

**THE OFFICE OF THE  
ATTORNEY GENERAL and  
Immigration and Naturalization  
Office of the Commonwealth of  
the Northern Mariana Islands**

**vs.**

**Elsa B. LIGAYA and Leonida L.  
Carreon**

**Appellate Action No. 85-9020  
Civil Action No. 85-239 & 85-  
359**

**District Court NMI  
Appellate Division**

**Decided December 1, 1986**

**1. Evidence - Attorney  
Statements**

Statements made by attorneys do not constitute adequate evidence.

**2. Immigration - Deportation**

The citizenship of their children is not relevant to the question of deportation of the parents.

**3. Immigration - Deportation**

A person who gives birth to a child in the CNMI is not entitled by virtue of that fact to remain indefinitely in the CNMI in order to prevent a de facto deportation of the child.

**4. Constitutional law - Due  
Process - Particular Cases**

The deportation of parents who are out of status is not a violation of due process and/or equal protection rights of their children.

**5. Immigration - Deportation**

A departure of the alleged children of a deportable parent would not be a "de facto" deportation of the children, but merely the exercise of choice by the parents to have the children depart with them.



1 Defendant-appellants Leonida L. Carreon and Elsa B. Ligaya appeal  
2 from the Commonwealth trial court's deportation order of August 19, 1985.  
3 The appellants raise issues on appeal which center upon the rights of their  
4 children who were allegedly born on the Northern Mariana Islands.

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6 STATEMENT OF FACTS AND PROCEEDINGS BELOW

7 Appellants Elsa B. Ligaya and Leonida L. Carreon are Philippine citizens  
8 whose entry permits into the Commonwealth of the Northern Mariana Islands  
9 ("CNMI") as non-resident workers expired on February 3, 1984 and July 18,  
10 1985, respectively. As such, appellants admit that they are subject to  
11 deportation but assert that they should be allowed to remain until the  
12 termination of the Trusteeship to protect the rights of their purported  
13 children who were born in the CNMI.

14 An order to show cause for deportation was issued, and a hearing was  
15 held before the Honorable Jose S. Dela Cruz on August 7, 1985. Due to the  
16 similarity of defenses, appellants' cases were joined. On August 19, 1985, the  
17 trial court entered an order deporting appellants on the ground that their  
18 children's citizenship was not a relevant issue in their deportation. The trial  
19 court further held that even if it were relevant, the children were neither  
20 citizens of the Northern Mariana Islands nor the of the Trust Territory.

21 DISCUSSION

22 [2] Initially, the court notes that appellants presented no evidence before  
23 the trial court which would establish that either appellant actually gave birth  
24 to children in the CNMI. Appellants assert that the parties stipulated to the  
25 birth of the children; however, there is no evidence in the record of such  
26 stipulation. Although counsel for appellants made reference to the existence  
27 of children during the hearing on the order to show cause, statements made  
28

1 by attorneys does not constitute adequate evidence. See People v. Stuart,  
2 168 Cal. App. 2d 57 (1959). The trial court makes no findings regarding the  
3 existence of children, but instead refers to these purported children as  
4 "respondents' children who allegedly were born in the Northern Mariana  
5 Islands." Therefore, under these facts, the question of the rights of children  
6 born to non-resident mothers is not properly before this court.

7 [2] Even assuming that appellants gave birth to live children in the CNMI,  
8 the primary issue before this court is whether the trial court properly issued  
9 its order requiring appellants to depart the Commonwealth within seven days  
10 from the issuance of the order. Although appellants couch the issue in terms  
11 of the rights of these children to citizenship which allegedly are effected by  
12 the deportation of their mothers, the trial court aptly noted that the  
13 citizenship of the children is not relevant to the question of deportation of the  
14 appellant.

15 [3,4] Appellants cite no authority for the proposition that the mere fact that  
16 a person gives birth to a child in the CNMI entitles an out of status parent to  
17 remain indefinitely in the CNMI in order to prevent a de facto deportation of  
18 the child. To the contrary, cases which have addressed the issue of whether  
19 the deportation of a parent who is out of status would lead to the violation of  
20 due process and/or equal protection rights of the children has been  
21 repeatedly rejected. See Rubio de Cachu v. Immigration & Naturalization  
22 Service, 568 F.2d 625 (9th Cir. 1977); Acosta v. Gaffney, 558 F.2d 1153 (3d  
23 Cir. 1977); Gonzalez-Cuevas v. Immigration & Naturalization Service, 515  
24 F.2d 1222 (5th Cir. 1975); Lopez v. Franklin, 427 F.Supp. 345 (E.D.Mich.  
25 1977). These cases discuss due process rights of minors who are citizens of  
26 the United States by virtue of their birth in the United States whereas in the  
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1 case at bench, the very issue of citizenship of these alleged children is open to  
2 debate.<sup>1</sup>

3 <sup>CS</sup> A departure of the alleged children of the appellants would not be a  
4 "de facto" deportation of the children, but merely the exercise of choice by  
5 the parents to have the children depart with them. As stated by the court in  
6 Lopez, "[c]ertainly the prospect of leaving an infant citizen-child [behind] . . .  
7 is not a pleasant one, but the alien parents who deliberately overstayed their  
8 legal visitation period . . . must bear the responsibility for creating such a  
9 choice." Lopez v. Franklin, 427 F.Supp. at 349.

#### 10 CONCLUSION

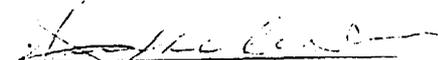
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12 The trial court's deportation order is hereby affirmed. No evidence  
13 was presented in the court below which supports the appellants' contention  
14 that they gave birth to children in the CNMI. Even assuming that children  
15 were born, the status of the children is not relevant to deportability of the  
16 parents. Moreover, the birth of the children in CNMI should not confer an  
17 out-of-status parent the right to remain in the CNMI with a favored status  
18 over those aliens who do not bear children in the CNMI. Deportation of the  
19 parent is not a "de facto" deportation of the children since there are other  
20 options available to the parent.

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23 <sup>1/</sup> The court declines to address the issue of whether the children born to  
24 non-immigrant aliens in the CNMI are Trust Territory Citizens, Northern  
25 Mariana Islands citizens or interim United States Citizens under the CNMI  
26 Constitution, Covenant to Establish a Commonwealth of the Northern Mariana  
27 Islands in Political Union with the United States of America, or the  
28 Commonwealth Code since the children's status is not relevant to  
deportability of the appellants. This issue remains to be addressed under  
circumstances where the facts and issues are more suited procedurally and  
substantively to a determination of this question.

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JUDGE CONSUELO B. MARSHALL

  
JUDGE ALFRED LAURETA

  
JUDGE CRISTOBAL C. DUENAS