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6 **IN THE SUPERIOR COURT**
7 **OF THE**
8 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

9 JOSEPHINE V. QUITUGUA,)
10 Plaintiff,)
11 v.)
12 MARK D. ZACHARES, SECRETARY OF)
13 LABOR AND IMMIGRATION,)
14 DEPARTMENT OF LABOR AND)
15 IMMIGRATION and THE)
16 COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
Defendants.)

CIVIL ACTION NO. 00-0593
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DEFENDANTS' CROSS MOTION
FOR SUMMARY JUDGMENT

17 **I. INTRODUCTION**

18 THIS MATTER came on for a hearing on August 27, 2001 in Courtroom 205A on Plaintiff's
19 motion for summary judgment, Defendants' cross-motion for summary judgment and Defendants' notice
20 of improper stipulation. Jane Mack, Esq. appeared on behalf Josephine V. Quitugua [hereinafter
21 Plaintiff]. Assistant Attorney General Andrew Clayton, appeared on behalf of Defendants Mark D.
22 Zachares and the Department of Labor and Immigration [hereinafter Defendants]. The court, having
23 reviewed the pleadings on file and having heard the arguments of counsels, and being fully advised, now
24 renders its decision.

25 **II. FACTS**

26 On December 4, 1981, Plaintiff married Abraham Sablan Quitugua, a person of Chamorro descent
27 who was born on October 14, 1959, on Saipan, the Commonwealth of the Northern

28 FOR PUBLICATION

1 Mariana Islands [hereinafter Commonwealth]. *See* Compl. at ¶ 7; Answer at ¶ 2; Pl.'s Decl. in Support
2 of Mot. for Summ. J. (June 27, 2001) [hereinafter Pl.'s Decl.], Ex. 1 . On November 29, 1983,
3 Plaintiff's husband, Abraham Sablan Quitugua, died while in the line of duty as a police officer. *See* Pl.'s
4 Decl.¶ 2. In March of 1984, Plaintiff left the Commonwealth and returned to the Philippines. *See* Pl.'s
5 Decl. ¶ 4.

6 In 1992, Plaintiff returned to the Commonwealth and was issued an Immediate Relative of
7 Nonalien Entry Permit [hereinafter 706(D) Permit]¹, valid for the period from November 25, 1992 to
8 November 24, 1993. *See* Pl.'s Decl. ¶¶ 3- 4; *see also* Pl.'s Decl., Ex. 2. On November 15, 1993,
9 Plaintiff's 706(D) Permit was renewed for a period from November 16, 1993 to November 17, 1994.
10 *See* Pl.'s Decl., Ex. 3. On June 5, 1994, Plaintiff left the Commonwealth again to return to the
11 Philippines. *See* Pl.'s Decl. ¶ 5.

12 On February 20, 2000, Plaintiff returned to the Commonwealth and attempted to reenter the
13 Commonwealth with her expired 706(D) Permit but was unsuccessful. *See* Pl.'s Decl. ¶¶ 5-6; Complaint
14 ¶ 12. On the advice of an Immigration Division employee at the border, she entered the Commonwealth
15 on a tourist entry permit. *See* Pl.'s Decl. ¶ 6. Sometime in March of 2000, Plaintiff applied for a new
16 706(D) Permit with the Immigration Division. *Id.*

17 On November 13, 2000, Thomas O. Sablan, Acting Director of Immigration, denied Plaintiff's
18 application for a 706(D) Permit. *See* Pl.'s Mem. in Support of Mot. for Summ. J., Ex. 2 (June 27, 2001)
19 [hereinafter Pl.'s Memo.]. The Acting Director stated in his letter of November 13, 2000 that Plaintiff's
20 application was disapproved on the ground that her "immediate relative status does not exist." *Id.* The
21 letter further stated that her immigration record showed that Plaintiff's husband, Abraham Sablan
22 Quitugua, died on November 29, 1983; that Plaintiff's last 706(D) Permit expired on November 17,

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25 ¹ Section 706(D) of the *Immigration and Naturalization Regulations* "permits immediate relatives of
26 persons who are not aliens to remain in the CNMI for one (1) year so long as the immediate relative status is in
27 effect." The permit issued to qualified aliens is called an "Immediate Relative of Nonalien Permit" and is renewed
28 annually. *See* 7 Com. Reg. 3,787 (July 22, 1985). In this case, it is undisputed that Plaintiff's deceased spouse is a
"nonalien" under the applicable immigration regulation.

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1 1994; and that Plaintiff returned to and resided in the Philippines since June 5, 1994. *Id.* Shortly after
2 receiving the letter of denial, Plaintiff appealed the decision of the Acting Director of Immigration to the
3 Secretary of the Department of Labor and Immigration [hereinafter DOLI]. *Id.*

4 On November 28, 2000, Mark D. Zachares, Secretary of DOLI affirmed the decision of the
5 Acting Director of Immigration and found that the "decision of the Acting Director was not arbitrary,
6 capricious, an abuse of discretion or otherwise not in accordance with the law." *See* Pl.'s Memo., Ex. 3.
7 In the same letter, the Secretary of DOLI notified Plaintiff to depart the Commonwealth within 20 days
8 of the issuance of the letter. *Id.*

9 On December 18, 2000, Plaintiff filed this complaint to compel Defendants: (1) to stay enforcement
10 of, and reverse the Secretary of DOLI's decision of November 28, 2000; (2) to declare that Plaintiff has
11 the status of an "immediate relative of a nonalien", and, (3) to order Defendants to issue Plaintiff a
12 706(D) Permit. On January 8, 2001, Defendants filed their answer to the complaint.

13 On June 27, 2001, Plaintiff filed a motion for summary judgment on the complaint. On July 6,
14 2001, Defendants filed their cross-motion for summary judgment. On July 10, 2001, Defendants filed a
15 notice of improper stipulation. On August 9, 2001, Plaintiff filed her opposition to Defendants' notice of
16 improper stipulation. On August 17, 2001, Plaintiff filed her reply to Defendants' cross-motion for
17 summary judgment. On August 27, 2001, the court heard arguments on Plaintiff's motion for summary
18 judgment, Defendants' cross-motion for summary judgment and Defendants' notice of improper
19 stipulation.²

20 III. ISSUES

21 1. Whether Plaintiff, as a surviving spouse, is an "immediate relative" under 3 CMC §
22 4303(m).³

23 2. Whether DOLI's denial of Plaintiff's application for a 706(D) Permit on the basis
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25 ² Subsequent to the hearing of August 27, 2001, the Government withdrew its notice of improper stipulation
26 and the Court granted the parties' stipulation pending the results of the case. *See* Order of September 19, 2001.

27 ³ *See generally* the Commonwealth Entry and Deportation Act of 1983, Public Law 3-105 codified at 3 CMC
28 §§ 4301-4382.

1 that Plaintiff was not an "immediate relative of a nonalien" was arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with the law.

3 **IV. ANALYSIS**

4 **A. Judicial Review**

5 Judicial review of an administrative agency action is governed by the Commonwealth
6 Administrative Procedure Act, codified at 1 CMC §§ 9101-9115 [hereinafter CAPA]. *See Camacho*
7 *v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 366 (1990). Pursuant to the CAPA, the
8 reviewing court shall decide all questions of law, interpret constitutional and statutory provisions, and
9 determine the meaning or applicability of the terms of an agency action. *See* 1 CMC § 9112(f).⁴ With
10 respect to an agency's actions, findings and conclusions, the court may uphold or set aside the same if it
11 determines that any one of the six bases set forth at 1 CMC § 9112(f) exists to warrant such a holding.
12 *Id.* The standard of review is *de novo*. *See In re San Nicolas*, 1 N.M.I. 329, 333 (1990). Here,
13 Plaintiff moves for summary judgment asserting that DOLI's denial of Plaintiff's application for a 706(D)
14 Permit was arbitrarily, capriciously, an abuse of discretion and not in accordance with the law.

15 **B. Summary Judgment Standard**

16 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil
17 Procedure. Rule 56(a) provides: “[a] party seeking to recover upon a claim . . . may . . . move with or
18 without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.”

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20 ⁴ Pursuant to 1 CMC § 9112(f), the reviewing the court shall:

- 21 (2) Hold unlawful and set aside agency action, findings, and conclusions found to be:
 - 22 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
with law;
 - 23 (ii) Contrary to constitutional right, power, privilege, or immunity;
 - 24 (iii) In excess of statutory jurisdiction, authority, or limitations, or short of
statutory rights;
 - 25 (iv) Without observance of procedure required by law;
 - 26 (v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108
and 9109 or otherwise reviewed on the record of an agency hearing provided by statute;
or
 - 27 (vi) Unwarranted by the facts to the extent that the facts are subject to trial
de novo by the reviewing court.

28 *See* 1 CMC § 9112(f)(2).

1 Com. R. Civ. P. 56(a). Rule 56(c) continues:

2 The judgment sought shall be rendered forthwith if the pleadings, depositions,
3 answers to interrogatories, and admissions on file, together with the affidavits,
4 if any, show that there is no genuine issue as to any material fact and that the
moving party is entitled to a judgment as a matter of law.

5 Com. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of
6 material fact exists, the burden shifts to the opponent to show that such an issue does exist. *Riley v.*
7 *Public School System*, 4 N.M.I. 85, 89 (1994). In considering a motion for summary judgment, the trial
8 court must review the evidence and inferences in the light most favorable to the non-moving party.
9 *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233, 240 (1991).

10 C. Plaintiff as Surviving Spouse is "Immediate Relative" Under CNMI Law

11 The first question is whether Plaintiff, as a surviving spouse, is considered an "immediate relative"
12 under Commonwealth law. Plaintiff claims that all of the statutory, judicial and prior agency actions
13 recognize her status as an "immediate relative" for purposes of qualifying for a 706(D) Permit. She relies
14 on the decision of the Trial Court in *Office of Attorney General v. Arriola*, 3 CR 1 (Trial Ct. 1985), to
15 support her position. Defendants, on the other hand, disagree with Plaintiff for several reasons.
16 Defendants argue: (1) that Plaintiff's reliance on the *Arriola* decision is misplaced in that the decision of
17 the Trial Court is not binding and is distinguishable to the case at bar; (2) that the immigration officials
18 who previously granted Plaintiff a 706(D) Permit in 1992 and 1993 erred in considering Plaintiff's
19 deceased husband as a "person" under the immigration regulation; (3) that Plaintiff's decision to live and
20 reside in the Philippines for nearly fourteen cumulative years after the death of her spouse and her failure
21 to timely renew her 706(D) Permit divested her of her "immediate relative" status since 1994; and, (4)
22 that DOLI's decision was not arbitrary, capricious, an abuse of discretion, or contrary to law and, as
23 such, insist that Plaintiff should depart the Commonwealth.

24 The Commonwealth Entry and Deportation Act of 1983 [hereinafter CEDA], codified at 3
25 CMC §§ 4301-4382, specifically at section 4303(m), defines an "immediate relative" as "children, under
26 the age of 21, whether natural or adopted, spouse and parents; provided, however, that no alien shall
27 derive immediate relative status from a U.S. citizen child who is less than 21 years of age." 3 CMC §
28 4303(m). Here, Plaintiff contends that although her husband has died, she is still a spouse of a

1 Commonwealth citizen, under 3 CMC § 4303(m), for the purpose of obtaining status as an immediate
2 relative of a nonalien under section 706(D) of the Immigration Rules and Regulations.

3 A review of the relevant provisions reveal that the word "spouse" is not defined in CEDA. In the
4 absence of a statutory definition, the court looks to case law for guidance. *See* 7 CMC § 3401. The only
5 case on point in the Commonwealth is *Office of the Attorney General v. Arriola*, 3 CR 1 (Trial Ct.
6 1985), which Plaintiff cites to support her position. The Commonwealth Trial Court in *Arriola*
7 addressed the issue of whether a spouse continues to be the spouse of a deceased for purposes of
8 determining immediate relative status pursuant to Public Law 3-105, § 3(m), codified at 3 CMC §
9 4303(m). *See Arriola*, 3 CR at 11. In *Arriola*, the respondent, a Philippine citizen, married a citizen of
10 the Commonwealth and obtained immediate relative status based on her marriage. Upon the death of her
11 husband a few years later, the Commonwealth filed an action for deportation contending that the death
12 of respondent's husband operated to terminate her immediate relative status and thus subjected her to
13 deportation. *Id.* at 6. The court in *Arriola*, held that:

14 "Immediate relative" is defined by statute as meaning *wives*, parents and
15 children under the age of 21. Public Law 3-105, § 3(m). And they enter the
16 Commonwealth as non-immigrants. *Id.*, § 3(q)(9). When their husband dies,
17 however, they do not cease being spouses of that husband. They become
18 surviving spouses, or widows, of the deceased. Unlike a divorce which
19 terminates the marital relationship completely, the death of a spouse does not
20 operate to terminate a surviving spouse's relationship to the deceased. She
21 continues to be the spouse of the deceased, albeit a surviving spouse or widow.
22 The fact that she outlived her husband does not operate to terminate her relationship
23 as an immediate relative. To conclude otherwise, as the Commonwealth contends,
24 would be tantamount to equating a spouse's death to the effect produced by a
25 divorce. A divorced person ceases being the spouse of the other; a widow remains
26 the spouse of the deceased, and entitles [sic] her to certain rights as may be
27 provided by law.

28 *Id.* at 11-12. The court in *Arriola* held that respondent, after the death of her husband, remained an
immediate relative of the deceased for purposes of Public Law 3-105 and the regulations promulgated
thereunder. *Id.* at 14. While this Court agrees with Defendants that it is not bound by a trial court
decision, it finds the rationale set forth in *Arriola* persuasive. The court further notes that the *Arriola*
decision and its interpretation of 3 CMC § 4303(m) has since become a part of Commonwealth
jurisprudence because the Commonwealth Legislature has not amended the definition of "immediate

1 relative" to exclude "surviving spouses" since the *Arriola* decision was rendered in 1985.⁵

2 Based on the principles stated above, this Court agrees with the Trial Court's holding in *Arriola*
3 that the death of a spouse does not operate to terminate a surviving spouse's relationship to the
4 deceased; and that he or she continues to be the spouse of the deceased, albeit a surviving spouse or
5 widow or widower. As such, the Court finds that the term "immediate relative" under 3 CMC §
6 4303(m) includes "surviving spouse." Accordingly, the Court finds that Plaintiff, as the surviving spouse
7 of Abraham Sablan Quitugua, is an "immediate relative" under to 3 CMC § 4303(m).

8 D. Plaintiff is Not Entitled as a Matter of Law to a 706(D) Permit

9 The second question is whether Plaintiff is entitled to a 706(D) Permit as a matter of law, based
10 solely on her status as an immediate relative of a nonalien. Plaintiff asserts that proof of marriage
11 establishing that she is a spouse, albeit surviving spouse or widow, is the sole criteria for eligibility of the
12 706(D) Permit. Plaintiff cites both the *Arriola* decision, and *Office of Attorney General v. Lockhart*,
13 Civ. No. 89-0905 (N.M.I. Super. Ct. Dec.15, 1989), for the proposition that the applicant's status as
14 an "immediate relative" of his or her spouse continues even if his or her spouse is deceased, as in the
15 case of *Arriola*, or is physically absent from the Commonwealth, as in the case of *Lockhart*. *See Office*
16 *of Attorney General v. Arriola*, 3 CR 1 (Trial Ct. 1985); *Office of Attorney General v. Lockhart*,
17 Civ. No. 89-0905 (N.M.I. Super. Ct. Dec. 15, 1989).

18 The *Immigration and Naturalization Regulations*, 7 Com. Reg. 3,774 (July 22, 1985),
19 [hereinafter INR] define the various types of immigration entry permits issued by the Division of
20 Immigration of DOLI. The INR governing the permit applied for by Plaintiff provides: "Section 706.
21 Classifications of Entry Permits . . . D. Immediate Relative of Nonalien Entry Permit - permits immediate
22 relatives of persons who are not aliens to remain in the CNMI for one (1) year so long as the immediate
23 relative status is in effect. The permit may be renewed." *See* INR § 706(D), 7 Com. Reg. at 3,787.

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25 ⁵ Many jurisdictions follow the general definition that a spouse continues to be the spouse of the other
26 even after death. *See Burriss v. PHB, Inc.*, 1999 WL 463715, *2 (Del. Super. Ct. 1999) (unpublished opinion); *see also*
27 *In re Atwood's Trust*, 114 N.W.2d 284, 288 (Minn. 1962); *Woolbert v. Kimble Glass, Inc.*, 54 F. Supp. 2d 539, 542
28 (W.D.N.C. 1999); *Estate of Steffke*, 538 F.2d 730, 737 (7th Cir. 1976).

1 A basic principle of statutory construction is that language must be given its plain meaning. When
2 language is clear, the court will not construe it contrary to its plain meaning. *See King v. Board of*
3 *Elections*, 2 N.M.I. 398, 403 (1991). Based on the plain meaning of section 706(D), a holder of a
4 706(D) Permit, issued pursuant to the regulation, is allowed to remain in the Commonwealth on a yearly
5 basis, so long as the holder of the permit continues to be an immediate relative of a nonalien. The
6 inclusion of the word "may" in the last sentence of section 706(D), however, makes it clear that renewal
7 of the entry is not automatic. It is undisputed that the Immigration Division has the discretion to determine
8 whether or not to issue or renew entry permits.⁶ Accordingly, the court finds that Plaintiff is not entitled
9 to the issuance of a 706(D) Permit as a matter of law merely because of her status as an immediate
10 relative of a nonalien. Plaintiff's status as an immediate relative of a nonalien is merely evidence of her
11 eligibility for a 706(D) Permit.

12 The court's interpretation of section 706(D) of the INR is analogous to the reading of the provision
13 under the Federal Immigration and Naturalization Act, which requires immediate relatives to petition for
14 permanent residency. In *Malhotra v. Meyers*, 552 F. Supp. 253 (N.D. Ill. 1982), an alien (Malhotra)
15 filed an action to enjoin the acting director of the Immigration and Naturalization Service [hereinafter
16 INS] from deporting him. The court in *Malhotra* noted that pursuant to the Federal Immigration and
17 Naturalization Act, 8 U.S.C. § 1101 *et seq.*, marriage to a United States citizen, and classification as an
18 immediate relative of a citizen, does not entitle an individual to permanent residency in the United States.
19 *Id.* at 254. The court further noted that:

20 Marriage to a United States citizen allows the citizen spouse to file a petition
21 to classify the status of the alien spouse as an immediate relative pursuant to
22 8 U.S.C. § 1151(b). . . . Section 1151(b) simply exempts immediate relatives
23 from numerical immigration quota imposed upon the issuance of immigrant
24 visas. Such exemption, however, does not authorize the automatic admission
25 of a spouse to the United States. In order to be admitted into the United

26 ⁶ The parties do not dispute that the Office of Immigration has the discretion to renew an immigration entry
27 permit. Plaintiff states that "[INR section 706(D)] does not mandate that the permit must be renewed, only that it may
28 be renewed." *See* Pl.'s Mem. in Support of Mot. for Summ. J. at 8 (June 27, 2001). Defendant also agrees by stating
that "the Government 'may renew' at their discretion and based upon their investigation into the card holder's legal
status, such as whether the card holder has complied with the 'requirements or conditions of his/her entry.'" (citations omitted). *See* Def.'s Cross-Mot. for Summ. J.

1 States, an immigrant must have a valid immigrant visa. 8 U.S.C. § 1181. An
2 immigrant visa is a visa properly issued by a consular officer at his office
3 outside of the United States to an eligible immigrant . . . 8 U.S.C. § 1101(a)(16).

4 *Id.* at 254-55 (citations omitted). The court in *Malhotra* also held that:

5 Malhotra [did] not have a valid immigrant visa at the present time; the
6 granting of his spouse's I-130 petition [a petition to the INS to
7 classify status of alien relative for issuance of immigration visa] would
8 not award Malhotra such a visa, but rather, would merely be evidence of
9 his eligibility for an immigrant visa. To obtain a lawful residency,
10 Malhotra would still be required to apply for and obtain an immigrant visa
11 from a consular officer of the United States. Thus, even if we assume
12 Malhotra's marriage to a United States citizen is valid, this alone does not
13 exempt him from deportation.

14 *Id.* at 255 (citations omitted). As such, the *Malhotra* court concluded that an alien, who does not have a
15 valid immigration visa is not exempted from deportation even if his marriage to a citizen was valid and he
16 was classified as an immediate relative of a citizen. *Id.* at 253-55.

17 Similarly in the case at bar, Plaintiff is not automatically entitled to a 706(D) Permit by virtue of
18 her status as an immediate relative of a Commonwealth citizen. Rather, Plaintiff's status as an immediate
19 relative is mere evidence of her eligibility for the 706(D) Permit. Plaintiff still must comply with the
20 conditions of her entry permit and all the other requirements imposed by the Division of Immigration and
21 Commonwealth law.

22 Based on the principles stated above, the Court finds that the Acting Director of Immigration has
23 the discretion to approve or disapprove Plaintiff's application for a 706(D) Permit; however, the Acting
24 Director of Immigration may not disapprove Plaintiff's application for the reason that Plaintiff's
25 "immediate relative status does not exist" as stated in his letter of November 13, 2000. As stated above,
26 Plaintiff's immediate relative status did not cease to exist upon the death of her husband. As such, the
27 Court finds that the Acting Director of Immigration's decision to disapprove Plaintiff's 706(D) Permit on
28 the basis that Plaintiff was not immediate relative was not in accordance with the law. Accordingly, this
Court holds the basis of DOLI's denial was unlawful and hereby sets it aside pursuant to 1 CMC §
9112(f)(2)(i). The Court, however, remands this case to the Division of Immigration for a determination
as to whether Plaintiff meets all the other requirements imposed by the Immigration Division and
Commonwealth law for Plaintiff's continued presence in the Commonwealth. Accordingly, the decision

1 of the Division of Immigration is REVERSED IN PART and REMANDED IN PART.

2 **V. CONCLUSION**

3 Based on the foregoing reasons, the court hereby GRANTS IN PART Plaintiff's motion for
4 summary judgment as to the finding that Plaintiff, as the surviving spouse of Abraham Quitugua, is an
5 immediate relative of a nonalien for purposes of Immigration Rules and Regulations Section 706(D). The
6 court DENIES IN PART Plaintiff's motion for summary judgment to compel the Acting Director of
7 Immigration to grant Plaintiff a 706(D) Permit as a matter of law, The Division of Immigration is hereby
8 ordered to act in accordance with this order.

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10 SO ORDERED this 9th day of May 2002.

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12 /s/Virginia S. Sablan Onerhiem
13 VIRGINIA S. SABLAN ONERHIEM, Associate Judge
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