

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

**OFFICE OF THE ATTORNEY GENERAL,
and DIVISION OF IMMIGRATION
SERVICE**)
)
)
)
Petitioners,)
vs.)
)
WU, GUOHONG, HUANG GUOZHU, and)
XIE, CHENGWEI,)
)
Respondents/Appellees.)
_____)

**Civil Action Nos. 00-0564B,
565B, 566B**

**ORDER DENYING MOTION
TO STAY DEPORTATION**

I. INTRODUCTION

¶1 Respondents Wu, Huang, and Xie are among thirty non-resident workers who filed combined labor and agency cases against their former employer, Pacific Zhida Co., Ltd.^{1/} In response to the Commonwealth’s petition to institute deportation proceedings, Respondents maintain that they are not deportable, that they are entitled to seek and engage in employment in the Commonwealth, and that they are entitled to extensions of time in order to transfer to new employers.

¶2 On June 14, 2001, Petitioners’ motion for an order to show cause, along with Respondents’ motion for stay and employment authorization came before the court for hearing. Assistant Attorney General Terrence Dennigan appeared on behalf of the Office of the Attorney

^{1/} See Labor Case No. 98-065 (Aug. 11, 2000) (Administrative Order awarding unpaid wages, liquidated damages and expenses; imposing sanctions; and authorizing transfer relief); Civil Action No. 00-0433 B (N.M.I. Super.Ct. May 15, 2001) (Order Granting Motion to Dismiss Petition for Judicial Review of Administrative Order).

FOR PUBLICATION

1 General and the Division of Immigration Services. Linn H. Asper appeared for the Respondents.
2 The court, having reviewed the record in this proceeding, including the memoranda, declarations,
3 and exhibits, issued its oral ruling denying the motion. The following represents the court's
4 reasoning in support of its decision.

5 **II. FACTUAL BACKGROUND**

6 ¶3 Respondents number among thirty Chinese nonresident workers recruited by one Lin Zuxiu
7 to travel to Saipan for work in his karaoke bar and/or "plastics fabrication" factory. Following
8 more than nineteen days of hearings, the Hearing Officer found that these workers had been
9 coerced into paying exorbitant fees for processing their CNMI labor permits, only to arrive in
10 Saipan and discover that Lin had no work for them. *See In the Matter of Director of Labor and*
11 *Chen, Guorong, et al.*, A.C. No. 98-065 (Aug. 11, 2000) (Administrative Order); *see also Pacific*
12 *Zhida Co., Ltd. v. Zachares*, Civil Action No. 00-0433 (N.M.I. Super.Ct., Oct.4, 2000)
13 (Complaint for Judicial Review). The Hearing Officer not only determined that Lin's Karaoke
14 bar had closed for business before the workers even arrived, but also that the "plastics
15 fabrication" factory never even began production because, among other things, Lin lacked an
16 effective source of electricity. *See Admin. Order at 4, ¶¶ 2-4, 7.* As a result, the complainants
17 received neither work nor money from Lin. Some of them attempted to make ends meet by
18 assisting Lin with an unauthorized bean sprout business that Lin started by growing sprouts on
19 the floor of his dormant factory. In the end, the Hearing Officer found that Respondents received
20 no wages for this work. After nearly a year without work or salary, they filed labor cases against
21 Lin and his company, Pacific Zhida Co., Ltd.

22 ¶3 The Hearing Officer found in favor of all Pacific Zhida Complainants on the merits of the
23 issues presented at the administrative hearings. In addition to back wages, the Hearing Officer
24 granted complainants forty-five days from August 11, 2000 to transfer to new employers.

25 ¶4 All of the Pacific Zhida complainants failed to transfer within the 45 day period granted
26 by the August 11 Order.

27

28

1 ¶5 On January 4, 2001, Respondents formally requested an extension of the transfer deadline,
2 contending that they had finally located suitable employers. *See* Mem. in Opp. to Deportation
3 Proceeding, Ex. "B." In material part, Respondents also claimed that under 3 CMC § 4444, the
4 Hearing Officer had the authority to grant a brief extension of the transfer deadline, but that the
5 Hearing Officer had unreasonably withheld that extension. *Id.*^{2/}

6 ¶6 On January 10, 2001, the Hearing Officer denied their request. Mem. in Opp. to
7 Deportation Proceeding, Ex. "C."^{3/} In so doing, the Hearing Officer indicated that Respondents
8 had effectively been given seven months to file transfer applications, and that the seven month
9 period far exceeded the standard 45-day period mandated by Public Law 11-6. The Hearing
10 Officer also noted that although the transfer deadline expired on September 25, 2000,
11 Respondents Wu, Huang, and Xie had failed to file permit applications within the 45-day period
12 specified in the August 11, 2000 Order. Borrowing from the standard governing a motion for
13 reconsideration under Com. R. Civ. P. 60(b), the Hearing Officer then determined that the
14 reasons proffered by Respondents to extend the transfer deadline did not justify any further
15 extension of the transfer period, and that no manifest injustice would result from enforcing the
16 order. *Id.* at ¶¶ 8-9.

17 ¶7 On February 7, 2001, the Acting Secretary of Labor and Immigration affirmed the Hearing
18 Officer's denial of Respondents' Request for extension of the transfer deadline. Mem. in Opp.
19 to Deportation Petition, Ex. "D." Shortly thereafter, Respondents learned that Gil San Nicolas,
20 the Director of Labor, had granted an extension of the transfer deadline to Huang, Fu Yong,
21 another Pacific Zhida employee similarly situated to Respondents. *Id.* at Ex. "E." As a result
22
23

24 ^{2/} In material part, section 4444(e)(5) of the Nonresident Worker's Act authorizes the agency and thus the hearing
25 officer the power to transfer an affected nonresident worker to another employer with the consent of the worker and new
26 employer.

27 ^{3/} The Hearing Officer noted that at the close of the evidentiary hearing in this case in April of 2000, each
28 complainant had been offered the immediate opportunity to transfer, even though the final Administrative Order had yet
to issue. Since the final Administrative Order did not issue until August 11, the Hearing Officer admitted that
complainants were effectively given from April of 2000 until October of 2000 to file transfer applications.

1 of the extension, Huang was able to transfer to a new job and was issued Labor Permit No.
2 156075 with an expiration date of January 3, 2002.

3 ¶8 Based on the Director’s treatment of Huang, Respondents again requested extensions of
4 transfer deadlines from the Director of Labor. The Director of Labor denied the requests,
5 maintaining that the grant of an extension to Huang was a mistake and should never have been
6 granted. *See* Mem. in Opp. to Deportation Petition, Ex. “F”; *see also* Declaration of Gil San
7 Nicolas (filed May 10, 2001). The Director claimed that had he known that Huang had exceeded
8 his right to transfer, he never would have approved the application in the first place. Because the
9 permit had issued, however, the Director claimed that he lacked the authority to rescind it. Mem.
10 in Opp. to Deportation Petition, Ex. “F.”

11 III. ISSUES

12 ¶9 Whether the NWA, as amended, permits the Director of Labor and/or any Hearing Officer
13 to extend, indefinitely, the period of time for a nonresident worker to transfer to another
14 employer.

15 ¶10 In light of the Director of Labor’s decision to grant an extension of the transfer deadline
16 to Huang, whether the denial of Respondents’ requests to extend the deadline for transfer violates
17 equal protection of the laws.

18 IV. ANALYSIS

19 A. Requirements Governing Transfer Relief

20 ¶11 Under the current statutory scheme governing nonresident workers in the Commonwealth,
21 a nonresident worker who quits his or her employment, or who is no longer employed by the
22 employer approved by the Department of Labor and Immigration, is not permitted to remain in
23 the Commonwealth. *See* Nonresident Worker’s Act (“NWA”), 3 CMC § 4434(g).^{4/} The NWA
24 further prohibits the transfer of nonresident workers from one employer to another, except as
25 provided by law. 3 CMC § 4411(b). Under the NWA, the Director of Labor may transfer a

26
27 ^{4/} The NWA does, however, permit a nonresident worker to remain in the Commonwealth for a limited period of
28 time to pursue a claim for unpaid wages, civil and criminal claims against an employer, or to pursue violations of
Commonwealth and federal law.

1 nonresident worker to another employer with the consent of the worker and the new employer
2 following an investigation or administrative hearing to determine whether the NWA has been
3 violated. *See* 3 CMC §4444(e)(5).^{5/} The Alien Labor Rules and Regulations, promulgated to
4 implement the NWA,^{6/} further authorize the Director of Labor to grant transfer relief in the event
5 of a bona fide merger, acquisition, reorganization, or incorporation of a valid business entity. *See*
6 Alien Labor Rules and Regs. § VI.F.11. These same regulations also empower a Hearing Officer
7 to grant transfer relief at the conclusion of an administrative hearing: (1) when an employer
8 abandons his employees and flees the Commonwealth; (2) in cases of employer insolvency or
9 bankruptcy; (3) upon the destruction of an employer’s business by natural disaster, fire or other
10 act of God; and (4) upon the conclusion of a 3 CMC § 4444(a)(2-3) hearing to investigate a
11 violation of the NWA.^{7/} *See* Alien Labor Rules and Regs. § VI(F)(10)(a-d). Neither the NWA
12 nor the Alien Labor Rules and Regulations, however, mandate a period of time within which
13 consensual transfers following and administrative hearing or transfers engendered by the
14 conditions spelled out in the Regulations must be completed. Nor do they prohibit a hearing
15 officer or the Director of Labor from extending the period of time to secure new employment.

16 ¶12 In 1988, the Legislature enacted Public Law 11-6 to impose a temporary freeze on the
17 hiring of nonresident workers in the Commonwealth. *See* Pub.L. No. 11-6, § 1. Section three
18 of the Act specifically addressed transfers for nonresident workers currently employed in the
19 Commonwealth. Although section 3(b) of the Act required a nonresident worker seeking a
20 transfer after the expiration of an initial or renewal contract to secure new employment within “a

22 ^{5/} Nonresident workers may bring an administrative action against their employers for breach of their employment
23 contracts. *See* 3 CMC §§ 4434(f), 4444, 4447(b). When a labor case has been filed, the Department of Labor and
24 Immigration must conduct an investigation of the facts and decide whether to issue a warning or notice of violation and
25 conduct a hearing. *See* 3 CMC. §§ 4441, 444(a). Following an administrative hearing, if the Hearing Officer determines
that the nonresident worker has not violated the NWA or is not more than 50% at fault for a violation of the NWA, the
nonresident worker may transfer to another employer. 3 CMC § 4444(e)(5); Alien Labor Rules and Regulations, §
VI.F.10.d, reprinted in 10 COM. REG. 5512 (Apr. 15, 1988).

26 ^{6/} *See* 10 Com. Reg. 5512 *et seq.* (Apr. 15, 1988).

27 ^{7/} In material part, 3 CMC § 4444(a)(2-3) permits the Chief of Labor to issue a notice of violation and conduct a
28 hearing when he or she has reason to believe that any provision of the NWA, any rule or regulation promulgated pursuant
thereto, or any agreement or contract executed pursuant to the NWA is being violated.

1 limited period of time as provided by regulation,”^{8/} the new transfer provisions were not intended
2 to restrict transfers otherwise available under the NWA or the regulations promulgated thereunder.
3 *See* Pub. L. No. 11-6, § 3(e). Emergency Regulations subsequently promulgated by the Secretary
4 of Labor and Immigration to implement Public Law 11-6,^{9/} moreover, limited the period of time
5 for securing new employment to forty five days from the expiration of the nonresident worker’s
6 contract. *See* Emergency Regulations at D(1-3) and 3(b), reported in 20 COMMONWEALTH
7 REG. 15976-15977 (July 15, 1998). At the end of the regulatory period, if the nonresident worker
8 failed to secure new employment, the statute required him or her to depart the Commonwealth or
9 be subject to deportation. *See* Pub. L. No. 11-6, § 3(b).

10 ¶13 The Omnibus Labor and Business Reform Act of 2000 subsequently amended section 3(b)
11 of Pub.L. No.11-6 in its entirety. *See* Publ. L. No. 12-11, § 5(b) (2000). Consistent with the
12 Emergency Regulations, section 5(b) of Public Law 12-11 imposed a period of up to 45 days after
13 the end of the contract term for a nonresident worker to secure new employment.^{10/}
14 Notwithstanding the 45 day period governing transfers after the expiration of an initial or renewal
15 contract, however, nothing in the Omnibus Labor and Business Reform Act of 2000 restricted or
16 even addressed transfers otherwise available under the NWA or its implementing regulations.
17 Accordingly, the authority of the Director of Labor and a hearing officer to order transfer relief
18 following an administrative hearing to investigate a violation of the NWA remains unrestricted.

19 **B. Respondents’ Challenge**

20 ¶14 In this proceeding, Respondents do not specifically challenge the findings or conclusions
21 of the Hearing Officer as arbitrary or capricious, nor do they claim the decision to deny the

22
23 ^{8/} *See* Pub. L. No.11-6, § 3(b).

24 ^{9/} *See* Rules and Regulations to Implement Public Law 11-6, the Moratorium on Hiring Nonresident Workers, 20
25 Com. Reg. 15970 (July 15, 1998). The Emergency Regulations were adopted without modification or amendment on
October 14, 1998. *See* 20 Com. Reg. 16260 (Oct. 14, 1998).

26 ^{10/} *See* P.L. No. 12-11 §7(b) (2000)(amending section 3(b) of Public Law 11-6). The time periods set forth in Public
27 Law 12-11, moreover, provide for no extensions. To the contrary, the language of Pubic Law 12-11 is unequivocally
28 clear: the statute expressly provides that at the “end of [the forty five day] period, if the nonresident worker has not
secured new employment, he or she must depart the Commonwealth or be subject to deportation as provided by law.”
Pub. L. No.12-11, §5(b) (2000), amending Pub. L. No. 11-6 § 3(b).

1 transfer was contrary to applicable law. Instead, they argue that because the Director of Labor
2 chose to grant even one request to extend the transfer deadline, the Department has a duty under
3 the equal protection clause to grant extensions to all Pacific Zhida complainants who requested
4 them. The court disagrees.

5 ¶15 Both the Fourteenth Amendment to the United States Constitution and Article I, § 6 of the
6 Commonwealth’s Constitution guarantee all persons in the Commonwealth equal protection of the
7 laws. See U.S. CONST. amend. XIV, §1;^{11/} N.M.I. CONST. Art. I § 6 (1976).^{12/} Aliens and
8 citizens alike are entitled to the guarantee of equal protection. *Sirilan v. Castro*, 1 C.R. 312, 313
9 (N.M.I. Tr.Ct. 1982), *aff’d* 1 C.R. 1082 (Dist. Ct. App.1984). The guarantee of equal protection
10 requires that all persons similarly situated be treated alike. Thus, so long as the laws apply
11 equally to all persons similarly situated and do not subject individuals to an arbitrary exercise of
12 power, there is no equal protection violation.

13 ¶16 Respondents do not claim that any particular statute or regulation is facially discriminatory.
14 Nor, in this proceeding, do they seek judicial review of the Hearing Officer’s Order. Instead,
15 their claim rests entirely on a theory of arbitrary or selective enforcement of the law. Such a
16 claim can only succeed, however, if Respondents can prove that: (1) they, compared with others
17 similarly situated, were selectively treated; and (2) that such selective treatment was based on

18
19 ^{11/} The Fourteenth Amendment to the United States Constitution provides in pertinent part that “No State... shall
20 deny to any person within its jurisdiction the equal protection of laws.” This portion of the Fourteenth Amendment is
21 made applicable to the Commonwealth by § 501(a) of the Covenant to Establish a Commonwealth of the Northern
22 Mariana Islands in Political Union with the United States of America. See COVENANT TO ESTABLISH A COMMONWEALTH
23 OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, § 501(a), 48 U.S.C.
24 § 1601 note, *reprinted in* Commonwealth Code at B-101 *et seq.* (hereinafter, the “COVENANT”); *Basiente v. Glickman*,
25 242 F.3d 1137 (9th Cir. 2001) (Equal Protection Clause applies within the CNMI as if the Commonwealth were one of
26 the several states).

27 ^{12/} Article I, Section 6 of the Commonwealth Constitution, entitled “Equal Protection,” provides as follows:

28 No person shall be denied the equal protection of the laws. No
person shall be denied the enjoyment of civil rights or be
discriminated against in the exercise thereof on account of race,
color, religion, ancestry or sex.

The Equal Protection Clause of the Commonwealth Constitution is given the same meaning and interpretation as the
Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. See *Sablan v. Board of
Elections*, 1 CR 741, 754 (Dist. Ct. App. Div. 1983).

1 impermissible considerations such as race, religion, intent to inhibit or punish the exercise of
2 constitutional rights, or some malicious or bad faith intent to injure a person. *See Snowden v.*
3 *Hughes*, 321 U.S. 1, 8, 64 S.Ct. 397, 88 L.Ed. 497 (1944); *see also, Village of Arlington Heights*
4 *v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977);
5 *Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). Each prong
6 of the test is to be applied separately, and the failure to satisfy either inquiry is fatal to
7 Respondents' claim. *See A.B.C. Home Furnishings, Inc. v. Town of East Hampton*, 964 F.Supp.
8 697, 702 (E.D.N.Y.1997).

9 ¶17 As an initial matter, Plaintiffs present some evidence that another Pacific Zhida employee
10 was similarly situated but was treated differently and received an extension of the transfer
11 deadline. An allegation of differing treatment alone, however, even among those similarly
12 situated, does not amount to an allegation of malice or bad faith intent to injure. *See, e.g.,*
13 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 297, 118 S.Ct. 766, 774, 139 L.Ed.2d
14 717 (1998) ("inequalities that result not from hostile discrimination, but occasionally and
15 incidentally in the application of a [tax] system that is not arbitrary in its classification, are not
16 sufficient to defeat the law"); *Crowley v. Courville*, 76 F.3d 47, 53 (2d Cir. 1996) ("a
17 demonstration of different treatment from persons similarly situated, without more, would not
18 establish malice or bad faith"); *Zahra v. Town of Southold*, 48 F.3d 674, 683 (2d Cir. 1995)
19 ("equal protection does not require that all evils of the same genus be eradicated, or none at all").
20 Similarly, an equal protection claim fails when it "at most amounts to an allegation that state law
21 was misapplied in [an] individual case." *Short v. Garrison*, 678 F.2d 364, 368 (4th Cir.1982).
22 The United States Supreme Court has made clear that the misapplication of state law alone does
23 not constitute invidious discrimination in violation of the equal protection clause: "[w]ere it
24 otherwise, every alleged misapplication of state law would constitute a federal constitutional
25 question." *Beck v. Washington*, 369 U.S. 541, 554, 555, 82 S.Ct. 955, 962- 63, 8 L.Ed.2d 98
26 (1962); *see also Oyler v. Boles*, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962)
27 (selective enforcement of a recidivist statute is not in itself a violation of the Equal Protection
28

1 Clause unless the "selection was deliberately based upon an unjustifiable standard such as race,
2 religion, or other arbitrary classification"); *Waters v. Gaston County, N.C.*, 57 F.3d 422, 427-428
3 (4th Cir. 1995) (“If it is true that the County Manager allowed one violation of the policy, this
4 single violation is simply "the exercise of some selectivity in enforcement" [and] that alone does
5 not embody a constitutional violation.”).

6 ¶18 Likewise, mere errors of judgment do not necessarily amount to an equal protection
7 violation. *See, e.g., Allegheny Pittsburgh Coal Co. v. County Com’n of Webster Co., W. Va.*, 488
8 U.S. 336, 343, 109 S.Ct. 633, 638 102 L.Ed.2d 688 (1989) (Equal Protection Clause tolerates
9 occasional errors of state law or mistakes in judgment when valuing property for tax purposes).
10 Thus, regardless of whether the Director of Labor misapplied the law or extended the transfer
11 deadline by mistake, the result is the same. Absent an impermissible motive, there is no equal
12 protection violation. Respondents' failure to allege the requisite causal connection between the
13 Petitioners' actions and a constitutionally impermissible reason renders their equal protection
14 claim facially deficient.

15 **CONCLUSION**

16 ¶19 For the foregoing reasons, Respondents’ motions for stay and for employment
17 authorization are DENIED.

18
19 So ORDERED this 8th day of AUGUST, 2001.

20
21
22 /s/
23 TIMOTHY H. BELLAS, Associate Judge