

NG TIONG SUAN, IN BEHALF OF NG KUN, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 43099, August 01, 1935

Ponente: HULL, J.

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HULL, J.:

On November 8, 1934, Ng Kun arrived at the port of Manila from China and sought admission into this country as a minor son of Ng Tiong Suah, an alleged resident Chinese merchant. On November 19, 1934, a board of special inquiry appointed by the Insular Collector of Customs, after investigating his right to enter and reside in this country, rendered a decision denying him admission into this country. This decision of the board of special inquiry, on appeal, was confirmed by the Insular Collector of Customs. Whereupon, Ng Tiong Suan, in behalf of Ng Kun, presented petition for a writ of habeas corpus in the Court of First Instance of Manila. The lower court after considering the evidence presented, rendered a decision granting the petition for a writ of habeas corpus. Whereupon the Solicitor-General, representing the Insular Collector of Customs, brings this appeal and asks that the judgment of the Court of First Instance be reversed and set aside.

For a petitioner to be entitled to a writ of habeas corpus, it must be shown, first, that petitioner is in fact a merchant; second, that the party whom he is seeking to have admitted into this country is in fact his minor son; and, third, that the customs officials acted so arbitrarily that it amounted to an abuse of discretion and authority and therefore should be corrected by the court.

In the instant case the proof submitted by petitioner to the customs authorities as to his status as a merchant is far from conclusive. It rests primarily upon the fact that he is one of the seven owners of a Chinese partnership engaged in mercantile pursuits in the City of Manila.

This court has held in the case of *Ang Giok Chip vs. Collector of Customs*, promulgated December 23, 1932,¹ that a part ownership in a Chinese co-partnership and employment by that firm as a customs broker is not sufficient proof that the party is in fact a merchant.

In the present case there is no satisfactory proof as to what petitioner is doing. As far as the record is concerned, he may be a day-laborer, digging ditches or performing any other manual labor for his daily sustenance.

Furthermore, it is not certain that Ng Kun is the minor son of petitioner. Virtually the only evidence to that effect comes from the lips of petitioner and is not corroborated. Although Ng Kun had been living with his seven brothers in China, he was unable to state the names of any of his brothers.

Due to lack of proof submitted by the petitioner, on whom was the burden of establishing the legal right to have his alleged minor son admitted, it cannot be said that the customs authorities acted arbitrarily or abused their discretion in denying admission in this case.

The writ of habeas corpus should not have been granted.

The judgment of the Court of First Instance of Manila is therefore reversed and the writ of habeas corpus denied. Costs in both instances against appellee. So ordered.

Avanceña, C.J., Abad Santos, Diaz, and Recto, JJ., concur.

Judgment reversed, writ denied.

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