

EULOGIO MACALAYAC, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G. R. No. 42460. December 13, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

Eulogio Macalayac appeals from a decision of the Court of First Instance of Manila denying his petition for a writ of habeas corpus in behalf of his alleged minor son, Yee Sing.

The appellant makes the following assignments of error:

"I. The lower court erred in not declaring that the board of special inquiry and the respondent-appellee, Insular Collector of Customs, have arbitrarily abused their authority and discretion in refusing the applicant Yee Sing the right of entry, notwithstanding the existence on record of an overwhelmingly strong, decisive and undisputed evidence that he is the real son of the petitioner-appellant.

"II. The lower court erred in not granting the present petition for habeas corpus."

In the first place it should be pointed out that contrary to the allegation in the petition and the statement in appellant's brief, Yee Sing did not claim the right to enter the Philippine Islands as the minor son of his alleged father, but as the son of a native born citizen of the Philippine Islands. He arrived in Manila on July 7, 1934, and testified that he was born in China on November 30, 1911. He was therefore twenty-two years, seven months, and seven days old at the time of his arrival. He also gave his age as twenty-four. The board of special inquiry found him to be not less than twenty-five, but no question was raised as to whether the applicant, who was born in China and had never previously been in the Philippine Islands, had forfeited his right to enter the Philippine Islands as a son of a native born citizen thereof.

The board of special inquiry, which investigated the case of Yee Sing on July 9, 1934, denied him admission in the following decision:

"This is the case of Yee Sing, male, 22 years old who is seeking admission as the son of a native born Filipino citizen. His alleged father, one Eulogio Macalayac, holder of L. C. R. No. 17614/21208 and another witness testified in his behalf. After considering all the facts and circumstances of this case the board found that the applicant failed to establish his right to admission in view of the following grounds:

"1. IDENTITY OF FATHER.—While the alleged father in this case claims that his real and only name is Eulogio Macalayac, the applicant insists that the name of his father is Eulogio Yee and that he has no Chinese name.

"2. WHEREABOUTS OF ALLEGED FATHER UPON THE DEATH OF APPLICANT'S MOTHER.—It is claimed by the herein applicant that his father was in China when his mother died. The alleged father, however, declares that he was in this country at the time the mother of the applicant died.

"3. NAME OF THE ALLEGED BROTHER IN THIS COUNTRY.— It is claimed by the herein applicant that

his brother who is in this country is Yee Kim while the alleged father declared that the other child in this country is Yee Suy.

"4. OCCUPATION OF ALLEGED BROTHERS IN CHINA.— While the herein applicant claims that all his brothers in China are studying, the alleged father declared that two of them are not studying.

"5. SIZE OF SCHOOLHOUSE.—While the applicant says that the schoolhouse and their house in China are about the same size the alleged father contends that the schoolhouse is much bigger, it having more rooms than their own house.

"6. LENGTH OF TIME THE APPLICANT STUDIED IN CHINA.— While the applicant claims that he studied in China for six years, the alleged father declares that the applicant studied for nine years.

"7. EXISTENCE OF STREAM.—While the alleged father declares that there is small stream in front of their house in China the applicant insists that there is no river or body of water near their house in China.

"8. While the applicant testified that the second wife of his father was in China when he left for this country, the alleged father declared that his second wife is now in this country having arrived here in the year 1932.

"9. AGE AND NATIONALITY OF APPLICANT.—While the applicant claims that he is a Chinese mestizo, 22 years old, it is the opinion of the board that he is a pure blooded Chinese person as evidenced by his mongolian type and characteristics. He is at least 25 years old as shown by his general appearance and physical development.

"In view of the foregoing, it is the opinion of this board that the herein applicant is not a real son of Eulogio Macalayac, a native born Filipino citizen.

"The applicant is, therefore, refused admission. He and his broker are informed of this decision and are further informed that they have two days within which to appeal to the Insular Collector of Customs should they feel dissatisfied therewith."

On appeal to the respondent the decision of the board of special inquiry was approved, although it was erroneously stated in respondent's order that the applicant failed to prove satisfactorily that he is a native born Filipino citizen. Such was not his contention.

Although we do not attach much weight to some of the grounds of the decision of the board of special inquiry, there are certain material discrepancies between the testimony of the applicant and that of his alleged father which leave no doubt in our minds that the applicant is not the son of the petitioner, but an impostor seeking to enter the Philippine Islands unlawfully. The applicant testified that his mother, Yang Shi, died in China in 1929, and that his father was in China when she died. Eulogio Macalayac, the alleged father of the applicant, testified that he was not in China when his first wife, Yang Shi, died. When the applicant was asked if his father attended the funeral of Yang Shi, he replied that he did not remember. According to the testimony of the applicant he was twenty-two or twenty-four years old when he testified before the board of special inquiry. He was, therefore, at least seventeen years old when his mother died. If he were in fact the son of the petitioner, he would know positively whether the petitioner was in China when the applicant's mother died, and whether or not his father attended the funeral.

The applicant claims to have seven brothers, six of whom are in China and the other one in the Philippine Islands. When asked the name of his brother, who is in the Philippine Islands, he said that it was Yee Kim, and that he came to the Philippine Islands last year. The petitioner testified, however, that the name of his son that has been admitted into the Philippine Islands is Yee Suy, and that he arrived in April of this year. After the petitioner had testified as stated, the applicant was recalled. He then changed his statement to agree with that of his alleged

father.

The applicant testified that his father's second wife, Kang Shi, was in China when he left home to come to the Philippines, but the alleged father stated that his second wife has been in the Philippine Islands since 1932.

We do not deem it necessary to discuss the other grounds for rejecting the applicant, and finding no merit in the appeal, we affirm the decision of the lower court, with the costs against the appellant.

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

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