

TAN HON, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 43604. October 05, 1935

Ponente: RECTO, J.

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RECTO, J.:

Tan Hon, the petitioner, gained admission into Philippine territory in May, 1929, the corresponding certificate of residence having been issued to him on the 9th of said month. The administrative proceedings for his deportation were instituted only in February of this year, or after, the lapse of more than five years.

Section 19 of the Immigration Act of 1917 enumerates the different classes of aliens whose deportation should be ordered and in connection with some of said classes fixes the time within which the authorities concerned should take the necessary action to that effect, as follows:

"(1) Any alien who at the time of entry was a member of one or more of the classes excluded by law, shall be deported at any time within five years after entry;

"(2) Any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States, shall be deported;

"(3) Any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials, shall be deported;

"(4) Any alien who within five years after entry becomes" a public charge from causes not affirmatively shown to have arisen subsequent to landing, shall be deported;

"(5) Any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of a crime involving moral turpitude, committed at any time after entry, shall be deported;

"(6) Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, shall be deported;

"(7) Any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute, shall be deported;

"(8) Any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose, shall be deported;

"(9) Any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States, shall be deported;

"(10) Any alien convicted and imprisoned for a violation of section four hereof (which relates to persons who import prostitutes), shall be deported;

"(11) Any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude, shall be deported,

"(12) Any alien who shall have entered the United States by water at any time or place other than that designated by immigration officials, or by land at any place other than the one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall be deported at any time within three years after entry."

The Federal jurisprudence has interpreted the scope of the foregoing provisions, particularly with reference to the limitation period in certain cases, in the following words:

"To better understand the meaning and effect of certain words in section 20 (section 4289 1/4k), which have caused some conflict of opinion as to the five-year limitation, it becomes necessary to keep in mind that section 19 is dealing with two classes of aliens, whose status before the law is entirely different, but who together constitute all the deportable cases. The first class embraces those who had no right to enter the country, who were not admissible under the law, who ought to have been excluded but who have entered the country, or are found therein, in violation of the law. The status of all this class is fixed, unalterably, as of the date of arrival at port. The second class embraces those whose admission into the United States was lawful, against whose status, at the time, physically, mentally, or morally, the law could raise no objection, but whose subsequent conduct was such as to forfeit their right, under the law, to remain. The status of this class is fixed, not as of the date of arrival, but as of the date when the offense was committed, or the conditions were found to exist, which forfeited their right of residence." (Hughes vs. Tropello, 296 Fed., 306, 309.)

"Section 19 deals with two classes of aliens: The first is those who have no right to enter; the second class, those whose admission was lawful, but whose subsequent conduct forfeited the right to remain. The five-year limitation of the first class began at the date of entry, and the five-year limitation period of the second class began at the time of the commission of, or conviction of, the inhibited crime. This is the view expressed by the Circuit Court of Appeals of the Third Circuit in Hughes vs. Tropello, supra." (Ex parte Tayohichi Yamada, 300 Fed., 248, 249.)

"Section 19 deals with two classes of aliens: The first is those who have no right to enter; the second class, those whose admission was lawful, but whose subsequent conduct forfeited the right to remain. The five-year limitation of the first class began at the date of entry, and the five-year limitation period of the second class began at the time of the commission of, or conviction of, the inhibited crime." (Ex parte McMahon, 1 Fed. [2d], 456.)

"The five-year period, during which an alien unlawfully entering the United States may be deported under Immigration Act of February 5, 1917, * * * begins to run from date of prohibited entry."* (Weedin vs. Banzo Okada, 2 Fed. [2d], 321.)

"While the several statutes relating to the deportation of aliens can hardly be said to have been skillfully drawn, the courts are almost unanimous in holding that the limitation of five years after entry imposed on the first class, defined in section 19 of the Act of 1917, should not be construed as applying to all the enumerated classes following; each instance thereafter enumerated being separated by a semicolon and constitutes an independent class." (Tillinghast vs. Cresswell, 54 Fed. [2d], 459.)

The petitioner, a native of Chinkang, China, obtained entry into these Islands as a minor son of Tan Ah) a Chinese national, who holds a certificate of resident merchant. The respondent's theory is that the petitioner is not Tan Ah's son and has employed false and fraudulent representations to gain admission in May, 1929. According to this theory of the respondent, the petitioner, being an alien who "at the time of entry was a member of one or more of the classes excluded by law," falls under the class described in section 19, paragraph 1, of the Immigration Act of 1917, inasmuch as section 3 thereof, in its part pertinent to the case under consideration, reads as follows:

"Sec. 3. That the following classes of aliens shall be excluded from admission into the United States: * * * persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eight parallels of latitude north * * *. The provision next foregoing, however, shall not apply to persons of the following status or occupations: * * * merchants, * * * their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, * * *."

It appearing from the foregoing that the petitioner; at the time of entry into Philippine territory, belonged to the class of aliens excluded by law, and it being undisputed that more than five years have already elapsed from that date to the institution of the administrative proceedings for his deportation, he is undoubtedly entitled to the benefits afforded by the five-year limitation prescribed in section 19, paragraph 1, of the Immigration Act of 1917, and therefore the Insular Collector of Customs lacks authority in the present case to order his arrest and deportation.

In *Nagle vs. Hansen* (17 Fed, [2d], 557), it has been held that that part of the Immigration Act of 1917 fixing a period of five years within which to deport aliens belonging to the excluded classes, has been repealed by section 14 of the Immigration Act of 1924, but it should be noted that although this latter Act contains a provision to the effect that its provisions shall be enforced as a part of the former immigration laws, it has not been -expressly extended to the Philippines and, therefore, never been in force in this jurisdiction. (*Jones Law*, section 5; 62 C. J., 787; *U. S. vs. Bull*, 15 Phil., 7; *Tan Te vs. Bell*, 27 Phil., 354.)

Having arrived at the conclusion that the statutory period for the deportation of the petitioner has elapsed, we deem it necessary to pass upon the other questions raised by the respondent, and it only remains for us to declare that we affirm the appealed judgment ordering the respondent to release the petitioner, without special pronouncement as to costs.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Hull, Vickers, Imperial, Goddard, and Diaz, JJ., concur.

Judgment affirmed.

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