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2 **FOR PUBLICATION**

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

7 **OFFICE OF THE ATTORNEY** ) **Civil Action No. 05-0021E**  
8 **GENERAL and DIVISION OF** )  
9 **IMMIGRATION SERVICES,** )  
10 **Petitioners,** )  
11 **v.** ) **DEPORTATION ORDER**  
12 **YONGHUA JIN** )  
13 **Respondent** )  
14 \_\_\_\_\_ )

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16 This matter came on for hearing May 26, 2005, at 1:30 p.m. in courtroom 223A pursuant to  
17 the Government’s Petition for Order to Show Cause as to why Respondent should not be deported.  
18 The hearing was continued on June 1, 2005, at 1:30 p.m. Assistant Attorney General Ian Catlett  
19 appeared on behalf of the Government. The Respondent, Yonghua Jin (“Jin”), appeared and was  
20 represented by counsel, Anthony Long. Lisa Demoux appeared as translator.

21 **I. BACKGROUND**

22 Jin is a Chinese citizen and is an alien in the CNMI, as defined in 3 CMC § 4303 (a). Jin  
23 arrived in the CNMI pursuant to the issuance of a Section 706K Non-resident Worker’s Entry  
24 Permit. (“Permit”) The Permit entitled Jin to work as a masseuse and expired on February 12, 2005.  
25 The Government presented a video tape recording of Jin frequenting the area in and around DFS  
26 Galleria (“DFS”) in Garapan, beginning in November 2004 and ending in January 2005. Jin made  
27 a number of objections to the introduction of the video tapes, which the Court took under  
28 advisement. Having considered the relevant statutes and case law, and having viewed the

1 videotapes, for the reasons stated below, the Court hereby overrules the objections.

2         The general rule is that the admissibility of a videotape is governed by the same rules that  
3 apply to still photographs. *See, e.g., North Carolina v. Strickland*, 173 S.E.2d 129, 132 (1970). The  
4 primary requirement is that the videotape accurately portray the facts and in the event the video  
5 varies from the relevant facts, the video may still be admissible if the judge determines that the  
6 changes “are not so substantial as to be misleading.” In fact, the contents of a videotape admitted  
7 into evidence need not be merely illustrative, but can be admitted as evidence independent of the  
8 testimony of any witness as to the events depicted, upon a foundation sufficient to meet the  
9 requirements of FEDERAL RULE OF EVIDENCE 901(a). *See also, New Mexico v. Henderson*, 669 P.2d  
10 736 (N.M. Ct. App. 1983) (admitting photographs by an ATM camera on a bank officer’s testimony  
11 as to origin and developing procedures); *Fisher v. Arkansas*, 643 S.W.2d 571 (Ark. Ct. App. 1982)  
12 (upholding admissibility of videotape from store surveillance camera); and *United States v. Stearns*,  
13 wherein Judge (now Justice) Kennedy wrote that photographs of a boat on open seas was admissible  
14 “[e]ven if direct testimony as to foundation matters is absent . . . [where] the contents of a  
15 photograph itself, together with such other circumstantial or indirect evidence as bears upon the  
16 issue, may serve to explain and authenticate a photograph sufficiently to justify its admission into  
17 evidence,” 550 F.2d 1167, 1171 (9th Cir. 1977).

18         Here, the Government presented testimony that the videotapes were made by DFS personnel.  
19 A supervisor in the loss control division of DFS testified as to the authenticity of the tapes. He  
20 testified that DFS surveillance video cameras are maintained at DFS, recording activity in and  
21 around the DFS building. The video recorder tapes the view from several cameras throughout the  
22 DFS building. This videotaping process imprints the date and time at which the videos are recorded.  
23 He then identified a series of clips that were compiled onto one tape and admitted into evidence over  
24 Jin’s objection. He further testified that he had viewed the original videotape and the resultant video  
25 compilation was a fair and accurate depiction of what was on the videotape. The imprinted date and  
26 times ranged from about 19:27 November 10, 2004, until about 19:59, January 13, 2005. On cross-  
27 examination, he testified that he had personal knowledge of the events depicted on the video tapes  
28 and that he had compiled the scenes from the various days onto the video tape. As such, the Court

1 determined that the videotape was admissible.

2 In the security videotapes made by DFS, Jin was seen loitering in and around the DFS  
3 Galleria during the evening hours, several hours at a time, on consecutive days. The Government  
4 contends that Jin's presence in the area was for the purpose of promoting prostitution to Garapan's  
5 male tourists, in violation of the terms of her entry permit.

## 6 **II. FINDINGS OF FACT**

7 In addition to the aforementioned video tape, the evidence presented by the Government  
8 included testimony by a DFS manager about the video tape; the testimony of an undercover  
9 Department of Labor officer participating in an anti-prostitution sting; and the testimony of an expert  
10 on prostitution activity. The video tape established that:

- 11 1. Jin was frequently observed loitering in and around DFS Galleria in the evening  
12 hours;
- 13 2. Jin approached Asian males, spoke with them, discussed a small book with some of  
14 the males on occasion, and frequently handed the males a slip of paper;
- 15 3. Jin walked with the males to the Joy Hotel;
- 16 4. Jin did not approach women;
- 17 5. When a police squad car was in the area, Jin hid behind planters located in front of  
18 DFS.

19 The Government also presented evidence through expert testimony and the testimony of a  
20 public safety officer that:

- 21 1. Jin regularly arrived at the DFS area around 3:00 p.m. daily;
- 22 2. The slips of paper Jin handed to the Asian males have been known to contain phone  
23 numbers for prostitutes;
- 24 3. The books shown the Asian males in the video tape contained pictures of attractive  
25 Asian women;
- 26 4. The Joy Hotel is a known place of prostitution;
- 27 5. Jin's actions were consistent with prostitution activity.

28 Jin did not present any evidence such as pay records, work schedules, employer testimony,

1 or otherwise to rebut the Government’s position that Jin was not working as a masseuse. Rather,  
2 Jin presented evidence, through the testimony of two separate witnesses, that she was selling  
3 handmade wallets, and suggested that her activities in front of DFS were for the purpose of selling  
4 the wallets. Jin asserts that because she legally entered the CNMI, CNMI law unlawfully precludes  
5 her from becoming self-employed, and as such, is unconstitutional.

### 6 **III. DISCUSSION**

7 While the Government contends Jin was engaged in prostitution, the Government is not  
8 seeking to deport Jin for engaging in prostitution, a criminal activity. Rather, the Government  
9 alleges that Jin violated 3 CMC § 4340(e) and (f), and 3 CMC § 4437(e) and (d), which prohibit a  
10 non-resident worker from engaging in commercial activity other than that designated on a § 706K  
11 Non-resident Worker’s Entry Permit. As such, the standard of proof that applies to this Order to  
12 Show Cause why Jin should not be deported for violating the conditions of her entry into the CNMI,  
13 is premised on violation of the CNMI’s immigration statutes and the standard of proof is that of  
14 clear and convincing evidence. In viewing the totality of the circumstances, this Court finds that  
15 there is clear and convincing evidence that Jin violated the terms of her entry Permit and is subject  
16 to deportation.

17 When faced with a constitutional question, a court must assume that the acts of the  
18 legislature are constitutional and within its legislative power until and unless contrary evidence  
19 clearly appears. United States Supreme Court Justice Holmes wrote extensively on the presumption  
20 of constitutionality, stating: “[a] statute must be construed, if fairly possible, so as to avoid not only  
21 the conclusion that it is unconstitutional but also grave doubts upon that score.” *United States v. Jin*  
22 *Fuey Moy*, 241 U.S. 394, 401, 36 S. ct. 658, 659, 60 L. Ed. 1061 (1961) (citing *United States ex rel.*  
23 *Attorney Gen. v. Delaware Hudson Co.*, 213 U.S. 366, 408, 29 S. Ct. 527, 535-36, 53 L. Ed. 836  
24 (1909)). We should follow this canon out of respect for our Legislature, “which we assume  
25 legislates in the light of constitutional limitations. This doctrine seeks in part to minimize  
26 disagreement between the branches by preserving [legislative] enactments that might otherwise  
27 founder on constitutional objections.” *Almendarez-Torres v. United States*, 523 U.S. 224, 237-38,  
28 118 S. Ct. 1219, 1227-28, 140 L. Ed. 2d 350 (1998) (internal citations omitted).

1 Jin fails to present any compelling evidence or argument that the CNMI Non-Resident  
2 Worker statutes are unconstitutional. Jin was engaged in activities other than those allowed under  
3 her entry permit, and as such, Jin is deportable pursuant to 3 CMC § 4340(e) and (f), and 3 CMC  
4 § 4437(e) and (d).

5 **III. CONCLUSION**

6 For the aforementioned reasons, the Court orders that Yonghua Jin be deported for violating  
7 3 CMC § 4340(e) and (f), and 3 CMC § 4437(e) and (d), and as such, the terms of her work entry  
8 Permit.

9 **SO ORDERED** this 28th day of June 2005.

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11 /s/  
12 David A. Wiseman  
13 Associate Judge  
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