

Office of the Attorney General and
Division of Immigration Services
Petitioners/Appellants,
v.
Gemma G. Sagun
Respondent/ Appellee.
Appeal No. 98-041
Civil Action No. 98-1022
October 20, 1999

Submitted on the briefs July 13, 1999.

Counsel for Petitioners: Robert Goldberg, Assistant Attorney General, Saipan.

Pro Se: Gemma G. Sagun

Amicus Curiae: Joe Hill (Hill Law Office), Saipan.

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice and TAYLOR, Justice *Pro Tem*.

DEMAPAN, Chief Justice:

¶1 This matter is before us on an appeal brought by the Office of the Attorney General and the Division of Immigration Services of the Commonwealth of the Northern Mariana Islands (“Government”) following the trial court’s order granting voluntary departure to an immigrant, who overstayed her legal stay by six years, in a deportation case. Amicus curiae argue they have similar factual and legal issues that warrant an interest in this case,¹ pursuant to Commonwealth Rules of Appellate Procedure 29.

¶2 [1,2] Orders of deportation are final and appealable. 3 CMC § 4342. This Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const. art. IV, § 3 and 3 CMC § 4342.² We reverse and remand.

ISSUE PRESENTED AND STANDARD OF REVIEW

¹ On June 28, 1999 this Court declined to issue a writ of mandamus against the Superior Court in *Office of the Attorney General v. Superior Court (Fabricante)*, 1999 MP 14.

² Appeal of an order of deportation may be had as an appeal in any civil case. 3 CMC § 4342.

¶3 [3] We must determine whether the lower court had the discretion to allow Sagun to voluntarily depart the Commonwealth. In other words, does the Superior Court have statutory jurisdiction to grant voluntary departure after a deportation case has commenced? This is a legal issue reviewed *de novo*. *Agulto v. Northern Marianas Investment Group, Ltd.*, 4 N.M.I. 7, 9 (1993).

FACTUAL AND PROCEDURAL BACKGROUND

¶4 Respondent/ Appellee, Sagun, is a citizen of the Republic of the Philippines, who entered the Commonwealth for employment as a houseworker. Her work permit expired on January 27, 1993. In spite of the expiration, she remained in the Commonwealth for nearly six more years. On September 18, 1998, the trial court entered an Order to Show Cause why Sagun should not be deported and set the matter for a deportation hearing on October 22, 1998. Prior to the deportation hearing the Government denied Sagun's request for a voluntary departure.

¶5 At the October 22, 1998 deportation hearing, Sagun³ admitted the facts in the Petition, then asked the lower court judge to grant her a voluntary departure. The judge responded that the Superior Court could not grant a voluntary departure in her situation and "the only way" the trial court could grant a voluntary departure was if the Government were to stipulate. Appellant's Trial Tr., Excerpts of Record ("E.R.") at 19. Nonetheless, the judge granted the voluntary departure "for the sake of expediency." E.R. at 21. The Order of Deportation stated, "[i]f respondent departs the Commonwealth by October 31, 1998, the court shall vacate the Order." *Office of the Attorney General v. Sagun*, Civ. No. 98-1022 (N.M.I. Super. Ct. Oct. 26, 1998) ([Unpublished] Order of Deportation). The Government timely appealed.

ANALYSIS

¶6 It is undisputed that Sagun remained in the Commonwealth after her permit expired and was thus subject to deportation. *See* 3 CMC § 4434(g). The particular issue we confront is whether the trial court had the discretion to permit the voluntary departure of an immigrant who overstayed her legal stay by six years.

³ Sagun appeared pro se, assisted by Benigno M. Sablan. Mr. Sablan is not licensed to practice law in the CNMI. *Office of the Attorney General v. Sagun*, App. No. 98-041, Request for Leave re Modification and Correction of Record Pursuant to Rule 10(e) and Suggestion of Mootness; Under Rule 27(c), Affidavit of Benigno Sablan.

I. Mootness

¶7 [4, 5] We begin by noting that counsel for Amicus Curiae declare that Sagun has already departed the CNMI⁴. The Amicus Curiae submit that since Sagun voluntarily departed the Commonwealth before October 31, 1998, complying with the provision from the Order of Deportation, the matter should be deemed moot. Nonetheless we will entertain this appeal:

[I]n exceptional situations mootness is not an obstacle to the consideration of an appeal. In our opinion, “[w]hen the question involved affects the public interest, and it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court can be made,” an exception to the rule is justified.

Govendo v. Micronesian Garment Mfg., Inc., 2 N.M.I. 270, 282 (1991) (quoting *Kona Old Hawaiian Trails Group v. Lyman*, 734 P.2d 161, 165 (Haw. 1987)). The question presented in this case is of public concern, and, if it were to recur, would likely become moot before it could be determined on appeal.⁵ *Govendo*, 2 N.M.I. at 282-83. We are satisfied that the matter is not moot because of the effect the deportation order has on Sagun’s ability to re-enter the Commonwealth. See 3 CMC § 4322 (d) (A resident alien who is deported may not re-enter the Commonwealth for five years from the date of deportation). We shall, therefore, address the issue presented.

II. Plenary Power Over Immigration

¶8 [6] The Commonwealth Legislature exercises plenary power with respect to Commonwealth immigration matters, pursuant to section 503 of the Covenant.⁶ “For reasons including the population and

⁴ Respondent provides copies of boarding passes for Gemma Sagun from Saipan to Manila on October 23, 1998, on Continental Micronesia airlines. *Office of the Attorney General v. Sagun*, App. No. 98-041, Request for Leave re Modification and Correction of Record Pursuant to Rule 10(e) and Suggestion of Mootness; Under Rule 27(c), Exhibit 1.

⁵ The practice over the years has been that the trial court has permitted voluntary departure relief pursuant to stipulations by the Office of the Attorney General. See, e.g., *Office of the Attorney General v. Tobias*, Civ. No. 97-1144 (N.M.I. Super. Ct. Dec. 1997) ([Unpublished] Stipulated Motion for Stay/ Dismissal and Relief from Order of Deportation/ Order); *Office of the Attorney General v. Babusao*, Civ. No. 96-0366 (N.M.I. Super. Ct. June 17, 1997) ([Unpublished] Stipulation Re Motion for Stay/ Dismissal and Relief from Order of Deportation / Order); *Office of the Attorney General v. Mendoza*, Civ. No. 96-0659 (N.M.I. Super. Ct. Sept. 13, 1996) ([Unpublished] Stipulated Motion to Dismiss with Prejudice to 3 CMC Section 4343 - Voluntary Departure and Order).

⁶ COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICAN, 48 U.S.C. § 1801 note § 503(a), reprinted in CMC at B-114.

size disparity between the CNMI and the rest of the U.S. and preservation of the CNMI's unique Chamorro and Carolinian ethnic and cultural heritage, the CNMI has been permitted to exercise plenary authority over its own immigration.” *Tran v. Commonwealth*, 780 F. Supp. 709, 713 (D.N.M.I. 1991), *aff'd*, 993 F.2d 884 (9th Cir. 1993) (unpublished table decision). With respect to Commonwealth immigration matters, the Commonwealth is sovereign and this Court is duty-bound to apply only the immigration laws of the Commonwealth.⁷ *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶ 30, 5 N.M.I. 8, 12 (1996) (Villagomez, J., dissenting).

¶9 [7,8,9] The Covenant and the Commonwealth Constitution set forth roles for each branch. In the Commonwealth, deportation proceedings are governed by the terms of the Commonwealth Entry and Deportation Act of 1983, 3 CMC §§ 4301-4382. Sections 4341 and 4343 govern deportation procedures at the hearing stage and set the terms for voluntary departure:

Any time *prior* to actual commencement of the hearing on the order to show cause, the respondent may be permitted to *voluntarily depart* the Commonwealth *at the discretion of the Attorney General*.

3 CMC § 4343 (emphases added).

¶10 The role of the Superior Court is as follows:

(e) *Hearing*. A hearing on the petition to show cause *shall* be [made] before the Commonwealth Trial Court. *A determination of deportability shall* be made if there is clear and convincing evidence that the facts alleged as grounds for deportation are true .

. . .

(f) *Disposition*. If the trial court makes a determination of deportability, an *order of deportation shall be entered* and the *respondent shall forthwith be deported*.

3 CMC § 4341(e) and (f) (emphasis added).

¶11 [10,11] The executive branch is vested with authority to exercise discretion with respect to voluntary departure; the judicial branch has the authority to determine facts with respect to deportability. The courts of the United States have historically employed the granting of discretionary relief, including voluntary departure and suspension of deportation to avoid the harshness and hardship resulting from deportation in appropriate cases. In contrast, the Commonwealth Legislature has placed *the proceedings*

⁷ The Commonwealth Legislature has expressed its intent that “[e]ntry and deportation legislation in the Commonwealth should follow closely United States law.” Standing Committee Report No. 33-267, on Senate Bill No. 3-119 (November 21, 1983), Exhibit 8. The immigration laws of the United States, with limited exceptions which are not relevant here, do not apply to the CNMI. COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICAN, 48 U.S.C. § 1801 note §§ 503(a), 506, *reprinted in CMC* at B-114 - B-115.

that lead to final orders of deportation in the Commonwealth Superior Court.⁸

¶12 [12] A basic canon of statutory construction is that language be given its plain meaning. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995). This Court’s objective in interpreting statutes, is to “ascertain and give effect to the intent of the legislature.” *Id.* at 266. If the intent of the legislature is clear, the implementing agency must give effect to the statute as written. *Chevron U.S.A. v. Natural Resources Defense Council Inc.*, 467 U.S. 837, 842-43, 104 S. Ct. 2778, 2781-82, 81 L. Ed. 2d 694 (1984).

¶13 [13,14,15] From the meaning of the statute, the trial judge possesses discretion in whether deportability is found. The language of the statute states, “if the trial court makes a finding of deportability”; the trial judge must assess whether factually the alien is deportable. 3 CMC § 4341(e). In cases where deportability is found, or as here, if deportability is admitted, the statute prescribes that the alien in question shall be deported. “The use of the word ‘shall’ in the statute is mandatory and has the effect of creating a duty, absent any legislative intent to the contrary.” *Aquino v. Tinian Cockfighting Board*, 3 N.M.I. 284, 292 (1992).

¶14 [16] “A court does not sit as a superlegislature, passing judgment on the wisdom of legislative policy decisions limiting immigration.” *Tran*, 780 F. Supp. at 713. It is constrained to follow the Constitution and the law. *Id.* As justices, it is our duty to apply the law even if the results are sometimes harsh. *Honrado*, 1996 MP 16 ¶¶ 40-41, 5 N.M.I. at 14 (Villagomez, J. ¶15 dissenting). [17] In this case,

the trial court found Sagun “remained in the Commonwealth without lawful authority and is subject to deportation pursuant to 3 CMC § 4340.” Order of

⁸ The U.S. Congress has vested both rule making and adjudicating powers in the Attorney General of the United States regarding aliens in immigration matters. The United States Supreme Court has determined that “discretionary relief, if sought, must be requested prior to or during the deportation hearing. The hearings on deportability and on an application for discretionary relief have, as a matter of traditional uniform practice, been held in one proceeding. . . resulting in one final order of deportation.” *Foti v. INS*, 375 U.S. 217, 223, 84 S. Ct. 306, 310, 11 L. Ed. 2d 281, 286 (1963).

Deportation. Sagun admitted she remained in the Commonwealth illegally for nearly six years. The Superior Court should therefore have ordered Sagun's deportation. We find no reason to justify an overstay nor a voluntary departure under the circumstances of this case.

CONCLUSION

¶16 For the foregoing reasons, we find that the trial court erred in allowing Sagun to voluntarily depart the Commonwealth. The case is **REMANDED** to the trial court to delete the voluntary departure provision in the Order of Deportation that states, “[i]f respondent departs the Commonwealth by October 31, 1998 the Court shall vacate the Order.”