

YU SE GUIOC ON BEHALF OF YU PEC, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 42312. January 28, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the respondent Insular Collector of Customs from the following decision of Judge A. Horrilleno in the Court of First Instance of Manila:

"Esta es una solicitud de habeas corpus presentada por Yu Se Guioc a favor de Yu Pec contra el Administrador Insular de Aduanas.

"En la vista de este expediente, el recurrente present6 como prueba el expediente de la investigation de aduanas y los documentos en que se hace constar por el recurrente que Yu Pec es uno de sus hijos. El recurrido no articul6 ninguna prueba en su defensa.

"De los documentos presentados como pruebas resulta que Yu Se Guioc que comparecio en representation de su .hijo, Yu Pec, es un comerciante debidamente certificado (Exhibit C). La negativa de las autoridades aduaneras a permitir la entrada de Yu Pec en las Islas Filipinas se funda en que su padre Yu Se Guioc suscribio una declaraci6n jurada en la que hizo constar que el, Yu Se Guioc, no tenia mas hi jo que Yu Hi, pero esta declaraci6n jurada no se ha presentado como prueba del recurrido ni forma parte de los documentos que se han presentado por el recurrente como prueba en este expediente.

"El Juzgado, deSpues de haber examinado las pruebas, encuentra que Yu Pec es hijo de Yu Se Guioc y, por lo tanto, tiene derecho a entrar en las Islas Filipinas. El Juzgado, por consiguiente, cree que el' remedio solicitado debe ser concedido, como por la presente se concede, ordenando al recurrido que ponga en libertad al recurrente Yu Pec, sin especial pronunciamiento en cuanto a las costas."

The appellant by the Solicitor-General alleges the lower court erred in granting the writ applied for and in ordering the release of the immigrant Yu Pec.

The decision of Judge Horrilleno is based upon the record submitted to him, and is fully sustained by the evidence taken in the hearing before the board of special inquiry. The Solicitor-General maintains that the record is not complete, because a certain affidavit mentioned in the decision of the board, and constituting the sole reason for denying the applicant admission, is not included; but the SolicitorGeneral did not make any objection to the record as presented in the lower court, or submit a copy of the affidavit in question and request that it be made a part of the record, if it be conceded that the affidavit was admissible at that stage of the proceedings.

The Solicitor-General contends, however, that the respondent was under no obligation to present the affidavit in question at the hearing of the petition for a writ of habeas corpus, because the customs officials are not obliged to establish an immigrant's lack of right to enter the Philippine Islands; that the burden of proof rests upon the alien who seeks admission. That contention may be granted, but the fact that the alien has the burden of proving his

right to enter does not impose upon him the duty of presenting to the court a document which was not mentioned at the hearing before the board of special inquiry, and which he had been given no opportunity to see or to explain.

Relying on the decisions of this court in *Chieng Ah Sui vs. Collector of Customs* (22 Phil., 361), which was affirmed in 239 U. S., 138, and *Lao Hian vs. Collector of Customs* (60 Phil., 556), the Solicitor-General claims that the customs authorities had the right to take into account or to take judicial notice of relevant facts appearing in the records of their office, and that since they made reference in their decision to the affidavit in question, it became a part of the evidence taken by said officials in this case.

For the purpose of deciding the present appeal, it is sufficient to say that the present case is distinguishable from the *Chieng Ah Sui* case, *supra*, and the pertinent portion of the decision in the *Lao Hian* case, based on the language used in the former case, was not necessary for the decision of the latter case.

In the *Chieng Ah Sui* case the applicant was granted three hearings. He and his alleged father had therefore an opportunity to see and explain the affidavit taken into account by the board of special inquiry in its decision.

Furthermore an examination of the record of that case filed in the Court of First Instance of Manila shows that at the first hearing on July 19, 1910, while the alleged father was testifying, the board of special inquiry made two notes in the body of the record respecting merchant's affidavit No. 8136, the record which the board afterwards took into account. In the first note it was stated that Cheung (Chieng) Ah Soon, the alleged father, was permitted to land on July 19, 1910 as a resident Chinese merchant, presenting at the time of his arrival merchant's affidavit No. 8136, indorsed by the Bureau of Customs on August 23, 1909; and in the second note it was stated that according to the inspector's slip attached to merchant's affidavit No. 8136, Ah Soon when examined, before his departure, as to his family, said that he had three sons, Ah Lung, 19, Ah Wing, 15, and Ah Fua, 8, and one daughter, Ah Pec, 2. (The applicants were Ah Lui and Ah Sui.)

After the hearing was suspended "pending the arrival of more competent witnesses," the board made an extended note in the record regarding "affidavit No. 8136 of Ah Moon." In its decision the board said-that according to the records of its office, when Cheung Ah Moon was examined prior to his departure for China, he did not mention any boy by the name of Siu, and that in view of the discrepancies between the testimony of the witnesses and the statements made by the alleged father prior to his departure for China, it required further proof as to the relationship claimed, but Ah Moon said he could not furnish it.

A rehearing was granted by the Insular Collector of Customs, and on July 23, 1910 the applicant presented additional evidence, but the applicant was again rejected.

A third hearing was held on August 10, 1910, with the same result.

A petition for a fourth hearing was denied on September 15, 1910.

In the *Lao Hian* case, cited above, the Insular Collector of Customs ordered her deportation to China for the reason that she obtained admission by representing herself to be the minor daughter of Lao Pong, a resident Chinese merchant, when as a matter of fact she was not his daughter, and for the further reason that she was a prostitute and was actually engaged in prostitution. She admitted at the hearing that she was allowed to enter the Philippine Islands because she posed as the daughter of a merchant, who was not her father; that at that time her parents were already dead. The charge of being a prostitute was duly proved. The board consulted its records to find out as whose child she had been admitted.

In the present case the affidavit in Question was not referred to at the hearing. It was mentioned for the first time

in the decision of the board, and there was no rehearing. The only affidavits mentioned at the hearing or referred to in the record were affidavits Nos. 13116 and 32234 attached to the record, and affidavits Nos. 13794 of May 6, 1921 and 8035 of April 6, 1914, none of which is the affidavit in question, which according to the decision was executed on May 11, 1933. In "Notary Affidavit No. 13116," executed on January 17, 1933, the applicant, Yu Pec, was mentioned as one of the children of the petitioner, Yu Se Guioc.

It is true that the hearing before the board of special inquiry is not a judicial but an administrative proceeding, which is not governed by technical criminal procedure; nevertheless it must be a fair hearing "in accordance with the fundamental principles that inhere in due process of law."

"Where the most important evidence against an alien in proceedings to deport him because he was afflicted with a contagious disease consisted of a letter written by a hospital surgeon, a hearing at which the alien was not confronted with such letter and had no opportunity to controvert the statements made therein was an unfair one, and insufficient to sustain an order of deportation." {Ex parte Keisuki Sata [D. C. Cal.], 215 Fed., 173, 174.)

"Fair hearing of an alien's right to enter the United States means a hearing before the immigration officers in accordance with the fundamental principles that inhere in due process of law, and implies that the alien shall not only have a fair opportunity to present evidence in his favor, but shall be apprised of the evidence against him, so that at the conclusion of the hearing he may be in a position to know all of the evidence on which the matter is to be decided; it being not enough that the immigration officials meant to be fair." (Ex parte Petkos [D. C. Mass.], 212 Fed., 275, 277.)

Summarizing in a few words several of its decisions, the Supreme Court of the United States, in the case of *Kwock Jan Fat vs. White* (253 U. S., 454; 64 Law. ed., 1010), said:

"It is fully settled that the decision by the Secretary of Labor, of such a question as we have here, is final, and conclusive upon the courts, unless it be shown that the proceedings were 'manifestly unfair/ were 'such as to prevent a fair investigation,' or show 'manifest abuse' of the discretion committed to the executive officers by the statute (*Low Wah Suey vs. Backus*, supra), or that 'their authority was not fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law.*' (*Tang Tun vs. Edsell*, 223 U. S., 673, 681, 682; 56 L. ed.} 606, 610; 32 Sup. Ct. Rep., 359.) The decision must be after a hearing in good faith, however summary (*Chin Yow vs. United States*, 208 U. S., 8, 12; 52 L. ed., 369, 370; 28 Sup. Ct. Rep., 201), and it must find adequate support in the evidence (*Zakonaite vs. Wolf*, 226 U. S., 272, 274; 57 L. ed., 218, 220; 33 Sup. Ct. Rep., 31).

"The acts of Congress give great power to the Secretary of Labor over Chinese immigrants and persons of Chinese descent. It is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts, in proceedings for review, within the limits amply defined in the cases cited, to prevent abuse of this extraordinary power, and this is possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment. For failure to preserve such a record for the information, not less of the commissioner of immigration and of the Secretary of Labor than for the courts, the judgment in this case must be reversed. It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his country."

We hold that under the circumstances of the present case the applicant was not given a fair hearing with respect to the affidavit in question, and that the board of special inquiry abused its discretion in denying him admission when its decision finds no support in the evidence of record.

For the foregoing reasons, the decision appealed from is affirmed, without a special finding as to costs.

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

Judgment affirmed.

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