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

OFFICE OF THE ATTORNEY GENERAL
and DIVISION OF IMMIGRATION SERVICES,
Plaintiffs-Appellees,

v.

DOUGLAS AMAICHY PHILLIP,
Defendant-Appellant.

SUPREME COURT NO. CV-06-0017-GA
SUPERIOR COURT NO. 05-0558E

Cite as: 2008 MP 1

Decided January 30, 2008

Melissa Simms and Kevin A. Lynch, Commonwealth Office of the Attorney General, for Plaintiffs-Appellees.
Steven P. Pixley, Saipan, Northern Mariana Islands, for Defendant-Appellant.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JESUS C. BORJA, Justice Pro Tem

CASTRO, J.:

¶ 1 Appellant Douglas Amaichy Phillip ("Phillip"), a citizen of the Federated States of Micronesia ("FSM"), appeals the trial court's deportation order on the grounds that he is not an alien within the meaning of the Commonwealth Entry and Deportation Act of 1983, 3 CMC §§ 4301 *et seq.* ("Commonwealth Entry and Deportation Act"). The language of Commonwealth law on this issue, combined with federal interpretation of the term "alien" and the Commonwealth legislature's silence on this matter, lead us to conclude that Phillip is an alien for deportation purposes. We therefore AFFIRM the decision of the trial court and uphold the deportation order.

I

¶ 2 On July 29, 2002, Phillip was convicted of assault with a dangerous weapon, a felony, in violation of 6 CMC § 1204(a). On December 28, 2005, the Division of Immigration Services of the Commonwealth Attorney General's Office ("Attorney General's Office") filed a petition to show cause why Phillip should not be deported pursuant to 3 CMC § 4340(d), which permits the deportation of aliens following a felony conviction. On April 4, 2006, the trial court held that Phillip, as an FSM citizen, falls within the definition of the term "alien" and is, therefore, subject to deportation.

II

¶ 3 On appeal, Phillip contends that as an FSM citizen, a former entity of the now dissolved Trust Territory of the Pacific Islands ("Trust Territory"), he is not an alien subject to deportation.[1] This is a question of law which we review de novo. *Commonwealth v. Bergonia*, 3 NMI 22, 35 (1992).

¶ 4 Section 4340(d) of the Commonwealth Entry and Deportation Act provides for the deportation of an alien if "[t]he alien is convicted of a felony, or two or more misdemeanors, or any crime of moral turpitude, or any firearms control offense." Hence, aliens are the only category of convicted persons that may be deported from the Commonwealth under Commonwealth Entry and Deportation Act. The term "alien" is defined as:

> a person who is not or will not become a citizen or national of the United States as defined by United States law or in the Constitution of the Northern Mariana Islands, or who is not a citizen of the Trust Territory of the Pacific [Islands] or the Northern Mariana Islands, or who is not a permanent resident.

---

[1] It is undisputed that the FSM issued Phillip's passport, not the Trust Territory. Additionally, Phillip asserts that he is an FSM citizen and makes no claim to be a current citizen of the Trust Territory.

3 CMC § 4303(a). Accordingly, Phillip must be classified as an alien before he is subject to deportation under Commonwealth law.

¶ 5 The power to formulate immigration policy is vested in the Commonwealth legislature pursuant to Section 503 of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* CMC at B-101 *et seq.* ("Covenant"). The Commonwealth is its own sovereign with respect to immigration matters, and, when analyzing immigration issues, we are bound to apply Commonwealth immigration law and not the immigration law of the United States. Covenant § 503; *Office of the Att'y Gen. v. Sagun*, 1999 MP 19 ¶ 8.

¶ 6 Basic statutory construction doctrine dictates that language must be given its plain meaning. *Tudela v. Marianas Public Land Corp.*, 1 NMI 179, 185 (1990). If the meaning of a statute is clear, courts will not construe it contrary to its plain meaning. *Office of the Att'y Gen. v. Deala*, 3 NMI 110, 117 (1992); *Gioda v. Saipan Stevedoring Co., Inc.*, 1 NMI 310, 315 (1990) (stating that the Commonwealth Supreme Court must "construe . . . statute[s] according to [their] plain meaning, where [their meaning] is clear and unambiguous."). We deem "a statute . . . ambiguous when it is capable of more than one meaning." *Commonwealth v. Taisacan*, 5 NMI 236, 237 (1999). Here, the definition of the term "alien" unequivocally excluded Trust Territory citizens when the act was passed. The term's scope, however, became less clear when the Trust Territory was dissolved as an entity and its administrative districts became separate and distinct political entities. We must, therefore, determine whether the term "alien" under the Commonwealth Entry and Deportation Act now includes former citizens of the Trust Territory.

¶ 7 We begin our analysis in the aftermath of World War II when the United Nations established the Trust Territory and designated the United States as trustee. The Trust Territory, also known as Micronesia, was originally comprised of six administrative districts: Chuuk, the Mariana Islands, the Marshall Islands, Palau, Pohnpei, and Yap.[2] Its inhabitants were classified as Trust Territory citizens. The Trusteeship Agreement for the Former Japanese Mandated Islands ("Trusteeship Agreement") mandated that the United States, as trustee:

> foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in

[2] Following a reorganization of the Trust Territory government in 1976, Kosrae became an administrative district.

> government; and give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends . . . .

Trusteeship Agreement for the Former Japanese Mandated Islands art. 6, § 1. In accordance with the goals of this mandate, the Trust Territory's administrative districts began exercising greater control over their own affairs. The Commonwealth of the Northern Mariana Islands was established in 1978 as a commonwealth in political union with the United States. The Republic of the Marshall Islands and the Federated States of Micronesia were established in 1979, and both signed a compact of free association ("Compact") with the United States effective October 21, 1986 and November 3, 1986, respectively. The Republic of Palau was created in 1981, and entered into its own compact of free association with the United States effective October 1, 1994. Congressional approval of the compacts was codified in the Compact of Free Association Act of 1985; 48 U.S.C. § 1901 ("Compact of Free Association Act").[3] All of these events occurred prior to the enactment of the Commonwealth Entry and Deportation Act in 1983. Although the Trust Territory was not fully dissolved when the Commonwealth Entry and Deportation Act was enacted, the establishment of the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau indicated that its dissolution was inevitable.[4]

¶ 8 The Attorney General's Office contends that it is impossible to be a citizen of a territory that no longer exists, and claims that, as the Trust Territory gradually dissolved, so did the exemption granted by 3 CMC § 4303(a). In response, Phillip cites *Lorillard v. Pons*, 434 U.S. 575, 580 (1978), which states that "[a legislature] is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change."

¶ 9 Since the Trust Territory's gradual dissolution from 1986 until 1994, the Commonwealth legislature amended the Commonwealth Entry and Deportation Act on three separate occasions. In each instance, the legislature left the definition of the term "alien" intact. In 1994, Section 13 of PL 9-5, § 13 revised, *inter alia*, 3 CMC § 4303. In 1999, PL 11-60, § 2 amended 3 CMC §

---

[3] Approval for the compact of free association with Palau was only granted "in principle" by this act. Compact of Free Association Act of 1985, § 501(a). Codification of congressional approval can be found at 48 U.S.C. § 1931(a).

[4] On October 21, 1986, the United States ended its administration of the Marshall Islands district. The termination of the United States administration of the Chuuk, Kosrae, Mariana Islands, Pohnpei, and Yap districts of the Trust Territory soon followed on November 3, 1986. The United Nations formally ended the trusteeship of the Chuuk, Kosrae, Mariana Islands, Marshall Islands, Pohnpei, and Yap districts on December 22, 1990. On May 25, 1994, the United Nations ended the trusteeship of the Palau district, after which the United States and Palau agreed to establish the latter's independence on October 1, 1994.

4303, and PL 11-86, § 2 revised 3 CMC § 4303. The legislature did so despite the inevitable and continuing dissolution of the Trust Territory. Furthermore, while the legislature left the definition of "alien" unaltered with respect to the Commonwealth Entry and Deportation Act, the legislature defined it differently in other areas. Under Commonwealth law regulating foreign investment, "'[a]lien' means an individual who is not a United States citizen, a citizen of the former Trust Territory of the Pacific Islands, a CNMI permanent resident or a holder of a CNMI Certificate of Identity." 4 CMC § 5901(a). Under this definition, Phillip is exempt from deportation. However, such usage of the term "alien" was not incorporated as part of the Commonwealth Entry and Deportation Act.

¶ 10 While the Commonwealth retained sovereignty regarding immigration, it is important to note how federal immigration policy addresses the deportation of compact nationals for purposes of comparison. Under the Compact,

> [a]ny person [who is a citizen of the Federated States of Micronesia] . . . may enter into, lawfully engage in occupations, and establish residence . . . in the United States and its territories and possessions . . . without regard to [certain specified sections] of the Immigration and Nationality Act . . . .

Compact § 141(a). Subsection (a) goes on to state that "[s]uch persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States." *Id*. Subsection (b) continues:

> [t]he right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for: (1) in statutes or regulations of the United States; or (2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

Id., § 141(b). The Compact grants FSM citizens and citizens of other compact states liberal opportunities to work and reside in the United States. However, that is the only exception to federal immigration law that they have been granted. Other provisions are still in full force. *See United States v. Terrence*, 132 F.3d 1291, 1293 (9th Cir. 1997) (referencing the compact of free association between the United States and Palau, which contains identical provisions to those in the Compact quoted above). Accordingly, it is clear that the Compact did not intend to allow compact nationals to avoid deportation after committing serious criminal acts.

¶ 11 It is similarly clear that the Commonwealth legislature did not wish FSM citizens to avoid deportation after participating in criminal activity. Admission to the Commonwealth is not an automatic right. "No alien may seek or obtain entry into the Commonwealth as a matter of right. Entry to the Commonwealth is a privilege extended to aliens only upon such terms and conditions as may be prescribed by law." 3 CMC § 4302(b). The Commonwealth legislature

changed the definition of "alien" for purposes of foreign investment to exclude citizens of the former Trust Territory, but did not do the same for deportation purposes. The only rationale for changing one definition and not the other is to retain the Commonwealth's ability to deport Compact citizens who commit criminal acts.

¶ 12 In addition, the Attorney General's Office quotes the Compact of Free Association Act's statement that "it is not the intent of the Congress to cause any adverse consequences for the United States territories and commonwealths or the State of Hawaii." § 104(e)(1); 48 U.S.C. § 1904(e)(1). While Commonwealth law is controlling in immigration matters, the Compact of Free Association Act's language strongly indicates that the generous entry polices for FSM citizens to territories and commonwealths is not intended to cause any harm to those entities. The inability to deport a violent criminal amounts to clear harm. We see no reason why the legislature would wish to prohibit the Commonwealth from deporting a violent criminal when the federal government reserved such a right for itself.

¶ 13 Finally, federal law considers FSM citizens residing in the Commonwealth to be aliens. Under *Basiente v. Glickman*, 242 F.3d 1137, 1140-41 (9th Cir. 2001), the Ninth Circuit held that FSM citizens in the Commonwealth are aliens under the federal definition. While the federal definition does not control in the present case, it nonetheless confirms the result of our analysis and is useful as a guide.

¶ 14 In his appeal, Phillip argues that he is exempt from deportation because the United States District Court for the Northern Mariana Islands concluded that changing the status of alien spouses of Palauan or FSM citizens from "immediate relatives of non-aliens" to "immediate relatives of aliens" without notice and a hearing violated due process. *Syed v. Aloot*, Civil Action No. 95-00025, 1996 WL 173394 *passim* (D. N. Mar. I. Mar. 26, 1996). Phillip further notes that, after *Syed*, the Attorney General's Office issued a written opinion that FSM citizens were not aliens. Attorney General Legal Opinion No. 05-02, at 2, *reprinted in* Commonwealth Register, Vol. 27 No. 01, 23900-23901 (January 17, 2005).

¶ 15 Phillip's arguments are flawed on both counts. In *Syed*, not only was the case unpublished, but the court's ruling also pertained to a change in status, not an initial determination of status. Additionally, *Syed*'s decision concerned alien status for employment purposes, which is a major portion of the privilege granted to FSM citizens through the Compact and Commonwealth law. *Syed* did not pertain to the deportation of aliens following the commission of major crimes. Furthermore, the Attorney General's opinion that Phillip references does not address the treatment of FSM citizens for purposes of deportation. Accordingly, neither *Syed* nor the Attorney General's opinion provide any support for Phillip's claims.

III

¶ 16 The immigration policies of the Commonwealth rest in the hands of the Commonwealth legislature. Since the enactment of Commonwealth Entry and Deportation Act in 1983, the legislature has amended the statute on three separate occasions and, during each visit, the definition of the term "alien" was left untouched and did not include citizens of the former Trust Territory. In contrast, the Commonwealth legislature explicitly exempts citizens of the former Trust Territory from alien status with respect to the regulation of foreign investments. It is, therefore, reasonable to presume that the legislature intends to only classify current citizens of the Trust Territory as non-aliens for deportation purposes. Because the Trust Territory no longer exists, its residents, including those of the FSM, now qualify as aliens in deportation matters. In addition, federal immigration law only grants compact nationals certain entry privileges and applies all other immigration laws to them. The Commonwealth has always embraced its Micronesian brothers and sisters when they have come here for work and educational purposes. However, the Compact was not intended to harm the territories and commonwealths, and there is no reason to believe that the Commonwealth legislature wishes to cause such harm either. To hold that Phillip may not be deported would grossly usurp the function of the Commonwealth legislature as set forth in the Covenant.

¶ 17 For the foregoing reasons, we conclude that Phillip is an alien within the meaning of the Commonwealth Entry and Deportation Act. Accordingly, he is subject to deportation. We therefore AFFIRM the trial court's decision and uphold the deportation order.

Concurring:
Demapan, C.J., Borja, J.P.T.