

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

JUYEL AHMED,)	Special Proceeding No. 00-0101A
)	
Applicant,)	
)	
vs.)	ORDER GRANTING
)	TEMPORARY RESTRAINING ORDER
MAJOR IGNACIO CELIS, Supervisor)	AND EXPEDITED HEARING
of Labor and Immigration Detention)	
Center, COMMONWEALTH OF THE)	
NORTHERN MARIANA ISLANDS and)	
CNMI DEPARTMENT OF LABOR)	
AND IMMIGRATION,)	
)	
Respondents.)	
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I. PROCEDURAL BACKGROUND

This matter comes before the court on Applicant Juyhel Ahmed’s ex parte motion for issuance of a temporary restraining order and request for expedited hearing. The court, having reviewed the record in this proceeding, including the memoranda, declarations, and exhibits, makes the following findings:

II. FACTUAL BACKGROUND

1. In its Order of March 9, 2000, the court found that Applicant, a Bangladeshi national, was ordered detained and deported by this court because his tourist permit expired on [p. 2] November 24, 1994. *See CNMI v. Ahmed*, Civil Action No. 98-0704B (N.M.I. Super.Ct August 6, 1998). Pursuant to this court’s Deportation Order, on August 6, 1998, Applicant was remanded to the custody of the Division of Immigration and ordered to surrender his passport. Applicant did not appeal the court’s Deportation Order.
2. Although the court also ordered the Division of Immigration Services to place Applicant on the first available airline flight to the People’s Republic of Bangladesh, Applicant has been

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held at the prison facility operated by the Government's Department of Labor and Immigration ("DOL") since July 1, 1998.

3. Applicant, a practicing Muslim, contended that before his entry to the CNMI, he was the victim of torture by Bangladeshi authorities, and that if repatriated to return to Bangladesh, he would be persecuted and subjected to severe pain or suffering. Applicant's papers further reflected that he has applied for Federal and CNMI asylum and protection. Applicant has completed and submitted an I-590 form to the U.S. Immigration and Naturalization Service ("INS") and is one of several plaintiffs seeking injunctive, declaratory, and other relief in *Liang v. United States, et al.*, Civil Action No. 99-046 (U.S. Dist. Court).
4. To challenge his detention, Applicant applied for a writ of habeas corpus. At the hearing on this matter, Applicant did not contend that by submitting an I-590 application and requesting protection under the 1985 Torture Convention or other international treaties, agreements and covenants, the Government was precluded from subjecting him to refoulement. Instead, Applicant argued that his involuntary detention for nearly two years violated protections and rights guaranteed to him under the constitutions of the Commonwealth and the United States.
5. Addressing this issue, the court accordingly ruled that Applicant's detention extended well beyond that necessary to effect removal and had become punitive imprisonment without due process in contravention of Applicant's fundamental rights under the Fifth Amendment and Article I, § 5 of the Commonwealth Constitution. This court therefore ordered that **[p. 3]** unless the Government could effect deportation within ten (10) days of the court's order, then Applicant was to be released.
6. On March 10, 2000, Applicant filed a Notice of Appeal and Request for Expedited Hearing on Habeas Corpus Application.
7. On March 14, 2000, Respondents filed a status report advising the court that the travel document necessary to effect deportation had been received and that Applicant will be deported on March 16, 2000.

8. The same day, Applicant filed the instant motion for temporary restraining order, for reconsideration of the court's March 9 Order, and to withdraw, without prejudice, his Notice of Appeal. The Motion seeks an Order from this court commanding the CNMI and all others to release Applicant immediately from custody pending final disposition of this proceeding and precluding the CNMI from deporting Applicant from the CNMI and returning him to his country of origin pending disposition of this proceeding and until such time as his pending I-590 asylum application and request for protection under various international covenants can be processed.¹

II. FINDINGS AND CONCLUSIONS

1. Com. R. Civ. P.65(b) governs the issuance of temporary restraining orders and provides, in material part, that:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons [p. 4] supporting the claim that notice should not be required.

2. Although courts may consider whether the movant has a reasonable probability of prevailing on the merits, and whether, on balance, the hardship to either litigant tips in favor of the movant, proof of immediate and irreparable injury to the movant is an "essential prerequisite" to a temporary restraining order. C. Wright, A. Miller, E. Cooper, FEDERAL PRACTICE AND PROCEDURE § 2951 at 257, 265-68 (West 1999).
3. The court finds that Applicant has made a sufficient showing that unless a temporary restraining order issues he will suffer irreparable injury and irreparable harm before Respondents can be heard in opposition. The right of an alien to petition for political asylum may implicate due process guarantees, which guarantees may vanish absent relief from this court. Applicant asserts that notwithstanding his application for asylum, deportation is

¹ Applicant also seeks an Order amending the court's March 9, 2000 Order to reflect that attorney Bruce Berline, and not attorney Bruce Jorgensen, appeared at hearing on Applicant's habeas application. The court has already addressed this issue in its Errata dated March 13, 2000.

imminent. The Commonwealth apparently agrees, indicating that deportation will in fact transpire tomorrow. The Commonwealth is not willing to stipulate, moreover, either to Applicant's immediate release from DOLI imprisonment or to agree that Applicant's imminent deportation is precluded, as Applicant contends by CNMI law, Federal law, and/or International law (Motion at Exs. 1 and 4). The court therefore finds that unless the Application is granted, Applicant may well be without a remedy to seek a stay of the deportation order pending the resolution of these questions.

4. The court further concludes that the Motion raises important questions of fact and law that require briefing by all the parties. On the basis of these allegations in the Motion, the court finds that the balance of hardships in this case tips sharply in Applicant's favor. Applicant faces the prospect of imminent deportation and torture before his application for asylum and requests for protection can be reviewed. Since a temporary restraining order will preserve the status quo long enough to hold a hearing, the court finds these considerations sufficiently compelling to award the relief requested. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974). [p. 5]
5. At the same time, the court finds that Respondents will suffer no injury were proceedings stayed pending a hearing on these issues. The court has already determined that Applicant's detention has extended well beyond that necessary to effect removal and has become punitive imprisonment without due process in contravention of his fundamental rights under the Fifth Amendment and Article I, § 5 of the Commonwealth Constitution. In light of the Government's failure to demonstrate that Applicant poses a danger to the community or a flight risk, the court finds that further detention by the Government is unwarranted during the pendency of these proceedings.
6. Although Com. R. Civ. P. states, in relevant part, that no restraining order shall issue except upon the giving of security by the Applicant, Applicant is apparently without funds (Letter from Bruce Lee Jorgensen to Bruce Berline, Esq. dated March 13, 2000, attached as Ex. 3 to Motion). Accordingly, the court must, in this case, consider the issue of whether a bond is required. In connection with Applicant's habeas application, the court notes that the

Government did not present any evidence of Applicant's criminal history, and this court made no finding that Applicant posed any danger to the community. Similarly, the Government did not present any evidence that Applicant posed a flight risk, and thus the court made no finding that Applicant would abscond, were he released from detention. The court may refuse to require security, in a situation such as this, moreover, when and if the restrained or enjoined party shows no likelihood of harm, when a case raises important questions, or where, as here, the amount of any bond would be based upon gross speculation. *See, e.g., Haitian Centers Council, Inc. v. McNary*, 789 F.Supp. 541 (E.D.N.Y. 1992).

7. Pursuant to Com. R. Civ. P. 65(b), the court finds that Respondents have been provided with notice of the Motion and all Exhibits (Certification of Counsel at 4 ¶ 8; Letter to Robert Goldberg, Esq. dated March 9, 2000, attached to Mot. as Exh.5) and that to date, Respondents have filed no opposition or response. [p. 6]

ORDER

On the basis of the foregoing, the court makes the following ORDER:

1. Applicant's Motion for a Temporary Restraining Order is GRANTED.
2. Applicant's Motion to withdraw, without prejudice, Applicant's Notice of Appeal, is GRANTED.
3. The court's Order of Deportation in Civil Action No. 98-704(B) is hereby STAYED.
3. Major Ignacio Celis, in his capacity as Supervisor of the Department of Labor and Immigration Detention Center and as custodian of Applicant, is directed to release Applicant from imprisonment forthwith. During the pendency of this Order and for any extensions thereof, Applicant shall be required to appear periodically before an immigration officer for identification, appear at all scheduled hearings before the court, and provide such information as the Attorney General may deem proper to assure Applicant's availability for deportation.
4. The court finds that a further evidentiary hearing is necessary to address issues raised by the Motion and specifically, whether the Government may subject Applicant to

deportation while present applications for asylum are pending. The Court therefore sets matter for hearing on preliminary injunction on March 23, 2000 at 1:30 o'clock p.m.

5. This Order shall remain in effect for ten (10) days unless, within that time and for good cause shown, it is extended by the court or dissolved by agreement of the parties.

So ORDERED this 15 day of March, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge