

SO SEE, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 43618. August 09, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The petitioner, a woman of Chinese descent, came to Manila from China on February 21, 1935. Attorney Vicente Y. Austria, stating that she was a passenger in transit for Iloilo, applied to the Insular Collector of Customs for her release under bond without any investigation, and prayed that the papers in her case be forwarded to that port for the final determination of her right to land in the Philippine Islands. A preliminary investigation was made on the day of her arrival by a board of special inquiry, in the presence of Mr. Austria, to determine whether or not the petition should be granted. After questioning the applicant and noting her appearance, the board recommended that the application for release be denied, and that the final investigation of her right to admission be made in Manila, for the reason that she appeared to be a pure-blooded Chinese and not the daughter of a Filipino woman as she claimed; that apparently she had never seen her alleged mother, and had come to this country at the instance of a man named Ng, who told her that her mother wanted her in the Philippines.

Attorney Austria appealed from this recommendation of the board of special inquiry to the Insular Collector of Customs, who denied the petition.

On February 28th the applicant was brought before a board of special inquiry for the regular investigation of her right to enter the Philippine Islands. When asked who was her attorney, she replied that she did not know. Although present at the hearing, Mr. Austria did not appear for the applicant. He informed the board that he had been engaged to represent the applicant only in the preliminary investigation for the purpose of filing a bond for her temporary release, and that he ceased to be her attorney when the Insular Collector of Customs denied his request. Upon the termination of the hearing, the board informed the applicant that she had been rejected, and that if she did not file her appeal within two days she would be deported to China, as she had not proved her right to admission into the Philippine Islands. Asked if she had anything further to say in her behalf inasmuch as her attorney had withdrawn from the case, the applicant replied "In case nobody will claim for me I am willing to go back in the next voyage of the Anking."

The decision of the board is as follows:

"The applicant in this case is one Soo See, a Chinese woman, who claims to be 19 years of age. She arrived on the steamship Tjisadani on February 21, 1935, from China, seeking admission as a minor daughter of a Filipino woman.

"It appears that on the date of her arrival a preliminary investigation was ordered conducted to determine whether this applicant-immigrant is entitled to a release under bond as a transit passenger for the port of Iloilo. In this preliminary examination, however, she had shown prima facie not to possess the status that she is claiming to possess. Hence, the board recommended to the Insular Collector of Customs that the application

filed in her behalf by Attorney Vicente Austria, thru agent Uy Khey Phow, be denied. Acting on this recommendation, the Insular Collector of Customs denied their request, and instead it was ordered that the regular investigation be conducted in Manila. Attorney Austria and immigration agent Uy Khey Phow were duly advised of the new order. In spite of the lapse of more than a week from the date of the arrival of this applicant and the denial of her application for temporary release, her case was not presented to the board. Accordingly this investigation was ordered.

"After a careful and diligent perusal of the evidence adduced herein, the board finds and so holds that she is not entitled to admission here. She has shown that she is a woman of no occupation in spite of her age. She claims that she is being supported by her Filipino mother, but taking into account the fact that she does not even know her by name or seen her in person during her (applicant's) lifetime notwithstanding her faltering and vague recollection, the board believes that these representations are totally incredible.

"While in the preliminary investigation she stated that she came to know that her alleged mother is in this country thru one Mr. Ng, a friend of said mother, she now claims that it was her brother Soo It who told her about her. She stated in the said preliminary investigation that this Mr. Ng approached and represented to her in China that he would take her to her mother. She further told that it was only the time that she remembered her mother when Mr. Ng approached her in her house last year. In the present investigation she is now relating a different story. She admitted that she had never seen her mother and that it was only her father who told her about her name. She too had shown that she does not have any acquaintance in this country in this investigation. Such being the case it can not be expected that she could find her supposed mother unless a 'third party who wants to make use of her innocence will fool her.

"The board has likewise noted conspicuously .from her appearance that she is not a mestizo,. Her appearance, color and demeanor strongly indicate that she is a person of pure Chinese blood. Her color is yellowish to the core of her bones and flesh and her manner of dressing too, her accent and intimate movements are those of a pure-blooded Chinese. She can not therefore be a daughter of a Filipino woman and to admit so would be a mockery of the law.

"Lastly we find that this woman had been heavily smoking as noted from the lines and margins of her fingers. There are visible signs of cigarette and smoke marks which are only noted among heavy and vicious smokers. Considering that this woman is without any lawful occupation in life, the board is inclined to believe that she had been leading a life of ease and contentment under a very suspicious circumstance. To admit here a woman of this kind, this board will be nurturing immorality, because such will be her roadway under the circumstances.

"In view of the foregoing, this applicant is refused admission as she has not shown that she is entitled to admission here. She has been advised of this decision and further told that she "has two days within which to file her appeal from this decision should she so desire.

"Manila, February 28, 1935."

On March 4th Attorney C. C. Viana appeared for the applicant and appealed to the Insular Collector of Customs from the foregoing decision of the board of special inquiry. On March 8th the Insular Collector of Customs informed Attorney Viana that his appeal could not be entertained for the reason that it was not filed on time, because the case was decided on February 28th and the appeal was received only on March 4th or after the expiration of forty-eight hours allowed by law within which to appeal from the decision of the board of special inquiry.

The applicant through Attorney Francisco T. Koh then applied to the Court of First Instance of Manila for a writ of habeas corpus on the ground that the respondent had abused his discretion in refusing to allow her to proceed to Iloilo, her destination, where her mother was residing and where she could obtain the necessary evidence to prove

her right to remain in the Philippine Islands; that the respondent had further abused his discretion in forcing her to submit to an investigation in Manila, where she could not present her mother as a witness, and was not represented by an immigration broker or an attorney, in denying her right of appeal, and in ordering her deportation to China, and that in consequence thereof she was illegally deprived of her liberty.

In his return to the writ the Solicitor-General in behalf of the respondent alleged that the petitioner was an alien who had come to the Philippine Islands from China; that her right to land had been investigated by a duly constituted board of special inquiry, which after due hearing and investigation had rendered a decision denying her right to land and reside in the Philippine Islands, and that said decision had been affirmed by the respondent on appeal. The Solicitor-General amended his return by adding an allegation to the effect that the petitioner had failed to exhaust the remedies afforded her by the customs authorities before instituting the present proceedings.

When the petition for a writ of habeas corpus was called for hearing on March 29th, the Solicitor-General challenged the jurisdiction of the court on the ground that the petitioner had failed to appeal from the decision of the board of special inquiry within forty-eight hours, and the court therefore did not have jurisdiction to try and decide the case. The trial judge overruled the contention of the Solicitor-General on the ground that apart from the statement made by the board of special inquiry at the hearing, as appears from the record, there was no proof that the board had informed the petitioner of its decision and of her right to appeal to the Insular Collector of Customs within two days, and held that the lack of notification was evidenced by the fact that Attorney Viana wrote to the respondent on March 1st requesting that the petitioner be allowed to submit her case to a board of special inquiry sitting at the port of Iloilo, and that the petitioner did not have notice of the decision of the board of special inquiry until the day on which she filed her appeal; that the action of the respondent in refusing to admit the appeal was arbitrary and constituted an abuse of his discretion.

After the case was submitted for decision on its merits, the trial judge found that the respondent had abused his discretion, and ordered him to allow the petitioner to proceed to the port of Iloilo, under bond or otherwise, for the purpose of giving her an opportunity to present the evidence which she failed to present in the investigation before the board of special inquiry at the port of Manila.

From this decision the respondent through the Solicitor-General has appealed to this court alleging that the lower court erred:

"(a) In holding that it had jurisdiction to hear and try the herein petition for habeas corpus notwithstanding that petitioner had failed to exhaust the administrative remedies provided by law before instituting the present proceedings;

"(b) In granting the petitioner bail during the pendency of the present proceedings;

"(c) In ordering the respondent to allow petitioner to proceed to the port of Iloilo for the purpose of affording her an opportunity to present there the evidence she had failed to produce at the hearing before the board of special inquiry at the port of Manila; and

"(d) In not denying the writ of habeas corpus applied for by petitioner."

As to the refusal of the respondent to allow the petitioner to proceed to Iloilo and to order that her right to remain in the Philippine Islands be determined by a board of special inquiry at that port, we are of the opinion that the respondent did not abuse his discretion in denying petitioner's request. The rule quoted in the decision of the trial judge does not sustain his findings. It merely provides for the taking of the testimony of material witnesses who reside at a distance from the port of entry and the transmission thereof to the board of special inquiry at the port of arrival. It does not give the alien the right to proceed to the port nearest the place of residence of the witness or to

have his right to enter the Philippine Islands determined by a board of special inquiry sitting at that port. The petitioner was not entitled upon the showing made by her to invoke the aforementioned rule, because she did not know the name of the place in which her alleged mother was residing. As a matter of fact, she did not request that the testimony of her mother or any other witness be taken in Iloilo in accordance with the aforesaid rule.

We cannot agree with the findings and conclusions of the lower court on the question of the appeal from the board of special inquiry to the Insular Collector of Customs. It clearly appears from the record that the petitioner was notified on February 28th that the board of special inquiry had found that she was not entitled to enter the Philippine Islands, and that she would be deported to China if she did not file her appeal within two days. To this notification the petitioner replied that she would be willing to go back to China if nobody made a claim for her. In our opinion this notice of the finding of the board of special inquiry was sufficient. Our attention has not been called to any provision of law requiring any other form of notice; on the contrary subdivision 1 of Rule 17 of the Immigration Laws of the United States Department of Labor provides that where an appeal lies the alien shall be informed of his right thereto, and the fact that he has been so informed shall be entered in the minutes. We see no reason for entertaining any doubt as to the reliability of the record. Furthermore, there is no allegation in the petition for a writ of habeas corpus that the petitioner was not duly notified of the decision of the board of special inquiry. It is merely alleged that the respondent denied the petitioner's right to appeal. The fact that the petitioner was not represented at the time of the hearing by an attorney or an immigration broker is immaterial. The attorney who had represented her at the preliminary hearing a week prior to the hearing in question informed the board that he was no longer her attorney. The petitioner did not ask for a continuance in order that she might secure the services of an attorney. She told the board she did not know who was her attorney. It was certainly not the duty of the board of special inquiry to engage an attorney for the petitioner.

Subsection 3 of the aforementioned Rule 17 provides that any appeal filed more than forty-eight hours after the time of an excluding decision may be rejected by the immigration officer in charge in his discretion. It was therefore within the discretion of the respondent to reject the appeal of the petitioner.

In the case of *Lo Po vs. McCoy* ([1907], 8 Phil., 343), the decision of the board of special inquiry excluding the alien was communicated to him and he was informed of his right to appeal, and due notation of these facts was made in the record of the proceedings of the board. The alien's attorney verbally announced his intention to appeal from the decision of the board of special inquiry but failed to file any written appeal. One of the grounds on which the respondent Insular Collector of Customs opposed the petition for a writ of habeas corpus filed in that case was that the petitioner was not entitled to be heard by the court for the reason that he had not exhausted all the remedies afforded him by the Bureau of Customs, in that he did not exercise his right of appeal to the Insular Collector of Customs within five days (the time then fixed by the rules) after he received notice of the action of the board of special inquiry. This court said: "We think this contention of the respondent is tenable. The petitioner had no right to appeal to the court, even admitting that there was an abuse of authority, until he had exhausted the remedies afforded him by the executive branch of the Government." (*U.S. vs. Sing Tuck*, 1914 U. S., 161; *U. S. vs. Ju Toy*, 198 U. S., 253; *Ekiu vs. U. S.* 142 U. S., 651.)

For the foregoing reasons, the decision appealed from is reversed, and the petition for a writ of habeas corpus is denied, with the costs against the petitioner.

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

Judgment reversed and writ denied.

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