

YAP TIAN BING IN BEHALF OF YAP SONG, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 43004. April 05, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

Yap Song, on behalf of whom these proceedings were filed in the Court of First Instance of Manila by his alleged father, Yap Tian Bing, was refused admission into the Philippine Islands by a board of special inquiry on November 7, 1934 in the following decision, which was approved by the respondent:

"Yap Song applicant in this case stated his family relationship with Yap Tian Beng, Chinese resident merchant, M. A. 17737 and N. A. 13460.

"Upon scrutiny, it was found that the date of birth claimed by the applicant and testified to by the alleged father is that of C. R. 3-5-15 or June 8, 1914, the date given in N. A. 13460, filed on May 24, 1933. To account for the birth of this applicant, the father alleged that he went to China in 1913, and returned according to the stamp on the back of L. C. R. No. 1721-02012 on October 16, 1913. The M. A. No. 17737, however, shows that the date of birth of this applicant is C. R. 4-1-10 or Feb. 23, 1915. This merchant's affidavit was filed on April 24, 1917, showing a returning date as of Nov. 11, 1918. Following the latter date of birth, the result is that, there is no stamp to account for the birth of this applicant.

"In view of the above, the applicant was refused his landing. He and his broker were informed of this decision and further informed that they have two days within which to appeal before the Insular Collector of Customs should they feel dissatisfied therewith."

After considering the evidence in the case, the lower court found that, in accordance with the testimony of Yap Song and Yap Tian Bing and Exhibit B, Yap Song was born on June 8, 1914 and is a minor son of Yap Tian Bing, a resident Chinese merchant; that he has therefore a right to enter and remain in the Philippine Islands, and that in denying him this right the respondent abused his discretion. The lower court accordingly revoked the decision of the customs authorities and ordered that Yap Song be immediately released from custody.

The Solicitor-General in behalf of the respondent appealed to this court, and alleges that the lower court erred in granting the writ applied for and in ordering the discharge of Yap Song from the custody of the respondent.

Yap Song testified before the board of special inquiry that he was born in China on C. R. 3-5-15, or June 8, 1914, and Yap Tian Bing also testified that Yap Song was born on June 8, 1914; and in the affidavit, Exhibit B, executed by Yap Tian Bing on May 24, 1933 he stated that Yap Song was born on C. R. 3-5-15, or June 8, 1914.

In his brief the Solicitor-General states that Merchant's affidavit No. 17737 of Yap Tian Bing, which was filed in the immigration division of the Bureau of Customs on April 24, 1917, shows that the date of birth of Yap Song was C. R. 4-1-10, or February 23, 1915, and that in view of this discrepancy the customs authorities decided that

the immigrant Yap Song could not be the same person that he claimed to be. It appears, however, upon an examination of Exhibit A that the date of the birth of Yap Song is not stated in the affidavit filed by Yap Tian Bing on April 24, 1917 for indorsement as a resident Chinese merchant, but is found¹ in the "Inspector's Notes" attached to the affidavit. This memorandum was not sworn to or signed by Yap Tian Bing, and there is no evidence to show by whom or under what circumstances it was prepared. It is therefore not binding on Yap Tian Bing, and the board of special inquiry was not justified in rejecting the applicant because of the difference between this memorandum and the testimony of the applicant and his father at the hearing before the board of special inquiry as to the date of his birth.

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

Malcolm, Abad Santos, Hull, and Diaz, JJ., concur.

Judgment affirmed.

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