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**FOR PUBLICATION**

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

OFFICE OF THE ATTORNEY GENERAL )  
and DIVISION OF IMMIGRATION SERVICES, )  
Petitioners, )  
vs. )  
ELMO E. SAN PEDRO, )  
Respondent. )

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CIVIL ACTION NO. 05-0350E

**ORDER DENYING RESPONDENT'S  
MOTION FOR STAY AND SETTING  
HEARING DATE**

This matter came on for hearing on November 17, 2005 pursuant to Respondent's motion to stay deportation or dismiss. Ian Catlett appeared for the Petitioners and Reynaldo O. Yana, Esq. appeared for the Respondent.

**I. The Court Should Not Stay Deportation Proceedings**

The Order to Show Cause for the deportation of Respondent was based on the undisputed fact, conceded by Respondent, that Respondent is a deportable alien, having been convicted of two misdemeanors. Pursuant to 3 CMC § 4340(d), an alien who has been convicted of two or more misdemeanors is a deportable alien. Respondent argues that because he has a pending labor contract approved by Department of Labor that there is a tolling effect on any deportation until the contract is completed. He claims that the deportation is intertwined with the issue of breach of employment contract because if he is now deported, he may be liable to the employer for breach of employment contract, unless pursuant to a hearing conducted by Department of Labor, the employment contract is terminated.

1 Respondent's request for a stay is unsupported by CNMI law. Under 3 CMC § 4340(d), the  
2 applicable section in this case, an alien is deportable after being found guilty of two misdemeanors. In this  
3 case, the Respondent concedes that he has been convicted of two DUI counts. See Brief of Respondent, at  
4 1. This section makes no distinction between aliens present as non-resident workers on contracts approved  
5 by the Department of Labor and other aliens present for other purposes. It therefore cannot be said that a  
6 contract approved by the Department of Labor has a tolling effect on § 4340(d). Respondent's request that  
7 the matter be referred to the Department of Labor for adjudication under administrative remedy and due  
8 process principles has no basis in Commonwealth law. The Department of Labor has no role in either  
9 immigration or criminal proceedings. The Petitioners are not questioning the validity of the Respondent's  
10 work contract, but rather are proceeding against him on entirely separate grounds of deportation. The Court  
11 has determined that the Respondent has committed two misdemeanors and the Petitioners are proceeding  
12 accordingly. The fact that the Respondent may breach his work contract is irrelevant. As stated *supra*, 3  
13 CMC § 4340(d) makes no distinction between aliens present as non-resident workers and aliens present for  
14 other reasons. The Respondent asks this Court to take the position that any non-resident worker convicted  
15 of two or more DUIs must be allowed to complete a work contract before deportation. Such a finding is  
16 both contrary to CNMI law and would constitute a major public safety risk. Under Respondent's theory, an  
17 alien worker convicted of murder should not go to jail until his employment contract is completed. A theory  
18 without merit.

19 **IT IS SO ORDERED**, that for the foregoing reasons Respondent's Motions to Stay and Dismiss  
20 is hereby **DENIED**. A **Status Conference** is hereby set for **July 19, 2007** at **1:30 p.m.** in **Courtroom**  
21 **223A**. All parties are ordered to appear.

22  
23 **SO ORDERED** this 12<sup>th</sup> day of July, 2007.

24 /s/  
25 DAVID A. WISEMAN, Associate Judge