

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

**OFFICE OF THE ATTORNEY GENERAL,  
and DIVISION OF IMMIGRATION  
SERVICE** )  
)  
)  
**Petitioners,** )  
**vs.** )  
**CHEN, WEI JUAN,** )  
**Respondents/Appellees.** )  
\_\_\_\_\_ )

**Civil Action No. 01-0163B**

**ORDER FOLLOWING  
DECISION GRANTING MOTION  
TO STAY DEPORTATION**

**I. INTRODUCTION**

¶1 Respondent Wei Juan Chen is, by her own admission, in the Commonwealth illegally. Having entered the Commonwealth on a nonresident worker entry permit and having failed to find work once the permit expired, the Commonwealth instituted deportation proceedings against her on March 22, 2001. Respondent seeks a stay of these proceedings to pursue wage claims against her former employers in a collective action, instituted by and on behalf of approximately 25,000 similarly situated nonresident foreign garment workers, currently pending in federal court. *See Does I, et al. v. Advance Textile Corp., et al.*, Civil Action No. 99-0002 (D.Ct. N.M.I.) (The “District Court Litigation”).

¶2 On May 3, 2001, Respondent’s motion came before the court for hearing. Assistant Attorney General Barry Hirshbein appeared on behalf of the Office of the Attorney General and the Division of Immigration Services. Mark Hanson appeared for the Respondent, Wei Juan Chen. The court, having reviewed the record in this proceeding, including the memoranda, [p. 2] declarations, and

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exhibits, issued an oral ruling from the bench granting the motion. The following represents the court's reasoning in support of its decision.

## II. FACTUAL BACKGROUND

¶3 The underlying facts material to the motion are undisputed. Respondent first arrived in Saipan in April of 1995 pursuant to an entry permit and work certificate for employment with Trans-Asia Garment Forte Corporation ("Trans-Asia") and/or its sister corporation, Concorde Garment Manufacturing, Inc. ("Concorde"). *See* Decl. of Chen Wei Juan ("Chen Decl."), ¶ 2. That permit expired in March of 1997. *Id.* at ¶ 3. In March of 1997, Respondent applied for and was granted limited immunity under CNMI Public Law 11-33 (the "Limited Immunity Act"), and commenced working for United International Corporation ("United") on a Limited Immunity Temporary Work Authorization shortly thereafter. *Id.* at ¶¶ 7-8. Respondent resigned from United in May of 1999. *Id.* at ¶ 9.

¶4 During her two year employment with Trans-Asia and/or its sister company, Concorde, Respondent claims to have performed work for which she was not paid. Chen Decl. at ¶ 4. In addition, Respondent claims that while she was employed with Trans-Asia and/or Concorde, she was subject to a curfew and was not compensated for the time that she was restricted to factory barracks. *Id.* at ¶ 5. Respondent also alleges that as a condition of her employment with Trans-Asia and Concorde, she was assessed thousands of dollars in recruitment fees, the effect of which was to deprive her of overtime wages for weeks when she worked overtime hours. *Id.* at ¶ 6. Respondent claims, moreover, that at United, she was also requested to perform work for which she was not paid. *Id.* at ¶ 10.

¶5 In December of 1999, Respondent executed and delivered to her attorneys a consent to become a party-plaintiff in the District Court Litigation, in which she is seeking payment for unpaid overtime wages. Chen Decl. at ¶ 11; Ex. "A." Respondent contends that under applicable Commonwealth Supreme Court precedents, she is entitled to remain in the Commonwealth to prosecute her wage claims. [p. 3]

¶6 According to the Commonwealth, however, a wage claim pending in the Federal District Court provides no basis for a stay. The Commonwealth also maintains that even if due process requires a stay of deportation proceedings in order to allow non-residents to resolve pending wage disputes, applicable Supreme Court rulings apply only to wage cases litigated in an administrative forum. Because there are potentially more than 25,000 members of the class who can fairly and adequately protect Plaintiff's interests in the collective action, the Commonwealth further maintains that Respondent is not even necessary to the prosecution of her case. As a last resort, the Commonwealth argues that even if a stay were warranted, it should be issued by the District Court.

### III. QUESTION PRESENTED

¶7 Whether Respondent is entitled to a stay of deportation proceedings pending the resolution of wage claims against her former employers.

### IV. ANALYSIS

¶8 The outcome in this case is governed by three seminal decisions of the Commonwealth Supreme Court. In the first, the Court ruled that in an administrative proceeding where a person's life, liberty or property is at stake, article I, § 5 of the N.M.I. Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity for a hearing, appropriate to the nature of the case. *See Office of the Attorney General v. Deala*, 3 N.M.I. 110 (1992). In the second, the Court recognized that nonresident workers have a property interest in their claims for unpaid wages, and thus while a valid wage claim is pending, a deportation order must be stayed until, at the very least, an aggrieved nonresident worker is provided with a meaningful opportunity for a hearing. *See Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 445 (1992). In the third, the Court reiterated that a stay of deportation proceedings may be in order when a nonresident worker is seeking to recover damages. *See Office of the Attorney General v. Paran*, 4 N.M.I. 191, 195 (1994). The Commonwealth Supreme Court has, accordingly, recognized broad due process

protections for nonresidents [p. 4] following through on claims against their employers for unpaid wages, regardless of the forum or time required to pursue those claims.<sup>1</sup>

¶9 The parties appear to agree, moreover, that for due process protections to attach, the wage claim should be valid. Where claims are plainly frivolous, time-barred, or otherwise prohibited by law, the parties concur that deportation proceedings should proceed. The issue before the court, then, is what, if any, showing must a nonresident make to entitle him or her to a stay of deportation proceedings.

¶10 In *Office of the Attorney General v. Gorromeo*,<sup>2</sup> this court ruled that a deportee is entitled to a stay if he or she can show: (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) that serious questions are raised and the balance of hardships tips sharply in the deportee's favor. *See* Slip Op. at 2-3. The Commonwealth Supreme Court has applied the *Gorromeo* test to evaluate the propriety of a stay of deportation pending an appeal of the deportation order itself. *See generally Office of Attorney General v. Estel*, Appeal No. 98-028 (N.M.I. Sup.Ct. Sept. 4, 1998) (Order Denying Respondent's Motion for Stay Pending Appeal); *Office of Attorney General v. Evangelista*, Appeal No. 98-009 (N.M.I. Sup.Ct. March 31, 1998) (Order Denying Respondent's Motion for Stay Pending Appeal). Although [p. 5] *Gorromeo*'s test is certainly appropriate in evaluating petitions for stays of mandates pending appeal of those mandates,<sup>3</sup> where, as here, the right to the stay arises from constitutional grounds that were never litigated in the

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<sup>1</sup> *Rivera's* holding is unequivocal: the Court ruled:

The property at stake for the workers in this case is each of their claims for unpaid wages. They must be allowed to have their wage claim heard. The opportunity to have their wage claim heard must be meaningful. In this particular case, it is not a meaningful opportunity to have a wage claim heard if it only means that a worker has to leave the island immediately and then return for brief visits, not to exceed a total of 90 days to pursue his or her claim. Due process cannot be satisfied in this case by placing a specified time limit on the opportunity for a hearing. Furthermore, the opportunity for a hearing cannot be meaningful when a worker is required to leave the island and then return for a hearing and it is undisputed that the worker has no financial means to return.

<sup>3</sup> N.M.I. at 445-446.

<sup>2</sup> Civil Action No. 98-0789 (N.M.I. Sup.Ct. April 22, 1999) (Order Denying Respondent's Motion to Stay Deportation).

<sup>3</sup> *Cf. Estel, supra; Evangelista, supra.*

deportation proceeding itself, a test which focuses upon a claimant's likelihood of success on the merits in an entirely separate proceeding would be essentially unworkable.

¶11 As an initial matter, the Attorney General's Office is not even a party to the District Court Litigation; therefore, it is in no position to argue the merits of Respondent's FLSA claims in this proceeding. Second, *Deala, Rivera, and Paran* do not address the likelihood of success on the merits; they only require the court to determine whether Respondent's pending labor claims are valid. Although Respondent makes a compelling argument that denying her a stay would effectively eviscerate her right to litigate her wage claims against her former employers,<sup>4</sup> a determination of the validity of Respondent's pending claims should not be confused with or depend upon a balance of the hardships or a high probability of prevailing on the merits.

¶12 In any civil action, principles governing the disposition of motions under Rule 12(b)(6) are routinely utilized to test the legal sufficiency of the allegations contained in a complaint. *See, e.g., Grace v. Federal Emergency Management*, 889 F.Supp.394 (C.D.Cal. 1995). "In a Rule 12(b)(6) motion, the court evaluates the merits of the claims by accepting all allegations in the complaint as true, viewing them in the light most favorable to the plaintiffs, and determining whether they state a claim as a matter of law." *See Gould Elecs., Inc. v. United States*, 220 F.3d 169, 178 (3d Cir.2000) (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir.1997)); *see also Jenkins v. McKeithen*, 395 U.S. 411, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). Since a motion to dismiss should be granted when a claim clearly does not contain direct allegations on every material point necessary to sustain recovery, the court is persuaded that to [p. 6] obtain a stay of deportation during the pendency of a wage dispute taking place in another forum, a standard similar to that employed in evaluating a complaint under Com. R.Civ. P. 12(b)(6) should apply. *See In re Adoption of Magofna*, 1 N.M.I. 449 (1990).<sup>5</sup> To prevail, the non-resident should establish, at a minimum: (1)

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<sup>4</sup> Respondent argues that the amount of unpaid wages and overtime compensation at issue will not justify her return, even if possible, to Saipan from China, in order to litigate her claims in the District Court Litigation. Mem. at 11. Respondent suggests that there is a strong possibility that after she returns to China, the Chinese government would not allow her to return to Saipan to litigate labor violations against her former employers.

<sup>5</sup> "The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; it is not a procedure for resolving a contest about the facts of the merits of the case." 5A C. Wright, A. Miller, M. Kane, FEDERAL PRACTICE AND PROCEDURE § 1356 (1998 Cum. Supp.) (Citations omitted). A court should dismiss

the existence of a pending wage action in which the non-resident is a plaintiff or complainant; (2) the wage claims advanced therein; and (3) sufficient factual allegations to support the relief requested in the pending proceeding. The claim should not be discounted unless it appears beyond doubt that the Respondent can prove no set of facts in support of her claim that would entitle her to relief. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 272, 283 (1990).

¶12 Applying these factors to the case at bar leads the court to conclude that Respondent is entitled to have her deportation stayed. First, Respondent has provided this court with documentation establishing that she has joined an action to collect wages as a party-plaintiff. Second, and for the purposes of this motion only, she appears to have alleged sufficient facts to support the relief requested in the pending proceeding. *See* Chen Decl. ¶¶ 2-11. That Respondent elected to sue her employer in a collective action, rather than to bear the costs of litigation herself, appears to the court to be a distinction without a difference. All plaintiffs opting in to the collective action must eventually prove their damages. Since Respondent could have remained in the Commonwealth to prosecute her claims if she had filed an individual action, moreover, there is no reason to deny the stay, simply because she elected to avail herself of the efficiencies in a collective action.

¶13 At issue here is the entitlement to a stay of deportation proceedings where the deportee is seeking to enforce a constitutional right to prosecute a wage claim in either a Commonwealth court [p. 7] or an administrative tribunal. Respondent is not requesting a stay pending an appeal of her deportation. The distinction is significant, and thus the criteria governing a stay of proceedings articulated by this court in *Office of the Attorney General v. Gorromeo* do not apply.

## ORDER

¶15 On the basis of the foregoing, the motion to stay these deportation proceedings pending the resolution of her claims in District Court Litigation is hereby GRANTED.

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a complaint under Com. R. Civ. P. 12(b)(6) only if no relief can be granted based on any set of facts that could be proved consistent with plaintiff's allegations. *See Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 272, 283 (1991); *Office of the Attorney General v. Luo, Jin Ling, et al.*, Civil Action Nos. 98-1108 (N.M.I.Sup. Ct. Feb. 22, 1999) (Order Denying Joint Motions for Judgment on the Pleadings Or, in the Alternative, to Dismiss for Failure to State a Claim upon which Relief Can be Granted).

So ORDERED this 14 day of May, 2001.

/s/  
TIMOTHY H. BELLAS, Associate Judge