

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

G.R. No. 8126. December 11, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is a proceeding in habeas corpus for the relief of Tan Beko, who claims to be illegally detained by the Collector of Customs.

It is alleged in the petition that said Tan Beko arrived at the port of Manila in the Philippine Islands from China on or about July 17, 1910, and applied for admission as the minor son of a resident Chinese merchant; that said petitioner was brought before a board of special inquiry, which board heard a number of witnesses, all of whom testified that the petitioner was a minor less than 21 years of age, and that said board received no testimony whatever to the effect that said petitioner was more than 21 years of age; that the said board unjustly, arbitrarily, and in abuse of its authority and of the rights of the petitioner, refused to hear a certain material witness presented by the said petitioner; and that said board, in violation of the rights of the plaintiff and in abuse of its authority and discretion, denied entry to the petitioner and excluded him from the Philippine Islands. It is further alleged that an appeal was taken to the Insular Collector of Customs, who affirmed the decision of the board in violation of the rights of the petitioner.

The facts appearing from the record show the arrival of the petitioner at the port of Manila from Amoy, China, on or about July 22, 1910; that his right to land was inquired into by a board of special inquiry duly authorized thereunto, hearings being held on July 22, 28 and 29, 1910. Upon the first hearing the board decided that the said Tan Beko was the legitimate son of Tan Tee-Co but that Tan Beko was more than 21 years of age and was, therefore, not a minor son of a resident Chinese merchant within the meaning of the Chinese Exclusion Law, and declined to permit the entry. A motion for a rehearing was made and granted on the 5th day of August, 1910, On the termination of said rehearing the board again rendered a decision adverse to the right of the petitioner to enter the Philippine Islands, basing it upon the ground that Tan Tee-Co, the father of the petitioner, was not a merchant within the meaning of the Chinese exclusion laws and that the petitioner himself was more than 21 years of age. On the 19th of August, 1910, another application for a rehearing was made which was granted on the 22d of that month. At said rehearing testimony was again received regarding the right of the petitioner to enter the Philippine Islands, after which the board again rendered a decision adverse to the right of the petitioner, holding that while he might be considered the legitimate son of Tan Tee-Co, as he claimed, and that the latter was a merchant within the meaning of the Chinese exclusion laws, still the petitioner was not entitled to enter because of the fact that he was more than 21 years of age.

An appeal having been taken to the Insular Collector of Customs, the decision of the board was affirmed.

The main question presented by the appellant in this case is that the board of special inquiry rendered a decision adverse to the appellant without any evidence before it to sustain such decision. It is true that no witness was

sworn before the board on behalf of the Government or against the claim of the petitioner. The board, however, made a thorough examination of the person of the petitioner and, after such examination, came to the conclusion that he was not a minor but was a person of full age.

We are of the opinion that the person of an alien seeking admission into the Philippine Islands is evidence in an investigation by the board of special inquiry to determine his right to enter and that the board may take his appearance into consideration to determine or to assist in determining not only the age of the applicant but the credibility of the witnesses who testify as to his age; and that, therefore, the decision of the board in this case, based upon the appearance of the applicant, is not without evidence to sustain it.

We have held in numerous cases that we will not interfere with the decision of the board of special inquiry upon the facts when it appears that there is evidence supporting the decision. The board is not obliged to believe the testimony of witnesses that an applicant is 10 years of age when it is apparent from his appearance that he is 40; and although such a determination is much more easy than is that of whether an applicant is 20 or 21, still the same principle is involved, namely, the right of the board to determine from the appearance of the applicant his apparent age.

Another error assigned by the appellant is that during the hearing before the board Tay Chico was called as a witness on behalf of the petitioner and stated that he was a merchant residing at Pagbilao, Tayabas, and that he had left his certificate of residence and his cedula at home. The board refused to permit the witness to testify without first presenting his cedula as required by Act No. 1189 of the Philippine Commission. This refusal to hear the witness occurred on the 29th of July, 1910. Thereafter hearings were granted on the 5th and again on the 22d of August.

It is evident therefore that the witness had ample time to obtain his certificate and cedula and qualify himself as a witness and that his failure to do so was the fault either of himself or of the person who called him as a witness. Moreover, this witness was not again presented.

We find no error which calls for a reversal of the judgment. It is, therefore, affirmed, with costs against the appellant.

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

Trent, J., dissents.

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