

CHUA GO, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 40684. February 17, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

On August 29, 1933, the board of special inquiry of the Bureau of Customs, after conducting an investigation for the purpose of determining whether or not the petitioner had the right to remain in this country, recommended his deportation, having discovered that he had succeeded in landing at this port, upon his arrival from China on October 28, 1932, through false statements relative to his filiation.

The respondent, to whom the recommendation of the board of special inquiry was submitted, after considering the evidence upon which said board based its conclusions, and acting in conformity with the aforesaid recommendation, ordered the arrest and deportation of the petitioner.

To prevent his deportation, the petitioner appealed to the lower court, demanding his release through habeas corpus proceedings. The said court, after considering the evidence upon which the board of special inquiry of the Bureau of Customs and the respondent based their conclusions, held that the petitioner was really entitled to the remedy sought by him and that the investigation conducted by the board in question was held in "an irregular manner unjust to the petitioner" and forthwith ordered his immediate release. The respondent appealed from the above judgment and order of the trial court contending that said court erred in ordering him to immediately release said petitioner.

The alleged irregularity in the investigation conducted against the petitioner by the board of special inquiry, to which the trial court refers, consists in the fact that when the petitioner's testimony was taken, he was not assisted by counsel nor informed of the nature of the investigation conducted against him, and that the testimony of Proceso Estacio, husband of Gregoria Maria, the alleged mother of said petitioner, was taken behind his back.

The evidence of record, which is the same as that considered by the board of special inquiry of the Bureau of Customs, shows that when the petitioner was summoned to appear before said board, he was clearly informed of the purpose of the investigation then to be conducted and was told that it was to require him to show cause, if any, why he should not be deported to his country. The questions asked and warnings given him for that purpose, and his answers thereto, are as follows:

"Q.

You are then hereby informed that you were arrested because you secured landing into this country through false and fraudulent representations and grant you this hearing in order to show cause, if any there be, why you should not be deported from this country. Do you understand it now?

—

A.

That is not true because I came here as a son of P. I. citizen.

"Q.

You were given a landing certificate by error or omission. We are now going to cancel this certificate and send you back to China. But before doing so, we want to give you a chance to show that you are really a son of a Filipina and are entitled to such certificate?

—

A.

I do not think that the Customhouse will make any mistake in granting me that certificate. I have already answered those questions and there is no use for me to answer any more."

The foregoing shows that the petitioner-appellee's first contention is unfounded. After he had been so notified and informed of the purpose of the investigation, there is no doubt that it was incumbent upon him to show cause, if any, why he should not be deported from the Islands. The general rule established by Act No. 702 is that every Chinese immigrant desiring to enter and reside in the Philippine Islands, should prove that he is entitled to that privilege. The reason for this is that the burden of proof rests upon the one who alleges a right. Such was the situation in which the petitioner placed himself after he had been informed that, unless he proved his right to remain in this country, he would be deported to China. The petitioner, instead of presenting evidence to show and convince the customs authorities that he was entitled to remain in this country, preferred to remain silent, confining his answer to the questions asked him by the board to the statement that he had already declared everything at the former investigation and that he did not want to say anything more. The following questions which were asked him and the answers he gave thereto, give an idea how the petitioner behaved during the investigation:

"Q.

Is not your mother a Chinese ?

—

A.

She is a Filipina.

"Q.

Where were you born?

—

A.

In China.

"Q.

When?

—

A.

I have stated already before.

"Q.

Can you not state it now?

—

A.

My mother knows it.

"Q.

But don't you know yourself the date when you were born ?

—

A.

I do not know to my mother for I have already stated it before.

"Q.

Where is your mother?

—

A.

In Paco.

"Q.

Do you know the house where she is living in Paco?

—

A.

I do not know the way to go.

"Q.

Have you ever been to the house of your mother in Paco?

—

A.

Yes, I have lived there before. I will not answer any more because I have already answered.

"Q.

Where are you living?

—

A.

In Santa Ana.

"Q.

After you left your mother in order to live in Santa Ana, did you see her again?

—

A.

I do not want to answer.

"Q.

Do you have any brother in this country?

—

A.

We are three brothers in this country.

"Q.

Are your two brothers in this country living with you?

—

A.

I do not want to answer any more.

"Q.

You must know that your alleged brother Chua Bao was also granted a certificate like the one you have, but this board which found him to have entered the Islands thru fraudulent means ordered his-deportation and the cancellation of his certificate?

—

A.

I know that my certificate has been issued by the board of special inquiry.

"Q.

Yes, but why don't you like to answer questions ?

—

A.

Before I have answered already so it is not necessary for me to answer again these questions.

"Q.

Did your mother visit you there?

—

A.

No."

The answers given by the petitioner tend to show that, because he had already been investigated once upon his arrival in the Philippines on October 28, 1932, and that as a result of said investigation a certificate of residence had been issued to him, he cannot now be deported, thereby implying that his certificate is in itself conclusive evidence of his right to remain in this country. The question thus raised by the petitioner-appellee is not new because it has already been decided adversely by this court in the cases of *Ong Liengco vs. Collector of Customs* (58 Phil., 554), and *Villava vs. Collector of Customs* (58 Phil., 962) not to mention that of *De Leon vs. Collector of Customs* (58 Phil., 579). Therefore, the fact that a certificate of residence was issued to the petitioner in 1932, is not a bar to his subsequent deportation to the place whence he came, if later it is established that he is not an immigrant entitled to remain in the Philippines, or that he succeeded in gaining admission to this country through fraudulent means. (*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; *Pearson vs. Williams*, 136 Fed., 734, 735; 202 U. S., 281.)

The contention that the petitioner-appellee was not informed of his right to be assisted by counsel, and that *Proceso Estacio's* testimony was taken behind his back, thus depriving him of the opportunity of being confronted by and of cross-examining said witness, is of no consequence, on the ground that such rights are recognized only in criminal proceedings (sees. 17 and 15 of General Orders, No. 58); and furthermore, it is a doctrine already established by this court that deportation proceedings do not constitute a criminal action (*U. S. vs. Yap Kin Co*, 22 Phil., 340; *U. S. vs. De-los Santos*, 33 Phil., 397; *Molden vs. Collector of Customs*, 34 Phil., 493). From the foregoing it follows that there was no irregularity in the procedure followed by the board of special inquiry of the Bureau of Customs in taking the petitioner-appellee's testimony without assistance of counsel and that of *Proceso Estacio* behind the petitioner's back especially when it is taken into consideration that he made it understood at the second investigation that he was not willing to say anything more than what he had already stated at the first investigation. In view of the foregoing and of the fact that, according to *Proceso Estacio's* testimony, his wife *Gregoria Maria*, whom the petitioner claims to be his mother, never had any Chinese son, and of the further fact that said woman's testimony at the former investigation was false because she had never lived at 553 P. Herrera Street, as she testified, nor has she a Chinese husband nor is she the petitioner's mother, all of which show the

falsity of the statements made by the petitioner's witnesses during the aforesaid former investigation, this court is convinced that neither the board of special inquiry of the Bureau of Customs, nor the Collector of Customs acted arbitrarily, the former in recommending, and the latter in ordering the petitioner's deportation.

Wherefore, the appealed judgment is hereby reversed, with the costs against the petitioner, and it is hereby ordered that said petitioner again be placed in the custody of the respondent. So ordered.

Steeet, Villa-Real, Abas Santos, and Butte, JJ., concur.

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