

LIM SON ET AL., PETITIONERS AND APPELLEES, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 41498. September 21, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

The petitioners claim the right to enter the Philippine Islands as the wife and minor children of Ong Tay Jong, a resident Chinese merchant. They were given a hearing by a board of special inquiry, which denied them admission in the following decision:

"The applicants, Lim Son, female, 31 years, Ong Tec Yong, female, 5 years, Ong Le Te, male, 10 years, Ong Le Gee, male, 18 years and Ong Chuy Suan, female, 20 years, who arrived on board the S/S Anking, October 7, 1933, except Ong Chuy Suan, who arrived on March 25, 1933, are seeking admission into this country as wife and children, respectively, of one Ong Tay Jong, an alleged resident Chinese merchant. Ong Tec Yong was not required to testify on account of her tender age.

"Upon reviewing the testimonies of the applicants and that of their alleged father and husband, the following substantial contradictions have been found:

"1. Ong Le Gee, one of the applicants, testified before the board that they had no family picture in their home in China while his sister Ong Chuy Suan, also one of the applicants, declared that they had a family picture which was still hanging in the wall of their house in China. When she left in such a position that occupants of said house could see it and further declared that Ong Le Gee is one of the persons appearing in the said family picture.

"2. Lim Son, one of the applicants and an alleged wife of Ong Tay Jong, testified that she was married to Ong Tay Jong on C. R. 11-8-15 (Oct. 5, 1922) while her alleged husband, Ong Tay Jong, declared that he married to Lim Son on October 10, 1922.

"Furthermore, Lim Son, declared that her husband, Ong Tay Jong, was in this country when their daughter Ong Tec Yong was born in China and same was corroborated by her alleged husband, while the rubber stamp at the back of C. R. No. 566/2814 of Ong Tay Jong shows clearly that he (Ong Tay Jong) was in China during the birth of Ong Tec Yong as per Spl. Ret. Cert. No. 76801 issued in his favor on November 7, 1927, and returning here on Feb. 11, 1930.

"Observation of the Board:

"Applicants, Ong Le Gee and Ong Chuy Suan, alleged brothers and sisters and minor children of Ong Tay Jong appear in the opinion of the board to be younger and older, respectively, than the ages they have given. The former in the opinion of the board is only 14 to 15 years old, while the latter is believed to be about 22 and 23 years old. We submit the persons of the herein applicants to the reviewing authorities as the proper evidence.

"It is the opinion of this board that the claims of the applicants are unbelievable in view of the fact that their

alleged father and husband declared in this investigation that he is an employee in the Bureau of Internal Revenue as Chinese Accountant since 1925 up to the present time and that he had no proof to show that he is still a merchant. Being not a merchant, Ong Tay Jong, their alleged father and husband, cannot, therefore, bring in this country the members of his family residing abroad. Besides, he could not present license to show that he is still engaged in business. In the absence of the above mentioned document, Ong Tay Jong could not be considered to possess a merchant status to entitle him to bring his family in this country.

"The mere fact that he had been indorsed before does not confer upon him the same privilege which he has otherwise lost by his change of status. His prior indorsement merely protects and guarantees his return into the country even tho he subsequently became a laborer or a bankrupt but it could not be in anyway considered to include the rights of his children when his changed of status took place long ago. This holding is believed to be in conformity with the established policy of this Office and is also considered to be in accord with the essence of the Immigration Laws.

"Being a clerk we are of the opinion that he belongs to the class of skilled laborers. Hence, he is not entitled to the privilege of the exempt classes.

"In view of the foregoing, the applicants, are hereby denied admission.

"The applicants and their attorney, Mr. Francisco T. Koh, are hereby informed of this decision and further informed that they have two days within which to appeal to the Insular Collector of Customs should they feel dissatisfied therewith."

The petitioners then appealed to the respondent, the Insular Collector of Customs, who overruled their appeal and ordered that they be returned to their port of embarkation.

They next applied to the Court of First Instance of Manila for writ of habeas corpus, which was granted by Judge Pedro Concepcion, who found that the contradictions in the testimony of the petitioners noted by the board of special inquiry were immaterial; that the board abused its discretion in stating, without giving any reason therefor, that Ong Chuy Suan and Ong Le Gee appeared to be younger and older, respectively, than they represented themselves to be; that the board denied the petitioners admission because Ong Tay Jong, the husband of Lim Son, and the father of the other petitioners, was an employee of the Bureau of Internal Revenue and did not prove that he was still a merchant; that if it is admitted, as it is, that Ong Tay Jong has the right to remain in the Philippine Islands' because he was a merchant when he entered this country, and if his right to remain here has not been lost, and would not be lost even if he had become a laborer through financial reverses, it is unquestionable that his wife and children have the right to enter and reside in these Islands, because such right is the necessary consequence of Ong Tay Jong's right to reside here, citing the case of *Lim Pue vs. Collector of Customs* (33 Phil., 519); that if a Chinese, who has become a laborer, has the right to bring in his family, with more reason has Ong Tay Jong that right because he is not a laborer, but a Chinese accountant in the Bureau of Internal Revenue, and that an employee Who renders services to the Government of the Philippine Islands is in a better political condition than a mere laborer, and it is unjust to deny to such employee of the Government the privileges of a laborer who was formerly a merchant. The decision of the Insular Collector of Customs was set aside, and it was adjudged that the petitioners have the right to enter and reside in the Philippine Islands.

The respondent through the Solicitor-General appealed to this court, and now makes the following assignments of error:

"The lower court erred:

"1. In holding that the contradictions committed by the detained immigrants were not so material and important as to deserve any consideration;

"2. In holding that if a Chinese merchant upon later becoming a laborer, is entitled to bring in here members of his family, more so in the case of Ong Tay Jong, who is not a laborer, but an officer of the Government of the Philippine Islands; and

"3. In ordering the discharge of the petitioners from the custody of the respondent."

It is unnecessary for us to discuss the first error assigned, because the board of special inquiry did not find that the petitioners were not the wife and children of Ong Tay Jong, and the board merely expressed the opinion, without giving any reason therefor, that Ong Chuy Suan was twenty-two or twenty-three years old. The board said: "The claims of the applicants are unbelievable in view of the fact that their alleged father and husband declared in this investigation that he is an employee in the Bureau of Internal Revenue as Chinese Accountant since 1925 up to the present time and that he had no proof to show that he is still a merchant. Being not a merchant, Ong Tay Jong, their alleged father and husband, cannot, therefore, bring in this country the members of his family residing abroad. Besides, he could not present license to show that he still engaged in business. In the absence of the above mentioned document, Ong Tay Jong could not be considered to possess a merchant status to entitle him to bring his family in this country"

In other words, the board of special inquiry denied the petitioners admission solely because Ong Tay Jong did not prove that he was still engaged in business as a merchant. In the absence of any finding to the contrary by the board of special inquiry, we may accept the finding of the lower court that the petitioners are the wife and children of Ong Tay Jong.

The second contention of the respondent is that Ong Tay Jong has ceased to be a merchant, and that he has therefore no right to bring his wife and minor children into the Philippine Islands.

The contentions of the petitioners are ably set forth in the decision of the lower court, which we have summarized.

Prior to the Immigration Act of 1924 (Act of Congress of May 26, 1924) a Chinese that had been lawfully admitted as a merchant did not become subject to deportation if he became a laborer. (*Dang Foo vs. Day* [C. C. A.], 50 Fed. [2d], 116, 118, and cases there cited; *Yee See Que vs. McGregor*, 2 Fed. Supp., 688.)

In the case of *Cheung Sum Shee vs. Nagle* ([1925], 268 U. S., 336; 69 Law. e.d., 985), the Supreme Court of the United States, construing the Immigration Act of 1924 said: "The wives and minor children of resident Chinese merchants were guaranteed the right of entry by the Treaty of 1880, and certainly possessed it prior to July 1st when the present Immigration Act became effective. (*United States vs. Gue Lim*, supra.) That Act must be construed with the view to preserve treaty rights unless clearly annulled, and we cannot conclude that, considering its history, the general terms therein disclose a congressional intent absolutely to exclude the petitioners from entry.

"In a certain sense it is true that petitioners did not come 'solely to carry on trade.' But Mrs. Gue Lim did not come as a 'merchant.' She was nevertheless allowed to enter, upon the theory that a treaty provision admitting merchants by necessary implication extended to their wives and minor children. This rule was not unknown to Congress when considering the act now before us."

The Supreme Court of the Philippine Islands held in the case of *Lim Pue vs. Collector of Customs* (33 Phil, 519), decided in 1916, that a Chinese person who entered the Philippine Islands as a Chinese merchant and did business therein for several years as such who, through changes in financial circumstances, becomes a laborer, may still remain in the Philippine Islands by virtue of the privileges attaching to the status which he enjoyed at the time of entry; and the wife of such a person has the right to enter the Philippine Islands by reason of those privileges, although her husband has ceased to be a merchant and become a laborer.

It appears from the record that Ong Tay Jong, husband and father of the petitioners, has been domiciled in the Philippine Islands for many years; that he was indorsed as a merchant in 1912; that since then he has made four visits to China and was permitted to reenter the Philippine Islands as a merchant on his return in 1914, 1924, 1927, and 1930; that he and his partners had a store in Cebu and another in Leyte; that he closed his store ("stopped my business") in Cebu in 1920, went to China in 1922, returned in 1924, and entered the service of the Government of the Philippine Islands in 1925 as a Chinese accountant in the Bureau of Internal Revenue, where he is at present employed.

The case of *To Ming vs. Commissioner of Immigration* (52 Fed. [2d], 791), erroneously cited by the Solicitor-General as having been decided by the Supreme Court of the United States, was decided by the United States District Court for the Southern District of New York in 1981. The decision in that case has no application to the present case, because *To Ming* first went to the United States in December, 1924, and in the decision emphasis was laid upon the fact that the alien's entry was after the effective date of the Immigration Act of 1924; but in the case of *Chin Hong vs. Nagle* (7 Fed. [2d], 609), decided August 24, 1925, the Circuit Court of Appeals, Ninth Circuit, held that the petitioner, *Chin Hong*, had no right to enter the United States, because his father was not a merchant at the time when *Chin Hong* sought to enter the United States. After citing the facts showing that while *Chin Lung*, the petitioner's father, was a member of a firm engaged in general merchandise business in a small way, he devoted a considerable part of his time to the business of a lottery carried on in the same building as the merchandise business, and that the Commissioner of Immigration and the Secretary of Labor had decided that *Chin Lung* was a Chinese laborer, the court said: "* * * Here the crucial question is whether or not *Chin Lung* was a merchant at the time when his minor son sought to enter the United States.*" With this one sentence the court disposed of the case. The decision is not sustained by any reasoning or citation of authorities.

In the case of *Haff vs. Yung Poy* (68 Fed. [2d], 203), decided December 11, 1933, the record showed that *Yung Poy* was admitted into the United States on June 2, 1926 as a minor son of *Yung Hong*, a Chinese merchant lawfully domiciled in the United States. In 1927 *Yung Hong* ceased to be a merchant and obtained employment as a janitor. On September 9, 1932 *Yung Poy* was ordered deported to China on the ground that he had remained in the United States after failing to maintain the exempt status, under which he was admitted, of an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of the present existing treaty of commerce and labor. From an order of the District Court granting the petition of *Yung Poy* for a writ of habeas corpus the government appealed, and contended (1) that appellee's rights were measured by the Immigration Act of 1924 and not by the Treaty of Commerce and Navigation with China, dated November 17, 1880, under which appellee's father was admitted as a merchant; (2) that one admitted to the United States under the Immigration Act of 1924 as a minor son of a trader becomes subject to deportation if his father ceases to carry on trade.

The Circuit Court of Appeals in affirming the decision of the lower court held that the provisions of the Immigration Act of 1924, applicable to Chinese aliens, abrogate only those provisions in the treaty with China that are inconsistent with the act; that the right of a Chinese minor alien, admitted as a minor son of Chinese trader or merchant, to remain in the United States after his father has lost the exempt status, is governed by the treaty and not by the Immigration Act; that a Chinese merchant, lawfully admitted prior to the Immigration Act of 1924, may remain after losing his exempt status as a merchant; that statutes should be given a sensible construction to effectuate legislative intention, and, if possible, to avoid unjust or absurd conclusions; and that a minor Chinese alien, admitted as a minor son of a Chinese trader or merchant, is not subject to deportation, where his father, although not subject to deportation, has lost his exempt status.

The court said: "* * * The right of such a merchant's wife or minor child to remain here after loss of his or her

communicated status, by reason of the merchant's changed occupation, is, of course, another question; but that such an alien's right is coextensive with the right of the husband, or father, seems a Just and reasonable answer, for the absurdities and hardships of a contrary rule of law are apparent. Thus, if a merchant, because of illness, mishap, economic condition, or other misfortune, were required to change his status as a merchant and secure other employment, should his hapless—and perhaps helpless— family be deported and he allowed to remain, or perforce required to remain because of long absence from his native country and environment? Likewise, must the family of such a merchant be deported because, upon the death of the merchant, the communicated status of the wife and children has been lost?

"With these harsh consequences in mind, and in view of the well-settled rule of law 'that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion' (Lau Ow Bew vs. United States, 144 U. S., 47, 59; 12 S. Ct, 517, 520; 36 L. ed., 340), we cannot conclude that the rights of such aliens to remain here should be construed so narrowly as the government contends, or that it was the intention of Congress in enacting the Immigration Act of 1924 that aliens admitted to the United States by virtue of the 'merchant status' of their prior domiciled father or husband, as the case might be, should be deported because the merchant, although not subject to deportation, has lost his status¹ as a merchant."

The rights of the petitioners in the present case are therefore determined by the treaty between the United States and China and not by the Immigration Act of 1924. As already pointed out, the Supreme Court of the United States¹ held in the case of the United States vs, Gue Lim [1] that "Although she did not come solely to carry on trade she was nevertheless entitled to enter, upon the theory that a treaty provision admitting merchants by necessary implication extended to their wives and minor children," and as was decided in the case of Haff vs. Yung Poy, supra, if a merchant because of illness, mishap, economic condition, or other misfortune is required to change his status as a merchant and secure other employment, his family should not be deported but should be allowed to remain, it might be contended upon the same reasoning that the petitioners are entitled to enter the Philippine Islands as the wife and minor children of Ong Tay Jong, even if he be at present a laborer in fact, because he was lawfully admitted as a merchant and is domiciled here.

In the Lim Pue case, supra, this court held that Tin Singa, the husband of the petitioner, still enjoyed the privileges of the status which he had when he entered the Philippine Islands as a merchant, although he had become a laborer in fact; that the petitioner participated in the privileges her husband enjoyed, which were derived from the fact that he entered the Philippine Islands and lived therein for years as a Chinese merchant.

If the petitioners had come to the Philippine Islands prior to July 1, 1924, the effective date of the present Immigration Act, they would have been admitted in accordance with the doctrine laid down in the case of Lim Pue, and since, as we have seen, their rights are not affected by the Immigration Act of 1924, they are now entitled to enter and reside in these Islands.

The decision of the lower court is affirmed, without a special finding as to costs.

Avancena, C. J., Abad Santos, Hull, and Diaz, JJ., concur.

[1] 176 U. S., 459; 44 Law. ed., 554.

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