



By the order of the court, Judge David A Wiseman

E-FILED
CNMI SUPERIOR COURT
E-filed: Dec 17 2008 11:55AM
Clerk Review: N/A
Filing ID: 22948434
Case Number: 06-0118-CV
N/A



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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,)	CIVIL ACTION NO. 06-0118E
Petitioners,)	
vs.)	ORDER DENYING RESPONDENT'S MOTION FOR DISMISSAL OF PETITION FOR DEPORTATION
MEJIA, MARISSA P.,)	
Respondent.)	ORDER SETTING HEARING TO SHOW CAUSE
_____)	

I. INTRODUCTION

THIS MATTER was heard on December 4, 2008, at 1:30 p.m. in Courtroom 223A on Respondent's motion for relief and dismissal. Assistant Attorney General Kathleen Busenkell appeared on behalf of the Government. Stephen Woodruff appeared on behalf of Respondent Marissa Mejia. The court having heard the arguments of counsel and having reviewed applicable law and considered the parties' briefings now submits its ruling and order.

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1 **II. SYNOPSIS**

2 On January 27, 2005, the Commonwealth filed an Information charging Respondent with 63 counts
3 of theft by deception in violation of 6 CMC 1603(a). On September 30, 2005, Defendant entered a plea
4 agreement whereby Defendant pled guilty to two felonies, Counts I and II of the information to wit: theft
5 by deception. As a result of the plea agreement, Defendant was sentenced to two years imprisonment with
6 the entire sentence suspended and she was placed on probation for two years. Per Defendant's plea
7 agreement, she was required to pay restitution in the amount of \$16,287.93. To date, \$190.00 has been paid.
8 On October 23, 2007, the victim submitted a letter to the Office of Adult Probation expressing her feelings
9 about Defendant's failure to pay restitution and appealed to the court to sentence Defendant to serve time
10 in jail. Although Defendant has failed to comply with the terms of her probation by failing to pay restitution
11 and fines, as well as failing to keep appointments with her probation officer, she has never been
12 incarcerated.

13 Respondents daughter, a three-year old U.S. citizen, has a serious liver disease which required
14 surgery when she was born. The daughter has been under the care of CNMI doctors since birth. According
15 to doctors, because of the child's risk for chronic liver disease, her liver must be evaluated by blood testing
16 every four to six months. Additionally, the child requires an ultra-sound of her liver and other special blood
17 testing. On October 13, 2008, Respondent moved this court to grant a motion for relief from deportation
18 and dismissal of this action. Respondent argues: 1) the court should exercise discretion and decline
19 deportation of Respondent on the grounds of hardship as permitted by United States federal immigration
20 laws and; 2) the court should deny deportation because Respondent has not made restitution to the victims
21 and deporting Respondent would only frustrate further Respondent's constitutional duty to the victims. The
22 Attorney General has opposed the motion in writing and at hearing.

23 Respondent is a Philippine national and has been convicted of two felonies, therefore, she is subject
24 to deportation. Further, the Commonwealth is not subject to United States federal immigration law.
25 Respondent's inability to pay restitution is inconsequential to her status as a deportable alien. This court

1 has no authority to grant the relief requested, therefore, the motion is DENIED.

3 III. DISCUSSION

4 At this time, and continuing until at least June, 2009, the “Commonwealth Legislature exercises
5 plenary power with respect to immigration matters, pursuant to section 503 of the covenant.” *Office of*
6 *the Attorney Gen. v. Sagun*, 1999 MP 19 ¶8. The courts are “duty-bound to apply only the immigration
7 laws of the Commonwealth”. *Id.* citing *Office of the Attorney Gen. v. Honrado*, 1996 MP 15 ¶30, 5
8 N.M.I. 8, 12 (1996). In the CNMI, deportation proceedings are governed by the terms of the
9 Commonwealth Entry and Deportation Act of 1983. 3 CMC §§ 4301-4382. Pursuant to 3 CMC §
10 4340(d), being convicted of two or more misdemeanors or one felony is grounds for deportation of an
11 alien from the CNMI. As discussed in *Sagun*, the role of the Superior Court is as follows:

12 (e) *Hearing.* A hearing on the petition to show cause shall be
13 [made] before the Commonwealth Trial Court. A determination of
14 deportability shall be made if there is clear and convincing evidence
15 that the facts alleged as grounds for deportation are true. . . .

16 (f) *Disposition.* If the trial court makes a determination of
17 deportability, an order of deportation shall be entered and the
18 respondent shall forthwith be deported.

19 3 CMC § 4341 (e) and (f).

20 Respondent relies on *Sagun* arguing that the Court in *Sagun* held that Superior Courts have
21 discretion in whether deportability is found. However, a broader reading of *Sagun* does not lend itself to
22 this conclusion. The Court in *Sagun* actually reaffirmed that the trial court’s discretion in immigration
23 matters is limited. The court held that the trial court must assess whether the alien is factually deportable
24 and where the alien is found to be factually deportable by the trial court, the trial court has a duty to order
25 the alien deported. *Id.* at ¶13. In so holding, the Court clarified that trial courts are not even permitted to
grant a voluntary departure where a factual basis for deportation has been determined. If a trial court’s
discretion is so limited as to not have the authority to grant a voluntary departure, this court clearly does not

1 have the authority to permit Respondent to avoid deportation altogether. Therefore, in accordance with
2 Commonwealth law, where there is clear and convincing evidence that the facts alleged as grounds for
3 deportation are true, a determination of deportability shall be made and Respondent shall be deported. 3
4 CMC § 4341 (e) and (f).

5 The Court in *Honrado* stated that “[t]his Court . . . does not find it easy to apply the law when such
6 application results in human trauma, especially where children are involved. But we are the judiciary, not
7 the legislature; we must apply the law.” *Honrado, 1996 MP* at ¶ 41. Here, too, it is the court’s “duty to
8 apply the law even if the results are sometimes harsh”. *Sagun, 1999 MP* at ¶14 quoting *Honrado, 1996 MP*
9 at ¶¶40-41. The plight of Respondent and the tragedy of her daughter’s health is not lost on this court.
10 However, neither is the egregiousness of Respondent’s actions and the constraints of the law. Even if
11 hardship was an appropriate consideration for this court, there is no evidence before the court that
12 Respondent’s daughter will not receive necessary medical treatment either in the Phillippines, or as a U.S.
13 citizen if she remains in the CNMI.

14 The facts of this case and the laws of the Commonwealth simply do not permit this court to read
15 into the authority as granting this court discretion as to whether or not Respondent shall be deported.¹
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17 IV. CONCLUSION

18 For the foregoing reasons, Respondent’s motion is hereby denied. It is further ordered that a hearing
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20 ¹Respondent also argues that deporting her now will frustrate the constitutional rights of the victims because they
21 have not been paid restitution. Respondent fails to cite any authority for this contention. There is no legal connection between
22 the payment of restitution to victims and Respondent’s status as a deportable alien. Further, this court agrees with the
23 Attorney General that awarding convicted felons special work permits would send an alarming message. Respondent pled
24 guilty over three years ago and has yet to pay any significant restitution. As unfortunate as this is for her victims, it is
25 certainly no basis for rewarding her an additional opportunity to remain in the CNMI.

1 on the petition for deportation shall be held on **January 8, 2008, at 2:00 pm in Courtroom 223A.**

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SO ORDERED this 17th day of December, 2008.

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/S/ _____
DAVID A. WISEMAN, Associate Judge

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