

TOMAS ONG LIENGCO, IN BEHALF OF ONG LET, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.*G.R. No. 39480. October 10, 1933*

Ponente: ABAD SANTOS, J.

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On December 7, 1932, Ong Let, together with Ong Guat and Ong Sek, arrived at the port of Manila, and, after proper investigation conducted by the customs authorities, were allowed to land as sons of the herein petitioner, who is a citizen of the Islands. Subsequently, however, Ong Let, together with his alleged brothers, were charged with having secured admission into this country through fraud and fraudulent representations in violation of the Act of Congress of February 5, 1917. So far, only Ong Let has been arrested. After due investigation as to his right to remain in the country, the customs authorities ordered his deportation.

To obtain a review of the order of deportation, this petition was begun in the Court of First Instance of Manila. At the hearing of the case in that court, the only evidence presented was the record of the proceedings had before the customs authorities which resulted in the order of deportation. On the evidence thus adduced, the trial court granted the petition.

The question raised by this appeal is whether or not the respondent had the power to review his former order admitting Ong Let, and, if so, whether or not the order of deportation was in accordance with the law.

It has been held that an order of admission of an immigrant is not a conclusive adjudication, preventing subsequent deportation proceedings. (Ex parte Chin Own, 239 Fed., 391.) Such an order is not even a competent evidence in a subsequent proceeding for his deportation. (You Fook Hing vs. U. S., 214 Fed., 77; Ex parte Mac Fock, 207 Fed., 696; Lum Bing Wey vs. U. S., 201 Fed., 379.) In the United States, decisions in favor of the right to enter are not conclusive on the United States. (2 Corpus Juris, 1111; 2 Cyc., 130; 2 Ruling Case Law, section 54, p. 841.) Nor do they constitute res adjudicata. (Pearson vs. Williams, 136 Fed., 734-735; 202 U. S., 281; Ex parte Chun Wing, 18 Fed., 2d ed., 119; White vs. Chan Wy Sheung, 270 Fed., 764.)

The right of the courts to review proceedings of deportation or exclusion of aliens is limited to cases of denial of fair hearing or abuse of authority. (2 Corpus Juris, section 126, p. 1112.) The burden of proof is upon the petitioner to show that the customs authorities have abused their authority, power or discretion. (Tan Me Nio vs. Collector of Customs, 34 Phil., 944; Flores Tan vs. Collector of Customs, 33 Phil., 205). A mere assertion of citizenship is not sufficient to overcome the burden of proof cast upon an alien claiming the right to remain in the country. (Guan Lee vs. U. S., 198 Fed., 596.)

Applying the foregoing principles to the case before us, we notice that the only evidence presented by the petitioner is the record of the previous proceedings under and by virtue of which Ong Let was allowed landing. Ong Let was afforded ample opportunity to prove that the representations made by him in said proceedings were true, but he failed to take advantage of that opportunity and obstinately refused to testify as to the truth or untruth

of such representations. Moreover, an examination of the personal record of his alleged father, shows that he is not the son of the latter.

The judgment appealed from is reversed, with costs against the petitioner. So ordered.

Avanceña, C. J., Street, Vickers, and Butte, JJ., concur.

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