FOR PUBLICATION

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE ATTORNEY GENERAL and
DIVISION OF IMMIGRATION SERVICES,
Petitioners/Appellees,

v.

ZENAIDA S. ESTEL,
Respondent/Appellant.

Supreme Court Appeal No. 98-028-GA
Superior Court Civil Action No. 98-0797A

DECISION AND ORDER DENYING PETITION FOR REHEARING

Cite as: *Office of the Attorney Gen. v. Estel*, 2004 MP 24

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; PEDRO M. ATALIG, *Justice Pro Tem*

PER CURIAM:

¶1 This Court issued its Opinion in the above-captioned matter on September 10, 2004. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 (hereinafter Opinion). Appellees Office of the Attorney General and Division of Immigration Services (hereinafter Petitioners) timely filed a petition for rehearing pursuant to Rule 40(a) of the Commonwealth Rules of Appellate Procedure.[1]

¶2 Petitioners correctly point out an error in the Opinion, as Paragraph 16 contains the following language, ". . . we vacate Appellant's deportation order." This is an editing mistake and should properly read ". . . we affirm Appellant's deportation order." Clearly, one of key holdings of this Court's Opinion was to affirm the deportation order. Any confusion surrounding the typographical error is understandable and the Opinion shall be so corrected to avoid future misunderstanding.

¶3 Petitioners request that this Court schedule a time for re-argument and rehearing of this appeal based on a purported need for clarity in enforcement of the Opinion resulting from complexities caused by dissolution of the Department of Labor and Immigration and to resolve Petitioners' confusion surrounding the holding of the Opinion. For the following reasons, Petitioners' request is DENIED.

¶4 In our Opinion in this matter, we found that jurisdiction over deportation proceedings in the trial court was proper, there was no equal protection violation as the control of immigration is a compelling state interest, and that the Government met its burden of providing clear and convincing evidence that Ms. Estel was a deportable alien. We also found, however, that the failure to enforce Ms. Estel's transfer employer's repatriation obligation pursuant to the Transfer

[1] Rule 40(a) allows for filing of a petition for re-hearing within 14 days after entry of judgment unless the time is shortened or enlarged by order. Com. R. App. P. 40(a).

Order denied her a property interest and violated her due process rights. Based on those findings, we affirmed the Order of Deportation, but required that the Department of Labor and Immigration or its successor (hereinafter DOLI) notify resident aliens when repatriation obligations per the terms of a Transfer Order are triggered resulting from a transfer employer's failure to comply with a Transfer Order, and remanded this case for further proceedings in the trial court to ensure that the DOLI enforce the terms of the Transfer Order.

¶5 Petitioners assert that our Opinion misapprehends the remedies available to Estel to protect her rights under the Transfer Order. This assertion is unsupported by the facts or by the law and demonstrates an unwillingness to recognize that Ms. Estel was largely the victim of a malfunctioning system. Petitioners claim that Ms. Estel's remedies included simply departing the Commonwealth, despite the fact that she had complied with the terms of the Transfer Order and was working peaceably for her transfer employer.[2] Petitioners also claim that Ms. Estel should have filed a new labor case despite the fact that she was gainfully employed and, in her mind, had no present labor dispute. Finally, Petitioners claim that Ms. Estel should have filed suit in the Commonwealth Superior Court or District Court despite the fact that she had no broad concerns about violations of her Constitutional rights because she complied with the terms of the Transfer Order and believed no actions had been taken against her in violation of Commonwealth law.

¶6 Petitioners' argument is unpersuasive because the offered remedies highlight the fact that Ms. Estel did not seek a remedy against any person or agency because she believed, albeit falsely, that she had valid status in the Commonwealth and was never notified that her status in the Commonwealth became illegal as a result of her transfer employer's failure to comply with the Transfer Order. Ms. Estel relied on and complied with the Transfer Order and believed

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[2] Ms. Estel's transfer employer is listed as Nelia Madlmeduh, d/b/a Bicol Express Enterprises.

herself in compliance with Commonwealth law. Of course, she shared the duty of every nonresident worker to maintain valid status in the Commonwealth. As shown in the case of Ms. Estel, a transfer employee's fulfillment of that duty may be frustrated by a disorganized, uncaring, or even unscrupulous transfer employer who does not comply with a Transfer Order and withholds that information from the transfer employee.

¶7 It is true that the remedies presented by Petitioners do exist and are very real for "nonresident workers." The offered remedies do not, however, avail themselves to "transfer employees" who fulfill their obligations under a transfer order and have no cause or reason to contact DOLI to double check that their valid status is indeed valid. The system in place when Ms. Estel transferred from one employer to the next malfunctioned because she relied on the Transfer Order and followed its terms explicitly but received no notification that her transfer employer had not complied. This malfunction is especially egregious in light of the fact that she continued to work illegally for the offending transfer employer for a period of years after the transfer. As per the holding of our Opinion, such a scenario is unfair to transfer employees, an untenable curtailment of their rights, and requires that notice be given by DOLI to both transfer employer and transfer employee when either party fails to comply with a transfer order.

¶8 Petitioners' assertions that Ms. Estel failed to pursue any one of a number of available remedies is further tempered by the fact that it was not until Ms. Estel filed for a renewal of her immigration status that DOLI became aware of her situation and examined her record. After a cursory review, DOLI promptly denied the renewal application and initiated deportation proceedings against Ms. Estel.[3] She worked in the Commonwealth illegally for years and yet DOLI was unaware until she, in good faith, requested a renewal. DOLI's failure to enforce its own procedures, especially the repatriation obligation of the Transfer Order at issue in this case,

[3] Ms. Estel filed for renewal on or about July 13, 1998. On July 26, 1998, her case was referred to DOLI for deportation proceedings.

further supports this Court's holding that DOLI must notify both transfer employer and transfer employee on the failure of either party to comply fully with the terms of that Order.

¶9 The Petitioners also expressed concern that unscrupulous employers may rely on our Opinion for the proposition that nonresident workers have no redress if their employers fail to file documents and may not sue to challenge such failure. Petitioners concern would be better placed on the facts of this case, which show an unscrupulous employer who failed to file necessary paperwork, failed to notify the transfer employee, failed to honor repatriation obligations, and failed to treat a loyal transfer employee with even a modicum of respect as that employee was deported from the Commonwealth. The Opinion clearly states that we "find that DOLI was required to notify Estel of her prospective employer's non-compliance with the Transfer Order in order to enforce the repatriation term of that Order, and that DOLI remains responsible for enforcing Appellant's prospective employer's obligation to provide repatriation expenses to the Philippines." Opinion at ¶ 18. This language limits the additional notice requirement to transfer employees and only when a transfer employer has not filed the required paperwork to effectuate a transfer within the time period stated in the Transfer Order and should allay Petitioner's concerns.

¶10 Petitioners also contend that this Court's Opinion is flawed as it remanded this Case to the Department of Labor and Immigration, an agency that no longer exists as a cohesive body responsible for the control of both labor and immigration. This Court is well aware that the Department of Labor and Immigration no longer exists as it did while this case was before the trial court and during oral arguments before this Court. Use of the name DOLI in the context of the Opinion was necessary for consistency and to avoid confusion. The division of DOLI resulted in a clear separation between the control of immigration, which is now under the aegis of the Attorney General's Office, and labor, which is now exclusively controlled by the Department of Labor. As our Opinion required action by both agencies, use of the acronym

DOLI in our remand of this case included an implicit direction for action by DOLI or its successor. As a Transfer Order is now issued and enforced by the Department of Labor and the Division of Immigration of the Attorney General's Office handles deportation, use of DOLI in our Opinion signifies that both agencies must respect the notice requirement to transfer employees.

¶11 Further, the remand of this case to the Superior Court for actions consistent with the Opinion was appropriate. This case is on appeal from a deportation hearing in the trial court, which is the body best suited to hold a hearing to ensure enforcement of the repatriation terms of the Transfer Order. The trial court shall not review the terms of the Transfer Order itself but ensure that the terms, as written, are enforced. Proceedings consistent with our Opinion may involve a hearing attended by parties involved in this action, the offer of evidence of repatriation costs, and a decision as to whether civil charges will be filed against any parties involved. The trial court is the proper venue to hold such proceedings consistent with our Opinion.

¶12 Petitioners' further insist that Ms. Estel did not have a valid claim to her repatriation costs despite the clear terms of the Transfer Order. The Transfer Order unequivocally stated, "[f]ailure to submit the Labor Permit application within the time period stated above, shall cause Nelia Madlmeduh to repatriate the complainant to her country of origin." Petitioners also note that the Nonresident Workers Act provides a last employer of record who is responsible for repatriation expenses, 3 CMC §4447(b), but that claim does nothing to change the situation here. The Transfer Order clearly stated, "[t]he prospective employer will assume all duties and obligations under the prior contract pending processing and approval of a new employment contract," which shifted repatriation obligations to the transfer employer and absolved the original employer of all prior obligations to Ms. Estel. On May 30, 1996, the Transfer Order became effective and Estel's transfer employer became her last employer of record obligated to

repatriate her in case of failure to submit the Labor Permit application within the time period set out in the Order.

¶13 Further, Petitioners' claim that "if [Ms. Estel] purchased her own ticket without seeking her right to enforce her right to repatriation, she did so voluntarily." Petition for Rehearing at 9. This callous interpretation of the facts fails to recognize that Ms. Estel was a houseworker with little education who complied with the terms of the Transfer Order, continued to work for her transfer employer, and was sent to DOLI for a startlingly quick deportation proceeding considering the fact that, but for the filing of a renewal application, she might be working for her transfer employer to this day.

¶14 This Court finds Petitioners' assertion that the record in this case does not reveal who paid Estel's repatriation costs unavailing. While it is indeed true that this Court "may not take new or additional evidence" it need not do so in this case. *Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶12; 1 CMC § 3103. Appellant's Excerpt of Record includes a copy of Ms. Estel's Order of Deportation, which in unmistakable language orders "that the Respondent shall obtain an airline ticket and the Division of Immigration Services shall place the Respondent on the first available airline flight to the Respondent's country of origin." The record is clear that Ms. Estel bore the cost of her repatriation and she may submit evidence of the exact costs during proceedings before the trial court to ensure the Department of Labor enforces the terms of the Transfer Order.

¶15 For the foregoing reasons, the Petition for Rehearing is DENIED

SO ORDERED THIS 5TH DAY OF NOVEMBER 2004.

/s/_____

MIGUEL S. DEMPAN, CHIEF JUSTICE

/s/_____ /s/_____

ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE PEDRO M. ATALIG, JUSTICE *PRO TEMPORE*