FOR PUBLICATION

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

OFFICE OF THE ATTORNEY GENERAL AND DIVISION OF IMMIGRATION, **Petitioners,** **v.** **DOUGLAS A. PHILLIP,** **Respondent.**	CIVIL ACTION NO. 05-0558E **ORDER OF DEPORTATION OF DOUGLAS AMAICHY PHILLIP, A CITIZEN OF THE FEDERATED STATES OF MICRONESIA**

I. INTRODUCTION

THIS MATTER was heard on March 9, 2006 at 1:30 p.m. in Courtroom 223A for an Order to Show Cause. Assistant Attorney General Ian Catlett appeared on behalf of the Government. Respondent appeared and was represented by Steven Pixley, Esq. The Court having heard the testimony of the witnesses, including that of the Respondent, reviewed the exhibits introduced at the hearing, and considered the parties' legal arguments as set forth in written submission submits its ruling and order.

II. FACTUAL AND PROCEDURAL HISTORY

At the March 9, hearing on the Order to Show Cause why Respondent should not be deported, the Commonwealth presented evidence proving the following by clear and convincing evidence: (1) That Respondent is a citizen of the Federated States of Micronesia (FSM); and (2) that Respondent was convicted of Assault with a Dangerous Weapon on July 29, 2002, a felony under CNMI law.

Pursuant to 3 CMC § 4340(d), being convicted of two or more misdemeanors or one felony is grounds for deportation of an alien from the Commonwealth of the Northern Mariana Islands (CNMI).

At hearing the Commonwealth demonstrated Respondent's felony conviction in the CNMI. Thus, it is for this Court to determine only whether Respondent, as a citizen of the FSM is an "alien" for the purposes of CNMI immigration law.

Both parties submitted written points and authorities on this question. The Commonwealth argued that Respondent is an "alien" under CNMI law because of Respondent's FSM citizenship, and is therefore deportable pursuant to the CNMI immigration statutes. Respondent argued that CNMI immigration laws of not apply to him because he is a citizen of a state which formerly held status as a Trust Territory of the Pacific Islands (TTPI) when it was in existence and the definition of "alien" specifically exempts citizens of TTPI from "alien" status.

III. DISCUSSION

A person is an "alien" for the purposes of immigration if such person (1) is not or will not become a citizen or national of the United States as defined by United States law or in the CNMI constitution, or (2) who is not a citizen of the TTPI or the CNMI, or (3) who is not a permanent resident. 3 CMC § 4303(a). As a preliminary matter, Respondent is a citizen of the FSM, and as such, is not currently a citizen of the United States, nor is he scheduled to become a citizen of the United States in accordance with U.S. law, or the CNMI Constitution. That Respondent carries a FSM passport supports the conclusion that he is not a citizen of the CNMI or the United States, but of the FSM. *See Palavra v. I.N.S.*, 287 F.3d 690, 692 (8th Cir. 2002). Secondly, Respondent is also neither a citizen nor a permanent resident of the Northern Mariana Islands. Consequently, by process of elimination, Respondent must be classified as an alien subject to the immigration laws of the Commonwealth if he is not a citizen of the TTPI.

A. Respondent Cannot Claim Citizenship of the TTPI Because the TTPI No Longer Exists

The issue before this Court is simply an issue of statutory interpretation, and it is for this Court to determine whether the "TTPI provision" in 3 CMC § 4303(a), which exempts citizens of the TTPI from classification as an alien is applicable to Respondent when the Trust Territory no longer exists. As a general matter, statutes must be interpreted so as to ascertain and give effect to the intent of the legislature. *In re Estate of Rofag*, 2 N.M.I. 18 (1991). At the same time a court should avoid interpretations of a statutory provision which would defy common sense or lead to absurd results.

Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc., 2 N.M.I. 212 (1991). Further, a court in construing a statute must take care not to haphazardly amend a statute, such that it oversteps its role as interpreter and becomes a superlegislative body. *In re Seman*, 3 N.M.I. 57 (1992).

In 1994, the Republic of Palau became an independent sovereign, and the Trust Territory of the Pacific completed its gradual dissolution into several sovereign states and autonomous territories, which enjoy multifarious relationships with the United States. The CNMI, a former Trust Territory member became a territory of the U.S. through the Covenant, and enjoys a relatively close relationship of governance with the United States; while other former TTPI members, such as the FSM and the Republic of Palau, enjoy a different status as Freely Associated States which enjoy a significantly greater degree of sovereignty and bear a much looser affiliation with the United States than the CNMI. *Temengil v. Trust Territory of the Pacific* Islands, 881 F.2d 647, 651 (1989). *See also* Commonwealth of the Northern Mariana Islands, 6 Immigr. L. Serv. 2d PSD FAM 1126.1 (February 2006); *and* HOWARD WILLENS ET AL., National Security and Self-Determination: United States Policy in Micronesia (1961-1972) 255-258 (2000).

Reasonable logic and sense dictates that with the dissolution of the TTPI, and its reorganization into separate political entities, its citizenry dissolved along with it and emerged as separate citizenries of each emerging body. Therefore, although Respondent has citizenship in a federation of a group of islands that once shared Trust Territory status with the islands of the CNMI, he may no longer claim exception to the immigration laws in the CNMI through section 4303(a) now that the trust territory status has dissolved. Indeed, to interpret this section as to apply to those who are citizens of former TTPI member states would lead to the absurd result of granting all Micronesians carte blanche exception to the immigration laws of the CNMI. Lastly, in order to read the statute as Respondent suggests would force this Court to manipulate the statutory language to include those "persons who are citizens of territories which were once a part of the TTPI" in addition to "citizen of the Trust Territory of the Pacific," an act that would greatly exaggerate the power of this Court.

Respondent argues that in spite of the dissolution of the TTPI, it is still the legislature's intent to preserve the exemption for those who live on territories formerly constituting the TTPI unless the legislature act to affirmatively dispense of such exemption. Respondent's argument is unpersuasive

because it assumes that a legislature must affirmatively acts to effectuate its intent, while such a presumption has never been the case. To be sure, Respondent's application of the statutory provision to his own status and the provision as read would require specific legislative tinkering to expand the language to include not only actual citizens of the TTPI but also citizens of any political entity which controls a territory that was once a part of the TTPI. The legislature, by its silence, has declined to make such a change, and this Court will impose no distortion of its own.

B. The Compact of Free Association Act Does Not Exempt FSM Citizens From CNMI Non-Discriminatory Immigration Limitations.

Respondent also relies on the Compacts of Free Association (Compacts) to argue that he is not subject to the immigration laws of the CNMI. Specifically, Respondent argues that because federal funding of the CNMI is heavily tied to the compacts, it supports Respondent's contention that the legislature intended that the exemption for citizens of TTPI to apply to citizens of islands which once were territories of the TTPI. Respondent alternatively relies on the federal district court's interpretation of the Compacts in *Syed v. Aloot*, 1996 WL 173394 (D.N.Mar.I.) to support his claim that citizens of the FSM, which is a party to the Compacts, are exempt from CNMI immigration law. Each of Respondent's arguments are inherently flawed.

As explained above, mere inaction by the legislature does not suggest that the legislature intends a statute to expand to accommodate significant political changes. It follows, then, that mere speculation as to motivation for such inaction is even less persuasive when it comes to supporting an already flawed argument. Although, the legislature may be motivated to enact law by federal funding, the mere provision of federal funding and a corresponding agreement does not conclusively divine the intent of the legislature.

Further, as the Commonwealth's points suggest, *Syed v. Aloot*, does not stand for the proposition that citizens of those states parties to the Compacts are exempted from the immigration laws of the CNMI. *Syed* is readily distinguishable from this case on two significant points. First, *Syed*'s holding was limited to finding that alien spouses of Palauan and FSM citizens enjoyed the same employment rights in the CNMI as immediate relatives of "non-aliens". *Id* at ¶21. In holding such, the district court never reached the issue regarding whether Palauan and FSM citizens were "aliens" within 3 CMC §

4303(a). Further, *Syed* recognized that although section 141 of the Compact permits citizens of FSM and Palau to enter, reside, and obtain employment under the Compacts of Free Association, such rights are *subject to* limitations provided in the statutes or regulations of the United States or the CNMI insofar as those limiting statutes or regulations are non-discriminatory. *Id* at ¶¶11-14, *referencing* § 141 COMPACT OF FREE ASSOCIATION ACT OF 1985 (adopted by Congress pursuant to 48 U.S.C. § 1901 et seq.).

Here, the CNMI, by virtue of the Covenant, has been granted nearly plenary authority over its own immigration. *See* COVENANT § 503; *see also AGO v. Sagun*, 1999 MP 19 (quoting *Tran v. CNMI*, 780 F. Supp. 709, 713 (D.N.M.I 1991) *aff'd*, 993 F.2d 884 (9th Cir. 1993)). In exercising this authority, the CNMI has passed legislation limiting the ability of "aliens" to remain in the CNMI by making deportable *all* aliens who have been convicted of two or more misdemeanors or one or more felonies. 3 CMC § 4340(d). Hence, because, neither *Syed* nor the Compact have the effect of treating citizens of the former TTPP members as "non-aliens" for the purposes of CNMI immigration limitations, and because such limitations are non-discriminatory, to the extent that they apply to all aliens, Respondent's argument must fail.

It is additionally explicit in the Compact language that "it is not the intent of the Congress to cause any adverse consequences for the United States territories and commonwealths or the State of Hawaii." COMPACT OF FREE ASSOCIATION ACT OF 1985 at § 104(e)(1), [48 U.S.C. §1904(e)(1)]. In light of the CNMI's unique geographic, economic, and political status, the welfare of the CNMI depends on its ability to control its own immigration, and specifically its ability to rid itself of those guests who have refused to comply with CNMI law. Those who have committed serious crimes such as felonies or multiple misdemeanors have already adversely impacted the CNMI in numerous ways, and have demonstrated that they are unwilling to participate in the essential social contract which ensures the rule of law in Saipan. It is thus fair and lawful that the CNMI should be able to expel even Compact state members, who have broken CNMI laws, without offense to the tenets and policies of the Compact.

IV. CONCLUSION

In conclusion, because Respondent, as a citizen of the FSM, is classified as an alien, he is subject to the immigration laws of the CNMI governing deportation. Further because the Commonwealth has proved that Respondent, an alien, has been convicted of a felony, this Court hereby finds Respondent deportable pursuant to 3 CMC § 4340(e).

It is further ordered that Respondent appear for a status conference at 1:30 p.m., April 10, 2006 in courtroom 223A.

SO ORDERED this 4th day of April, 2006.

/s/
DAVID A. WISEMAN, Associate Judge