FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	**Civil Action Nos. 04-0583, 05-0006E**
Petitioner,	)	
vs.	)	**ORDER DENYING RECONSIDERATION**
DIONISIO BRANA and HAYDEE DAMASCO,	)	
Respondents.	)	

I. INTRODUCTION

THIS MATTER came on for hearing November 9, 2005 at 1:30 p.m. for an Order to Show Cause. Assistant Attorney General Ian Catlett appeared on behalf of the Government. Respondents are represented by Stephen Woodruff, however Mr. Woodruff was unable to appear at the hearing. Respondents request reconsideration of this Court's Order entered October 19, 2005.

II. AUTHORITY

Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59 and are considered an extraordinary measure to be taken at the Court's discretion. *See Yuba Natural Res.*,

Inc. v. United States, 904 F.2d 1577, 1583 (Fed. Cir. 1990) (commenting on counterpart Federal rule). The Commonwealth Supreme Court articulated a limited number of grounds to warrant a court to revisit an already decided matter. Consequently, only an "intervening change of controlling law, the availability of new evidence, or the need to correct a *clear error* or prevent manifest injustice" are sufficient grounds for reconsideration. *Camacho v. J.C. Tenorio Enter., Inc.*, 2 N.M.I. 407, 414 (1992) (emphasis added).

Respondents, in their motion, ask this Court to revisit its previous Order Denying Respondent's Motion to Stay Deportation Proceedings ("Order") on the basis that the Order was rooted in "clear error" and must be corrected to prevent "manifest injustice." Respondents identify five separate instances, in which this Court clearly erred: (1) it misapprehend[ed] the scope of the Commonwealth's authority over immigration; (2) it failed to address whether a prosecutor in a case has the authority to exercise the Attorney General's discretionary power to grant or deny voluntary departure, and (3) whether prosecutorial exercise of such discretion would cause conflict in representation; (4) it failed to apply the Administrative Procedure Act to denials of voluntary departure; and erred (5) in holding that the pendency of a labor matter does not stay deportation proceedings. This Court will therefore examine Respondents' specific claims through the lense of *clear error*.

III. DISCUSSION

A. Scope of the CNMI's Authority Over Immigration

Respondents argue that this Court's ruling expanded the scope of the Commonwealth's authority to control immigration in the CNMI, by its reading of 3 CMC § 4340, thus forsaking an alien's access to judicial review of the Commonwealth's exercise of power. However, this Court merely interpreted the law as written by the Legislature, which saw it fit to delegate certain

responsibilities within the context of immigration to the Attorney General and others to the Commonwealth courts. It is not a court's duty to second-guess the wisdom of the legislature unless a statute is in clear and unavoidable conflict with the protections afforded by the Constitution of the CNMI or the United States. *See Tran v. Commonwealth*, 780 F. Supp. 709, 713 (D.N.M.I. 1991) *aff'd in an unpublished opinion*, 993 F.2d 884 (9th Cir. 1993); *see also Office of the Attorney Gen. v. Honrado*, 1996 MP 15, 5 N.M.I. 8.

Indeed, it would be far grosser error for this Court to supplant legislative wisdom with its own, hence disturbing the separation of powers, a deep-seated constitutional principle. Given that Respondents have articulated only a vague Constitutional problem without citation to clear authority supporting their concerns, this Court cannot find clear error in its own strict reading of 3 CMC §§ 4340, 4341, and 4343.

Moreover, Respondents' fears that the ruling will eviscerate judicial review of the Attorney General's conduct of his or her immigration duties are unfounded, given the language in § 4341(d) providing for habeas review of the Attorney General's determinations on "detention, release on bond or parole" or 6 CMC §§ 7101, *et seq*. providing general habeas review.

B. The Attorney General and Her Designees

Respondents next argue that the Prosecutor, Mr. Catlett in this case, is without statutory authority to exercise the discretion to make the determination to allow voluntary departure, because such discretion is singularly vested with the Attorney General and [her] designees, and that Mr. Catlett, absent any evidence showing that the Attorney General designated him with the authority to make such determinations, is powerless to do so.

Respondents correctly cite the statutory language, which reads:

> Any time prior to the actual commencement of the hearing on the order to show cause the respondent may be permitted to voluntarily depart the Commonwealth at the discretion of the Attorney General. A person so departing shall not be considered to have been deported.

3 CMC § 4343.

Indeed, "Attorney General" is defined under § 4303(c) as "the Attorney General of the Commonwealth of the Northern Mariana Islands or his designee." Thus, on its face, the statute would appear to limit such discretion only to the Attorney General--the person, and her specific designees--and not generally to the Office of the Attorney General as this Court presupposed in its ruling. Respondents make a familiar argument based on the premise that this statute identifies only one person, the Attorney General, and that person's *specific* designees, who are capable of exercising discretion in granting or denying voluntary departure to a deportable alien. However, this Court's analysis cannot end there.

When interpreting a statute, this Court must take care to give statutory language its plain meaning. *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 12, 6 N.M.I. 36, 39 (*quoting Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995)). "This Court's objective in interpreting statutes, is to 'ascertain and give effect to the intent of the legislature.'" *Id*. A statutory provision is ambiguous when its words are capable of more than one meaning.

Here, although it is clear that the statutory definition of "Attorney General" in § 4303(c) refers to the person and not the office, it is unclear whether "designee" refers only to those *specifically* designated by the Attorney General to exercise discretion or whether "designee" also includes Assistant Attorneys General. Given the ambiguity, this Court must look to other forms of authority for guidance.

Respondents' premise is remarkably similar to one advocated by the defendant in *Commonwealth v. Peredo*, Crim. No. 04-0181 (N.M.I. Super. Ct. Jan. 31, 2005)([Unpublished] Order Denying Defendant's Motion to Dismiss Information as Not Brought by Lawful Attorney General) ("*Peredo").* In *Peredo*, the defendant in a criminal case argued for the dismissal of a four-count information based on the simple fact that there was a dispute regarding the validity of the Attorney General's appointment. *Peredo* at 1. Peredo's argument essentially claimed that the constitutional language making the Attorney General "responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law," the framers intended only to vest such powers in a single personality. *Id.* at 2. In denying the defendant's motion to dismiss the information, the Superior Court found that the defendant's interpretation of the word "responsible" was a "narrow and self-serving reading of the text." *Id.* at 6. Instead, the court interpreted the word "responsible" in a "real world, practical sense" to find that "no one person can possibly handle all of these duties personally," and therefore, the Attorney General functioned chiefly in an administrative and leadership capacity. *Id*.

Likewise, Respondents press this Court to ignore the practical difficulties of requiring the Attorney General to personally review and determine each request for voluntary departure submitted by deportable aliens. To indulge in Respondents' theory would undoubtedly overburden a single person, who is already responsible for overseeing and performing numerous functions integral to the office of Attorney General. "Instead, the various powers of the AG, including the power to prosecute, [are] delegated, by statute, to the Office of the Attorney General. 1 CMC § 2154(a). Assistant Attorneys General assist in performing the duties of the Attorney General." *Peredo* at 6. Here, like the power to prosecute, the AG's discretionary authority to grant voluntary departure under 3 CMC §

4343, is delegated to the Office of the Attorney General, and is carried out by the Assistant Attorneys General. Indeed, general delegation of authority through the Office of the Attorney General to its staff is consistent with the word "designee" as found at 3 CMC § 4303(c),[1] thus providing the Attorney General with the ability to act through her Assistant Attorneys General, e.g. Mr. Catlett, in granting or denying discretionary voluntary departure.

Therefore, it is not incumbent upon the Attorney General's Office to supply the Court with "evidence" of a designation pursuant to 3 CMC § 4303(c) because such a delegation of authority is inherent under a practical treatment of the Attorney General's powers under the CNMI Consitution and 1 CMC §2154(a).

C. Conflict of Interest

Respondents additionally argue that allowing Assistant Attorneys General to "to exercise with finality the Attorney General's discretion on voluntary departure would constitute a conflict of interest in contravention of Respondents' due process rights." *See* Respondents' Brief at 7. Respondents, however, fail to cite to any statutory or case law, which supports their supposition. Therefore, Respondents have failed to meet their burden of demonstrating clear error within the meaning of *Camacho v. J.C. Tenorio Enter., Inc.*, 2 N.M.I. 407 (1992).

D. Administrative Procedure Act

Respondents next argue that the Administrative Procedure Act , 1 CMC §§ 9101, *et seq.* ("APA") applies in this case to require a contested case hearing, as provided for by 1 CMC §§ 9108(a), 9109, and 9110, whenever the AG exercises its statutory discretion in denying voluntary departure.

[1] Although 3 CMC § 4303(c) does not specifically define "designee," a common definition of the term is a "person who has been designated to perform some duty or carry out some specific role." BLACK'S LAW DICTIONARY (8th ed. 2004).

Respondent's position is unpersuasive.

Section 9108(a) requires an adjudicative process in the form of a contested case hearing "in every adjudication in which a *sanction* may be imposed." 1 CMC § 9108(a) (*emphasis added*). Section 9101(o) defines *sanction* as the "[w]ithholding of relief *where adjudication is required by law*." 1 CMC § 9101(o)(2) (*emphasis added*). Thus Respondents correctly assert that whether discretionary denial of voluntary departure requires a contested case hearing turns on whether *adjudication is required by law*. A strict reading of the statutory language providing for voluntary departure requires no such adjudication. *See* 3 CMC § 4343 ("the respondent *may be permitted* to voluntarily depart the Commonwealth *at the discretion* of the Attorney General") (*emphasis added*). Therefore, no contested case hearing is mandated each time the Attorney General declines to exercise her statutory discretion to grant voluntary departure.

Further, Respondents rely on an unpublished Superior Court ruling to support their contention. *Japan Enters., Inc. v. Brown*, Civ. No. 04-5555 ([Unpublished] Order Granting Motion for Writ of Mandamus) (N.M.I. Super. Ct. Jan. 7, 2005) (*"Japan Enterprises"*). However *Japan Enterprises* sheds no light on the APA's force, in the context of denials of discretionary voluntary departure under Section 4343. From the arguments made in both Petitioner's and Respondents' memoranda, it is clear that *Japan Enterprises* is factually distinguishable from this case because *Japan Enterprises* involved the Department of Immigration's failure to issue a discretionary decision on whether to issue entry permits, and whether that failure to decide constituted final agency action for the purposes of judicial review under the APA. This case, in contrast, distinctly hinges on whether an adjudication within the APA is required for a denial of voluntary departure rather than a failure to make a discretionary decision. As discussed *supra*, the Attorney General's office has made a decision not to grant voluntary departure,

and such decision is not subject to the adjudicative procedures outlined in the APA.

Lastly, although Respondents' reliance upon federal immigration case law is persuasive in demonstrating that exercise of discretionary relief in the federal context is subject to judicial review, particularly in the context of the Immigration and Nationality Act ("INA"), § 244(a), 8 U.S.C.A. § 1254(a) (repealed), such jurisprudence has no bearing on the applicability of the APA to discretionary denials of voluntary departures under 3 CMC § 4343. Unlike INA § 244(a), which involves discretionary suspension of deportation, 3 CMC § 4343, is applicable only to discretionary denials of voluntary departure. Moreover INA § 244(a) spelled out the standards for granting suspension of deportation:

> Under pre-[Pub. L. No. 104-208] law, an alien against whom deportation proceedings had commenced could apply for suspension of deportation provided she had been continuously physically present in the United States for seven years, was of good moral character, and could show that deportation would create a severe hardship upon herself or a spouse, parent, or child who is a citizen or lawful permanent resident of the United States.

Martinez-Garcia v. Ashcroft, 366 F.3d 732, 733-734 (C.A.9, 2004) (citing 8 U.S.C.A. § 1254 (repealed). 3 CMC § 4343 carries with it no such standards for making a discretionary determination of voluntary departure.

Moreover, United States Federal Courts and the Courts of the CNMI have repeatedly asserted the distinction, if not complete autonomy, that CNMI enjoys from the United States concerning immigration matters. *See e.g., Office of the Attorney Gen. v. Sagun,* 1999 MP 19 ¶ 8, 6 N.M.I. 36, 38 (*citing Tran v. Commonwealth*, 780 F. Supp. 709, 713 (D.N.M.I 1991), *aff'd in an unpublished table opinion,* 993 F.2d 884 (9th Cir. 1993)). This Court, although sympathetic to the hardships faced by aliens subject to deportation, cannot import, wholesale, the standards of Federal Immigration law to

provide additional avenues of relief, which are conspicuously absent from the statutory framework of CNMI immigration law. Therefore, federal jurisprudence built around the INA is inapplicable within the CNMI, unless implicated by a clear conflict with the CNMI or U.S. constitutions.

Because Respondents fail to specifically argue any salient Constitutional objection to CNMI statutes or process employed by the Attorney General's office in denying discretionary voluntary departure, this Court will not invent new requirements to accompany the exercise of discretionary authority.

E. Pending Labor Cases, Filed After the Institution of a Deportation Proceeding, Do Not Preclude a Hearing on Whether Respondent is Deportable.

It is the policy of this Court to construe and administer the Rules of Civil Procedure in a manner that achieves the just, speedy, and inexpensive determination of each civil action, as required by Commonwealth Rule of Civil Procedure 1. Thus, as an initial matter of policy, it appears to this Court that staying order to show cause hearings in immigration cases during the pendency of a labor claim--unless, of course, the legal status of the alien subject to deportation would be affected by the pending labor proceedings--runs contrary to the speedy and inexpensive management of this Court's extensive immigration docket.

However, Respondents urge this Court to stay deportation *proceedings*, because a failure to do so would "waste scarce judicial resources by conducting needless order to show cause hearings." *See* Respondents' Brief at 8. Respondents also question this Court's reliance on *Office of the Attorney Gen. v. Rivera*, 3 N.M.I. 436 (1993) ("*Rivera*"), because they did not claim that this Court lacked jurisdiction to find Respondents deportable, but rather, this Court *should have* stayed proceedings pending the labor disposition, because going forward with an order to show cause during while labor cases are pending is "contrary to established case law and [practice]." Respondents' Brief at 8.

However, Respondents fail to cite any of the "established case law" to support their proposition that courts *must* suspend deportation proceedings until the final disposition of an instituted labor claim. Respondents merely argue that *Rivera* does not limit stays to situations where orders of deportation have already been issued. No case law mandates this Court to stay deportation proceedings in the face of a pending labor claim. This Court only must stay an order of deportation, to avoid violating a deportee/claimant's due process right to their interest in the outcome of their pending labor case.

Because Respondents fail to cite any law that supports their claim that a pending labor case must stay deportation proceedings, this Court will not reconsider its earlier decision. Respondents' policy arguments are similarly unconvincing, as this Court's policy to dispose of all cases in a speedy and inexpensive manner would not be promoted by a practice of constant continuances and delays in determining the legal status of an alien.

F. No Conflict Exists Between This Court's Decision to a Set Hearing for an Order to Show Cause and the Decision of the Administrative Hearing Officer in Respondent Brana's Labor Case.

Authority to decide labor cases is vested in the Department of Labor. *See, e.g.,* 3 CMC § 4421. Nevertheless, the authority to determine *deportability* of aliens is vested solely with the Commonwealth Courts. *See* 3 CMC § 4341. Here, Respondents claim this Court's decision to schedule a hearing for an order to show cause interferes with the decision of the administrative hearing officer in respondent Brana's case constitutes error warranting reconsideration. However, despite proving that there was in fact a resolution favorable to Brana, Respondents fail to demonstrate how the rulings conflict. In addition, the labor order attached to Respondents' brief, only authorizes Brana to seek transfer employers and Temporary Work Authorization, it does not make a determination as to whether Brana's status in the Commonwealth is in violation of Commonwealth immigration law. That classification is

for this Court to decide after a hearing on an order to show cause.

As already discussed in the initial order, Respondent Brana's permit allegedly expired November 1, 2003. Therefore, if the same is proven at the hearing, it would make little difference that the Department of Labor now gives authorization for Brana to seek transfer employers and Temporary Work Authorization. Brana would still be found deportable if he failed to comply with the requirements or conditions of his entry into the Commonwealth by remaining in the Commonwealth after his permit expired in violation of 3 CMC § 4340(e).

G. This Court Cannot Consider the Equities of Respondents' Pleas to Remain in the CNMI.

Respondents in their brief make an impassioned plea to this Court to remain in the CNMI, notwithstanding their alleged violation of Commonwealth law. The Court acknowledges that Respondents have two children, both born and raised in the CNMI, and furthermore understands the very real hardships that may be imposed on this family, should the Respondents be deported back to their home country of the Philippines.

Respondents suggest that this Court employ some form of balancing the equities of their situation to relieve Respondents from deportation, citing the U.S. Immigration Act of 1917. This Court is sympathetic to Respondents' anticipated difficulties should they be deported, and is aware of the federal practice in the United States to offer relief to some removable or excludable aliens after balancing a number of factors. *See United States v. Ubaldo-Figueroa*, 364 F.3d 1042 (9th Cir. 2004).[2]

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[2] "The record on appeal shows that Ubaldo-Figueroa has been gainfully employed since he came to the United States, and his employer has the highest regard for his work ethic. He has substantial family ties in the United States, including a United States citizen wife and two United States citizen children, which 'is a weighty factor in support of the favorable exercise of discretion under § 212(c).' (Citation Omitted). The record also includes evidence of the active role that Ubaldo-Figuero has taken in his children's education and upbringing. The equities in Ubaldo-Figueroa's favor are significant. Thus we conclude that Ubaldo-Figuero had a plausible claim for relief...." *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1051 (9th Cir. 2004).

Unfortunately for Respondents, this court cannot adopt wholesale, U.S. immigration law in some circumstances, and enforce Commonwealth immigration law when it chooses. Respondents have identified no due process violation committed by the Attorney General, which warrants that this Court replace the Attorney General's discretion with its own, nor have they shown disparate treatment violating the equal protection clause and warranting constitutional scrutiny within *Sirilan v. Castro*, 1 C.R. 1082 (Dist. Ct. App. Div. 1984). Therefore, this Court must presently DENY Respondents motion for reconsideration.

IV. CONCLUSION

For the foregoing reasons, Respondents' request that the Court reconsider its earlier ruling is DENIED. This Court's judgment regarding each matter discussed herein is considered final within the Commonwealth Rule of Civil Procedure 54(b).

It is further ordered: the hearing on the Petition for an order to show cause why Respondents should not be deported shall be held on January 5, 2006, at 1:30 p.m. in courtroom 223A.

So ORDERED this 28th day of November 2005.

/s/_____
David A. Wiseman, Associate Judge