



By the order of the court, Judge David A Wiseman

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**CNMI SUPERIOR COURT**  
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**FOR PUBLICATION**

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

**GREAT SUNSHINE CORPORATION;  
CHEN, DONG SHUN; GUO, JIN LING;  
LIU, YANG; WEI, HAN; ZHANG, YING  
JUN; ZHU, XIU LI; and LI, DAN,**

**Petitioners,**

**v.**

**CNMI DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY, a CNMI  
Government Agency,**

**Respondent.**

**Civil Action No. 09-0330**

**ORDER AFFIRMING THE  
SECRETARY OF LABOR'S  
ORDER ON APPEAL**

**I. INTRODUCTION**

**THIS MATTER** came before the Court for a hearing on December 9, 2010 at 1:30 p.m. in Courtroom 223A. Robert Tenorio Torres, Esq. represented Great Sunshine Corporation *et al* (“Petitioners”) and Craig Dittrich, Esq. represented CNMI Department of Labor (“Respondent”). At the hearing the parties presented oral arguments regarding the Secretary of Labor’s July 28, 2009 Order on Appeal. After considering the oral and written arguments of the parties the Court **AFFIRMS** the Order on Appeal.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**<sup>1</sup>

2 Great Sunshine Corporation (“GSC”) operated a gift shop and karaoke bar in Garapan, Saipan.  
3 GSC employed 15 persons prior to this matter arising. The company reported losses for fiscal year  
4 2007 and appeared to be employing a large number of employees in light of the type and volume of  
5 business it conducted.

6 In 2007, Petitioners submitted applications to the CNMI Department of Labor to employ, renew  
7 or transfer seven non-resident workers.<sup>2</sup> In February, 2008, the applications were all denied by the  
8 Department of Labor (“DOL”) citing a lack of sufficient income to justify the employment of the seven  
9 workers. Petitioners appealed the denial determination by the DOL.

10 On July 24, 2008, a hearing was held by an Administrative Hearing Officer (“AHO”) of the  
11 DOL regarding the denial of the applications. On May 22, 2009, after receiving evidence and hearing  
12 testimony from both sides, the AHO issued an Administrative Order finding the denials appropriate  
13 given the insufficient funds of GSC. The AHO granted transfer relief for four of the workers, but  
14 denied transfer relief to GSC manager Li Dan (“Li”) based on his questionable management of company  
15 fiscal affairs and prolonged absence from the CNMI.

16 On June 10, 2009, Petitioner filed an appeal to the Administrative Order with the Secretary of  
17 Labor (“SOL”). The SOL affirmed the DOL’s Administrative Order through its July 28, 2009 Order  
18 on Appeal.

19 On August 19, 2009, Petitioner timely filed a Petition for Judicial review before this Court.  
20

21 **III. ISSUES FOR REVIEW**

- 22 1. Whether the DOL’s determination that the GSC was not financially able to meet the obligations  
23 of the seven employment contracts was supported by substantial evidence.  
24 2. Whether the DOL’s determination to deny Li transfer relief was arbitrary and capricious.  
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26 <sup>1</sup> The facts are taken from the SOL’s July 28, 2009 Order on Appeal and are not in dispute for purposes of this Review.  
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28 <sup>2</sup> The seven employee applications were for Wei, Han (08-212), Liu, Yang (08-447), Zhang, Ying jun, Shu, Xiuli (08-449), Li, Dan (08-450), Chen, Dongshun (08-714), and Guo, Jin Ling (08-715).

1 **IV. STANDARD OF REVIEW**

2 The standard of review the Superior Court must apply when reviewing agency actions within  
3 the Administrative Procedure Act (“APA”) is set forth in 1 CMC § 9112(f).<sup>3</sup> *Camacho v. Northern*  
4 *Marianas Retirement Fund*, 1 NMI 362 (1990). Section 9112(f) requires a reviewing court to decide  
5 all relevant questions of law, interpret constitutional and statutory provisions, and determine the  
6 meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 NMI 1 (1989). Specifically,  
7 § 9112(f)(2), mandates that a court set aside agency action if it finds the action is found to be:

- 8 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in  
9 accordance with law; (ii) Contrary to constitutional right, power, privilege,  
10 or immunity; (iii) In excess of statutory jurisdiction, authority, or limitations,  
11 or short of statutory rights; (iv) Without observance of procedure required by  
12 law; (v) Unsupported by substantial evidence in a case subject to 1 CMC §§  
13 9108 and 9109 or otherwise reviewed on the record of an agency hearing  
14 provided by statute or (vi) unwarranted by facts to the extent that the facts are  
15 subject to trial de novo by the reviewing court.

16 The standard of review for an appeal alleging an arbitrary and capricious action is similar to the  
17 abuse of discretion standard. *In re Blankenship*, 3 NMI 209 ¶ 16 (1992). “A court will review an  
18 action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable  
19 and based on information sufficient to support the decision at the time it was made.” *Id.*

20 Factual determinations from administrative hearings are reviewed under the substantial evidence  
21 standard of review. 1 CMC § 9112(f)(2)(v); *see Limon v. Camacho*, 1996 MP 18 ¶ 22; *Barte v. Saipan*  
22 *Ice, Inc.*, 1997 MP 17. In applying the substantial evidence standard, a court must determine whether  
23 agency action was reasonable based on the information before the agency, however, the reviewing court  
24 is to uphold the agency determination even if supported by something less than the weight of evidence  
25 if the agency’s conclusions are reasonable. *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 44 (1993).

26 Issues of law arising from administrative hearings are reviewed *de novo*. *Tenorio v. Superior*  
27 *Court*, 1 NMI 4, 9 (1989).

28 In making the determination, the court is confined to “the record or those parts of it cited by a  
party.” 1 CMC § 9112(f)(2)(vi); *see also* 3 CMC § 4949(2) (“Judicial review shall be confined to the

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<sup>3</sup> The APA is found in 1 CMC §§ 9110 *et seq.*

1 record”). What constitutes the record on review is laid out in 1 CMC § 9109(j).

2 In judicial review of agency action, a petitioner seeking an order setting aside an agency  
3 decision bears the burden of proof. *In re Hafadai Beach Hotel Extension*, 4 NMI at 45.

## 4 5 **V. DISCUSSION**

### 6 **A. The AHO’s Determination That GSC Was Not Able to Meet the Financial Obligations of the 7 Employment Contracts Was Not Improper**

8 Petitioners assert the AHO’s conclusion that GSC was not financially able to meet the  
9 obligations of additional employees was arbitrary capricious and an abuse of discretion.

10 An AHO is granted broad power and discretion in carrying out his or her duty to conduct  
11 hearings and reach conclusions in order to implement DOL regulations effectively. 3 CMC § 4944.<sup>4</sup>

12 Specifically the DOL has the power to enforce:

13 the approved employment contracts of foreign national workers and the  
14 provisions of the Commonwealth law related thereto; and oversee, monitor,  
15 and review the use of foreign national workers, all matters related to wages,  
16 work hours and conditions, and specific contractual provisions for the  
17 services of labor of such workers.

18 3 CMC § 4401(d).

19 The DOL is under no duty to grant renewal or transfer to any worker as both are a discretionary  
20 remedy. *See* 3 CMC §§ 4935-4936, 4947; *Office of the Attorney General v. Paran*, 4 NMI 191, 194  
21 (1994).<sup>5</sup> Thus, no right exists as to transfers or renewals of employment contracts. *Id.*

22 The applicable administrative regulations at the time of GSC’s applications for employment  
23 provided in pertinent part:

24 (b) An employer must be financially able to meet the obligations of an  
25 employment contract. The Director of Labor shall evaluate employer  
26 financial capability upon receipt of an application for an approved  
27 employment contract (initial, renewal, or transfer).

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28 <sup>4</sup> The Commonwealth Employment Act of 2007 enacted by PL 15-108 granted the DOL discretion over matters affecting the employment of foreign national workers. These regulations were in force in 2007 when the employment applications at issue were submitted by GSC to the DOL.

<sup>5</sup> *Paran* was decided under the Nonresident Workers Act, which preceded the Commonwealth Employment Act of 2007.

1 (1) Financial requirements for business employers. The Director may request  
2 such evidence of financial capability as is required for an evaluation of the  
3 financial capability of the business. The Director may reject an application  
4 for an approved employment contract upon finding that the employer has  
5 presented insufficient evidence that the employer is financially capable.

6 NMIAC § 80.20.1-422(b).<sup>6</sup>

7 As noted in the SOL's Order on Appeal, one of the reasons that the DOL screens employers for  
8 the financial capability to pay wages is to help ensure that these workers will be paid and not forced to  
9 file labor complaints against their employers in the future. Foreign workers rely on the prompt payment  
10 of wages to support themselves and their families. The CNMI has an interest in foreign workers  
11 remaining financially solvent and not becoming a burden on the CNMI's social services. The screening  
12 process performed by the DOL cuts down on the cost of the dispute resolution process. *See* PL 15-108  
13 § 2 (Findings and Purpose).

14 In support of the determination that GSC's income did not justify the employment of additional  
15 workers, the AHO found that the GSC's Business Gross Revenue Tax Quarterly Returns for 2007  
16 showed gross revenue of \$60,826 for the year, while the Employer's Quarterly Withholding Tax Returns  
17 showed employee wages of approximately \$122,035 for the year. This represented a net loss of  
18 \$61,209 on wages alone without including other expenses and overhead. Further, Li testified that the  
19 business lost close to \$100,000.00 in 2007. (RT at p. 64.)

20 Petitioners argue that the AHO should have given weight to the evidence introduced by Li that  
21 he arranged to bring \$100,000 in cash into the CNMI to cover the 2007 losses and that the business  
22 showed a significant increase in revenue for in the first quarter of 2008. The AHO, however, found the  
23 Petitioner's evidence to be highly suspect and chose to give it little weight, which is well within the  
24 AHO's discretion as fact finder. Even if one were to accept the Petitioners' testimony as true, \$100,000  
25 in cash brought into the CNMI to cover business losses does not comport with the spirit of DOL's  
26 regulations. Bringing in cash from overseas to cover continuing business losses is not indicative of the  
27 ability to pay debts in the ordinary course of business.

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28 <sup>6</sup> Respondent cites to the DOL Employment Rules and Regulations § 50.3-610 in its Opposition Brief, which is improper. The NMI style manual Rule 2.3.5 clearly states that citations to administrative regulations shall be to the NMIAC or if not yet codified to the Commonwealth Register.

1           Ultimately, the AHO used his broad discretion to find Petitioners were not financially able to  
2 take on new or sustain certain existing employment contracts. The AHO found, based on the evidence  
3 presented, that GSC was operating at a loss and was not financially sustainable. Pursuant to the broad  
4 powers of the AHO, the applicable laws and regulations, and the legislative purpose of the  
5 Commonwealth Employment Act of 2007 the AHO was not improper in denying GSC's applications.

6 **B. The AHO's Determination to Deny Manager Li Transfer Relief Was Not Improper**

7           Petitioners next assert that the determination of the AHO to deny Li transfer relief was arbitrary,  
8 capricious and an abuse of discretion.

9           As noted above, the Commonwealth Employment Act of 2007 strictly limits the availability of  
10 employment transfer relief and leaves transfer relief entirely to the discretion of the DOL. *See* 3 CMC  
11 §§ 4935-4936, 4947; *Office of the Attorney General v. Paran*, 4 NMI 191, 194 (1994).

12           Li was denied transfer relief on the basis of his questionable management of GSC. The AHO  
13 was suspicious of possible illegal or improper activities of Li in the management of GSC. (RT at p. 38,  
14 60.) The AHO also found that Li had prolonged absences from the CNMI for the first six months of  
15 2008, and except for a nine day visit in February, was again absent for four months, and after a one  
16 month visit to the CNMI, was again absent for another three months.

17           Because transfer relief is entirely discretionary and no right to transfer exists, the denial of Li's  
18 transfer was supported by substantial evidence and not improper.

19  
20 **VI. CONCLUSION**

21           For the foregoing reasons, the Court hereby **AFFIRMS** the Secretary of Labor's Order on  
22 Appeal.

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24 **So ORDERED this 13<sup>th</sup> day of December, 2011.**

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27 David A. Wiseman, Associate Judge