

Law Revision

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

OXANA GALKINA, et al.,
Complainants,
v.
BIG BOSS CORPORATION dba BOSS CLUB
and CHO SUNG MOON,
Respondents.

Civil Action No. 99-062
(Labor Case No. 97-1 19-09)

**ORDER DENYING MOTION
TO DISMISS, OR IN THE
ALTERNATIVE, TO STAY**

I. PROCEDURAL BACKGROUND

This matter came before the Court in former Courtroom A on Complainants' motion to dismiss, or in the alternative, to stay.^{1/} David G. Banes, Esq. appeared on behalf of Complainants. Aaron Williams, Esq. appeared on behalf of the Department of Labor and Immigration. 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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FOR PUBLICATION

^{1/}At the hearing on this matter, counsel for Complainants indicated that the motion was mislabeled and should have read "Petition for Judicial Review."

Aaron Williams

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II. FACTS

On July 2, 1998, the Department of Labor and Immigration (“DOLI”) conducted an immigration raid at the Big Boss Club in Chalan Lau Lau, Saipan. As a result of the raid, Complainants Oxana Galkina, Elena Tarassova, and Tanja Perminova (“Complainants”) were apprehended.

On July 6, 1998, the Attorney General filed petitions for order to show cause as to each Complainant alleging that Complainants were deportable in that they had overstayed their Non-Resident Worker Entry Permits in violation of 3 CMC § 4340.

On July 27, 1998, the Attorney General filed a criminal information against Big Boss Corporation (“Big Boss”) and its corporate officers alleging unlawful employment of illegal aliens and assisting in illegal entry. Prior to the information being filed, however, Complainants entered into an agreement with the Attorney General whereby the Attorney General agreed not to prosecute Complainants in exchange for their testimony against Big Boss. The agreement further provided that temporary work authorizations would be provided to Complainants while the criminal case was pending. However, Complainants would be required to voluntarily depart the Commonwealth at the conclusion of the criminal case against Big Boss.

On December 21, 1998, the prosecution of Big Boss concluded.

On January 13, 1999, a administrative hearing was held at the Division of Labor wherein Complainants requested that they be allowed to transfer from Big Boss to a new employer. On January 15, 1999, the hearing officer entered an order granting Complainants’ request to transfer.:’

On January 18, 1999, the Attorney General appealed the hearing officer’s decision to the Secretary of Labor and Immigration, contending that the hearing officer erred in granting transfer relief to Complainants since they had already agreed to depart the Commonwealth at the conclusion of the Big Boss prosecution.^{3/}

^{2/}See Administrative Order, dated January 15, 1999.

^{3/}See Notice of Appeal and Appeal of Administrative Order, dated January 18, 1999.

1 On January 27, 1999, the Secretary of Labor and Immigration entered an order reversing the
2 hearing officer's decision and ordered that Complainants depart the Commonwealth within fifteen
3 days.^{4/}

4 On January 28, 1999, Complainants filed a Complaint for Judicial Review seeking the Court's
5 review of the decision entered by the Secretary of Labor and Immigration. Finally, on February 10,
6 1999, the Court stayed the order of the Secretary of Labor and Immigration pending conclusion of
7 the review proceedings.^{5/}

8 III. ISSUES

9 1. Whether the decision by the Secretary of Labor and Immigration was an abuse of
10 discretion?

11 IV. ANALYSIS

12 4. Judicial review

13 Under the Commonwealth Administrative Procedure Act (hereinafter referred to as the
14 "APA"), the reviewing court shall decide all questions of law, interpret constitutional and statutory
15 provisions, and determine the meaning or applicability of the terms of an agency action. 1 CMC §
16 9112(f). With respect to an agency's actions, findings or conclusions, the law empowers the
17 reviewing court to hold and set aside the same if it determines that any of the six bases exist to
18 warrant such a holding. 1 CMC § 9112(f)(2)(i)-(vii). The standard of review is de novo. ~~In re San~~
19 Nicolas, 1 N.M.I. 329, 333 (1990).

20 B. Decision by Labor Secretary

21 In support of their petition, Complainants contend that the decision by the Secretary of Labor
22 and Immigration reversing the hearing officer's decision was an abuse of discretion.

23 Upon review of the hearing officer's written decision, it appears that the only item referred
24 to in the underlying record was the agreement between Complainants and DOLI that Complainants

25 ^{4/}See Administrative Order: Appeal, dated January 27, 1999.

26 ^{5/}See Order Preserving Status and Rights Pending Conclusion of the Review Proceedings, dated
27 February 10, 1999.

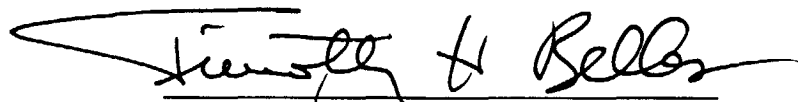
1 would voluntarily depart the Commonwealth at the conclusion of the Big Boss prosecution. In fact,
2 the Secretary of Labor and Immigration cited to that agreement in his order as the primary reason for
3 reversing the hearing officer's decision. The Secretary of Labor and Immigration's review of the
4 hearing officer's decision was limited to the existing record below. 3 CMC § 4445(b)(1). The Court's
5 review is likewise limited to the administrative record below. 1 CMC § 9112; Kunaknana v. Clark,
6 742 F.2d 1145, 1149 (9th Cir. 1986)(agency actions are reviewed by examining the administrative
7 record at the time the agency made its decision). Nonetheless, Complainants here offer additional
8 evidence via correspondence and Superior Court hearing transcripts to supplement the instant petition.
9 However, since these documents do not appear to have been part of the administrative record at the
10 time of decision by the Secretary of Labor and Immigration, the Court will not consider them.

11 As to the primary issue here, the Court finds that Complainants have failed to meet their
12 burden of proof that the Secretary of Labor and Immigration abused his discretion in reversing the
13 hearing officer's decision. It is undisputed that Complainants agreed to voluntarily depart the
14 Commonwealth at the conclusion of the Big Boss prosecution, which ended in mid-December 1998.
15 As such, it appears that it was entirely within the discretion of the Secretary of Labor and Immigration
16 to deny transfer relief to Complainants and hold Complainants to the terms of their agreement.

17 V. CONCLUSION

18 Based on the reasons stated above, the Court finds that the decision of the Secretary of Labor
19 and Immigration was not an abuse of discretion. As such, the decision of the Secretary of Labor and
20 Immigration is hereby **AFFIRMED**.

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22 So ORDERED this 12 day of August, 1999.

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25 TIMOTHY H. BELLAS, Associate Judge
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