

SY SAM, REPRESENTED BY HIS FATHER SY BANG, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 43370. August 22, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

The question raised by the petitioner's appeal from the judgment of the lower court is whether or not the respondent and the board of special inquiry of the Bureau of Customs have committed abuse of discretion in denying the petitioner the right to land and reside in the Philippines.

It appears from the evidence that Sy Sam, a Chinese national who arrived at the port of Manila from China on December 20, 1934, sought admission into the Islands alleging that he was a 14-year old minor son of Sy Bang, a Chinese merchant established in the municipality of Lucena of the Province of Tayabas; and the board of special inquiry of the Bureau of Customs, after having conducted the necessary investigation by taking evidence relative thereto and making the petitioner appear before it, decided to deny his petition for the reason that an examination of his person disclosed that he was not less than 17 years of age, judging from his height, robustness and manifest development of his muscles.

It likewise appears from the evidence that the respondent, to whom the decision of said board of special inquiry of the Bureau of Customs had been appealed for review in accordance with the law, affirmed said decision after reviewing it as well as all the evidence taken during the investigation, taking into consideration the expert opinion of the Bureau of Quarantine Service, which was obtained upon petition of the petitioner's representative.

During the investigation, the petitioner attempted to prove by the testimony of his father Sy Bang and by his own testimony that he was born in Go Tao, China, on April 10, 1921, and, computing his age according to the Chinese practice, was therefore about 14 years, 8 months and 10 days at the time he landed at the port of Manila. He now contends that neither the opinion of the members of said board of special inquiry of the Bureau of Customs nor that of the respondent, which is based partly on the expert opinion of the Bureau of Quarantine Service, should have been and should now be taken into consideration because, according to said petitioner, neither one nor the other is based on concrete facts. In support of his contention, he cites the ruling laid down in the case of *Dy Keng vs. Collector of Customs* (40 Phil., 118), where it was stated as follows:

"While the courts have held in numerous cases that the age of persons may be determined by their personal appearance, yet at the same time they have always insisted, when the question was raised, that the deciding officer or court should cause the record to show, not by a general statement that the personal appearance induced the officer or court to believe that the person in question was of a particular age, but the particular fact or facts concerning the personal appearance which led such officer or court to believe that his age was as said officer or court stated."

We do not believe that the contention of the petitioner is well-founded because the opinion and conclusion of the

board of special inquiry of the Bureau of Customs is based precisely on concrete facts, such as the petitioner's height, robustness and the manifest development of his muscles. Neither is there merit in the alleged error attributed by the petitioner to the lower court for having admitted Exhibits A and B, which are respectively the letter of a representative of the petitioner's father to the respondent requesting that said petitioner be examined by the officials of the Bureau of Quarantine Service for the purpose of determining his age, in view of the fact that the board of special inquiry of the Bureau of Customs gave him four years more than his alleged age, and the respondent's letter to the chief of said Bureau of Quarantine Service requesting the examination asked for, with the opinion of said chief concurred in by the other officials of said bureau, because in fact said evidence may be considered as having been presented by the petitioner himself, since without his petition through an agent, no step would have been taken to obtain it. It should be stated in passing that in Exhibit B the petitioner is held to be from 18 to 20 years of age.

On the other hand, the contention that the petitioner was not given an opportunity to cross-examine said officials of the Bureau of Quarantine Service is without merit because the right to confront and cross-examine witnesses is an essential requisite recognized only in criminal proceedings (section 15, General Order No. 58), and it is well settled in this jurisdiction that deportation proceedings, as the one under consideration, do not constitute a criminal action. (Chua Go vs. Collector of Customs, 59 Phil., 523, and the other cases cited therein.)

Therefore, inasmuch as the respondent's decision is based on the opinion of the board of special inquiry of the Bureau of Customs and on that of the officials of the Bureau of Quarantine Service, and inasmuch as said two opinions, in turn, are based on concrete facts, such as the person of the petitioner himself, his physical development, height and muscles, we are led to the conclusion that the respondent as well as the board of special inquiry of the Bureau of Customs committed no abuse of discretion.

Wherefore, the remedy prayed for is denied, with costs to the petitioner.

Let the petitioner be turned over again to the respondent in order that his order of deportation of January 7, 1935, may be complied with. So ordered.

Abad Santos, Hull, Vickers, and Recto, JJ., concur.

Judgment affirmed and writ denied.

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