

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

JUYEL AHMED,)	Special Proceeding No. 00-0101A
)	
Applicant,)	
)	
vs.)	ORDER DENYING PRELIMINARY
)	INJUNCTION AND GRANTING
)	STAY PENDING APPEAL
MAJOR IGNACIO CELIS, Supervisor)	
of Labor and Immigration Detention)	
Center, COMMONWEALTH OF THE)	
NORTHERN MARIANA ISLANDS and)	
CNMI DEPARTMENT OF LABOR)	
AND IMMIGRATION,)	
)	
Respondents.)	
<hr/>		

I. PROCEDURAL BACKGROUND

This matter comes before the court pursuant to this court’s order of March 23, 2000 directing the parties to appear to address certain questions raised by Applicant’s March 14, 2000 ex parte motion for a temporary restraining order and for preliminary injunction. Paul Lawlor, Esq. appeared on behalf of the Applicant, and Robert Goldberg, Esq. appeared for the Government. The court, having reviewed the record in this proceeding, including the memoranda, declarations, and exhibits, makes the following findings and conclusions. [p. 2]

II. FACTUAL BACKGROUND

1. On March 8, 2000, this court granted Applicant’s request for writ of habeas corpus with conditions, directing Respondents either to deport Applicant within ten days or release him from detention.

FOR PUBLICATION

2. On March 14, 2000, Respondents filed a status report advising the court that the travel document necessary to effect deportation had been received and that Applicant would be deported on March 16, 2000.
3. On March 15, 2000, Applicant sought and obtained from this court a temporary restraining order, releasing Applicant from custody pending final disposition of his I-590 asylum application¹. In addition to issuing the temporary restraining order, this court stayed the Order of Deportation in Civil Action No. 98-704(B) in order to hold an evidentiary hearing on whether the Government could properly subject Applicant to deportation while the present application for asylum is pending. The court scheduled the hearing for preliminary injunction on March 23, 2000 at 1:30 o'clock p.m.²
4. On March 22, 2000, the Government filed a motion to dissolve the temporary restraining order and to execute the Order of Deportation. The Government maintained that, at great time and expense, it had finally obtained a travel document to execute the Order of Deportation and that the travel document would be valid for only one month (Mot. at 4; Ex. 6). The Government contended, moreover, that Applicant could not prevail on his claim for injunctive relief because, as a matter of law, Applicant cannot seek political asylum in the CNMI (Mot. at 5). **[p. 3]**
5. The Immigration and Nationality Act (the "INA"), 8 U.S.C. §§ 1101 et seq. governs the resolution of immigration matters for the United States. For aliens claiming a fear of persecution in their native countries, the INA provides a mechanism by which those aliens may apply for asylum and withholding of deportation.. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 241(b)(3)(B) (deportation). In contrast to the INA, the Government argues that

¹ In support of his ex parte Application for a temporary restraining order, Applicant represented that he had completed an I-590 and applied for political asylum on or about February 24, 2000. Ex Parte Motion for Temporary Restraining Order, filed in this proceeding at Ex. 4 (Letter dated February 24, 2000 from Bruce Lee Jorgensen to Oscar Martinez, et al., enclosing for processing the INS Form I-590 application of Applicant).

² On March 21, 2000, Applicant filed an ex parte motion to continue the hearing and maintain the status quo on grounds that Applicant's counsel, Bruce Berline, would be off-island. Because Mr. Berline had sufficient advance notice of this court's March 23 hearing, the court denied the request to continue this matter.

the Commonwealth has neither the mechanism for granting political asylum nor any infrastructure in place to resolve these claims.

6. The relationship between the Commonwealth and the United States is governed by the Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, [hereinafter, the “COVENANT”].³ Under Article V of the COVENANT, however, INA provisions concerning asylum and withholding of deportation are not applicable to the CNMI. *See* COVENANT at § 503(a) (immigration and naturalization laws of the United States do not apply to the CNMI except as otherwise provided under § 506), § 506 (CNMI deemed to be a part of the United States for limited purposes pertaining to citizenship, immediate relatives, and loss of nationality). The INA, moreover, does not include the CNMI as a “state,”⁴ and defines the “United States” as “the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.” 8 U.S.C. § 1101(a)(38).
7. Aside from the specific exceptions set forth in section 506 of the COVENANT, the CNMI, as a sovereign nation, exercises plenary authority over its own immigration pursuant to CNMI domestic law. *See Tran v. Northern Mariana Islands*, 780 F.Supp. 709, 713 (D. N.M.I. 1991), *aff’d*, 993 F.2d 884 (9th Cir. 1993) (table). Since the law of the Commonwealth does not provide for a right of political asylum and Applicant does not point to any specific provision of international law mandating the Commonwealth to [p. 4] entertain such a claim, the Government argues that a pending application for political asylum in the United States should have no effect on this court’s Order of Deportation.
8. The Government further points out than Applicant’s asylum application has not been accepted for processing and is not even pending (Mot. at 5; Decl of Oscar Martinez, Ex.11). According to U.S. Immigration and Naturalization Service Officer Martinez, the INS is

³ 48 U.S.C. § 1601 note, *reprinted in* Commonwealth Code at B-101 *et seq.*

⁴ *See* 8 U.S.C. § 1101(a)(36), defining the term “state” to include the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, as well as the several states.

taking the position that it lacks jurisdiction to accept asylum or refugee applications from anyone residing in the CNMI.

9. At the hearing in this matter, Applicant argued that until the United States District Court passes on these questions,⁵ and until Applicant's pending requests for asylum under international law are fully processed, the Commonwealth should be restrained from deporting the Applicant. The court does not agree.
10. The court recognizes that the right of an alien to petition for political asylum may implicate fundamental due process guarantees. On the basis of the record before the court, however, the court is not persuaded that the law of the Commonwealth provides either the right to petition for political asylum or the infrastructure to determine and resolve such claims..
11. The court therefore Orders that Applicant shall be deported. Given the questions of first impression raised by the parties, and the hardship to Applicant, the court further ORDERS that the Order of Deportation in Civil Action No. 98-704(B) be stayed until and through April 5, 2000 to allow the parties sufficient time to file such motions and/or appeals on an expedited basis with the Commonwealth Supreme Court. *See Vaughan v. Bank of Guam*, 1 N.M.I. 318, 321 (1990). [p. 5]

ORDER

On the basis of the foregoing, the court makes the following ORDER:

1. The court DENIES Respondent's Motion to Dissolve Temporary Restraining Order as moot.
2. The court's Order of Deportation in Civil Action No. 98-704(B) is hereby STAYED until and including April 5, 2000.
3. During the pendency of this Order and any extensions thereof, Applicant shall be required to appear daily at 10:00 a.m. before an immigration officer for identification. On Mondays through Fridays, Applicant shall appear at the Offices of the Department of Labor and Immigration, and on weekends to at the Immigration

⁵ The Government points out that these matters are currently pending in *Liang v. United States*, Civil Action No. 99-0046 (D.N.M.I. 1999).

Detention Center. Applicant shall provide such information as the Department of Labor and Immigration may require to assure his availability for deportation including a map to his current address.

4. Should this court's Stay expire on its own terms, then Applicant shall present himself on April 6, 2000 to the Detention Center for deportation to occur no later than April 8, 2000.

So ORDERED this 27 day of March, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge