the new accusation or any other sort of that set forth in the warrant of arrest which served as a complaint or denunciation, and the rulings of the board are found in the minutes of the same, as follows:

"Note by Attorney Zaragoza

"The detained herein is being investigated because she is supposed to be dedicated to prostitution as per information given me that the warrant of arrest says so. If this is the case, I oppose to all or object to all questions that may not have direct connection with the case under which she is being investigated.

"The board: Objection denied. The last question is not impertinent as it may lead to the determination of the question as to whether or not the girl is engaged in prostitution. The detained may answer the question.

"Attorney Zaragoza: Exception. I ask for the reconsideration of the preceding resolution of the board unless the member who asked the question specifies the reason or reasons of the question, or its object.

"The board: Objection denied. The detained may answer the question."

In the board's report, also, the following, among other findings, appear:

"The board has made a careful consideration of all the facts and circumstances of this case and has found nothing of record to substantiate the charges that the girl in question was engaged in prostitution in the City of Manila. There is no proof that the girl had ever plied this disgraceful trade. The only evidence which would cast some doubt upon the reputation of the girl was the testimony of agents Lazcanotegui and Tan Heng that she lived in the New Chicago Hotel with a Chinese person named E. C. Lim, but this statement has not been substantiated as Lazcanotegui and Tan Heng did not have a chance to see the girl and her companion and were not able to effect the arrest in said hotel. Furthermore, these two customs secret service agents, according to their own testimony, had no information at all that the girl in question was leading an unclean and immoral life. The board is, therefore, of the opinion that the charges of prostitution preferred against the girl have not been established, and it is believed that it would be a miscarriage of justice and a violation of law to deport her on this ground.

"In the course of investigation, however, another aspect of the case has presented itself which, in our minds, deserves serious consideration. We refer to various discrepancies in the statement of the girl in these proceedings as compared with her testimony at the time of her landing on September 24, 1930. (C. B. R. No. 3646-3.)

"In view of the foregoing, the board finds that she is not the minor daughter of Sia Hoat Lian, a resident Chinese merchant, and that she succeeded in securing her landing as such daughter through false representations. It is, therefore, recommended that she be deported to China by the first available transportation under the provisions of section 19 of the Immigration Act of February 5, 1917."

And in the decision of the respondent, the following statements are likewise found:

"This case coming on for determination by the undersigned in his official capacity as Insular Collector of Customs, and it appearing that warrant of arrest No. 1884 was duly issued by the Insular Collector of Customs at Manila, P." I., on December 17, 1930, charging that the above-mentioned alien is engaged in prostitution, in violation of the Act of Congress of February 5, 1917, and commanding that she be brought before a board of special inquiry sitting at this port for an investigation of the question as to whether she ought to be deported from the Philippine Islands, and it appearing further that the above-mentioned alien was duly taken into custody by authority of said warrant of arrest and brought before such board of special inquiry, duly appointed, and that she was given a hearing before such board, and having full opportunity to show cause why she should not be deported, and the said board having kept a record of the proceedings of said hearing, including all of the minutes of the testimony taken and other evidence offered, and the board having duly reported its findings and

recommendation in the matter, and the said record having been duly forwarded to the undersigned to determine whether or not a warrant of deportation shall issue; Now, therefore, after reviewing the said record and considering all the facts and circumstances of the matter, and being fully advised in the premises, it is found and determined:

"That the Sia Pag is a resident of this country, holder of landing certificate of residence; that the charges of prostitution preferred against her have not been established, but that she succeeded in securing her landing as the minor daughter of Sia Hoat Lian, a resident Chinese merchant, through false representations.

"Wherefore, it is adjudged and decided:

"That the said Sia Pag has entered this country unlawfully, in violation of section 19 of the Act of Congress, approved February 5, 1917."

It will be observed that in both documents the following points are acknowledged to be true: (a) That the petitioner had obtained a certificate of residence which authorized her to live in this country; (b) that such certificate had not been cancelled; (c) that the petitioner was submitted to investigation upon the charge of prostitution; (d) that the evidence did not establish the charge, for which reason the board recommended that she be exonerated, as indeed, she was, by the respondent; and (e) that in the same investigation, and without the filing of any charge or complaint to that effect, but realizing that the charge of immorality had failed for lack of proof, the board, without being authorized by the Insular Collector of Customs, sought evidence against the petitioner in spite of the vigorous protest and objection of the latter's counsel, and finding it sufficient to show that she had obtained her certificate of residence by means of false representations, recommended her deportation.

One thing stands out in the consideration of this case, and that is, that the respondent and the board did not inform the petitioner or her counsel of the nature of the accusation of which she was later found guilty, and for which she is to be deported. Legally, she was deprived of a substantial right to the extent of being denied a fair, full, and impartial hearing. No such hearing could have been given at the investigation made by the board of special inquiry of the petitioner, wherein she was not informed of the nature of the accusation, evidence was taken to support an accusation different from that charged to her over the objection and protest of her counsel, she was not given an opportunity to defend herself, and, finally, she was found guilty of a violation entirely different from that which gave rise to the proceeding. The investigation was not made to determine the petitioner's right to enter and remain in this country, where the burden of proof was upon her, but to inquire whether she was guilty of prostitution and had violated section 19 of the Act of the United States Congress of February 5, 1917. For this reason, the offense imputed to the petitioner had to be proved by the complainant, the Insular Collector of Customs, who issued the warrant of arrest, or the board of special inquiry itself.

Investigations made by the boards appointed by the Insular Collector of Customs to determine the right of an alien to enter and reside in the country, and to try violations of the Immigration Law with a view to deporting the offender, are quasi-judicial, and we have so held in several cases. In *Bayani vs. Collector of Customs* (37 Phil., 468), we said:

"An alien seeking to enter territory of the United States, even though the hearing is summary, is entitled to a free, full, and fair hearing before he is denied the right to enter. The right to a hearing includes the right to have the evidence considered by the board. He is not only entitled to have the evidence which he presents considered, but he is entitled to present all of the evidence which he has and which is germane to the question of his right to enter. While the board of special inquiry is not technically a judicial body and the procedure is not technically judicial, nor are the proceedings defined by any particular rules or statutes, nevertheless, the board is required, under the procedure which it adopts, to give the immigrant or the alien an opportunity to show by proof that his request should be granted. (*Edwards vs. McCoy*, 22 Phil., 598.)"

And in the same case of Bayani, *supra* (p. 471), it was also held:

"While the hearings before the board of special inquiry are summary in that no special pleadings, etc., are required, they are, nevertheless, judicial in character, and the persons tried by such a board are entitled to a full, free, and fair hearing just as in any other cases where the rights of individuals are being inquired into. Such individuals have the right to be represented by an attorney, if they so desire. They have a right to present witnesses to support their request to enter. Their attorney has a right to present whatever pertinent questions he may desire to such witnesses, as will demonstrate or will tend to show the right of the immigrant to enter the country. (*Edwards vs. McCoy*, 22 Phil., 598; *Ang Eng Chong vs. Collector of Customs*, 23 Phil., 614; *Go Kiam vs. Collector of Customs*, G. R. No. 7099; *Loo Bun Hian vs. Collector of Customs*, G. R. No. 7074; *Lim Yiong vs. Collector of Customs*, 36 Phil., 424; *Ex parte Lam Pui*, 217 Fed. Rep., 456; *Jouras vs. Allen*, 222 Fed. Rep., 756; *U. S. vs. Ruiz*, 23 Fed. Rep., 431 [?]; *Ex parte Petkos*, 212 Fed. Rep., 275; *Ex parte Ung King Ieng*, 213 Fed. Rep., 119; *Lim Ching vs. Collector of Customs*, 33 Phil., 186; *Ex parte Gregory*, 210 Fed. Rep., 680; *Louie Dai vs. U. S.*, 238 Fed. Rep., 68, 74; *Ex parte Lee Dung Moo*, 230 Fed. Rep., 746; *Ex parte Tom Toy Tin*, 230 Fed. Rep., 747; *Ex parte Chin Loy You*, 223 Fed. Rep., 883; *Ex parte Wong Foo*, 230 Fed. Rep., 534.)"

It is therefore clear that, since the petitioner was not previously informed of the nature of the accusation for which her deportation was ordered, since she was submitted to an investigation based upon an entirely different ground from that which gave rise to the proceeding, without giving her an opportunity to defend herself and to produce evidence, said petitioner was not afforded a fair, full and impartial hearing in accordance with the cases cited above, and the other cited therein.

In view of the foregoing the third and last assignments of error made by the appellant are refuted, and the second need not be considered. With regard to the first, we are of opinion that the new hearing was properly ordered by the court *a quo*. The Immigration Law does not prescribe the form in which a complaint or accusation for its violation is to be made, and it is sufficient if it so informs the defendant as to afford him an opportunity to defend himself and adduce evidence, if he wishes to do so.

The decision appealed from is affirmed, and it is ordered that the respondent grant a new hearing or re-investigation to the petitioner with the opportunity of presenting any evidence she may desire to avail herself of; without special pronouncement of costs in this instance. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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