

1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **OF THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **OFFICE OF THE ATTORNEY**)
7 **GENERAL AND DIVISION OF**)
8 **IMMIGRATION SERVICES,**)
9 **Petitioners,**)
10 **vs.**)
11 **XU WANG ZHENG,**)
12 **Respondent.**)
13 _____)

Civil Action No. 05-0524E

**ORDER DISMISSING OFFICE OF
THE ATTORNEY GENERAL AND
DIVISION OF IMMIGRATION
SERVICES, PETITION FOR AN
ORDER TO SHOW CAUSE**

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17 **I. INTRODUCTION**

18 THIS MATTER came for hearing on January 5, 2006. Respondent Xu Wang Zheng
19 (Respondent) appeared and was represented by counsel Gregory Baka. Assistant Attorney General
20 appeared on behalf of the Office of the Attorney General and Division of Immigration Services (the
21 Commonwealth). The hearing was held on an order to show cause why Respondent should not be
22 deported from the Commonwealth for being found without his passport and entry permit in
23 violation of 3 CMC s. 4340(h) and 4340(f).

24 **II. FACTS**

25 The series of events giving rise to this hearing involved a high seas interdiction, carried out
26 by the United States Coast Guard, of a vessel, specifically a twenty-three foot boat with an outboard
27 motor, allegedly smuggling alien Chinese nationals to Guam. On December 1, 2005, Coast Guard
28 Investigator Hoyle (hereinafter “Investigator Hoyle”) received a request from Immigration and

1 Customs Enforcement (ICE) agent Hernandez for assistance in investigating incidents of immigrant
2 smuggling, specifically the expedition of aliens of Chinese nationality from Saipan to Guam by
3 small boat. Investigator Hoyle agreed to assist agent Hernandez and the Commonwealth Attorney
4 General Immigration investigators with their joint investigation and flew to Saipan to begin
5 surveillance of a suspected group of smugglers.

6 During his surveillance of the suspected smugglers, which lasted about six days, Investigator
7 Hoyle observed the inspection of the vessel by a boating safety officer, individuals working on the
8 boat, the boat being untied and transferred to smiling cove, fueled, placed in a wet dock, departing
9 and returning. Actions consistent with preparing the boat for use.

10 On December 6, 2005 the boat under investigation departed from Saipan. Coast Guard
11 Aircraft first located the boat on open ocean approximately twenty miles off the coast of Tinian,
12 headed on a southerly coast towards either Rota or Guam. Later, a Coast Guard cutter made contact
13 and intercepted the boat approximately 11 miles off the coast of Rota, heading on a southerly
14 course. The nearest land mass south of Rota is Guam. After intercepting the boat, the Coast Guard
15 escorted the boat containing 14 Chinese nationals, including the Respondent back to Saipan.

16 Upon arriving in Saipan, the joint team of investigators met the boat. None of the
17 passengers, with the exception of one, who is not the Respondent, carried either their CNMI entry
18 permits or their passports. When queried about the purpose of the trip, one of the passengers (not
19 the Respondent) claimed that the passengers intended to take a day trip to go fishing. Once the
20 passengers were disembarked and turned over to the Attorney General investigators, Investigator
21 Hoyle and ICE agent Hernandez processed and searched the boat. Among the items discovered on
22 the vessel were two fishing rods and tackle boxes. However, according to Investigator Hoyle's
23 testimony, no working gear was attached to one of the rods, rather the rod was rigged simply with a
24 length of line affixed to a lead weight. No bait or lures were recovered from the boat during the
25 search. Further, Investigator Hoyle testified that after examining the rods in question, he determined
26 that one was not rigged appropriately for deep water fishing, and the other, although rigged, was ill-
27 equipped for deep water trolling.

28 While searching the boat Investigator Hoyle discovered several personal items in the vessel

1 including: electric razors and adaptors, cell phone adaptors, electronic Chinese-English dictionaries
2 and print Chinese-English dictionaries, multiple passport-sized photographs of the individuals found
3 on the boat, family photos, Chinese over-the-counter medicines, cash sewn into jeans and hidden in
4 the soles of shoes, several changes of clothes, specifically underwear and socks. These items were
5 wrapped in plastic and contained in either small travel bags or other plastic bags numbering
6 approximately twelve to fifteen. According to Investigator Hoyle's professional experience, it was
7 his opinion that the presence of these items and the condition of the fishing equipment was
8 inconsistent with the passenger's claim that the purpose of the trip was for fishing. Investigator
9 Hoyle added that the engines of the vessel in question failed prior to reaching Saipan, possibly
10 suggesting that the vessel had insufficient fuel to return to Saipan from their point of interception.

11 Irwin Flores, an investigator with Attorney General Division of Immigration also testified
12 at the hearing on the order to show cause that Respondent was born June 1, 1973 (i.e. over
13 eighteen), a citizen of the Peoples Republic of China and that Respondent entered Saipan on June
14 13, 1997 as a contract worker whose permit remained valid at the time of the incident. Investigator
15 Flores identified the Respondent in the courtroom as a passenger on the boat subject to Coast Guard
16 interdiction and further testified that Respondent did not have a passport or entry permit on his
17 person when searched.

18 Colin Sablan, an employee of the CNMI Department of Immigration in charge of the
19 registration of aliens testified that the entry permit was a plastic card with a sticker affixed to the
20 back, which bears the date of the alien's registration. Mr. Sablan further testified that Respondent
21 last registered on July 20, 2005 and that such registration was valid for one year. Both Investigator
22 Flores and Mr. Sablan confirmed that neither were aware in their experiences of any aliens being
23 deported on account of not personally carrying their passport or entry permits.

24 **III. DISCUSSION**

25 In order to find an alien deportable under CNMI law, the Commonwealth has the burden of
26 showing, by "clear and convincing evidence" that Respondent's actions or omissions has made him
27 deportable by statute. 3 CMC § 4341(e). The Commonwealth seeks to deport Respondent based on
28 violations of 3 CMC § 4340, subsections (f) and (h).

1 **A. Respondent Is Not Deportable Under 3 CMC § 4340(f).**

2 The plain language of 3 CMC § 4340(f) makes an alien deportable if “[t]he alien by reason
3 of conduct, behavior, or activity at any time after entry has become an excludable alien pursuant to 3
4 CMC §§ 4322 or 4437(c).” The Commonwealth specifically references § 4322, subsections (g) and
5 (i) in its petition as the basis for Respondent becoming excludable under § 4340(f).

6 Under 3 CMC § 4322, the following classes of aliens, in pertinent part, are excludable from
7 entry into the Commonwealth: “(g) Aliens who are not in possession of a lawfully issued passport...
8 [and] (i) [a]liens who do not have evidence of a valid entry permit.” 3 CMC § 4322(g) and (i).

9 The Commonwealth in its oral argument and supplementary brief contend that because
10 Respondent, at the time he was taken into custody, was found to be without his passport or his entry
11 permit, he violated 3 CMC § 4322, subsections (g) and (i) and is therefore deportable under 3 CMC
12 § 4340. Here, testimony by Investigator Flores clearly and convincingly established Respondent’s
13 immigration status as an alien citizen of China and that Respondent was not carrying his passport or
14 entry permit at the time of his detention. However, whether Respondent violated § 4322,
15 subsections (g) and (i) depends on the proper meaning of the word “possession” in relation to
16 Respondent’s passport and “evidence of” in relation to Respondent’s entry permit.

17 “A basic rule of statutory interpretation is that courts must first look at the language of the
18 statute; and unless the statute provides otherwise, courts should adhere that words be given their
19 plain meaning. A statute is considered ambiguous when it is capable of more than one
20 interpretation.” *Commonwealth v. Taisacan*, 1999 MP 8, 5 N.M.I. 236 (internal citations omitted).
21 Multiple meanings attributed to a single term create ambiguities, which, depending on the meaning
22 given to the term, render inconsistent outcomes. The term “possession”, at least in legal usage, has
23 developed to embody multiple definitions in relation to a person’s control over a thing. A cursory
24 scan of Black’s Law Dictionary reveals several meanings attributable to “possession”. Generally,
25 “possession” is defined as the exercise of dominion over property to the exclusion of all others. *See*
26 BLACK’S LAW DICTIONARY (8th ed. 2004); *see also* C.J.S. Prop. §§ 27-31, 33. In contrast, “actual
27 possession” is defined as the “physical occupancy or control over property.” *Id.* And in further
28 contrast to “actual possession”, “constructive possession” connotes “control or dominion over a

1 property without actual custody or control of it.” *Id.*

2 The vexing question here, is what meaning did the legislature intend to impart “possession”
3 when the plain language of the statute provides no guidance and where the CNMI courts have been
4 thus silent on the matter.¹ Because the legislature left “possession” unadorned by adjectives
5 providing a more specific and restrictive meaning, the Court can only find that the legislature only
6 intended the word “possession” to be used in its broadest legal sense, i.e. the exercise or dominion
7 over property to the exclusion of all others, and therefore the Court will adopt this definition as the
8 manifestation of the legislature’s plain intent.

9 Here, the Commonwealth failed to show that Respondent relinquished his dominion and
10 control over his passport to the exclusion of all others as they could have done by demonstrating that
11 Respondent disposed of his passport as waste or sold it or gave it away to another, thus
12 relinquishing his dominion. Rather, the Commonwealth sought to show that Respondent was
13 required to carry his passport with him at all times or face deportation, and alternatively that he
14 constructively abandoned his passport. However, as discussed above, “possession” as intended by
15 the legislature did not exclude constructive possession, and absent clear and convincing proof of
16 Respondent’s relinquishment of dominion and control of his passport, this Court cannot find a
17 violation of 3 CMC § 4322(g) and grounds for deportation under 3 CMC § 4340(f).

18 Likewise, the Court finds the Commonwealth’s argument for constructive abandonment
19 creative, but unpersuasive. The gist of the Commonwealth’s theory was that by proving
20 Respondent’s intent to take a boat to Guam and his intent to remain there permanently, one may
21 infer Respondent’s intent to abandon his passport, and combined with his lack of physical
22 possession, that he had relinquished dominion and control. The Commonwealth offered the
23 testimony of Investigator Hoyle who described the events surrounding the high seas interdiction of
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26 ¹“In the whole range of legal theory there is no conception more difficult than that of possession. The Roman
27 lawyers brought their usual acumen to the analysis of it, and since their day the problem has formed the subject of a
28 voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or
scientific interest, for its practical importance is not less than its difficulty. The legal consequences which flow from the
acquisition and loss of possession are many and serious.” John Salmond, *Jurisprudence* 285 (Glanville L. Williams ed.,
10th ed. 1947).

1 the boat on which Respondent was discovered as circumstantial evidence that Respondent intended
2 to enter Guam and remain there. Indeed, the testimony of Investigator Hoyle pointed to several
3 circumstances that supported the Commonwealth's theory, most notably the inconsistency between
4 the items found on board the boat (e.g. extra clothes, cash sewn into clothing, multiple photographs,
5 lack of appropriate fishing gear) and the boat's ostensible purpose of a one-day fishing trip.

6 However, to allow the Commonwealth to demonstrate lack of possession through this
7 argument would risk effectively creating a new law not plainly envisioned by the legislature. To be
8 sure, Respondent and his fellow passengers are already subject to federal charges for attempting to
9 illegally enter the U.S. territory of Guam. By contrast, the CNMI legislature, thus far, has not
10 enacted legislation making it a deportable offense for an alien to travel to Guam. Consequently, this
11 Court will not extend the statute's scope to accept the Government's creative theory.

12 Furthermore, allowing such an interpretation may open the door to absurd and utterly
13 inequitable results. And a court must avoid interpreting a statute in such a manner that will yield
14 such unintended consequences. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*,
15 2 N.M.I. 212 (1991). To this end, Respondent persuasively argues that requiring actual or physical
16 possession at *all* times would place undue restrictions on an alien's activities in the CNMI, e.g.
17 restricting their ability to swim, windsurf, jog, bathe or otherwise engage in myriad activities which
18 typically require a person to secure their personal items in places other than their physical person.
19 This Court is not ready to apply these types of prior restraints on an alien's personal freedoms before
20 any concrete wrong has been committed and proven.

21 The Commonwealth further argues that Respondent was found without his entry permit in
22 violation of § 4322(i). Again, the Commonwealth's reliance on this code section is misplaced. The
23 language of § 4322(i) plainly requires that the government prove by clear and convincing evidence
24 that the alien have no *evidence* of an entry permit. Here, the Commonwealth has proven that
25 Respondent did not have physical possession of his entry permit at the time of his detention along
26 with the circumstances of his voyage. But the statute does not require that the Respondent even
27 show possession. In order to provide a basis for deportation, the Commonwealth must demonstrate
28 that Respondent had no evidence of a valid entry permit. Although this Court recognizes the

1 obvious difficulties of proving a negative, the Commonwealth has failed nevertheless to carry its
2 burden sufficiently to support a deportation order.

3 **B. Respondent Is Not Deportable Under 3 CMC § 4340(h).**

4 Under 3 CMC § 4340(h) an alien is deportable if the alien failed to comply with the
5 registration requirements of 3 CMC § 4351. The Commonwealth alleges in its petition, brief, and
6 oral argument that Respondent failed to comply with 3 CMC § 4351(e), which requires registered
7 aliens who are eighteen years or older to keep their “registered alien card or certificate in their
8 personal possession at all times.”

9 As stated above, the Commonwealth established at the hearing on the order to show cause
10 that Respondent was an alien and was without documentation when detained by Attorney General
11 investigators. The Commonwealth further established by the testimony of Investigator Flores that
12 Respondent was born on June 1, 1973 and was therefore over the age of eighteen. Consequently,
13 whether Respondent can be found to have violated the registration requirements of § 4351 and
14 thereby deportable under § 4340(h) again depends on the interpretation of “personal possession.”

15 The Commonwealth argues that “personal possession” should be interpreted to require that
16 aliens be required to carry their registration cards, plastic cards with a paper sticker affixed to its
17 back, on their person at all times. An initial glance at the statute appears to support such a reading.
18 Unlike § 4322(g), “possession” in § 4351(e) is modified by the adjective “personal”, which,
19 depending what definition is applied to “personal” could connote possession “on the physical person
20 of the individual.” However, the Commonwealth’s reliance on this line of reasoning would force
21 this Court to adopt an overly technical and flawed interpretation of “personal possession” which
22 threatens unanticipated and absurd consequences to those governed by the statute.

23 The Court must apply the statute according to its plain language absent any ambiguity. *See*
24 *supra*, pg. 4. However, no specific definition of “personal possession” is provided within the statute
25 or in CNMI jurisprudence. Nevertheless, as discussed *supra*, an interpretation of “personal
26 possession” which would require aliens like Respondent to carry these cards on their physical
27 person at all times threatens to precipitate absurd results that would impinge on the personal
28 freedoms of aliens subject to § 4351. *See supra*, pp. 6-7. Again, the Court foresees numerous

1 absurd consequences that could restrict aliens from enjoying physical exercise at a gym or in the
2 ocean, bathing, and other activities which require them to move about unencumbered.

3 The adjective “personal” limits “possession” only to the extent that it requires that the alien
4 keep their registration card in his/her possession to the exclusion of all others. Because the
5 Commonwealth has not demonstrated by clear and convincing evidence that Respondent had not
6 kept his registration documentation in his possession to the exclusion of all others by leaving it at
7 home, this Court cannot find Respondent in violation of the registration requirements of § 4351 and
8 deportable under § 4340(h).

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Commonwealth’s petition for an Order to Show Cause is
11 dismissed with prejudice.

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13 **So ORDERED this 2nd day of February, 2006.**

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15 /s/ _____
16 David A. Wiseman, Associate Judge
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