

1 **IN THE SUPERIOR COURT**
2 **FOR THE**
3 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

4 OFFICE OF THE ATTORNEY GENERAL)
5 and DIVISION OF IMMIGRATION)
6 SERVICES)
7 Petitioner,)
8 vs.)
9 AMERLITA C. ORTIZ)
Respondent.)

Civil Action No. 01-0534B

**ORDER DENYING MOTION
TO QUASH AND DENYING
MOTION TO DISMISS ORDER
TO SHOW CAUSE**

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11 THIS MATTER came before the Court on January 20, 2001 at 9:00 a.m. in courtroom
12 223A. on Respondents's motion to quash and motion to dismiss. Assistant Attorney General Terence
13 J. Denigan, Esq., appeared on behalf of the Government. Joe Hill, Esq., appeared on behalf of
14 Respondent AMERLITA C. ORTIZ [hereinafter ORTIZ]. Having read and considered all the papers
15 filed in connection with this motion, having considered the arguments advanced by the parties and
16 being fully informed, the Court DENIES Respondent's motion to quash and motion to dismiss and
17 hereby sets the hearing on the petition to show cause on February 14, 2002 at 1:30 p.m.

18 **BACKGROUND**

19 Respondent ORTIZ was employed by Zoris Manufacturing Company [hereinafter ZORIS]
20 as a sales representative, ORTIZ's work/entry permit expires on March 9, 2002. Last spring ORTIZ
21 filed a labor complaint against ZORIS alleging unpaid regular and overtime wages, failure to provide
22 work, verbal abuse, and failure to provide a copy of the employment contract. *See Ortiz v. Co.*,
23 Labor case No. 01-091 (filed May 31,2001).

24 On June 12, 2001, ZORIS filed a letter with the Division of Labor requesting to rescind the
25 employment contract with ORTIZ. ZORIS claimed that ORTIZ had submitted a false certificate of
26 employment. The Division of Labor served ORTIZ with a notice of hearing sometime during June
27 2000. ZORIS and ORTIZ appeared for a mediation hearing on July 5, 2001. The parties failed to

28 **FOR PUBLICATION**

1 reach a settlement and the matter is presently pending before the Division of Labor.

2 **ISSUES PRESENTED FOR REVIEW**

- 3 I. Whether ORTIZ's pending labor case with the Division of Labor, divests the court of
4 jurisdiction to hear the present order to show cause.
- 5 II. Whether the declaration of law enforcement officer John Peter should be suppressed.

6 **DISCUSSION**

7 **I. Jurisdiction**

8 The basic principle regarding jurisdiction is that, "[i]t is the local laws and constitution of a
9 forum that consigns jurisdiction in a court over an agency action." *In re Hafadai Beach Hotel*
10 *Extension*, 4 N.M.I. 37, 40 (1993) (citing RESTATEMENT (SECOND) OF JUDGEMENTS § 11 (1982);
11 2 Charles Koch, Jr., ADMINISTRATIVE LAW AND PRACTICE §§ 8.46-8.48 (1985 and 1990
12 Supp.)). The local law that consigns jurisdiction in this matter is 3 CMC § 4341(e).

13 Pursuant to 3 CMC § 4341(e), "[a] hearing on the petition to show cause shall be before the
14 Commonwealth Trial Court." It is clear that the court has jurisdiction to hear the order to show cause
15 because 3 CMC § 4341(e) and the relevant case law provide for it. *See Office of the Attorney*
16 *General v. Sagun*, App. No. 98-041 (N.M.I. Sup. Ct. Oct. 20, 1999) (Opinion at 5); *Office of the*
17 *Attorney General v. Honrado*, 1996 MP 15, 5 N.M.I. 8 (1996).

18 The real issue is whether ORTIZ's pending labor case has divested the court of jurisdiction. In
19 arguing that it does, Respondent relies heavily upon *Office of the Attorney General v. Jimenez*, 3
20 CR 827 (Dist. Ct. App. Div. 1989). The District Court, Appellate Division, held in *Jimenez* that any
21 cancellation of a nonresident worker's contract of employment must first be determined by the Division
22 of Labor, before the trial court can find the nonresident worker deportable based upon employment
23 status. *Id.* at 838. *Jimenez* involved 15 nonresident Filipino workers who filed a labor complaint
24 against their employer. The complaint was filed in January of 1988. The employer issued a "letter of
25 termination" on the same date. *Id.* at 829. The Division of Labor investigated the workers' complaint
26 and issued an order on February 8, 1988. In large measure, the Division found against the workers.

27 The workers appealed to the Director of Labor on March 8, 1988. The Director determined
28 that the previous proceeding was not conducted pursuant to the applicable law and concluded that the

1 order was "issued erroneously." *Id.* at 830. Between the February 8 order and the March 8 order, the
2 Immigration and Naturalization Office filed a petition for deportation, with the trial court, based upon
3 the termination of the employment contracts. The trial judge found that the workers had breached their
4 contract with the employer and found the workers deportable. *Id.* at 831.

5 In holding that the trial court was without jurisdiction to hear the deportation matter, the
6 District Court, Appellate Division, reasoned that, "[s]ince primary jurisdiction [concerning the
7 employment contract] lies with the Division of Labor and respondents' administrative remedies were
8 not exhausted, the trial court was without authority to find respondents deportable based on their
9 employment status." *Id.* at 838.

10 The critical fact, distinguishing the present matter from *Jimenez*, is that the trial court in
11 *Jimenez* made a determination of deportability based upon termination of the employment contract
12 before the validity of the employment contract could be determined by the Division of Labor. In the
13 plainest terms, the trial court "put the horse before the carriage."

14 Here, the Department of Labor and Immigration is basing its claim of deportability upon
15 violation of 3 CMC § 4363(c), immigration fraud by possession of false documents. Unlike *Jimenez*,
16 the charged offense is entirely independent from the pending wage claim. The validity of the fraud claim
17 is not affected by the outcome of the pending wage claim. The two matters are distinct from one
18 another and the validity of the one does not affect the validity of the other

19 In attempting to extend *Jimenez* to the present case, ORTIZ is expanding the holding beyond
20 its intended scope. At most, *Jimenez* stands for the proposition that the trial court can not base a
21 finding of deportability upon an issue that is currently pending on the administrative level. *See Office of*
22 *the Attorney General v. Rivera*, 3 N.M.I. 436, 442-43 (1993) (holding that the Superior Court
23 retained jurisdiction over deportation proceedings after nonresident workers filed wage claims because
24 they are different proceedings with different remedies).

25 Accordingly, ORTIZ's claim that the court no longer has jurisdiction is without merit because
26 the deportation hearing is based upon a claim unrelated to the pending labor case.

27 **II. Miranda Warnings**

28 ORTIZ argues she was entitled to *Miranda* warnings prior to giving her statement to Officer
John Peter. ORTIZ claims that the failure to administer *Miranda* warnings resulted in a litany of

1 Constitutional violations. This assertion is not correct. It is well settled that *Miranda* warnings are not
2 required before questioning in the context of a civil deportation hearing. *United States v.*
3 *Solano-Godines*, 120 F.3d 957, 960 (9th Cir. 1997) (citing *Trias-Hernandez v. I.N.S.*, 528 F.2d
4 366i 368 (9th Cir. 1975)). See also *Nai Cheng Chen v. I.N.S.*, 537 F.2d 566, 568 (1 st Cir. 1976)
5 (statements made in response to questioning by an immigration officer are admissible at the deportation
6 hearing despite the absence of *Miranda* warnings).

7 *Miranda* warnings are not required because deportation proceedings are not criminal
8 prosecutions, but are civil in nature. *Solano-Godines*, 120 F.3d at 960 (citing *Trias-Hernandez*, 528
9 F.2d at 368). Further, "[t]he full panoply of . . . procedural and substantive safeguards which are
10 provided in a criminal proceeding are not required at a deportation hearing." *Id.* at 960-61. In
11 *Trias-Hernandez*, the court explained that "the substantial distinctions between a deportation
12 proceeding and a criminal trial make *Miranda* warnings inappropriate in the deportation context", 528
13 F.2d at 368.

14 Despite ORTIZ's contention to the contrary, the current proceedings are civil rather than
15 criminal in nature. ORTIZ asserts that the proceeding is criminal because the original petition for order
16 to show cause and declaration filed stated that ORTIZ was in violation of 3 CMC § 4363(b).
17 Although the offense cited by the original petition is criminal, it was listed by mistake. The Department
18 of Labor and Immigration later amended the petition to correctly cite the appropriate statute that
19 ORTIZ was suspected of violating, namely, 3 CMC § 4363(c). (Amend. to Decl. Civ. Act. No.
20 01-0534).

21 It is clear that error in transcription can be attributed to inadvertence and nothing more. To
22 hold otherwise would facilitate a decision based upon a technicality, rather than on the merits of the
23 case. Decisions based upon technicalities are to be avoided when possible. *Nissan Motor Co., Ltd.*
24 *v. Nissan Computer Corp.*, 204 F.R.D. 460, 463 (C.D. Cal. 2001) (citing *United States v. Webb*,
25 655 F.2d 977, 979 (9th Cir. 1981)); See also *Angello v. Louis Vuitton Saipan, Inc.*, App. No.
26 00-003 (N.M.I. Sup. Ct. December 12, 2000) (Opinion at 5-6). Accordingly, ORTIZ is not
27 afforded *Miranda* protections because ORTIZ was not charged with a criminal offense.

28 CONCLUSION

For the foregoing reasons, Respondent's motion is hereby **DENIED**.

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So **ORDERED** this 30th day of January, 2002.

/s/ _____
DAVID WISEMAN, Associate Judge

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