



By the order of the court, Judge David A Wiseman

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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. 06-0547E
Petitioners,)	
vs.)	ORDER OF DEPORTATION
MONTON, JULIUS L.,)	
Respondent.)	
_____)	

Respondent appeared before this Court on February 26, 2008, for a hearing pursuant to an Order to Show Cause as to why he should not be deported. Assistant Attorney General Kathleen Busenkell appeared on behalf of Petitioners. Counsel Joe Hill appeared on behalf of Respondent.

I. BACKGROUND

On October 23, 2008, Respondent stipulated to deportation on the record during an Order to Show Cause hearing. At the hearing, Respondent requested that the Order of Deportation be stayed until the summer holiday because his children were enrolled in school in the Commonwealth. As a compromise, the Office of the Attorney General agreed to stay the execution of the Deportation Order until the winter

1 holiday. This Court found the compromise acceptable, however, it noted that Respondent *could* depart the
2 Commonwealth immediately and his family and children could join him in the Phillippines after the 2008-
3 2009 school year. A review hearing was scheduled for January 15, 2009, and Respondent was ordered to
4 appear if he was still in the Commonwealth.

5 On October 23, 2008, Petitioner forwarded Respondent a written Stipulation to Deportation which
6 memorialized the terms the parties agreed upon during the court proceeding. The Stipulation to Deportation
7 read: “The Commonwealth agrees to stay the execution of the Order of Deportation until December of 2008
8 or January of 2009, or whenever the Respondent’s children have a semester or quarterly break between the
9 2008 and 2009 school year.” Respondent never responded to the stipulation.

10 By December 26, 2008, Respondent still had not made contact with Petitioner nor had he responded
11 to the Stipulation. Petitioner then contacted Respondent regarding the Stipulation to Deportation. On
12 December 30, 2008, Petitioners received a revised version of the Stipulation from Respondents which had
13 changed the deportation date to “July 1, 2009 or as soon thereafter. . . .” Petitioner’s opposed the proposed
14 deportation date.

15 On December 31, 2008, Petitioners requested the Court to execute an Order of Deportation that
16 comported with the agreement made during the October 23, 2008 hearing. Before ordering the deportation,
17 this Court deemed it prudent to hold a complete hearing on Petitioner’s Motion notwithstanding
18 Respondent’s previous stipulation to deportation. At the hearing, Respondent argued, for the first time, that
19 he could not be deported until his valid work entry permit was cancelled. Prior to the hearing on Petitioner’s
20 motion for Order to Show Cause, Respondent had not filed any pleadings which discussed or outlined this
21 argument. However, this Court has considered Respondent’s arguments and researched the applicable law.
22 For the reasons stated below, Respondent’s argument is unpersuasive and an Order of Deportation is hereby
23 issued.

1 **II. FINDINGS**

2 Two key facts are undisputed in this matter. First, Respondent holds a valid work entry permit
3 which was issued to him in September 2008, after his criminal convictions, and is set to expire in September
4 2010.¹ Second, Respondent has been convicted of three misdemeanors which subjects him to deportation
5 as defined by 3 CMC 4340 (d). These two findings are mutually exclusive and Respondent’s Work Entry
6 Permit in no way limits the execution of deportation based on 3 CMC § 4340 (d), which states, in part as
7 follows:

8 § 4340. Deportable Aliens.

9 The following are grounds for deportation of an alien from the Commonwealth:

- 10 (d) The alien is convicted in the Commonwealth of a felony, or two or more
11 misdemeanors, or any crime of moral turpitude, or any firearms control
offense.

12 Respondent discussed two cases during the hearing in support of his contention that a hearing must
13 first be held to cancel his valid two year Entry Permit before he may be deported. Neither case is on point
14 or supports Respondent’s contention. In *Office of the Att’y Gen. and Div. of Immigr. Serv. v. Estel*, 2004
15 MP 20, the petitioner’s entry permit expired and her new employer was directed to file a Nonresident
16 Worker’s Identification Certificate within 30 days. However, the prospective employer did not file the
17 Labor Permit within the 30 days and, unknown to petitioner, she continued to work in the Commonwealth
18 without a valid entry permit for two years. *Id.* at ¶ 2. The Office of the Attorney General sought to deport
19 petitioner because she did not have a valid entry permit. *Id.* at ¶ 3. The trial court ordered petitioner’s
20 deportation. *Id.*

21 The Supreme Court held that by no fault of her own, petitioner was in violation of her entry permit

22 _____
23 ¹This Court expresses its concern regarding the renewal of Respondent’s work entry permit
24 because at the time of the renewal, Respondent’s prior criminal convictions were a matter of record and
25 should have prevented the renewal of his work entry permit.

1 but the trial court's exercise of jurisdiction over the deportation hearing was proper. *Id.* at ¶ 9. The Court
2 also held that the Department of Labor and Immigration was required to notify petitioner of her prospective
3 employer's non-compliance with the Transfer Order in order to enforce the repatriation terms of that Order.
4 *Id.* at ¶ 16. The Court held that petitioner's property interest is not in the Transfer Order itself, rather,
5 petitioner's property interest is in the unpaid repatriation expenses that became her property right on the
6 expiration of the Transfer Order. *Id.* at ¶ 17. These findings are inconsequential to the issues in this case.
7 Here, Respondent has no property claim to any repatriation expenses which would require a hearing to
8 satisfy Respondent's due process rights. Petitioner merely holds an Entry Permit which requires him to
9 remain in compliance with the laws of the Commonwealth, which he has failed to do.

10 Likewise, the second case Respondent relies on is inconsequential. In *Office of the Att'y Gen. and*
11 *the Office of Immigr. and Naturalization of the CNMI v. Jimenez*, the respondents were issued entry permits
12 by the Division of Labor. 3 CR 828, 829 (1988). Six months before the permits expired, the respondents
13 filed a complaint against their employer claiming unauthorized wage deductions and seeking back wages.
14 *Id.* On that same date, the respondents employer terminated them from their jobs. While a Department of
15 Labor appeal was pending, the Immigration and Naturalization Office filed a petition in Superior Court that
16 the workers show cause why they should not be deported on the grounds that their employment had
17 terminated. *Id.* at 830-31. The trial court ordered the respondents to deport the Commonwealth. *Id.* at 831.

18 The District Court concluded that the deportation was improper. The Court held that the status of
19 a nonresident worker's employment contract must first be determined by the Division of Labor before their
20 employment status can form the basis of their deportation. *Id.* at 838. This holding is inapplicable to the
21 case at hand. Here, the status of Respondent's Entry Permit does not form the basis for his deportation.
22 Rather, an independent basis, completely freestanding from his employment status, exists for deportation
23 as provided in 3 CMC § 4340 (d). The status of Respondents entry permit has no bearing on his criminal
24 convictions or his status as a deportable alien under 3 CMC 4340 (d).

25 The Court finds by clear and convincing evidence that Respondent, a citizen from the Republic of

1 Phillippines, is a deportable alien pursuant to 3 CMC § 4340 (d) based on more than two criminal
2 convictions. The Court took judicial notice of two Judgment and Conviction Orders. The first was in
3 Criminal Case No. 02-0116(E), wherein Respondent plead guilty to Obstructing Justice and Driving Under
4 the Influence. The second Judgment and Conviction Order was in Traffic Case No. 05-03594, wherein
5 Respondent was found guilty of Driving Under the Influence.

6
7 **IV. CONCLUSION**

8 It is hereby ordered that Respondent is a deportable alien, that he is ordered deported from the
9 Commonwealth, and that he be removed forthwith pursuant to Commonwealth law and regulation. Any
10 cash bail posted in this case shall be exonerated to the posting party on the business day preceding
11 Respondent's departure. Respondent's travel documents, if any, are to be released to Investigator Nick
12 Reyes for repatriation purposes.

13 **SO ORDERED** this 3rd day of March, 2009.

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16 /s/
David A. Wiseman, Associate Judge



By the order of the court, Judge David A Wiseman

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

OFFICE OF THE ATTORNEY GENERAL AND DIVISION OF IMMIGRATION,)	CIVIL ACTION NO. 06-0547E
Petitioners,)	
vs.)	ERRATA ORDER
MONTON, JULIUS L.,)	
Respondent.)	
_____)	

On March 3, 2009, the Court entered an Order of Deportation in the above referenced case.

The first sentence of the Order states: "Respondent appeared before this Court on February 26, 2008, for a hearing pursuant to an Order to Show Cause as to why he should not be deported."

The date as referenced is incorrect. Therefore, the Court now enters this errata order to correct the first sentence to state as follows: "Respondent appeared before this Court on February 26, 2009, for a hearing pursuant to an Order to Show Cause as to why he should not be deported." The published opinion shall reflect this change.

1 **SO ORDERED** this 3rd day of March, 2009.

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/s/
David A. Wiseman, Associate Judge

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