

LO PO, PETITIONER, VS. H. B. MCCOY, RESPONDENT.

G. R. No. 4002. August 08, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 29th day of April, 1907, the plaintiff presented in this court as an original action a petition for the writ of habeas corpus asking that the defendant bring the body of one Lo Toe before the court and to answer why the said Lo Toe was being detained by the said defendant. On the same day a writ of habeas corpus was issued directed to the defendant in compliance with the prayer of the said petition.

On the 2d day of May, 1907, the defendant brought the said Lo Toe before the court and presented his reasons for the detention of the said Lo Toe.

On the 3d day of May the attorneys for the respective parties filed the following stipulation of facts:

"I. It is agreed by counsel in this case that the Lo Toe mentioned in this petition and writ was born in the Empire of China twenty years ago, and that he and all his parents at birth were, ever since have been, and now are, subjects of the Emperor of China, and persons of Chinese race and descent.

"II. That the said Lo Toe has never been in the Philippine Islands before.

"III. That his father, Lo San, came to the Philippine Islands twenty-four years ago from his home in China and then took up a residence in said Islands, which said residence he has had and maintained ever since, without other interruption than periodical and temporary returns to his home.

"IV. That the said Lo San is of the class and status of merchants and has established his status in the manner required by law and regulation to the satisfaction of the immigration officers at the port of Manila, and that unless it be that the facts hereinafter stated constitute a bar, his son, the said Lo Toe has a right to enter the Philippine Islands at this time as the legitimate minor son of a resident Chinese merchant.

"V. That the said Lo San has been examined by a medical officer of the United States Marine-Hospital Service on duty at the port of Manila, who has had more than two years experience in the practice of his profession since receiving his degree as doctor of medicine, and who, being thereunto duly authorized, has certified in writing for the information of the immigration officers and the board of special inquiry that the said Lo San is suffering with trachoma, which is a loathsome or dangerous, contagious disease.

"VI. That the said Lo San has been examined by a board of special inquiry duly constituted, and thereunto duly authorized sitting at the port of Manila, and has been rejected by the said board on account of this aforementioned certificate of said officer of the Marine-Hospital Service.

"VII. That the said Lo Toe has been examined by a board of special inquiry duly constituted and thereunto duly authorized sitting at the port of Manila and has been rejected by the said board on the ground that the right of the said Lo Toe to enter the Philippine Islands is dependent upon the right of his father to land, and that, for the reason that Lo San has no right to enter, neither can the said Lo Toe have such right.

"VIII. That the said Lo Toe does not possess any certificate identifying him and evidencing the permission of the Chinese or any other Government, as provided in section 6 of the Act of Congress of May 6, 1882, as amended by the Act of July 5, 1884, nor any other documentary proof of a right to enter the Philippine Islands whatever.

"IX. That unless the facts above recited constitute an abuse of authority on the part of the board of special inquiry there has been no abuse of authority or other improper conduct on the part of any immigration officer in connection with either the case, of Lo San or that of Lo Toe.

"X. That the decision, of the board of special inquiry referred to in Paragraph VI above, was made on the 25th day of April, 1907, at Manila, and was then and there immediately communicated to said Lo Toe, who was also then and there duly and properly informed of his right to appeal from said decision within live days thereafter in accordance with the terms of the immigration regulations at the port of Manila (Chinese and immigration circular No. 186, 5 Off. Gaz., 290, which is hereto annexed and made a part of this stipulation) and due notation of these facts was made in the record of the proceedings of the board of special inquiry. That the attorney for the said Lo Toe appeared at the office of the board of special inquiry on the 20th or 27th day of April, was then and there informed of the date of hearing in this case and when the five days allowed by the regulations would expire, and then and there verbally announced his intention to appeal from the decision of the board of special inquiry. But that no written appeal from said adverse decision of the board of special inquiry has ever been taken by or on behalf of the said Lo Toe.

"XI. Further, that the admission that the boy is a minor is for the purpose of this case only, the board of special inquiry having expressed the opinion that he is not, without deciding the point. If the decision of this court on the facts above recited is that the said Lo Toe should not be deported, the said Lo Toe is to be remanded to the board of special inquiry in order that they may take a finding on the issue as to his minority.

(Signed) "DR. JOSE M. DE MARCAIDA,
"Attorney for Plaintiff.

"HARTFORD BEAUMONT,
"Attorney for Defendant."

On the 1st day of June, 1907, the vacation judge, before whom the said application was made, referred the questions presented in said application and agreed statement of facts, because of the importance of the same, to the Supreme Court, and the cause was presented to the Supreme Court on the .13th day of July, 1907.

In the agreed statement of facts it appears that Lo Toe had never been in the Philippine Islands-before the present attempt to enter; that he was the son of Lo San; that Lo Toe was twenty years of age; that Lo San had been a resident of the Philippine Islands for about twenty-four years prior to the date of this application; that said residence in said Islands had been continuous except for periodical and temporary visits to China; that Lo San would be entitled to reenter the Philippine Islands were it not for the fact that he is suffering with a loathsome and dangerous disease, to wit, trachoma; that Lo Toe as the minor son of Lo San would be entitled to enter the Philippine Islands had his father been entitled to enter; that Lo San had been examined by a medical officer of the United States Marine-Hospital Service, who had had more than two years experience in the practice of his profession, and had certified in writing to the board of special inquiry that the said Lo San is suffering with trachoma, a loathsome and dangerous disease; that said Lo San had been examined by said board of special inquiry and had been rejected by said board on account of said certificate of said officer of the marine service; that the said Lo Toe had been examined by said board of special inquiry and had been rejected by the said board on the ground that the right of the said Lo Toe to enter the Philippine Islands is dependent upon the right of his father, Lo San, to enter and that for the reason that Lo San had no right to enter, the son, Lo Toe, had no such right; that notice of the decision of the said board of special inquiry was given to the said Lo Toe on the 25th of

April, 1907, four days prior to the filing of the petition herein; that the said Lo Toe was duly informed of this right to appeal from said decision within five days thereafter, in accordance with the terms of the immigration regulations at the port of Manila; that the said Lo Toe did not avail himself of his right to appeal from the decision of said board of special inquiry.

This court, by decisions heretofore rendered, has settled the following propositions:

- (1) That the immigration laws of the United States in force in the Philippine Islands should be administered by the officers of the General Government thereof designated by the appropriate legislation of such Government. (In re Allen, 2 Phil.Rep., 630; Ngo-Ti vs. Shuster, 5 Off. Gaz., 137.[1])

The officers of the General Government of the Philippine Islands designated by said Government for the purpose of administering the immigration laws of the United States in force in the Philippine Islands are a board of special inquiry, consisting of three officials appointed from time to time by the Collector of Customs for the Philippine Islands. In the present case no question is raised as to the authority of this special examining board.

- (2) That the decision of the administrative officers, that a person seeking to enter the Islands is not entitled to enter, is final when no abuse of authority by such officers is alleged. (Ngo-Ti vs. Shuster; United States vs. Ju-Toy, 198 U.S, 253.)

The administration of the immigration laws belongs peculiarly to the executive branch of the Government and it has been repeatedly decided by the Supreme Court of the United States that the judicial branch of the Government will not interfere unless there has been an abuse of authority or a violation of the law. It has been repeatedly held that such boards of inquiry shall have authority to determine whether an alien who has been duly held shall be allowed to land or be deported and the decision of any two members of the board shall prevail and be final, but either the alien or any dissenting member of said board may appeal through the commissioner of immigration at the port of arrival to the Secretary of Commerce and Labor, whose decision shall then be final.

The contention that, if the decision of the proper parties in the executive branch of the Government is not final, if sustained would bring into the courts every case of an alien who claimed the right to come into United States territory under some law or treaty and who was denied that right.

This contention would defeat the manifest purpose of Congress in committing to subordinate immigration officers and the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into the country belongs to the class entitled by some law or treaty to come into the country or to the class forbidden to enter the territory of the United States. It was not the purpose of Congress to allow the courts to administer the law, but simply to prevent an abuse of authority given under the law. A mere refusal by the proper authorities to allow an alien to enter the territory of the United States is not an abuse of authority. The law permits the examining officer or board to examine the applicant for admission, and such other witnesses as may be presented, to hear their testimony, and to decide upon such testimony whether or not the applicant is entitled to enter. The authority to examine into the facts relating to the right of the applicant to enter implies the discretion to decide upon such evidence, and unless it is clearly proved that this discretion was abused for instance, that said officers or board refused to hear all of the testimony of such witnesses or refused to take into consideration certain evidence adduced the courts will refuse to take jurisdiction for the purpose of determining the questions presented to such officers or board, (In re Patterson, 1 Phil. Rep., 93; Rafferty vs. the Judge of the Court of First Instance, 4 Off. Gaz., 766. [1])

The respondent contends that the petitioner is not entitled to be heard by the court for the reason that he did not exhaust all the remedies afforded him by the Bureau of Customs of the Philippine Islands. The law gave the

petitioner the right of appeal to the Collector of Customs within five days after he received notice of the action of the board of special inquiry. We think this contention of the respondent is tenable. The petitioner had no right to appeal to the court, even admitting that there was an abuse of authority, until he had exhausted the remedies afforded him by the executive branch of the Government. The administrative remedies must first be exhausted before resort can be had to the courts. (United States vs. Sing Tuck, 194 U. S., 161; United States vs. Ju Toy, 198 U. S., 253; Ekiu vs. U. S., 142 U. S., 651.)

Under the facts agreed upon by the parties, it is admitted that the said Lo Toe was a minor and that he had no right to enter the Philippine Islands except upon the theory that he was a minor son of Lo San, who, except for the fact that he was found to be suffering from trachoma, a loathsome, dangerous, and contagious disease, would be entitled to enter the Philippine Islands. It seems quite clear, therefore, if the right of the son to enter was dependent upon the right of the father to enter, that in case the latter was not permitted to enter certainly the former could not be so permitted.

The objection might be urged that the disability of the father to enter was but temporary and that this temporary disability should not affect the right of the son. Whether this disability is temporary or permanent we can not decide. It is sufficient to say that the board of special inquiry has decided that the father, Lo San, can not enter the Philippines now, and therefore the son, Lo Toe, can not.

It is therefore the judgment of this court that the said Lo Toe be remanded to the custody of the Insular Collector, in order that the order heretofore made by the board of special inquiry may be carried out, without any finding as to costs. So ordered.

Arellano, C.J., Torres and Willard, JJ.concur. Tracey, J., concurs.

[1]7 Phil. Rep., 355.

[1]7 Phil., 164.

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