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# A CRITICAL STUDY OF THE EXCLUSION LAW AS APPLIED IN LIM PUE v. INSULAR COLLECTOR OF CUSTOMS

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## INTRODUCTION

In commenting on the doctrine laid down by the Philippine Supreme Court in the case of *Lim Pue v. Insular Collector of Customs* (33 Phil. 519), I shall attempt to point out some of the difficulties of administrative officials consequent on the application of the doctrine in the actual enforcement of the Exclusion laws of the United States in the hope that these may be done away with either by legislation or reversal of the principles enunciated. I have had the privilege of taking part, to a limited extent, in the enforcement of the immigration laws of the United States as a member of the Board of Special Inquiry and as Immigration Inspector of the Bureau of Customs and the difficulties met are actual and subsisting, gathered from experience in the performance of my official duties. In order that my position on the subject may be understood, I shall say as a preliminary statement that I look at the doctrine not only from the purely legal aspect but also from the administrative viewpoint. The case of *Lim Pue v. Insular Collector of Customs* was decided by our Supreme Court without any dissenting opinion with Mr. Justice Moreland penning the decision. The doctrine in fine is: Once a Chinese person acquires the status of a merchant under the immigration laws he remains a merchant and enjoys the privileges attached to such status even though subsequently he becomes in fact a laborer. I do not agree with this opinion not only because its actual application hampered a great deal the immigration officials in the prevention of illegal entry but also because such doctrine is not amply supported by the Immigration laws.

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## THE CASE

This is an appeal by the respondent from a judgment of the Court of First Instance of Manila reversing a decision of the Insular Collector of Customs and discharging the petitioner from custody.

The petitioner is the lawful wife of one Tin Singa, a Chinese resident of Parang, Mindanao, Philippine Islands. She arrived at the port of Manila on or about the 24th day of April, 1915, seeking admission into the Philippines as said wife, alleging as a right to entry that her husband was a merchant legally domiciled in the Islands. She was refused admission by the Immigration inspector of the Bureau of Customs who boarded the boat on which she arrived at the port of Manila and was by them held for investigation by a board of special inquiry.

The petitioner was given two hearings by the board, one on May 6, and the other on May 17, 1915. At the termination of the first hearing, the board refused her admission. The same decision was rendered on the second hearing. The board found that Tin Singa, her alleged husband, is a Chinese laborer and not a merchant. The petitioner, Lim Pue, therefore was refused landing on that account.

Lim Pue thereupon made application to the Court of First Instance of Manila for a writ of habeas corpus. An order to show cause was directed to the respondent Insular Collector of Customs requiring him to show cause of the detention of the petitioner and why she should not be discharged from custody. On the return of the order to show cause a hearing was had on which evidence was taken by the court relative to the right of the petitioner to enter the Philippines. The court found on the evidence presented to it that, although the husband of petitioner was, prior to year 1914, a domiciled Chinese merchant within the definition of the law and was entitled to remain in the Islands as such, he ceased to be a merchant about the year 1914, and became and continued thereafter to be a laborer within the definition of the Chinese Exclusion Acts. Although the court found that the husband of the petitioner was a Chinese person or person of Chinese descent and that he was a laborer it nevertheless held that the petitioner was entitled to enter the Philippines and enjoy the society and companionship of her husband on the ground that the wife of a Chinese laborer entitled to remain in the Philippines has the right to enter, she being entitled to the same right as he.

The respondent appeald from the decision of the lower court and contends that it was in error when it held that the wife of a Chinese laborer domiciled in the Philippine Islands is entitled to enter under the Chinese Exclusion Acts, the contention of the counsel for the Government being that the wife of a laborer seeking to enter the Philippine Islands enjoys the same status which the husband would enjoy if he himself were at the border seeking to enter; and that, inasmuch as the husband would be excluded from the Philippine Islands under such circumstances, the wife must also be excluded.

The Supreme Court in deciding the case says that the case may be decided on different grounds and the judgment appealed from sustained. The Supreme Court continued, "The first that we find of Tin Singa on the record he was a merchant within the definition of the law and was engaged in business as such about the year 1907. There is no claim here that Tin Singa is not entitled to be and remain in the Philippines, but, on the contrary, it is conceded by both parties that he is legally in the Philippine Islands and entitled to remain therein although now a laborer in fact and without the certificate required by Act 702. In other words, so far as the record and admissions and attitudes of the parties are concerned, Tin Singa came to the Philippine Islands as a merchant, continued to be such until about 1914, and under decisions of this court, is entitled to remain although now a laborer, inasmuch as he still enjoys the privileges of the status which he had when he entered the Philippine Islands as a merchant. In other words, although Tin Singa has become a laborer he still retains the privileges attached to the status of merchant. To put it in another way, while he is a laborer in fact he is a merchant in law. We are of the opinion that, inasmuch as Tin Singa is still in the full enjoyment and within the full protection of the privileges attached to a Chinese merchant properly in the Philippine Islands, his status cannot be said to be in law that of a laborer who offers himself at the border as a candidate for entrance for the first time; and, that being the case, the entry of the petitioner could not be denied on the ground that, inasmuch as her husband is now in fact a laborer, she must be considered to have the same status as he. We believe that she could be regarded rather as having the privileges attaching to which protect her husband in the Philippine Islands and guard his right to remain therein although he is in fact a laborer. Such being the case,

if she enters the Philippine Islands at all it must be on the ground that she, as the wife of Tin Singa, participates in the privileges which he enjoys derived from the fact that he entered the Philippine Islands and lived therein for years as Chinese merchant. In other words, she must be deemed to enjoy the status of a wife of a Chinese merchant rather that of a wife of a Chinese laborer. From such viewpoint there is no question that she has the right to enter the Philippine Islands."

And on the above grounds, the Supreme Court sustained the order of the lower court discharging the petitioner from the custody of the respondent.

From the above opinion we may gather that:

1. Once a Chinese person or person of Chinese descent acquires the status of a merchant under the immigration laws, he remains a merchant and enjoys the privileges attached to such status although in fact he is a laborer.

2. A legal fiction is created whereby a laborer in fact is considered a merchant in law.

3. It is not considered necessary for a merchant to maintain his status as such once he is in the Philippine Islands.

## DEFINITION OF TERMS

In order to understand fully the subject under discussion, terms commonly used herein which have technical connotations in the immigration laws will be defined.

Section 1 of the Act of Congress of February 5, 1917 defines the term "United States" to mean the United States and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone. This broad definition embraces within the term "United States" the Philippines. In fact, even previous to the Act of Congress of 1917, the Congressional Exclusion Act of May 6, 1882, amended in 1884, 1888, 1892, 1893, 1894, 1900, and 1901 was expressly extended into the Islands by the Act of Congress of April 22 (29), 1902, (Weigall v. Shuster, 11 Phil. 340, 11 J. F. 350) so that the term as used in the Act of Congress of 1917 must have been made sufficiently broad purposely to extend to this country because previous exclusion laws have been made applicable here.

"Alien" is defined by paragraph (b) of Section 28 of the Immigration Act of 1924 to include any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United

States not taxed, nor to citizens of the Islands under the jurisdiction of the United States.

"Laborer" according to Ballentine's Law Dictionary is "one who performs with his own hands the contract he makes with his employer. Laborers whether skilled or unskilled are barred from entering the United States. (Proclamation of the President of the United States, February 24, 1913). The word "laborer" or "laborers" shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, buckstering, peddling, laundrymen, or those engaged in taking, drying, otherwise preserving shell or other fish for home consumption or exportation. (Sec. 2, page 14, Treaty, Laws, and Rules Governing the Admission of Chinese—Rules of October 1, 1926; par. 1, Sec. 12, Act 702).

### WHO ARE MERCHANTS UNDER THE IMMIGRATION LAW

The term "merchant" as employed in the acts of Congress pertaining to immigration "shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant." (Sec. 2, par. 2, p. 14, Treaty, Laws, and Rules Governing the Admission of Chinese—Rules of October 1, 1926). The definition of a merchant under our law is as follows: "The term 'merchant' as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant. The definition of 'laborer' and 'merchant' set out in this section shall receive the same construction as that given to it by the Federal courts of the United States and the rulings and regulations of the Treasury Department of the United States."

Our Supreme Court and the Federal Supreme Court had on various occasions interpreted and made clear the meaning

of the term. The United States Supreme Court has held that a member of a Chinese firm which manufactures cigars and also disposes of them at retail as well as wholesale is a merchant within the meaning of the Act of November 3, 1893. (Chin Fong v. White, 169 C. C. A. 569 Fed. 849 affirmed in 253 U. S. 90, 64 L. ed. 797). And a member of a firm engaged in buying and selling liquors and cigars is a merchant within the meaning of the act though he spends much of his time delivering goods to customers of the firm, since such manual labor is necessary in the conduct of his business as a merchant. (Ex parte Young, 262 Fed. 227). To bring a Chinaman within the definition of merchant in the immigration laws, his interest must be real, substantial, and appear in the business partnership articles in his name. (Lee Kau v. U. S. 10 C. C. A. 669, 15 U. S. App. 516, 62 Fed. 914; Re Chop Tin, 2 Haw Dist. Ct. 153).

Our local Supreme Court followed closely the holdings of the Federal Supreme Court. This could only be expected because the immigration laws were primarily intended to apply to continental United States. In Singh versus Insular Collector of Customs (38 Phil. 867) our Supreme Court ruled that a merchant is one who engages in buying and selling merchandise at a fixed place of business. It is not necessary and the law does not require that a large amount of money be invested in order to constitute a mercantile business. To be a merchant a man must have substantial interest in the business irrespective of its size. (Ngo Tim v. Collector, 30 Phil. 144).

The time for ascertaining the status of merchant must be made at the moment of entry. (Dharamdas v. Insular Collector, 67 U. S. 969). A person, therefore, claiming admission on a merchant status as well as those whose right to admission into the United States depends on him must be determined at the time of entry.

One of the privileges attaching to merchant status is that of being entitled to entry into the United States. Section 3 of the Act of Congress of February 5, 1917 (39 Stat. 874) after enumerating the persons excluded from admission into the United States says that merchants are among those not included in the class of aliens barred from the United States. A Chinese merchant, therefore, may enter the United States. And conse-

quent to that privilege is the right of his wife and minor children likewise to admission whether such wife and minor children accompany the husband and father on coming into the United States. (Sub-par. 2-A, par. 2, Rule 2 of Rules of October 1, 1926 of the Department of Labor of the United States). Once a merchant has been lawfully admitted into the United States, his children whether adopted, natural, or legitimate may also be admitted together with his lawful wife. (Ng Hian v. Collector of Customs, 34 Phil. 248; Ex parte Fong Yim, 134 Fed. 938).

## ANALYSIS OF THE CASE UNDER COMMENT

That at the time Tin Singa was admitted he was a merchant within the meaning of the Immigration laws is not disputed; nor the fact that when his lawful wife sought admission he ceased to be a merchant and was in fact a laborer. The Court says that "while he is a laborer in fact he is a merchant in law." This is creating a legal fiction, vesting privileges attaching to a merchant status of a person who in fact is a laborer. In support of this principle, the Court states that Tin Singa has been lawfuly admitted as a merchant and although he is now a laborer, he cannot be compared to a laborer who offers himself at the border as a candidate for entrance for the first time. Is this doctrine supported by the immigration laws?

Section 3 of the Act of Congress of February 5, 1917 (39 Stat. 874) provides that persons of the excepted classes or their lawful wives or foreign born children "WHO FAIL TO MAINTAIN IN THE UNITED STATES A STATUS OR OCCUPATION PLACING THEM WITHIN THE EXCEPTED CLASSES SHALL BE DEEMED TO BE IN THE UNITED STATES CONTRARY TO LAW, AND SHALL BE SUBJECT TO DEPORTATION * * *." As stated above, there is no question that Tin Singa at the time of his admission was a merchant and that he ceased in fact to be such and became a laborer at the time of entry of his wife. If this provision of the law were in operation at the time this case came up (1915) it is obvious that the stay of Tin Singa would have been unlawful and his deportation would have been in order. But the act of Congress of February 5, 1917 was not yet enforced so that it can not be said with accuracy that the stay of Tin Singa prior to 1917 was unlawful. It is unfortunate, however, that this doctrine al-

though growing out of laws prior to 1917 was followed even in the recent case of Lim Son et al versus Insular Collector of Customs. (33 Off. Gaz. 41). And more recently the same principle seems to be recognized by Justice Vickers in his dissenting opinion in Choa Siu versus Insular Collector of Customs (G. R. 43605) when he says that "he (referring to the Solicitor-General) doubtless realized that if Choa Siu had not continuously engaged in business as a merchant, he had not lost the status of a merchant or his right to bring in his wife and minor children."

The case of Chin Hong versus Nagle (7 Fed. 2d. 609) decided by the Circuit Court of Appeals, Ninth District on August 24, 1925, and cited by the Solicitor-General in the case of Lim Son versus Insular Collector (33 Off. Gaz. 41) was discarded by the Philippine Supreme Court as not controlling because the decision "is not sustained by any reasoning or citation of authorities." This case held that a minor son of a father not a merchant at the time such minor sought admission into the United States is not entitled to entry. I believe there was no necessity of the court to give citations and authorities because the plain provision of section 3 of the Act of Congress of February 5, 1917 is controlling. The law on the subject not having been declared unconstitutional by any courts either in the United States or in the Philippines should be upheld.

The doctrine of Lim Pue versus Insular Collector is abrogated by section 3 of the Act of Congress of February 5, 1917. The Lim Son case which followed the doctrine of the Lim Pue case made mention of the Immigration law of 1924 but not of section three of the Act of 1917. This provision has not been squarely placed before the court and it would be nullifying the express will of Congress if no effect is given to it. The provision is enforced and should be given the respect that is its due.

The reason, it seems, for creating the legal fiction of a merchant in law although a laborer in fact is that without such fiction the law would result in absurdities and hardships but "Dura est lex sed lex" and until such law is repealed it must be made effective.

The law must not be blind to the actuality of things. It is the purpose of the Immigration laws to exclude from the United States laborers of Chinese or of non-Caucasian descent in order that American laborers may not suffer competition from persons whose standard of living is conceded to be very

low. If we follow the doctrine of the Lim Pue case we would find ourselves admitting the family of a laborer who, under the immigration law, is not entitled to bring in his wife and minor children. A concrete example will illustrate my point. A Chinese laborer registered pursuant to the provisions of Act 702 of the Philippine Commission applies for endorsement as merchant under the immigration laws. He files his application with the Insular Collector of Customs. After his business has been investigated, the Insular Collector acts favorably and he is endorsed as a merchant. However, after endorsement he transfers his property to his brother also a laborer registered as such by the Bureau of Customs for the only purpose of enabling him to apply for endorsement. His brother applies and is endorsed. Subsequently he had his brother return the property to him. It is evident, therefore, that when his brother returns the property, that brother reverts to his old status of a laborer at least in fact. Now, should his brother, after the return of the property to him be considered a merchant under the immigration law and privileged to bring in his family? Undoubtedly, under the Lim Pue case, he, although a laborer, is entitled to bring in his family. For practical purposes, therefore, what would be the difference between a laborer registered under Act 702 of the Philippine Commission and another laborer who was endorsed as a merchant who in fact is a laborer? Would it not be a case of a laborer being allowed to bring in his minor children and wife? Is not the creation of the legal fiction of "a merchant in law" just another way of admitting persons who in fact could not have been admissible because their father or husband do not come within the excepted classes as enumerated in the Act of Congress of 1917? The excepted classes are allowed to come to the United States on the theory that they will not compete with American labor and that they are financially in a position to maintain their family to the extent of not being a burden to the state. This purpose, however, is defeated when a laborer is allowed to bring in his family because not only would he not be able to provide for his family financially but he would be forced to compete with American labor so that his family might live. Will the mere fact of endorsement bring him within those of the excepted class? The answer is in the affirmative but the endorsement was made in recognition of his financial and actual status— that of being actually engaged in

business. The cause for endorsement is his business and when such business ceases, the cause of the endorsement is removed and it follows that such endorsement expires. Under the Lim Pue case the result is to the contrary.

In the above illustration it is conceded that the one first endorsed is entitled to all the privileges of a resident Chinese merchant but certainly, it would be absurd to extend the same privilege to his brother who is in fact a laborer, because that would be pretending to see things that do not really exist or have ceased to exist. Merchant in law is not strictly a status but an occupation, a profession from which flows privileges recognized in the laws governing aliens. When such occupation ceases as when the merchant becomes a consul or a minister of the country from which he comes, it would not be correct even in law to say that he still is a merchant under the immigration laws for that would be ignoring his official status as an officer of his government and of the actual fact of having changed his occupation. If a laborer can change his status into a merchant why can he not change his status back to that of a laborer? Is there anything sacred in the merchant status that once acquired it can no longer be removed?

More often than not the Immigration Laws are evaded through fictitious transfers of mercantile business of resident Chinese merchants to laborers who are otherwise not entitled to bring in their families. These Chinese laborers may be only employees of a resident Chinese merchant but through connivance with their employer they may succeed in showing that they are partners of the business and therefore are entitled to endorsement. When immigration officials make inquiries of their business they are confronted with the employees who claim to be partners. Articles of co-partnerships are presented before such officials and to these misrepresentations it would be difficult for them to make adverse findings. After the endorsement the fictitious partnership is dissolved and the so-called partners are no longer laborers but merchants. It might be said that the immigration officers should be on the look out for such fictitious transfers and misrepresentations. Doubtless immigration officials have always been vigilant but since after endorsement the business of the alleged partner can no longer be the subject of inquiry, misrepresentations can still go on with impunity. This situation would not have been as it is if every time a merchant appears before the Board of Special Inquiry

he should be required to prove his *present* merchant status so that his actual business could be ascertained instead of merely showing that he *was* a merchant. Under the Lim Pue case this check up can not be made. All he has to prove is that in some remote past he had been a merchant irrespective of his present financial condition. He may be a beggar in fact yet in law he is a merchant. And the practical effect would be that a given mercantile business may become a mill out of which indefinite number of laborers may be manufactured into merchants in law.

## CONCLUSION

The foregoing consideration have shown that while the doctrine of the Lim Pue case can be said to be controlling in 1915 it cannot have force and effect any longer after the passage of the Act of Congress of February 5, 1917 specifically providing that persons of the excepted class should maintain their status at the time of entry. The doctrine while endeavoring to place facility to aliens has forgotten the purpose for which the Immigration laws were enacted. It has created a legal fiction blind to the reality of things. It has vested privileges to persons who should have been subject to deportation. It has encouraged rather than discouraged misrepresentations. The best doctrine should be that a person's merchant status should change as years go by keeping pace with the progress or diminution of his business. If one is admitted on a merchant status he should maintain that status and we would be complying with the law if he is deported for failure to continually stay within the bounds of the excepted classes. This may mean hardships but such is the law and over and above every consideration is the supremacy of the law.