

ANTONIO (ALIAS UY LIM), PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.*G.R. No. 43347. May 27, 1935*

Ponente: VICKERS, J.

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The respondent Insular Collector of Customs appeals from a decision of the Court of First Instance of Manila, and alleges in support of his appeal that the lower court erred in ordering the discharge of the petitioner Antonio alias Uy Lim from the custody of the respondent.

The petitioner was arrested on a warrant issued by the Insular Collector of Customs charging the petitioner as an alien with having gained admission into the Philippine Islands through false and fraudulent representations. The petitioner was given a hearing by a board of special inquiry, which recommended that he be deported. The respondent then made the following findings and ordered that the petitioner be deported:

"That the said Antonio alias Uy Lim was permitted to land by a board of special inquiry in 1915, and that he gained his admission into this country by posing to be the son of one Uy Tat, an indorsed resident Chinese merchant, when as a matter of fact he was not the son of said Uy Tat. Said Antonio alias Uy Lim testified in the present, investigation that he has only 2 brothers by the same father and mother and 2 brothers by his father and his concubine, but record shows that Uy Tat has 9 children by his legitimate wife See Toan. If really the respondent is a true son of Uy Tat, he must have known that Uy Tat has 9 children in all by See Toan and Uy Tat had no concubine. Uy Tat could not have been mistaken in stating that he has such number of children with See Toan, 8 of whom were already born before the landing of the respondent, because he had stated so in several public documents (merchant affidavits) as well as to his agents

"Wherefore, it is adjudged and decided:

"That the said Antonio alias Uy Lim had gained entry into the Philippine Islands thru false and fraudulent representations, as charged in said warrant of arrest, in violation of section 19" of the Act of Congress, approved February 5, 1917. "In consequence whereof, by authority vested by law in the Insular Collector of Customs, it is hereby ordered: "That the said Antonio alias Uy Lim be deported from the Philippine Islands to the place whence he came, in accordance with section 20 of the said Act of Congress, approved February 5, 1917."

It appears from the record that the petitioner was admitted into the Philippine Islands as a son of Uy Tat, a resident Chinese merchant, and that a landing certificate of residence, Exhibit C, was issued to the petitioner on April 22, 1915; that during the past twenty years the petitioner has made five or six visits to China, and has been permitted to land each time of his return, as evidenced by the notations on the back of his certificate of residence.

The decision of the respondent Insular Collector of Customs holding that the petitioner gained admission into the Philippine Islands through false and fraudulent representation by posing as a son of Uy Tat rests upon the finding that the petitioner testified in the investigation in question on February 4, 1935 that he had only two brothers by the same father and mother and two brothers by his father and the latter's concubine, while the record showed that

Uy Tat had nine children by his legitimate wife, See Toan; that if the petitioner were the true son of Uy Tat, he must have known that Uy Tat had nine children in all by See Toan, and that he had no concubine.

In our opinion the findings of the respondent are not sustained by any competent evidence, and he abused his discretion in ordering the deportation of the petitioner. When the respondent found that according to the record Uy Tat had nine children by his legitimate wife, See Toan, and that he had no concubine, the respondent was relying on Exhibit B, the merchant's affidavit No. 23182, filed by Uy Tat on May 14, 1920. It is true that in a memorandum prefixed to this affidavit and in the inspector's note attached thereto it appears that the name of the wife of Uy Tat was See Toan, that he had eight sons and one daughter, and no mention was made of a concubine. In the first place we invite attention to the fact that it does not appear from Exhibit B or from Exhibit E that the statements as to the children of Uy Tat were sworn to by him. The merchant's affidavit filed by Uy Tat when the petitioner was first admitted into the Philippine Islands in 1915 was not made a part of the record. The conclusion of the respondent that the petitioner has secured admission into the Philippine Islands through false representations was therefore based upon the discrepancy between the testimony of the petitioner before the board of special inquiry on February 4, 1935 and the unverified statement made by Uy Tat in 1920. At the time of the hearing in question Uy Tat was dead. We are of the opinion that these statements made by the petitioner's father five years after the petitioner was landed, even if they be admissible, are of no probative value to sustain the charge that the petitioner secured admission in 1915 through false and fraudulent representations. It appears from Exhibit B that petitioner's father, Uy Tat, filed merchant's affidavit No. 8758 on May 4, 1911, and merchant's affidavit No. 13460 on January 29, 1915, and merchant's affidavit No. 18379 on December 16, 1918, and merchant's affidavit No. 23182 (Exhibit B) on May 14, 1920, but neither the board of special inquiry in its findings nor the respondent in his decision referred to the affidavit filed in 1911 or that filed in 1915. The record therefore does not show, what statements Uy Tat made as to his children in 1911 and in 1915. It will be observed that according to the findings of the board of special inquiry the affidavit filed in 1918 as well as the affidavit filed in 1920 showed Uy Lim to be one of the sons of Uy Tat that had been landed in the Philippine Islands. If the board of special inquiry wished to disprove the testimony of the petitioner and to show that Uy Tat had other children than those mentioned by the petitioner, the board should have produced the affidavit filed by Uy Tat in 1915 when the petitioner was first landed. The mere fact that Uy Tat stated in 1920, when he applied for indorsement as a resident Chinese merchant, that he had nine children, and the petitioner testified in 1934 that Uy Tat had only four children is no evidence to prove that the petitioner is not the son of Uy Tat, or that he secured admission in 1915 by falsely representing himself to be a son of Uy Tat, because in said statement the petitioner is mentioned as one of the sons of Uy Tat.

"The production of the statutory certificate establishes prima facie the right to remain, and the burden then shifts to the government which must produce some proof to overcome this prima facie evidence or it will be the commissioner's duty to discharge defendant. The proof should be clear and convincing, and until the government has made out such a case the holder of the certificate is not required to make further proof." (2 C. J., 1102, citing U. S. vs. Wong Chung, 92 Fed., 141; U. S. vs. Horn Lim, 214 Fed., 456; Jew Sing vs. U. S., 97 Fed., 582.)

In the case of Yu Bun Uy (alias Yu Bon Ui) vs. Collector of Customs (G. R. No. 41544)[1], this court said:

"Cuanto a la primera razon que la Junta Especial de Investigacion de Aduanas tuvo en cuenta, nos parecen suficientes para destruirla, las razones que el Juzgado inferior consigno en su decision. El mero hecho de que el recurrente y sus hermanos que declararon en la misma ocasion que el dijeron que no eran mas que 7 hermanos sin tener ninguna hermana, y el de que en los expedientes de investigacion C. B. R. 4002-73 y N. S. 11300, otros chinos que dijeron ser hermanos del recurrente, declarasen a su vez que eran 14 hermanos sin tener ninguna hermana, no quieren decir necesariamente que dicho recurrente consiguio entrar en Filipinas por medios

fraudulentos. Como dijo muy bien el Juzgado inferior, al recurrente no se le dió oportunidad para ver y examinar esos supuestos expedientes de la Oficina de Aduanas, ni los ha tenido a la vista dicho Tribunal (ni obran hoy en autos), para poder comprobar si el hermano a que aludieron los que allí declararon era efectivamente el recurrente, Aparte de que, no constando la fecha en que se abrieron dichos expedientes, puede suponerse fundadamente que se abrieron con posterioridad al del recurrente, el cual se abrió, como ya se ha dicho, en 1922; y desde entonces hasta 1934 han transcurrido muchos años, tiempo mas que suficiente para traer sus padres al mundo otros 7 hijos."

It is true that in the present case the statement of Uy Tat attached to his merchant's affidavit was shown to the petitioner, but it is likewise true that it does not appear that the petitioner had anything to do with the preparation of said statement, and at the time of the hearing Uy Tat was already dead and could not therefore be cross-examined by the petitioner. It will be observed that in the Yu Bun Uy case, supra, the statements of the alleged brothers of the petitioner were made under oath in the course of the hearing before the board of special inquiry.

We are at a loss to understand on what evidence the respondent caused the petitioner to be arrested, because respondent's decision is based solely upon the fact that the testimony of the petitioner at the hearing held after he was arrested was in conflict with the statements previously made by, his father. As we have already indicated, no effort was made to show that petitioner's deceased father had made contradictory statements as to how many children he had. The most natural inference to be drawn from the fact that Uy Tat stated in 1920 that he had nine children, whereas the petitioner says he had only four, is that Uy Tat wished to bring in some children that did not belong to him.

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

Malcolm, Hull, Butte, and Diaz, JJ., concur.

Judgment affirmed:

[1] September 20, 1934, 60 Phil., 1044.

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