

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

OFFICE OF THE ATTORNEY GENERAL )  
and DIVISION OF IMMIGRATION )  
SERVICES )  
 )  
Petitioners, )  
 )  
v. )  
 )  
ARIEL GORROMEEO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Civil Action No. 98-789

**ORDER DENYING RESPONDENT'S  
MOTION TO DISMISS**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on September 3, 1998, in Courtroom A on Respondent Ariel Gorromeo's motion to dismiss. Robert Goldberg, Esq. appeared on behalf of Petitioners. G. Anthony Long, Esq. appeared on behalf of Respondent. 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.

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**II. FACTS**

On June 8, 1998, Petitioners instituted deportation proceedings against Respondent Ariel Gorromeo (hereinafter referred to as "Respondent") by way of an Order to Show Cause (OSC).<sup>1</sup>

On July 22, 1998, a hearing on the OSC was held at which time the Court dismissed the action without prejudice due in large part to a discrepancy in the expiration date of Respondent's work permit.<sup>2</sup>

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<sup>1</sup> See Civil Action No. 98-598.

<sup>2</sup> See Order dated August 6, 1998.

**FOR PUBLICATION**

On July 24, 1998, instituted the instant deportation action alleging, among other things, that Respondent's entry permit expired on March 28, 1995.

### III. ISSUES

1. Whether Petitioners were required to move for a new trial pursuant to Rule 59 of the Commonwealth Rules of Civil Procedure?
2. Whether res judicata applies to deportation proceedings?
3. Whether the instant deportation proceeding is barred by res judicata?

### IV. ANALYSIS

#### A. Res Judicata

In support of the instant motion, Respondent contends that since res judicata applies to the Court's ruling in the underlying case, the only way that Petitioners could file a new deportation case would be to move for a new trial under Rule 59 of the Commonwealth Rules of Civil Procedure. Since Petitioners have not done so, the instant deportation case is barred by res judicata.

Before considering the merits of Respondent's Rule 59 argument, the Court must first determine whether res judicata applies in this case. Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Santos v. Santos, 4 N.M.I. 206, 209 (1994); see also Restatement (Second) of Judgments, § 13 (1982)(res judicata applicable only when a final judgment [p. 3] is rendered). The doctrine of res judicata also applies to deportation proceedings. Ramon-Sepulveda v. INS, 824 F.2d 749, 750 (9<sup>th</sup> Cir. 1987).

In the case at bar, the Court dismissed the underlying deportation matter without prejudice after finding that Petitioners had failed to prove their case of deportation by clear and convincing evidence, due in large part to a two-year discrepancy in the expiration date of Respondent's work permit.<sup>3</sup> However, the Court was clear in noting in its oral ruling as well as its written Order that the underlying matter was

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<sup>3</sup> According to the testimony of Immigration Investigator Joseph Pangelinan, the LIIDS information concerning Respondent indicated that his work permit expired on March 28, 1992. However, at the hearing on this matter, counsel for Respondent presented Officer Pangelinan with an entry permit issued on August 24, 1993 and which expired on March 28, 1994. Officer Pangelinan could not offer any explanation for the discrepancy, nor did he have any idea whether Respondent had a valid entry permit at the time of his arrest or at any date subsequent thereto. In opposition, Petitioners argued that this information did not prove that Respondent was not deportable, but only that he had overstayed four years instead of six years.

dismissed *without prejudice* to Petitioners to refile a new deportation case if further investigation warranted such action. Since the Court dismissed the matter without prejudice, it has no res judicata effect. See In re Corey, 892 F.2d 829, 835 (9<sup>th</sup> Cir. 1989).

Since the Court's Order dismissing the underlying matter has no res judicata effect on the instant case, the Court will not address the issue of whether the government was required to comply with Rule 59.

B. Equal Protection

As an alternative argument, Respondent contends that if the Court were to somehow hold that res judicata did not apply to deportation proceedings, Respondent would be deprived of equal protection. However, the Court need not address this issue at length as the Court has already recognized that res judicata does in fact apply to deportation proceedings. See Ramon-Sepulveda, supra.

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V. CONCLUSION

For all the reasons stated above, Respondent's motion to dismiss is **DENIED**.

So ORDERED this 11 day of March, 1999.

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