

1 **FOR PUBLICATION**



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7 **IN THE SUPERIOR COURT**
8 **OF THE**
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

10 WU, MEI WEN,) Civil Action No. 04-0246
11)
12 Plaintiff/Appellant,)
13 v.) **DECISION AND ORDER AFFIRMING**
14) **DEPARTMENT OF LABOR’S REFUSAL**
15 DEPARTMENT OF LABOR,) **OF TRANSFER RELIEF**
16 Commonwealth of the Northern Mariana Islands,)
17 acting through JOAQUIN A. TENORIO,)
18 Secretary of Labor,)
19)
20 Defendant/Appellee.)
_____)

21 **I. INTRODUCTION**

22 THIS MATTER came for decision solely on the written submissions of the parties, upon
23 stipulation by the parties. Counsel Dorothy Hill represented Appellees, the Department of Labor
24 (Labor) and the Secretary of Labor. Counsel Stephen Woodruff represented Appellant, Mei Wen Wu.
25 The above-captioned action concerns Appellant’s challenge of Labor’s decision to deny
Appellant employment transfer relief after she had failed to obtain a transfer permit and was
apprehended as an alleged overstaying alien. Having reviewed the parties’ submissions, the written
findings and legal conclusions of the Labor hearing officer, the decision of the Secretary of Labor, and

1 the applicable law pertaining to review of agency actions, this Court renders its decision.

3 II. FACTUAL AND PROCEDURAL HISTORY

4 This case arises out events surrounding the abandonment of Appellant by her original employer
5 New Flying Dragon Co., Ltd. The Department of Labor opened a compliance agency case to address
6 the abandonment of New Flying Dragon Co.'s employees, at the conclusion of which Appellant and
7 other employees were granted 45 days to find a transfer employer. *Director of Labor v. New Flying*
8 *Dragon Co., Ltd.*, C.A.C. 99-003 (Administrative Order (Sept. 10, 2001). Appellant failed to file the
9 necessary Labor and Entry Permit Application by October 25, 2001, the approximate expiration date of
10 the 45 day period, and the Department of Labor forwarded Appellant's name to Immigration.

11 Appellant was apprehended by Immigration officers on November 25, 2002 for remaining in the
12 Commonwealth without lawful permit. Shortly thereafter, Appellant filed a complaint with the Division
13 of Labor. In her complaint, Appellant essentially alleged that at her original compliance hearing, Steven
14 Pangelinan offered to employ her and assist her in completing Appellant's Labor and Entry Permit.
15 Appellant further alleged that she paid Mr. Pangelinan \$500 to process her transfer application so
16 Appellant could then work for Mr. Pangelinan. The Hearing Officer ruled that Appellant's claim
17 against Pangelinan was time-barred under 4 CMC § 9246, and that Appellant was not entitled to
18 equitable transfer relief.

19 On appeal, the Secretary of Labor upheld the Labor Hearing Officer's decision on the basis that
20 the statute of limitations expressed under 4 CMC § 9246 time-barred Appellant's complaint and
21 likewise refused to grant Appellant equitable transfer relief.

22 Appellant filed a Complaint for Judicial Review Filed on June 4, 2004 pursuant to 3 CMC §
23 4446 and the CNMI Administrative Procedure Act (APA), 1 CMC § 9112(b), wherein Appellant claims
24 that the Secretary of Labor abused its discretion in upholding the hearing officer's denial of transfer
25 relief. Labor and the Secretary of Labor answered Appellant's complaint on June 23 and 24, 2006,

1 respectively.

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3 **III. ISSUES FOR REVIEW**

4 1. Whether the Secretary of Labor abused his discretion when he limited his review of the Labor
5 Hearing Officer's decision to the existing record without providing a written basis for exercising such
6 discretion under 3 CMC § 4445(b)?

7 2. Whether the record contained substantial evidence to support the Secretary of Labor's denial
8 of Appellant's request for transfer relief?

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10 **IV. ANALYSIS AND DISCUSSION**

11
12 **A. The Secretary of Labor's Determination to Confine Review to the Existing Record Was**
13 **in Accordance with 1 CMC § 9110(c).**

14 As a preliminary matter, Appellant claims that the Secretary of Labor's review of the Labor
15 Hearing Officer's decision fell short of statutory rights and was an abuse of discretion because the
16 Secretary of Labor failed to provide a written explanation of his determination to confine his review to
17 the existing record. Appellant relies on 1 CMC § 9110(c), which states in part that "[a]ll orders or
18 decisions, including initial or recommended orders or decisions, or those on agency review, are a part of
19 the record and shall include a statement of: (1) [f]indings and conclusions, and the reasons or basis for
20 them, on all material issues of fact, law, or discretion presented on the record...." 1CMC § 9110(c).

21 The Court must conclude otherwise. The Secretary of Labor provided a basis for exercising his
22 discretion to confine his review to the existing record by citing to 3 CMC § 4445(b)(1), which allows
23 the Secretary of Labor, in his discretion to restrict view to the existing record. *See* 3 CMC § 4445(b)(1).
24 Further the language of 3 CMC § 4445(b)(1), does not require the reviewing officer of a labor
25 administrative appeal to state his reasons for exercising such discretion.

1 Although the Secretary of Labor’s mere citation to 3 CMC § 4445(b)(1) provides a rather
2 perfunctory basis for exercising his discretion, the Court finds that the remainder of the decision, which
3 reviewed the bases for Labor’s initial refusal to grant Appellant transfer relief in light of the equities,
4 impliedly found that the existent record was sufficient to render a decision. Consequently, the Secretary
5 of Labor’s decision to confine his review of Appellant’s case to the existing record was not short of
6 statutory rights or an abuse of discretion.

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8 **B. Labor’s Refusal to Grant Appellant Equitable Transfer Relief is Supported by**
9 **Substantial Evidence.**

10 In her administrative appeal, Appellant asks this Court to reverse the Labor’s denial of transfer
11 relief because the Labor Hearing Officer’s decision was “arbitrary, capricious, an abuse of discretion, or
12 otherwise not in accordance with law, 1 CMC § 9112(f)(2)(i), unsupported by substantial evidence, 1
13 CMC § 9112(f)(2)(v), short of statutory rights, 1 CMC § 9112(f)(2)(iii), or entered without observance
14 of procedure mandated by law, 1 CMC § 9112(f)(2)(iv)...” The Court will address each claim
15 individually.

16 The Court will first address Appellant’s claim that the proceedings below were entered without
17 observance of procedure mandated by law in accord with 1 CMC § 9112(f)(2)(iv). Appellant fails in
18 either of its briefs to explain how either of the Labor proceedings in Appellant’s case failed to observe
19 mandated procedure. With regard to Appellant’s initial hearing, Appellant fails to direct this Court’s
20 attention to one instance where the Labor Hearing Officer failed to follow procedures prescribed under
21 section 4444 of the Nonresident Workers Act (“NWA”) or section 9109 of the Administrative Procedure
22 Act (“APA”). Furthermore, the Court addressed Appellant’s argument with regard to the Secretary of
23 Labor’s alleged error *infra*.

24 Likewise, Appellant makes no salient argument as to how Labor’s refusal to grant transfer relief
25 to Appellant was short of her statutory rights pursuant to 1 CMC § 9112(f)(2)(iii). As discussed *supra*,

1 there was substantial evidence to reasonably conclude that Appellant was not entitled to equitable
2 transfer relief within the statutes of the APA. Furthermore, Appellant fails to cite any additional
3 statutory rights which were denied to Appellant in so holding. Accordingly the Court will not set aside
4 Labor's determination pursuant to 1 CMC § 9112(f)(2)(iii).

5 Before addressing Appellant's remaining claims it is important to establish this Court's standard
6 of review. 1 CMC § 9112(f) prescribes the standard of review the Superior Court must apply when
7 reviewing agency actions within the Administrative Procedure Act. *Camacho v. Northern Marianas*
8 *Retirement Fund*, 1 N.M.I. 362 (1990).

9 Here, although Appellant claims that Labor's refusal to grant transfer relief should be overturned
10 because they were arbitrary and capricious and not supported by substantial evidence pursuant to 1
11 CMC § 9112(f)(2)(i) and (v) , only one standard is required for this Court's analysis: whether the
12 Labor's determination was supported by "substantial evidence". The Commonwealth Supreme Court
13 has unequivocally held that a finding that there was substantial evidence to support an agency action,
14 encompasses abuse of discretion standard set forth in subsection (i). *In re Hafadai Beach Hotel*
15 *Extension*, 4 N.M.I. 37 (1993) ("In other words, as we found substantial evidence supporting the
16 affirmance (sic) of the Board decision, it was not arbitrary and capricious"). Therefore, this Court will
17 review the Labor's refusal of transfer relief to Appellant under the "substantial evidence" standard.

18 The Court in *In re Hafadai Beach Hotel Extension* further explained the "substantial evidence"
19 standard:.

20 In judicial review of review of agency action, the substantial evidence standard for a finding
21 of fact means that the decision must be reasonable after consideration of the facts in the
22 record opposing the agency position as well as supporting it and the reviewing court is to
uphold the agency finding *even if supported by something less than the weight of evidence....*

23 In judicial review of agency action, questions of law under the substantial evidence or
24 "reasonableness" standard are examined to determine if the agency's conclusions are
reasonably based on the information package used by the agency in making the decision.
In re Hafadai Beach Hotel Extension, 4 N.M.I. 37 (1993) (*emphasis added*).

1 Simply put, this Court must examine the Labor's handling of the case to determine whether the result
2 reached by the agency is reasonable in light of the available facts and applicable law. As such, this
3 Court will accord reasonable deference to the Agency's findings of fact as implied by *In re Hafadai*,
4 when examining its holdings. By contrast, this Court will implement a stricter scrutiny of the agency's
5 interpretations of law to ensure that they are indeed consistent with legislative intent of the Nonresident
6 Workers Act.

7 Here, it is undisputed that Appellant was initially awarded transfer relief on account of another
8 unrelated labor case. Pursuant to the transfer relief awarded, Appellant had forty-five (45) days to seek
9 new employment, and with her prospective employer, submit a Commonwealth Nonresident Worker's
10 Labor and Entry Permit Application to the Division of Labor. Appellant failed to report to the Division
11 of Labor in the prescribed time with any prospective employer or a completed Labor and Entry Permit
12 Application. Instead, Appellant was not heard from but remained in the Commonwealth until she was
13 apprehended by immigration authorities on November 25, 2002. Appellant then initiated this labor case
14 by filing a complaint on December 16, 2002.

15 At the hearing, Appellant proffered several reasons for having failed to find work and return to
16 the Division of Labor within the prescribed time-period of her temporary transfer authorization. First,
17 Appellant claimed that she found a new employer, Steven Pangelinan, and entered into employment
18 negotiations with Mr. Pangelinan, and gave Mr. Pangelinan \$500 to cover the cost of the application
19 process (i.e. medical examination) but that Mr. Pangelinan failed to complete Appellant's Labor and
20 Entry Permit Application or hire her, and subsequently abandoned Appellant without returning her
21 money. Mr. Pangelinan corroborated Appellant's testimony that he offered to hire Appellant but failed
22 to follow through with the application process, however, he denied accepting \$500 from Appellant.

23 Appellant further blamed her failure to return to the division of labor to file on the fact that she
24 continued unsuccessfully to pursue employment with Mr. Pangelinan. Moreover, Appellant cited her
25 poor knowledge of English language and her unfamiliarity with CNMI labor law to explain her failure to

1 comply with the initial terms of the 45-day transfer authorization.

2 Under 3 CMC 4444(e)(5) and (6) Labor may enforce its findings by allowing a nonresident
3 employee to transfer to another employee or impose “such other sanction, order or relief that may
4 reasonably give effect to the purpose” of the Nonresident Workers Act. Simply put, the statute grants
5 Labor the ability to employ a number of remedies in light of the peculiar circumstances of each labor
6 case before it. Equitable transfer relief is one of these broad remedies which may be employed at the
7 discretion of Labor.

8 Here, it is undisputed that Appellant violated CNMI law when Appellant failed to report to the
9 division of labor after the 45-day transfer authorization period expired but nevertheless remained in the
10 Commonwealth in excess of one year. It is further undisputed that Appellant did not file her labor case
11 until shortly after she was apprehended for remaining in the CNMI illegally. The Labor Hearing Officer
12 and the Labor Secretary challenged the credibility of Appellant’s testimony that she was helpless to
13 remedy her situation before the 45 days expired by noting that Appellant had at least a chance to
14 passively observe the CNMI labor laws in action during her participation in her initial labor case. *See In*
15 *the Matter of Wu, Mei Wen v. Steven Pangelinan*, L.C. No. 02-285 (Administrative Order) (May 1,
16 2003); *In the Matter of Wu, Mei Wen, v. Steven Pangelinan*, L.C. No. 02-285 (Administrative Order:
17 Appeal)(May 20, 2004). Moreover, the Hearing Officer found that Appellant’s testimony of
18 helplessness was incredible on the basis of his finding that Appellant was savvy enough to seek
19 assistance from the federal ombudsman.

20 Although the Court cannot but sympathize with Appellant in light of some of the details of her
21 ordeal, it will not interfere with Labor’s determination not to extend equitable transfer relief to
22 Appellant. Labor has broad discretion to grant or deny equitable relief under 3 CMC 4444(e)(5) and (6).
23 Labor conducted its hearings according to law and determined that Appellant’s testimony that her
24 ignorance of English, and of CNMI law, and the misdeeds of another was insufficient to warrant transfer
25 relief. Labor questioned Appellant’s excuses for non-compliance with CNMI law on the basis of

1 credibility and her motive. Consequently, the Court must find that Labor's decision was reasonably
2 based on the facts before it and a correct interpretation of applicable law.

3

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V. CONCLUSION

5 For the foregoing reasons, the Department of Labor's decision not to grant Appellant transfer
6 relief under 3 CMC 4444(5) and (6) is AFFIRMED.

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8 **SO ORDERED** this 16th day of February, 2007.

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/s/

DAVID A. WISEMAN
Associate Judge

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