

JOSE TAN CHONG, PETITIONER-APPELLEE, VS. SECRETARY OF LABOR, RESPONDENT-APPELLANT.

G.R. No. 47616. October 15, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal taken by the Solicitor-General from the decision of the Court of First Instance of Manila granting the petition of Jose Tan Chong Hong for a writ of habeas corpus to secure his release from the custody of the Secretary of Labor.

It appears that the petitioner was born in San Pablo, Laguna, in the month of July, 1915, of a Chinese father named Tan Chong Hong and a Filipino mother named Antonia Mangahis; that his parents were legally married; that sometime in 1925 when the petitioner was about ten years old he was taken by his parents to China; that on January 25, 1940, he arrived at the port of Manila and sought entry as a native born citizen. The Board of Special Inquiry assigned to hear his case, denied him admission on the alleged ground that he is a Chinese citizen, and on appeal, the Secretary of Labor affirmed the decision of the Board and ordered the deportation of the petitioner to the port from whence he came. The petitioner sued for a writ of habeas corpus in the Court of First Instance of Manila which was granted. Hence, the present appeal by the Solicitor-General.

The petitioner, having been born in the Philippines before the approval of our Constitution, of a Chinese father and a Filipino mother, is a Filipino citizen. This conclusion is in harmony with the policy embodied in the Constitution (par. 4 sec. 1, Art. IV; *Torres vs. Tan Chim*, G. R. No. 46593, promulgated Feb. 3, 1940; *Gallofin vs. Ordonez*, G. R. No. 46782, promulgated June 27, 1940). His sojourn in China did not adversely affect his Philippine citizenship, it appearing that ever since he was twelve years old he wanted to return to the Philippines but his father would not allow him to come, and he did not have the means to pay for his transportation back to the Philippines until the date of his return. *Animus revertendi* existed here. (*Lim Teco vs. Collector of Customs*, 23 Phil., 84; *Munoz vs. Collector of Customs*, 20 Phil., 494; *Lorenzo vs. McCoy*, 15 Phil., 559.)

The judgment of the lower court is accordingly affirmed, without pronouncement regarding costs. So ordered.

Avancena, C.J., Ahad Santos, and Diaz, JJ., concur.

Moran and Horrilleno, JJ., dissented on the grounds expressed in *Torres vs. Tan Chim*.

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