

YU PIAN, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 37107. March 04, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a decision of the Court of First Instance of Manila granting the appellee a writ of habeas corpus and commanding the appellant to release him from custody.

The petition alleges that the petitioner, who is a Chinese, was granted a landing certificate of residence by the Collector of Customs at the Port of Manila on July 18, 1924; that, notwithstanding said certificate, he was arrested and is being illegally detained by the respondent and in danger of being deported to China; that said arrest and detention by the respondent and the cancellation of his certificate without sufficient reason constitute an abuse of authority.

The return of the respondent (omitting caption) is as follows:

"Comes now the respondent Acting Insular Collector of Customs, thru the undersigned, and by way of return to the writ of habeas corpus issued in the above entitled cause, respectfully states:

"1. That Yu Pian is held in custody by virtue of a decision rendered, after proper investigation, by a duly constituted board of special inquiry sitting at the port of Cebu, ordering his deportation from the Philippine Islands on the ground that he entered the Philippines thru fraud and false representations, in violation of section 19 of the Act of Congress, approved February 5, 1917, which decision was confirmed by the Acting Insular Collector of Customs. The said decisions of the board of special inquiry and the Acting Insular Collector of Customs were made in the performance of their official duties pursuant to the Immigration Laws of the United States in force in this jurisdiction.

"2. That the said Yu Pian is restrained of his liberty by the Acting Insular Collector of Customs only for the purpose of enforcing the said Immigration Laws.

"Wherefore, the Acting Insular Collector of Customs, thru the undersigned, respectfully prays this Honorable Court to deny the petition for a writ of habeas corpus, with costs against the petitioner.

"Manila, February 16, 1932.

"Delfin Jaranilla

"Attorney-General"

The only evidence introduced by the petitioner is the original of his said landing certificate of residence, across the face of which, in red ink, are written the words "Cancelled, 1-18-32, See CBR". The fiscal, thereupon, moved for the dismissal of the case, which motion was denied by the court and judgment rendered for the petitioner as aforesaid.

The appellant assigns as error that the court below erred in not dismissing the case for lack of evidence as to the alleged abuse of authority by the respondent in ordering the petitioner's deportation as set out in the return. The appellee has filed no brief.

The court below seemed to be of the opinion that because the respondent offered no proof of the fraud and false representations of the petitioner in obtaining his certificate of residence, judgment must be rendered for the petitioner because his possession of such a certificate, previously issued to him, raises a presumption that he has a right to remain in the Philippine Islands. The decision seems to ignore the fact, which appears on the face of the certificate itself, that it was cancelled by the customs authorities before the petition for habeas corpus was filed. The true issue then for determination is whether or not said cancellation was illegal or, as alleged in the petition, an abuse of discretion on the part of the respondent who is vested by law with the supervision and enforcement of the immigration statutes.

In order to establish that there was such an abuse of discretion, the burden rests upon the petitioner to show the same from the record of the proceedings had before the said official. (See *Ty Buan vs. Collector of Customs*, 34 Phil., 937, 941; and *Tan Me Nio vs. Collector of Customs*, 34 Phil., 944, 946.)

The petitioner in this case, having failed to establish by proper evidence that the cancellation of his landing certificate was arbitrary or illegal, the petition should have been dismissed.

The judgment appealed from is reversed with costs against the appellee.

Avanceña, C. J., Street, Ostrand, and Abad Santos, JJ., concur.

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