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

In re:	)	**Civil Action No. 99-492B**
PERFECTO C. RAMOS	)	
Petitioner/Appellant,	)	
vs.	)	**DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW**
MAGUSA, INC.,	)	
Respondent/Appellee,	)	
DIRECTOR OF LABOR,	)	
Intervenor.	)	

I. INTRODUCTION

¶1 This matter comes before the court on Perfecto Ramos' petition for judicial review of a July 23, 1999 decision of the Hearing Officer declaring Petitioner's claim for unpaid wages frivolous, ordering Petitioner to depart the Commonwealth, and imposing restrictions on re-entry for five years. Petitioner challenges the decision of the Hearing Officer as arbitrary and capricious, contending that every employee, regardless of his status as a corporate officer, has the right to file a claim for unpaid wages. Intervenor, the Director of Labor, contends that Petitioner was wrongfully engaged in the operation and/or management of a business in contravention of the Nonresident Worker's Act, 3 CMC § 4411 *et seq.* and urges the court to affirm the decision of the Hearing Officer.

¶2 Assistant Attorney General Andrew Clayton appeared for Intervenor, the Director of Labor, and Reynaldo O. Yana appeared on behalf of Petitioner/Appellant, Perfecto C. Ramos. The court, having reviewed the record in this proceeding, including the memoranda, declarations, and exhibits, now issues its written decision affirming, in part, the decision of the Hearing Officer.

II. FACTUAL BACKGROUND

¶3 Petitioner, a citizen of the Philippines, entered the Commonwealth pursuant to a nonresident worker's employment contract in either 1986 or 1989.[1/] On November 7, 1989, Romeo A. Ramos filed, or caused to be filed, articles of incorporation for Magusa, Incorporated. Three individuals signed as incorporators: (1) Ramos' nephew, Petitioner Perfecto C. Ramos; (2) Romeo A. Ramos; and (3) Maribel R. Mejia. See Tr.4; Ex. 1.

¶4 On November 7, 1989, Magusa also filed a stock affidavit, listing Petitioner, Romeo A. Ramos, and Mejia as shareholders (Tr. 41; Ex.2). The stock affidavit further designated Mejia as president, Romeo A. Ramos as vice-president, and Petitioner as secretary-treasurer.

¶5 Magusa also filed annual corporation reports for each year from 1989 through 1997 listing Romeo Ramos as president, Mejia as vice-president, and Petitioner as secretary-treasurer. Each annual report further lists Petitioner as the owner of 2,000 shares of stock (Tr.3; Ex.3). Since its inception, moreover, Magusa employed Petitioner and Mejia as nonresident workers (Tr. 7-8, 20).

¶6 On December 16, 1997 Romeo Ramos applied for and was granted a business license to operate Magusa, Inc. d/b/a Romeson's Video Rental (Tr.15, 48; Ex.4). Romeo Ramos resided in Guam while Petitioner and Mejia ran the business as nonresident workers (Tr. 7-8).

¶7 During the time that Magusa was in operation, Petitioner testified that his uncle visited Saipan several times a month to pay him wages in cash (Tr.11). While he was here, his uncle and

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[1/] *See* Transcript of Proceedings of Labor Case 98-337 ("Tr.") at 20 (indicating his initial date of entry as 1989); Ex. 7 Labor Complaint, (listing 1989 as date of employment); Tr. 29, 38-39 (indicating 1986 as the date he first came to Saipan to work in some construction company for a church and as a mechanic). Petitioner further testified that he may have departed the Commonwealth before he started the business at issue (Tr. 37-39).

Mejia deposited the cash receipts from the video rental business into an account at the Bank of Hawaii under the name of Romeson (Tr. 13-15). Petitioner testified that he never made any deposits into the account (Tr. 14).

¶8 Romeo Ramos died on December 30, 1997 (Tr. 15-16).

¶9 Following the death of his uncle, Petitioner continued to operate the business, but no deposits were made into the business account (Tr. 18, 21). Petitioner claimed that he had not received wages since March of 1998 (Tr. 18-19, 22).

¶10 On June 29, 1998, Petitioner and Mejia sold the contents of Romeson's Video Rental to Movieland Sales and Rental (Ex. 6). Both Petitioner and Mejia signed the Absolute Deed of Sale.

¶11 On July 15, 1998, Petitioner filed Labor Complaint 98-337 against Magusa, claiming unpaid wages and requesting transfer relief (Ex. 7). In his complaint, Petitioner claimed that he had been abandoned by his employer and sought unpaid wages from March through June of 1998.

¶12 On July 21, 1999, the Division of Labor held a hearing on Labor Case 98-337, during which Petitioner testified that when Romeo Ramos died, Petitioner assumed that the business had passed to Mejia, his coworker and Magusa's vice-president, because of her romantic involvement with Romeo Ramos (Tr. 30-32). Petitioner also claimed that without his knowledge, Mejia sold the business to a person known as "Jeffrey," and as a result, he was abandoned during the course of his contract (Tr. 30-31).

¶13 At the hearing, Petitioner also admitted to signing the Articles of Incorporation, but denied serving as a corporate officer. Although he was listed as paying some $2,000 for corporate stock, he denied paying any money to start the business (Tr. 37).

¶14 Petitioner testified that he did not receive any wages from March 1998 through June of 1998, when the business was sold (Tr. 21-22). During the hearing, however, Petitioner admitted that he did use receipts generated by the business for food and other expenses, and that he was not seeking back wages, but only wanted the right to transfer employment (Tr. at 24 42-43).

¶15 Based on these facts, on or about July 23, 1999, the Hearing Officer found that Magusa had been conceived to legitimize Petitioner's presence in the Commonwealth (¶1). The Hearing

Officer also concluded that Magusa effectively functioned as the business of Petitioner and Mejia, and that Petitioner did not qualify as a foreign investor (*Id.*). In light of Petitioner's attempts to deny his status as a corporate officer and shareholder, the Hearing Officer further concluded that Petitioner played some part in falsifying business documents, thereby either consciously or unintentionally playing fast and loose with CNMI labor laws (Tr. 44). In light of Petitioner's status as a corporate officer and shareholder, moreover, the Hearing Officer found Petitioner bore some responsibility for creating the situation of which he complained (¶2). Ruling that the complaint was unfounded, without merit, and not brought in good faith, the Hearing Officer ruled that the complaint had been filed for the improper purpose of prolonging Petitioner's stay in the Commonwealth (¶3). Pursuant to 3 CMC §4447(d), the Hearing Officer found the complaint to constitute a material breach of contract, ordered Petitioner to depart the Commonwealth, and further imposed restrictions on re-entry.

¶16 Following a timely request for administrative review, the Secretary of Labor issued a final order affirming the decision of the Hearing Officer on August 19, 1999. Within fifteen days of the issuance of the final order, Petitioner Perfecto C. Ramos timely filed his petition for judicial review of the decision of the hearing officer in the instant case before this court.

¶17 Petitioner filed a *pro se* challenge to the decision of the Department of Labor and Immigration, essentially contending that the Hearing Officer's findings of fact and the final order affirming the ruling were arbitrary and capricious and contrary to applicable law, and the five-year bar on re-entry exceeded the Hearing Officer's statutory authority. Complaint at ¶ 7. Petitioner further claimed that his complaint against Magusa for unpaid wages was filed in good faith and not to avoid immigration and investment laws, and that, as secretary-treasurer of Magusa, he had no responsibility for paying employee wages and thus had every right to sue for unpaid wages. ¶18 The Division of Labor defends the decision of the Hearing Officer by attacking Petitioner's claim for unpaid wages and transfer relief as meritless. Pointing first to Petitioner's failure to acknowledge his complicity in the sale of business assets and his failure to mention that moneys received from the sale would have covered the allegedly unpaid wages,

Intervenor emphasizes **[p. 5]** that Petitioner himself recognized that his claim was unfounded, in that he withdrew the claim for wages during the course of the hearing. Arguing further that the sale of a business does not constitute employer abandonment, Intervenor contends that Petitioner's claims are simply not credible.

ISSUE

¶19 Whether the Hearing Officer's finding, that Labor Case 98-337 was filed in bad faith and without merit and further directing Petitioner to depart the Commonwealth for the conscious violation of CNMI labor laws should be set aside as "arbitrary or capricious," as "not based on substantial evidence," or as "unwarranted by the facts."

¶20 Whether the Hearing Officer exceeded his statutory authority by imposing a five year ban on re-entry into the Commonwealth for the filing of a frivolous claim for unpaid wages.

ANALYSIS

¶21 Petitioner challenges the decision of the Hearing Officer as arbitrary and capricious[2/] and further claims it was unsupported by substantial evidence and contrary to applicable law (Brief at 1). Conversely, Intervenor contends that in reviewing the decision of the Hearing Officer, this court may only set aside agency action, findings, and conclusions found to be unwarranted by the facts (Opp. at 2).

¶22 The Commonwealth's Administrative Procedure Act sets forth standards by which Commonwealth courts review the actions of administrative agencies. *See* 1 CMC § 9112. Among these standards, § 9112(f)(2)(i) requires a reviewing court to reverse an agency action which is found to be arbitrary or capricious. 1 CMC § 9112(f)(2)(i). Section 9112(f)(2)(v) of the Act, however, requires a reviewing court to set aside an agency action found to be "[u]nsupported by substantial evidence in a case subject to sections 9108 and 9109" of the APA. 1 CMC § 9112(f)(2)(v). APA sections 9108 and 9109, in turn, establish requirements for notice and hearing

[2/] *See* Petition at ¶7(a).

prior to an agency action, and set forth procedural requirements for the conduct of administrative hearings. See 1 CMC §§ 9108-9109.

¶23 As required by the Nonresident Worker's Act (the "NWA"), the Division of Labor conducted hearings on Petitioner's complaint pursuant to § 9109 of the APA. Because the NWA requires administrative hearings to be conducted pursuant to the procedures set forth in §§ 9108 and 9109 of the APA, the court reviews the factual determinations by the Director of Labor under the "substantial evidence" standard of review called for in APA § 9112(f)(2)(v), and not under the more deferential "arbitrary and capricious" standard established by § 9112(f)(2)(i). *See Limon v. Camacho*, Appeal No. 90-040 (N.M.I. Sup.Ct. Aug. 5, 1996), Slip Op. at 9. Under the substantial evidence standard, the court will defer to the judgment of the Hearing Officer, so long as the ruling rests on such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if the court would not have reached the same conclusion as to the issues in question. *See In re Hafadai Beach Hotel Extension,* 4 N.M.I. 38, 43-44 & n.25 (1993).[3/]

¶24 Although Petitioner correctly recites the appropriate standard of review governing this case, he fails to argue coherently for its correct application to the facts. The question is not, as Petitioner contends, whether an officer and/or shareholder of a corporation may sue his employer for unpaid wages, but whether the Hearing Officer's conclusions, that Petitioner's wage claim was frivolous and that Petitioner was unlawfully engaged in the ownership and/or operation of a business, were supported by substantial evidence. In avoiding these issues, Petitioner overlooks several key statutory provisions governing the outcome of this case.

¶25 In material part, the NWA clearly and unequivocally prohibits any nonresident worker, whose first entry into the Commonwealth for purposes of employment occurs after July 28, 1987, from operating, engaging in, or having a financial interest in any business, or becoming an

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[3/] "Substantial evidence" is "more than a scintilla ... but less than a preponderance." *See Barte v. Saipan Ice, Inc.*, Civil Action No. 95-1049 (N.M.I. Super.Ct. April 22, 1997) (Decision and Order) (internal quotations omitted). The court examines questions of law under the "substantial evidence" or "reasonableness" standard to determine if "the agency's conclusions are reasonable based on the information package used by the agency in making the decision." *In re Hafadai Beach Hotel Extension*, 4 N.M.I. at 44 and nn. 26 & 27.

employer. *See* 3 CMC § 4437(h). Substantial record evidence indicates that this is precisely what Petitioner did. Although there is conflicting evidence as to when Petitioner first arrived in the Commonwealth, in his labor complaint, Petitioner admitted that he arrived in Saipan in 1986 either as a mechanic or to work for some company, left the Commonwealth, and then returned to work for his employer of record (Ex.7; Tr. 37-39). He also testified that he served not only as a manager, shareholder, and officer of Magusa from 1989 through 1998, but that he also played an instrumental role in liquidating the corporation and used corporate receipts to support himself during the period dating from the death of his uncle until the business was eventually sold.

¶26 Substantial record evidence reflects, moreover, that although Petitioner was to have been paid some $5.80 per hour since the inception of his contract, consistent with the role of a business owner, Petitioner was never paid on a regular schedule; he did not receive overtime; and he agreed to accept modified payments of $1,000 per month; and later accepted reduced or partial payments of a monthly salary at several points during his employment (Tr. 10-15). When questioned about payments, moreover, Petitioner was exceedingly vague as to their source, contending that he received monthly or weekly payments from his uncle, that at times he also received payment from Mejia, and that at other times he also took payments from the profits of the business (Tr. 10). Although business owners may be free to modify the terms and conditions of their employment, the NWA expressly prohibits nonresident workers and their employers from modifying any existing contract, in writing or otherwise, without the approval of the Division of Labor. 3 CMC § 4437(d). The unauthorized modification of any employment contract constitutes grounds for certificate revocation and subjects a nonresident worker to immediate deportation. § 3 CMC § 4437(e).

¶27 A nonresident worker who files a frivolous complaint with the Dept of Labor and Immigration, moreover, is not entitled to transfer relief. *See* Pub. L. No. 11-6, § 3(d), *to be codified at* 3 CMC § 4602. In addition to the finding that Petitioner was impermissibly engaged in the management and ownership of a business, the Hearing Officer also concluded that Petitioner's wage claim was frivolous. During the course of the hearing, Petitioner not only

admitted that he was not interested in recovering any overdue wages, but that he had filed his labor case simply to continue working (Tr. 40-43). This testimony, along with Petitioner's participation in the sale of the business, led the Hearing Officer to conclude that Petitioner's wage claim, along with his claim of employer abandonment, was disingenuous, at best. The Hearing Officer thus denied Petitioner's request to transfer. Based on a review of the record, the court sees no basis to disturb the Hearing Officer's conclusion. There is substantial evidence supporting the Hearing Officer's determination that Petitioner's complaint for unpaid wages was unfounded and without merit.

¶28 4 CMC § 4447(d) of the NWA provides for three penalties and remedies that may be imposed to enforce the provisions of the Act with regard to wage claims. The first sentence of the subsection permits a worker who prevails in an action under the NWA to recover unpaid wages and overtime compensation, liquidated damages, and court costs. 3 CMC § 4447(d). The last portion of the subsection permits a nonresident worker who prevails in a wage or overtime dispute to recover attorney's fees. *Id.* The second sentence, however, directs "[i]n all cases the court shall, as part of the judgment render a finding as to the merits of the action." The third sentence of § 4447(d) further provides that "the filing of an action which is determined by the court to be unfounded or without merit shall be considered a material breach of contract and shall prevent reentry into the Commonwealth by the nonresident worker … [for] five years from the date of the court's decision."

¶29 Although Petitioner's Brief in its entirety challenges the factual basis for the Hearing Officer's conclusion,[4/] his petition disputes the authority of the Hearing Officer to impose a five year re-entry restriction *per se.* See Petition at ¶ 7(e). In responding to the Brief, Intervenor did not address this issue. Because, in determining the meaning or applicability of the terms of an agency action, a reviewing court is charged with deciding all relevant questions of law and

[4/] Petitioner states: "It is my opinion that the hearing officer did not mean that the exercise of one's right to file a complaint for non-payment of wages was an avoidance of immigration and investment laws...." Brief at 7.

interpreting statutory provisions,[5] the court turns next to the question of whether the Hearing Officer exceeded his statutory authority in imposing a five year ban on re-entry.

¶30 In *Limon v. Camacho*, the CNMI Supreme Court addressed the authority of the Division of Labor to award attorney's fees and impose other sanctions under section 4447(d). The Court expressly rejected a reading of the statute that would have restricted the authority to impose a re-entry ban to the courts and prevented the Division of Labor from "wielding the enforcement powers of § 4447(d)." After analyzing the legislative history, and specifically with regard to the re-entry restriction, the Court reasoned:

> Denying the Division of Labor the power to declare a complaint frivolous and prevent a complainant's reentry into the Commonwealth for five years would likewise limit that provision's usefulness in penalizing unfounded complaints. This construction would completely eliminate any disincentive to file an unfounded administrative complaint, since a worker would face no penalty until the stage of judicial review. Moreover, to define the term "action" to mean court action only would mean that, even the judicial review stage, the court could not "render a finding as to the merits" of the worker's underlying complaint, but only as to whether the appeal itself was meritorious. Some workers who filed frivolous appeals would be penalized under this reading, to be sure; but frivolous claims in general could be far more effectively prevented if the agency itself were empowered to use § 4447(d) against unfounded complaints.

Slip Op. at 18. The Court thus rejected a reading of § 4447(d) that would have prevented the Division of Labor from imposing the re-entry restrictions that Petitioner challenges here.

¶31 The NWA thus permits the Division of Labor to impose a five year restriction on reentry in cases where a nonresident worker files an unfounded claim for unpaid wages.[6] The remaining question to be addressed by the court concerns the date at which the ban on re-entry begins.

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[5] *See* 1 CMC § 9112(f). Under the APA, the court is also required to hold unlawful and set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights." *See* 1 CMC § 9112(f)(2)(iii).

[6] *See* 3 CMC § 4447(d) provides, in material part, that "the filing of an action which is determined by the court to be unfounded or without merit shall be considered a material breach of contract and shall prevent reentry into the Commonwealth by the nonresident worker in the event the nonresident attempts reentry into the Commonwealth within five years from the date of the court's decision."

Contrary to the language of the statute, which starts the five year period "on the date of the court's decision," the Hearing Officer barred Petitioner from returning to the Commonwealth for a period of five years "from the date of departure." In light of the discrepancy, the court addresses whether the interpretation utilized by the Hearing Officer is correct.

¶32 The objective of statutory interpretation is to ascertain and effectuate legislative intent. *See Govendo v. Micronesian Garment Mfg., Inc.,* 2 N.M.I. 270 (N.M.I. 1991). The Legislature is presumed to have meant what it said, and generally the plain meaning of the language governs the interpretation of any statute. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enter.,* Inc., 2 N.M.I. 212, 221 (1991). Whereas the language of a statute is not to be given a literal meaning when an apparent clarity would lead to an absurd result,[7/] the court finds no basis for dating the reentry restrictions of section 4447(d) from the date of the nonresident worker's departure. By the plain meaning of the word "court," the legislature intended the five year period to commence on the date that the tribunal issuing the sanction renders its decision. When language is clear, the court will not construe it contrary to its plain meaning. *Govendo v. Micronesian Garment Mfg., Inc.* 2 N.M.I, at 284.

¶33 *Limon* ruled that the term "court" in § 4447(d) encompassed the courts of the Commonwealth and administrative tribunals. Slip Op. at 18. The Court also recognized that one of the principal purposes behind § 4447(d) was to penalize workers who file frivolous complaints. *Id.* at 15. Accordingly, § 4447(d) requires the tribunal considering a wage claim to render a finding as to the merits of the action as part of the judgment, and, with respect to a claim that is "determined by the court to be unfounded or without merit," impose reentry restrictions that would remain in effect for five years "from the date of the court's decision." 3 CMC §4447(d). Since this court concludes, on review, that Petitioner's wage claim was unfounded and without merit, it is this court that is rendering its decision, and the five year re-entry bar commences on the date of this court's ruling.

[7/] *See In re Estate of Rofag*, 2 N.M.I. 18, 29 (1991); *Bank of Hawaii v. Sablan*, SC 00-002B (June 7, 2001) (Order Granting Summary Judgment).

ORDER

¶34 For the foregoing reasons, the court concludes as follows:

1. The Secretary of Labor's finding that Petitioner had a financial interest in and operated Magusa, Inc. as his own business was based on substantial evidence and shall not be disturbed.

2. The Secretary of Labor's conclusion, that Petitioner's claim for unpaid wages was frivolous and unfounded, was based on substantial evidence and shall not be disturbed.

3. The Secretary of Labor's conclusion that the reentry bar of 3 CMC § 4447(d) commences on the date of the nonresident worker's departure was incorrect. Petitioner is hereby barred from returning to the Commonwealth for a period of five years from the date of the court's decision. This matter is hereby referred back to the Department of Labor and Immigration for further proceedings consistent with this court's order.

4. The Secretary of Labor's conclusion, that Petitioner was not entitled to transfer relief, is affirmed.

5. On the basis of the foregoing, judgment is hereby entered against Petitioner and in favor of Intervenor, the Division of Labor. Petitioner's Request for Judicial Review is DENIED.

So ORDERED this 13th day of June, 2001.

/s/

TIMOTHY H. BELLAS, Associate Judge