

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. YU WA (ALIAS YENG WA), DEFENDANT AND APPELLEE.*G.R. No. 7679. September 01, 1914*

Ponente: MORELAND, J.

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The defendant in this case is a Chinese alien about 38 years of age. He was arrested and brought before the Court of First Instance of the city of Manila charged with having been found in the Philippine Islands without the certificate of registration provided for and required by Act No. 702 of the Philippine Commission, although he was in the Philippine Islands at the time the Act took effect and has been therein continuously since that time.

The alien was duly arraigned for a hearing and was given an opportunity to present the evidence provided for in sections 4 and 5 of said Act No, 702, and to avoid the effects of the proviso clause of section 4. After hearing the cause and the argument of counsel, the learned trial court said:

"In this proceeding for deportation the only witness is the defendant. It is admitted that for three years past he has been a partner in a business enterprise in Manila, and he testifies that before that he was an employee five years. This accounts 'for his occupation back to about the close of the period for registration provided by Act No. 702; and he further testifies that before the close of that period he was sick. We do not think it sufficiently appears from the testimony that he continued to be a laborer until the close of the registration period, and unless he did he would not be within the terms of that Act. The case of *U. S. vs. Chan Sam* (17 Phil. Rep., 448), cited by the Government, applies only where the original entry was unlawful, which was not the case with the defendant here. Under the rule in *U. S. vs. Tan Sam Tao* (15 Phil. Rep., 592), a person of defendant's present status is not subject to registration or deportation, and the only qualification for this which has been brought to our attention is the rule announced in the case first cited, which, as we have seen, is not applicable here. If it had been clearly shown that the status of defendant was that of a laborer until the close of the period of registration it might well be that he could not escape the consequences of non-registration by subsequently becoming a merchant, but, as already suggested, we do not think that has been sufficiently shown, especially after allowing for errors of interpretation. The presumption provided by Act No. 702, section 5, arose only 'after the expiration' of said period.

"Giving the defendant, as we think we should, the benefit of all doubts, we find that sufficient cause for his deportation has not been shown, and he is therefore discharged."

We are of the opinion that the judgment must be reversed. From the statement of the court itself it appears that the alien was a laborer at the time Act No. 702 went into effect and continued to be such for some years after the period for registration under said Act closed. It is not incumbent upon the Government, as the trial court seems to have held, to prove affirmatively that the alien was a laborer and should have registered under the Act. The burden is by law expressly placed upon the alien to demonstrate that he was not within the class which was required by the Act to register, it being provided that "every Chinese person found without such certificate in the Philippine Islands after the expiration of the time limited by law for registration shall be presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer and shall be subject to deportation as provided in

section 4 of this Act." (Sec. 5, Act No. 702.)

We do not think that the law as to the burden of proof is changed by reason of the fact that the defendant is found, at the time of his apprehension, to be a merchant. That which determines where the burden lies is the failure to have the certificate and not the status of the defendant at the time of arrest. (U. S. vs. Lim Co, 12.Phil. Rep., 703.)

The fact that he has recently changed his status from that of laborer to that of merchant does not avail him. It is the status which he enjoyed during the period for registration under Act No, 702 which determines his rights under this proceeding. If he was a laborer then and subject to registration, the fact that he is a merchant now will not serve him. (Juan Co vs. Rafferty, 14 Phil. Rep., 235.)

The alien in this case has not only failed to establish that, when the Act was passed and during the time limited for registration thereunder, he was a member of a class not required to be registered, but has affirmatively demonstrated by his own testimony that he was a Chinese laborer at the time the Act took effect and that he remained such until the close of the registration period. His only excuse for not having obtained the certificate was that he was sick for a short time. This, however, is no excuse under the Act, for, while the Act extended the time for registration to those who were sick and, for that reason, unable to register, it still provided, nevertheless, "that any Chinese laborer failing for any reason to secure the certificate required under this law within two years from the date of its passage shall be deported from the Islands."

Courts naturally feel a reluctance to deport from a country an individual who has been a resident thereof for a period of ten years and who, in a way, has established himself as a member of the community. The statute, however, is plain, was passed by express authorization of Congress, and must be complied with, whatever hardship may follow its application.

The judgment of the trial court is reversed and the alien is remanded to the custody of the Collector of Customs for deportation.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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