

II. FACTS

On November 17, 1998, workers from the Department of Sanitation saw two individuals running from the kitchen area of the Sablan compound in San Antonio. The sanitation workers reported their observations to the Division of Immigration and Officer Clarence Somorang responded to investigate. In a search of the compound area, Officer Somorang happened upon a small structure he described as a “dog house”. Upon opening the door to the structure, Officer Somorang found Respondents Chi Shou Ting and Su Jun Jing (hereinafter referred to as “Respondents”) sitting inside. After establishing that Respondents spoke no English, Officer Somorang arrested Respondents and transported them to the Immigration Detention Facility for questioning with the use of an interpreter. At this time, it was determined that both Respondents had overstayed their entry permits and were in the CNMI illegally.¹

On November 18, 1998, the Attorney General filed a petition for order to show cause as to why each Respondent should not be deported. On December 2, 1998, Public Law 11-33 became effective which provided for limited immunity from prosecution to qualified illegal aliens for their prior illegal status. On this same day, Respondents went to the Department of Labor and Immigration (DOLI) where they applied for and were granted limited immunity under Public Law 11-33.

On December 3, 1998, a deportation hearing was held and Officer Somorang testified. Based on the testimony of Officer Somorang, Respondents made oral motions to suppress on the grounds that the warrantless arrests lacked probable cause and requested that the cases be dismissed. As an alternative argument, Respondents contended that since they were granted limited immunity by DOLI under Public Law 11-33, they cannot now be subject to deportation.²

¹ Officer Somorang testified that Respondent Chi Shou Ting admitted that he had overstayed his short-term business entry permit, which had expired in December 1995. As for Respondent Su Jin Jing, the petition for order to show cause indicates that this Respondent entered the CNMI in 1997, but had no idea whether he entered the CNMI under a non-resident worker entry permit or a tourist entry permit. However, there was no record of Respondent Su Jin Jing in the LIIDS system. Moreover, both Respondents indicated that they had lost their passports.

² At the conclusion of the hearing, the Court ordered the parties to brief the issue of probable cause as well as the limited immunity issue.

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III. ISSUES

1. Whether there was probable cause to arrest Respondents without a warrant?
2. Whether the Court has jurisdiction to review the decision by DOLI to grant limited immunity to Respondents?

IV. ANALYSIS

A. Arrest

Respondents contend that Officer Somorang lacked probable cause to make a warrantless arrest of Respondents. As such, the evidence obtained by way of the arrests must be suppressed and the deportation cases dismissed.

3 CMC § 4382(b) bestows upon immigration officers the power to arrest any person without a warrant, provided that:

- (1) The officer has *probable cause* to believe that the person is an alien, and is in the Commonwealth in violation of any law or regulation made pursuant to law regulating the admission, exclusion, or expulsion of aliens; and
- (2) The officer reasonably believes that the person is likely to escape before a warrant can be obtained for his arrest.

3 CMC § 4382(b)(emphasis added). See Commonwealth v. Bowie, 3 N.M.I. 462, 469 (1993); United States v. Cuyson, 3 CR 712, 723-724 (D.N.M.I. 1989); see also International Molders' and Allied Workers' Local Union No. 164 v. Nelson, 799 F.2d 547, 553 (9th Cir. 1986)(arrest requires probable cause to believe that person is an illegal alien); Tejeda-Mata v. I.N.S., 626 F.2d 721, 725 (9th Cir. 1980)(warrantless arrest of alien believed to be in United States illegally requires probable cause). To determine whether probable cause exists to support a warrantless arrest, the court examines whether the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person to believe a suspect has committed, is committing, or is about to commit a crime. United States v. Green, 783 F.2d 1364, 1367 (9th Cir.), *cert. denied*, 476 U.S. 1185, 106 S.Ct. 2923, 91 L.Ed.2d 551 (1986).

In the case at bar, the Court finds the facts insufficient to establish probable cause to arrest Respondents without a warrant. The only "facts and circumstances" within Officer Somorang's [p. 4] knowledge at the time of the arrest was the vague report from the sanitation workers that

two “individuals” were seen running from the kitchen area at the compound. Yet, Officer Somorang testified that the sanitation workers provided no description of the individuals to him nor did he himself ever see any individuals running at or near the compound. Nonetheless, Officer Somorang arrested Respondents and took them to Immigration Detention for questioning after finding these two non-English speaking men sitting inside a closed structure. However, without additional supporting facts, the Court finds that the instant scenario would not warrant a prudent person to believe that Respondents were illegal aliens at the time of their warrantless arrest. See United States v. Green, supra. Therefore, Respondents’ motions to suppress are granted.³

B. Public Law 11-33

Respondents contend that they cannot be deported because they applied for and were granted limited immunity by DOLI pursuant to Public Law 11-33. As such, the Court is without jurisdiction to review DOLI’s decision to grant limited immunity to Respondents because the government has not exhausted its administrative remedies. In opposition, the government contends that Respondents applied for limited immunity under Public Law 11-33 with the actual knowledge that they did not meet the criteria for such immunity as DOLI had previously identified Respondents as being in the CNMI illegally. See PL 11-33 § 2(a). As such, Respondents’ applications were automatically null and void ab initio.

In reviewing Public Law 11-33, the Court finds no language within this Act which provides for the direct review of DOLI decisions in granting limited immunity. Therefore, the jurisdictional basis for the Court to review this matter is provided under the CNMI Administrative Procedure Act (“APA”), 1 CMC § 9101, et seq. See also In re San Nicolas, 1 N.M.I. 329 (1990); State of Nevada v. Watkins, 914 F.2d 1545, 1563 (9th Cir. 1990)(judicial review available within constraints of APA if statute does not expressly provide for judicial review of agency decision). Under the APA, agency [p. 5] action that is not directly reviewable is subject to judicial review only after a final agency action. See 1 CMC § 9112(d); In re Hafadai Beach Hotel

³ In finding that there was no probable cause to support the warrantless arrests, the Court will not address the Fourth Amendment issues raised by Respondents as to whether the government unreasonably intruded into the “residence” of the Respondents.

Extension, 4 N.M.I. 37 (1993). In order to obtain a final agency action, a claimant must exhaust his or her administrative remedies by proceeding through the administrative appeals process. Bowen v. City of New York, 476 U.S. 467, 106 S.Ct. 2022, 90 L.Ed.2d 462 (1986). The exhaustion requirement applies equally well in the immigration context where it is well settled that a party must exhaust its administrative remedies before seeking judicial review of an agency's action. Mabugat v. I.N.S., 937 F.2d 426 (9th Cir. 1991); Vargas v. I.N.S., 831 F.2d 906 (9th Cir. 1987); Committee of Central American Refugees v. I.N.S., 682 F.Supp. 1055 (N.D. Cal. 1988).

While the Respondents did not meet the criteria for acceptance under the limited immunity program, their arrests have now been declared unlawful because they were made without probable cause. Since DOLI accepted the Respondents into the limited immunity program, it must now take whatever steps it feels appropriate under the current status of these cases. If Respondents are afforded due process and are dissatisfied with the administrative actions/decisions of DOLI, they must exhaust their administrative remedies. Until such administrative steps have been taken and final agency action has been ascertained, the Court will not review DOLI's decision as it is improperly before the Court at this time.

V. CONCLUSION

For all the reasons stated above, Respondents' motions to suppress are **GRANTED**.

So ORDERED this 06 day of April, 1999.

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