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3 **FOR PUBLICATION**

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

8 OFFICE OF THE ATTORNEY GENERAL
9 and DIVISION OF IMMIGRATION
10 SERVICES,

11 Petitioners,

12 v.

13 MUHAMMAD SHAFIQL ISLAM,

14 Respondent.

Civil Action No. 03-0147E

**ORDER DENYING MOTION FOR
STAY OF DEPORTATION
PROCEEDINGS AND REQUEST FOR
VOLUNTARY DEPARTURE**

15 **I. INTRODUCTION**

16 **THIS MATTER** came before this Court on a hearing on Respondent's Motion for Stay of
17 Deportation Proceedings and Request for Voluntary Departure, on June 19, 2003. The Commonwealth
18 was represented by Assistant Attorney General Justin Wolosz. The Respondent, Muhammad S. Islam
19 was represented by Joe Hill.

20 **II. FACTS**

21 This Court issued an arrest warrant for Respondent upon a finding of probable cause that two or
22 more misdemeanors were committed by Respondent and pursuant to 3 CMC § 4340(d), Respondent was
23 deportable because of the convictions. *See* Opp'n to Respondent's Mot. at 1. On April 1, 2003 the
24 Commonwealth, through counsel, submitted a petition for an order to show cause. Contained within the
25 supporting declaration were the following criminal convictions:

- 26 • Respondent on 02/17/00 entered a **guilty** plea to the charge of **Driving Under the
Influence of Alcohol**, 9 CMC § 7105.
- 27 • Respondent on 02/12/02 entered a **guilty** plea to the charges of **Reckless Driving**, 9
28 CMC § 7104, and **Failure to Submit to a Breath Test**, 9 CMC § 7106.
- Respondent on 02/12/02 entered a **guilty** plea to the charges of **Criminal Mischief**, 6
CMC § 1803(a)(3), and **Disturbing the Peace**, 6 CMC 3101(a).

1 See Decl.in Supp. of Arrest Warrant at 2.

2 Respondent was arrested and released on bail April 3, 2003. On April 30, 2003, attorney Joe Hill
3 entered an appearance and the next day filed the motion in issue based on a labor complaint filed on April
4 23, 2003. The motion was continued until June 5, 2003, to allow the Respondent to resolve his labor claim
5 through mediation. *Id.* Respondent's labor claim was not resolved through mediation causing the
6 Commonwealth to proceed with its deportation request.

7 III. DISCUSSION

8 The Commonwealth Supreme Court has previously held that pending valid wage claims require a
9 stay of deportation for specific groups of aliens. See *Office of the Attorney General v. Deala*, 3 N.M.I.
10 110, 116 (1992); *Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 444-45 (1993); *Office of*
11 *the Attorney General v. Paran*, 4 N.M.I. 191, 195 (1994). This Court has acknowledged this holding
12 through previous orders. These cases all involved deportations based on inadequate immigration status
13 pursuant to the Commonwealth Entry and Deportation Act of 1983, 3 CMC §§ 4301, *et seq.*, and the
14 Nonresident Workers Act, 3 CMC §§ 4411, *et seq.* The effect of initiation of a labor claim as a basis for
15 avoiding deportation pursuant to criminal violations has not yet been determined in the Commonwealth.
16 The Respondent in this matter is deportable pursuant to 3 CMC § 4340(d). Deportations arising out of
17 civil issues and criminal issues necessarily involve separate and distinct treatment. Deportations based on
18 criminal issues require the Court system to examine the case with closer scrutiny.

19 The primary concern of the above decisions is the importance of affording due process rights to
20 aliens by allowing their labor claims to be fully heard. See *Rivera*, 3 N.M.I. at 445. The United States
21 Supreme Court in *Matthews v. Eldridge*, articulated the test for what process is constitutionally due:

22 [I]dentification of the specific dictates of due process generally requires consideration of
23 three distinct factors: First, the private interest that will be affected by the official action;
24 second, the risk of an erroneous deprivation of such interest through the procedures used,
25 and the probable value, if any, of additional or substitute procedural safeguards; and finally,
the Government's interest, including the function involved and the fiscal and administrative
burdens that the additional or substitute procedural requirement would entail.

26 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976).

27 While the first prong of the *Eldridge* test may be satisfied, the second and third are not, in this
28 instance. As to the second element, the Court is only left to guess at precisely what due process

1 deprivation exists. There is only the conclusory statement that the rights of the Respondent will be violated
2 in this manner. Further, there still exists the possibility that the Respondent can prosecute his wage claim
3 from outside the Commonwealth through his current counsel.

4 Finally, and most importantly, the Commonwealth Government has a substantial interest in
5 maintaining a secure environment. The Commonwealth should possess the ability to remove criminal aliens
6 upon an adjudication of guilt. Labor claims should not be allowed as a mechanism for staying deportations
7 based on criminal violations. Of paramount concern to this Court, is the Respondent's unwillingness and
8 inability to comply with Commonwealth criminal law. This Court cannot allow a labor case to be used to
9 sidestep provisions of Commonwealth law. Therefore, this Court has no alternative but to deny the
10 Respondent's motion.

11 **IV. ORDER**

12 Respondent's Motion for Stay of Deportation and Request for Voluntary Departure is hereby
13 **DENIED**. The Respondent is ordered to appear in court for a hearing on the original deportation matter
14 on **September 18, 2003 at 1:30 p.m. in Courtroom 223A**.

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16 **SO ORDERED** this 4th day of September 2003.

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18 /s/ _____
19 David A. Wiseman
20 Associate Judge
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