

**HO TYA, REPRESENTED BY HIS FATHER HO SIN TIAK, PETITIONER,
VS. ANGEL MARAVE ET AL., AS PRESIDENT AND MEMBERS OF THE
BOARD OF SPECIAL INQUIRY OF CEBU, RESPONDENTS.***G.R. No. 46212. January 17, 1939*

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46212/>**CONCEPCION, J.:**

This is a petition filed by Ho Tya praying that, upon the appointment of his father Ho Sih Tiak as curator ad litem to represent him in these proceedings, a writ of mandamus be issued ordering the respondents, as president and members of the board of special inquiry of Cebu, to receive evidence, oral or documentary, which said petitioner might present to prove that his father is a merchant. It is alleged that during the investigation of the right of the petitioner to enter and reside in the port of Cebu as the son of a merchant, the board did not allow him to present evidence tending to prove that his father is a merchant, which denial of a right is an abuse of discretion, the petitioner having no other adequate and speedy remedy to obtain a final decision on the matter.

The Solicitor-General, on behalf of the respondents, in replying¹ to the petition, limited himself to the allegations that the board of special inquiry had not yet determined the right of the petitioner to enter these Islands; that said petitioner has not appealed to the collector of customs of said port nor to the Secretary of Labor from the resolution of the board of special inquiry complained of; that the remedy of mandamus cannot be invoked as long as there is another simple, speedy and adequate remedy such as habeas corpus; and that the petition, considered as one for habeas corpus, is premature, for the petitioner has not exhausted all the administrative remedies within his reach.

It appears from the copy of the minutes of the proceedings of the respondent board that during the hearing of the petition, said board dictated the following resolution:

"In view of the standing order of the Department of Labor to the effect that Boards of Special Inquiry are not authorized to admit evidence in the regular hearing of the immigration cases, when the purpose of such evidence is to prove the merchant status of the husband-father of the applicants, this board will not accept an evidence, oral or documentary, for such purpose. The proper procedure to be followed is for the alleged husband-father to file an application with the Secretary of Labor who under his memorandum order is the only one authorized to decide or pass upon applications for merchants' indorsements; therefore all the evidence tending to prove the merchant status of the alleged father of the applicant should be presented to the Secretary of Labor."

The administrative order No. 5 of the Department of Labor, to which the above-quoted resolution of the board refers, is alleged to be that copied in the memorandum of the petitioner dated March 17, 1937, which reads thus:

"Hereafter, only this Department shall approve applications for endorsements as Resident Chirfese Merchant. Public defenders, or in their absence, collectors of customs of sub-ports, shall, however, cause an investigation to be made of the statements contained in such applications and forward to this Department the investigator's findings, together with the applications and all pertinent papers."

The same memorandum of the petitioner quotes a letter allegedly addressed by the Department of Labor to the board of special inquiry of Cebu, dated October 15, 1937, and reads as follows:

"In connection with your letter of the 18th ultimo enclosing copies of your two memorandum orders relative to resident Chinese whose status as merchants has not been duly endorsed by this Department, but who have already brought to this country members of their families, I have the honor to advise that said resident Chinese should be required to submit to this Department their applications for endorsement as resident Chinese merchants as soon as possible, and that pending the approval of their application, cases of the members of their families should be held in abeyance. Hereafter, no resident Chinese merchant should be allowed to bring in members of his family unless his status as such has been duly endorsed by this Department."

In view of the fact that the case before us requires a determination of the authority or legal powers of the Department of Labor on immigration matters, by our resolution dated November 3, 1938, the Secretary of Labor has been invited to intervene as *amicus curiae* in this case and to present a memorandum, if he so desires, within a period of ten days. The period has expired and we have not been privileged to hear from him.

Since the early days of the American occupation and by virtue of a circular of the Department of War of the United States, the acts of Congress relating to immigration were made applicable to these Islands, and the Collector of Customs of these Islands was charged with the duty of enforcing them. (In re Allen, 2 Phil., 630.) Later on, by the Act of Congress of April 29, 1902, the laws prohibiting and regulating the entry of Chinese and their descendants into the United States were extended to these Islands. The Philippine Commission, by the Customs Administrative Act No. 355, approved on February 6, 1902, imposed on the customs officials the duty of enforcing these immigration laws, and in its section 19, paragraph 1, second chapter, provided that 'the Insular Collector of Customs, with the approval of the Secretary of Finance and Justice, shall adopt and promulgate the necessary regulations to enforce the legal provisions referring to immigration. The Act of Congress on immigration, dated February 5, 1917, applicable to the Philippines according to the last paragraph of section 1 thereof, provided in section 17 the creation of boards of special inquiry and provided further that:

"Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such board shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but, either the alien or any dissenting member of the said board may appeal * * * " (Italic ours.)

Section 4 of Commonwealth Act No. 139 provided that the Department of Labor "* * * shall also have executive supervision over matters concerning'the administration of existing Philippine Immigration Laws."

From what has been said, it appears that the boards of special inquiry are a creation of the Act of Congress of February 5, 1917. The same congressional act has denned the authority of said boards to hold hearings and decide whether an alien soliciting admission ought to be permitted to reside in these Islands or be deported.

Now, then, under Commonwealth Act No. 139, is the Department of Labor invested with authority to alter or amend an Act of Congress in the sense of depriving the boards of special inquiry of, and receiving for itself, the power to approve the applications of Chinese merchants to reside in these Islands, and that, pending their approval, the cases of their families should be held in abeyance?

We are of the opinion that the Department of Labor has only "executive supervision over matters concerning the administration of existing Philippine Immigration Laws," in accordance with Commonwealth Act No. 139, and

that such executive supervision does not imply in any way the power to alter or amend the Act of Congress of February 5, 1917 with regard to the authority and powers of the boards of special inquiry. According to said law, the power to determine if an alien has a right to be admitted to these Islands, belongs originally to the boards of special inquiry, and that power necessarily implies that of receiving and hearing evidence on the facts establishing such right.

Moreover, the allegations contained in the answer filed by the respondents are devoid of merit. The right of appeal is exercised only against a resolution or a decision on the merits of a case or incident. Against the resolution of the board of special inquiry in this case, which did not permit the petitioner to present evidence, appeal does not lie inasmuch as such resolution does not decide finally, favorably or adversely, the application of the petitioner regarding his admission into these Islands.

Neither could the petitioner have recourse to the remedy of habeas corpus for the same reason that there is no resolution by the board of special inquiry on the merits of his application.

Mandamus lies in this case, and it can be availed of in this court instead of in the Court of First Instance of Cebu, so as to obtain without any delay, directly from this court, a speedy remedy to correct the abuse of discretion on the part of the board of special inquiry of the port of Cebu, which deprived the petitioner of his right to prove the merchant status of his father in order to be able to reside in these Islands.

In view of the foregoing, the above-mentioned resolution of the board of special inquiry is reversed, and it is ordered that a writ of mandamus be issued to the respondents in their capacity as president and members of the board of special inquiry of Cebu, directing them to receive and hear the oral and documentary evidence, admissible in law, which the petitioner may present to prove the merchant status of his father, and other points tending to establish his right to reside in these Islands. Without costs. So ordered.

Avancena, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.