

Cheung Sum Shee Vs. Nagle

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Court : US Supreme Court

Decided On : May-25-1925

Appeal No. : 268 U.S. 336

Appellant : Cheung Sum Shee

Respondent : Nagle

Judgement :

Cheung Sum Shee v. Nagle - 268 U.S. 336 (1925)

U.S. Supreme Court Cheung Sum Shee v. Nagle, 268 U.S. 336 (1925)

Cheung Sum Shee v. Nagle

No. 769

Argued April 17, 20, 1925

Decided May 25, 1925

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ON CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

SYLLABUS

1. Alien Chinese wives and minor children, of Chinese merchants lawfully domiciled in the United States, are not mandatorily excluded from admission by the Immigration Act of 1924, which provides that "no alien ineligible to citizenship shall be admitted to the United States unless such alien is . . . not an immigrant, as defined in Section 3," and in that section classifies as a nonimmigrant

"an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."

P. [268 U. S. 344](#) .

2. Such wives and children were guaranteed the right of entry by the Treaty of 1880. *United States v. Mrs. Gue Lim*, [176 U. S. 459](#) . *Id.*

3. The Act of 1924 should be construed with a view to preserving this treaty right, and the legislative history and general terms of the Act permit this. P. [268 U. S. 345](#) .

4. Such aliens, being in effect specified by the Act itself as "nonimmigrants," are not barred by 5, which declares that an alien not particularly specified in the Act as a nonquota immigrant or nonimmigrant shall not be admitted as such

"by reason of relationship

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to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

P. [268 U. S. 346](#) .

Question certified by the circuit court of appeals, arising on the review of a decision of the district court (2 F. 2d 995) which refused relief by habeas corpus to

Chinese aliens held for deportation by the immigration authorities.

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MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

Petitioners are alien wives and minor children of resident Chinese merchants lawfully domiciled within the United States. They departed from China on the steamship *President Lincoln*, and upon arrival at San Francisco, July 11, 1924, sought permanent admission to the United States. The Secretary of Labor denied their applications and gave the following reasons therefor:

"Neither the mercantile status of the husband and father nor the applicant's relationship to him has been

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investigated, for the reason that, even if it were conceded that both these elements exist, the applicants would be inadmissible as a matter of law. This is made necessary because of the inhibition against their coming to the United States as found in Paragraph (c) of Section 13 and that portion of Section 5 which reads as follows:"

"An alien who is not particularly specified in this Act as a nonquota immigrant or a nonimmigrant shall not be admitted as a nonquota immigrant or a nonimmigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

The court below has inquired, Judicial Code, 239,

"Are the alien Chinese wives and minor children of Chinese merchants who were lawfully domiciled within the United States prior to July 1, 1924, such wives and minor children now applying for admission, mandatorily excluded from the United States under the provisions of the Immigration Act of 1924?"

Prior to July 1, 1924, petitioners, if otherwise unobjectionable, might have been admitted notwithstanding their race and nationality. *United States v. Mrs. Gue Lim*, [176 U. S. 459](#) , [176 U. S. 466](#) -468; *Yee Won v. White*, [256 U. S. 399](#) , [256 U. S. 400](#) -401. But it is said they are absolutely excluded by the "Act to limit the immigration of aliens into the United States, and for other purposes," approved May 26, 1924, c.190, 43 Stat. 153, applicable provisions of which follow:

"Sec. 13. . . . (c) No alien ineligible to citizenship shall be admitted to the United States unless such alien(1) is admissible as a nonquota immigrant under the provisions of subdivision (b), (d), or (e) of 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in 3."

"Sec. 3. When used in this Act, the term 'immigrant' means any alien departing from any place outside the

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United States destined for the United States, except . . . (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."

"Sec. 5. When used in this Act, the term 'quota immigrant' means any immigrant who is not a nonquota immigrant. An alien who is not particularly specified in this Act as a nonquota immigrant or a nonimmigrant shall not be admitted as a nonquota immigrant or a nonimmigrant by reason of relationship to any individual who is so specified, or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

The present existing treaty of commerce and navigation with China, dated November 17, 1880, 22 Stat. 826, 827, provides:

"Article II. Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household

servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation."

An alien entitled to enter the United States "solely to carry on trade" under an existing treaty of commerce and navigation is not an immigrant within the meaning of the Act, 3(6), and therefore is not absolutely excluded by 13.

The wives and minor children of resident Chinese merchants were guaranteed the right of entry by the treaty of 1880, and certainly possessed it prior to July 1st, when the present Immigration Act became effective. *United States v. Mrs. Gue Lim, supra*. That Act must be construed with the view to preserve treaty rights unless clearly

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annulled, and we cannot conclude that, considering its history, the general terms therein disclose a congressional intent absolutely to exclude the petitioners from entry.

In a certain sense, it is true that petitioners did not come "solely to carry on trade." But Mrs. Gue Lim did not come as a "merchant." She was nevertheless allowed to enter, upon the theory that a treaty provision admitting merchants by necessary implication extended to their wives and minor children. This rule was not unknown to Congress when considering the Act now before us.

Nor do we think the language of 5 is sufficient to defeat the rights which petitioners had under the treaty. In a very definite sense, they are specified by the Act itself as "nonimmigrants." They are aliens entitled to enter in pursuance of a treaty as interpreted and applied by this Court 25 years ago.

The question propounded by the court below must be answered in the negative.

