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

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| OFFICE OF THE ATTORNEY GENERAL and DIVISION OF IMMIGRATION SERVICES,<br><br>Petitioners,<br><br>v.<br><br>LUO, JIN LING; ZHENG, QING YING; XU, DANG YING; LI, XIU LAN; LI REN WEI; LIJUAN HUANG; MA DE LIN; CHI WEN KAI, and XU, GUI HAN,<br><br>Respondents. | ) | Civil Action Nos. 98-1107, 98-1109, 98-1115, 98-1118, 98-1121, 98-1123, 98-1127, 98-1128, 98-1145<br><br>**ORDER DENYING JOINT MOTIONS FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** |

## I. PROCEDURAL BACKGROUND

This matter came before the Court on November 18, 1998, in Courtroom A on Respondents' joint motions for judgment on the pleadings or, in the alternative, to dismiss for failure to state a claim upon which relief can be granted. David A. Wiseman, Esq. appeared on behalf of Respondents. Robert Goldberg, Esq. appeared on behalf of Petitioners. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

**FOR PUBLICATION**

## II. FACTS

On the evening of October 7, 1998, officers from the Division of Immigration conducted a surprise enforcement operation at the Golden Dragon Box Factory in Koblerville. Once inside the factory, the Immigration officers found evidence of an ongoing illegal garment operation. As a result of the enforcement operation, twenty-eight Chinese aliens were found to be working illegally in the garment operation at the factory. The government detained the aliens and then promptly filed deportation actions against them.

On October 28, 1998, nine of the Chinese aliens arrested at the box factory (hereinafter referred to as "Respondents") filed joint motions for judgment on the pleadings under Com.R.Civ.P.12(c) or, in the alternative, to dismiss for failure to state a claim upon which relief can be granted under Com.R.Civ.P.12(b)(6).[1]

## III. ISSUES

1. Whether Respondents are entitled to judgment on the pleadings or, in the alternative, to have the Petitions dismissed for failure to state a claim upon which relief can be granted?

## IV. ANALYSIS

A. Com.R.Civ.P.12(b)(6) and 12(c)

When a Rule 12(c) motion raises a Rule 12(b)(6) defense, the motion should be evaluated under the familiar standard applicable to a Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted. Massachusetts Candy & Tobacco Distributors, Inc. v. Golden Distributors, LTD., 852 F.Supp. 63, 67 (D.Mass. 1994). The court may dismiss a complaint under Rule 12(b)(6) only if no relief can be granted based on any set of facts that could be proved consistent with plaintiff's allegations. Hishon v. King & Spaulding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984). In considering the motion, the complaint is construed in the light most favorable to the plaintiff and its allegations are assumed true. Bolalin v. Guam Publications, Inc., 4

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[1] Although heard as a whole, Respondents' moving papers were filed in two separate groups. The first group was filed under case nos. 98-1115, 98-1118, and 98-1121. The second group was filed under case nos. 98-1107, 98-1109, 98-1123, 98-1127, 98-1128, and 98-1145. Respondents' reply brief, on the other hand, was filed jointly to include all nine Respondents.

**[p. 3]** N.M.I. 176 (1994); Coyne v. City of Somerville, 972 F.2d 440, 442-443 (1st Cir.1992)(all well-pleaded factual allegations in complaint treated as true and all reasonable inferences drawn therefrom in favor of plaintiff). Dismissal is improper unless the court is absolutely certain that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Govendo v. Micronesian Garment Mfg., Inc., 2 N.M.I. 270, 283 (1991).

1. Ma De Lin, Chi Wen Kai, and Xu Gui Han

In support of the instant joint motions, these three Respondents contend that the Petitions for Order to Show Cause fail to adequately plead the necessary elements of a claim of unauthorized employment. As such, the Petitions must be dismissed.

Within each declaration supporting the petitions to show cause, Immigration Officer Julita A. Omar states that "Respondent was found trimming shirts in the trimming section of the factory when a compliance check was conducted."[2] As such, Officer Omar alleged that each Respondent failed to comply with the applicable entry requirements and that each Respondent was an excludable alien pursuant to 3 CMC § 4437(e).

3 CMC § 4437(e) provides, in pertinent part, that:

> A nonresident worker shall not be permitted to perform any services or labor within the Commonwealth for any employer other than for the employer for whom the chief has approved an employment contract with such worker, nor may a nonresident worker perform any services or labor on a subcontract between the employer of record and any other employer . . . A nonresident worker who violates any provision of this subsection shall be subject to immediate deportation.

3 CMC § 4437(e).

The LIIDs information pertaining to Respondents Ma De Lin, Chi Wen Kai and Xu Gui Han indicate that each of these individuals entered the Commonwealth to work as farmers.[3] Yet, as Officer Omar's declarations allege, these Respondents were allegedly engaged in the manufacturing of garments in violation of 3 CMC § 4437(e). As such, the Court finds that the Petitions to Show

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[2] *See* Declaration and Order, Civil Action Nos. 98-1115, 98-1118, and 98-1121, each dated October 9, 1998.

[3] The LIIDS information notes the occupation of Ma De Lin as "farmer", while Xu Gui Han's occupation indicates "farm work" and Chi Wen Kai's occupation is noted as "vegetable".

**[p. 4]** Cause as to these Respondents clearly state a claim upon which relief can be granted, to wit, unauthorized employment. Therefore, the joint motions as to these Respondents are denied.

2. Luo Jin Ling, Zheng Qing Ying, Xu Dang Ying, Li Xiu Lan, Li Ren Wei, and Li Juan Huang

Much like the three Respondents above, these six Respondents contend that the Petitions for Order to Show Cause fail to adequately plead sufficient facts to allege unauthorized employment. As such, the Petitions as to these Respondents must be dismissed.

Within each declaration supporting each Petition for Order to Show Cause, Officer Vivian Fleming states that each "Respondent was found in the trimming section of the factory when a compliance check was conducted."[4] As such, Officer Fleming contends that each Respondent failed to comply with the condition of entry and became an excludable alien under 3 CMC § 4437(e) for unauthorized employment.[5]

A complaint should not be dismissed merely because the allegations do not support the legal theory the Plaintiff intends to proceed on, since it is the court's duty to examine the complaint to determine if the allegations provide for relief on any possible theory. Patriarca v. F.B.I., 639 F.Supp. 1193, 1197 (D.R.I. 1986); see also Crull v. Gem Insurance Company, 58 F.3d 1386, 1391 (9th Cir.1995)(the pleadings need not identify any particular theory under which recovery is sought). Moreover, under simplified notice pleading, the allegations of the complaint should be liberally construed. Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). All that is required is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. Id.; see also Com.R.Civ.P.8(a)(a pleading shall contain . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief); Com.R.Civ.P.8(e)(1)(no technical form of pleading is required); Com.R.Crim.P.7(c)(1)(the

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[4] *See* Declaration and Order, Civil Action Nos. 98-1107, 98-1109, 98-1123, 98-1127, 98-1128, and 98-1145, each dated October 9, 1998.

[5] The LIIDS occupation information for five of these Respondents involved farming, except for Respondent Luo Jin Ling who is listed as "waitress".

**[p. 5]** information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged).

Each of Officer Fleming's declarations assert, pertinent part, that:

> Respondent has failed to comply with the requirements or conditions of her entry. Respondent by reason of conduct, behavior, or activity at any time after entry has become an excludable alien pursuant to section 4437(e); a non-resident worker shall ht (sic) be permitted to perform any services or labor within the Commonwealth for any employer other than for whom the chief has approved an employment contract with such worker. A non-resident worker who violates any provision of this subsection shall be subject to immediate deportation. Respondent was found in the trimming section of the factory when a compliance check was conducted. Respondent's identity was verified in the following manner: Alien Registration Card and Immigration File.

Based on a liberal reading of the declaration above, the Court finds that the above allegations may be fairly construed to allege a cause of action under 3 CMC § 4437(e) for unauthorized employment.[6] As such, the Court finds that the Petitions for Order to Show Cause provide Respondents with fair notice of the claims against them. *See* Conley, supra. Therefore, the joint motions as to these Respondents are denied.

C. The *Jiminez* Decision

In support of the instant motions, Respondents contend that the holding in Office of the Attorney General v. Jiminez, 3 CR 827 (D.NMI App.Div. 1989) is controlling as it effectively divests jurisdiction from the Superior Court until the administrative procedures at the Department of Labor have been exhausted.

In Jiminez, fifteen non-resident workers filed a complaint against their employer with the Division of Labor for back wages and unauthorized wage deductions. On the same day, the employer terminated each of the workers' employment contracts for cause. The Division of Labor issued an order which essentially found against the workers, yet allowed the workers to continue working for the employer. The workers appealed. While the appeal was pending, the Immigration and Naturalization Office ("INO") filed petitions to show cause why the workers should not be deported on the grounds that their employment had been terminated. The Commonwealth Trial Court found **[p. 6]** that the workers' refusal to return to their employment constituted a termination

[6] The Court also notes that all pleadings shall be so construed as to do substantial justice. *See* Com.R.Civ.P. 8(f).

of their employment and were subject to deportation. In reversing the trial court decision, the district court found that any cancellation of nonresident worker contracts of employment must be made by the Division of Labor. As such, before such a determination is made, the trial court is without jurisdiction to hear matters involving deportation.

The Court finds the Jiminez case easily distinguishable from the instant case in that the Jiminez matter involved termination of nonresident workers whereas the instant case involves unauthorized employment. Moreover, the CNMI Supreme Court has expressly held that the Jiminez case stands for the proposition that "the trial court lacks jurisdiction to entertain a deportation matter *based on a termination of an employee's employment status*." See Office of the Attorney General v. Rivera, 3 N.M.I. 436, 443 (1993)(emphasis added). As such, the Court finds that it does have jurisdiction to hear this matter.

## V. CONCLUSION

For all the reasons stated above, Respondents' joint motions for judgment on the pleadings or, in the alternative, to dismiss for failure to state a claim upon which relief can be granted, are **DENIED**.

So ORDERED this 22 day of February, 1999.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge