

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

OFFICE OF THE ATTORNEY GENERAL,)
and DIVISION OF IMMIGRATION)
SERVICE)
)
 Petitioners,)
vs.)
)
YU DONG MEI,)
)
 Respondents/Appellees.)
_____)

Civil Action No. 98-01077B

**ORDER GRANTING MOTION
TO STAY DEPORTATION AND
REQUEST FOR INJUNCTIVE
RELIEF**

INTRODUCTION

¶1 Respondent Yu Dong Mei is, by her own admission, in the Commonwealth illegally. Having entered the Commonwealth on a nonresident worker entry permit and failed to find work once the permit expired, the Commonwealth instituted deportation proceedings against her. 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

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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”). Respondent also seeks injunctive relief allowing her to work in Saipan for the duration of the stay of her deportation.

¶2 In support of her motion, Respondent admits that she arrived in Saipan in 1995 pursuant to an entry permit and work certificate for employment with Advance Textile, Inc. (“Advance [p. 2] Textile”). Declaration of Yu Dong Mei (“Yu Decl.”), ¶3. During the period of her employment, Ms. Yu claims that she was not paid wages and overtime compensation due and owing to her. Yu Decl. at ¶¶ 5.

¶3 In May of 1996, Ms. Yu, unrepresented by counsel, filed a complaint against Advance Textile with the Department of Labor and Immigration (“DOLI”), contending that she had been improperly terminated and that Advance Textile was wrongfully withholding her passport and entry permit. Yu Decl. at ¶¶ 4-5. On January 20, 1998, DOLI dismissed Respondent’s claims for failure to attend a good faith hearing. *Id.* at ¶ 6. She timely appealed the dismissal, and on March 25, 1999, the Director of Labor affirmed the dismissal of her labor case. *Id.* at ¶7.

¶4 On April 9, 1999, Ms. Yu became a party to the District Court Litigation by filing a consent to sue. Yu Decl. at ¶ 8. In the collective action, Ms. Yu is seeking compensation for unpaid wages and overtime compensation. *Id.* On January 27, 2000, however, this court ordered that Respondent be deported. *See Notice Re: Administrative Order* (filed April 1, 1999). At Respondent’s request, the court granted her leave to file a motion to stay execution of the order of deportation.

¶5 Respondent filed her motion for stay on February 15, 2000. By a series of stipulations, the parties agreed to stay deportation and to postpone the hearing of this matter until April of 2001. On April 27, 2001, Respondent joined in the motion to stay filed by Chen Wei Juan in Civil Action 01-0163B. *See Office of the Attorney General v. Chen Wei Juan*, Civil Action 01-0163b (filed April 26, 2001). As Chen, Respondent argues that she has a right to remain in the Commonwealth to litigate her wage claims. She also contends that she should be permitted to work so as to support herself during the pendency of her wage case.

¶6 For the reasons set forth in *Chen Wei Juan*, the court agrees that Respondent should be able to remain in the Commonwealth to litigate her wage claims. The facts are essentially the [p. 3]

same.¹ 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* Yu Decl. ¶¶ 2-11. Accordingly, and under this court’s decision in *Office of the Attorney General v. Chen*, Civil Action No. 01-0163B (May __, 2001)(Order Granting Motion to Stay Deportation), the motion to stay these deportation proceedings pending the resolution of Respondent’s claims in District Court Litigation is hereby **GRANTED**.

¶7 Turning next to Respondent’s request for injunctive relief, the court finds that Ms. Yu’s due process right to remain in the Commonwealth pending the resolution of the District Court Litigation would be rendered meaningless unless she were permitted to support herself during the pendency of her stay here. To be entitled to a preliminary injunction, the moving party must demonstrate either a combination of probable success on the merits and the possibility of irreparable injury, or that serious questions are raised and that the balance of hardships tips favorably in the movant’s favor. *See Matsunaga v. Matsunaga*, Civ. No. 97-0043 (N.M.I. Super. Ct. July 1, 1996) (Decision and Order Denying Preliminary Injunction); *Sablan v. Bd. of Elections*, Civil Action Nos. 91-1274 (N.M.I. Super. Ct. Jan. 3, 1994) (Decision and Order on Motion for Preliminary Injunction). In a similar situation, the court has awarded injunctive relief when plaintiffs claimed that they would be irreparably harmed if they were not permitted to make a living while their labor complaints were pending. *See Sirilan v. Castro*, 1 C.R. 312, 313 (N.M.I. Tr. Ct. 1982). As in the case at bar, in *Sirilan*, plaintiffs contended that unless they were allowed to support themselves, they could not pursue their claims for lost wages. *Id.* at 313-314.

¶8 In analyzing their entitlement to injunctive relief, the court found that “[t]here is little doubt that the plaintiffs are placed in a most difficult, if not untenable, position in having their income eliminated while awaiting ... the resolution of their claim in this action.” *Id.* at 314. At the same time, the court noted that the Government would lose nothing if plaintiffs were to [p. 4] continue to work.

¹ The court notes that the Commonwealth did not file any Opposition or Response to Respondent’s Motion to Stay Deportation and Motion for Injunctive Relief. Thus, the operative facts are also undisputed.

After balancing the equities, the court concluded that they tipped strongly in favor of plaintiffs. In so doing, the court also ruled that “it would be hypocritical and self-defeating to deny to an alien the means to support himself or herself pending the resolution of a lawsuit which the court acknowledges the alien has the right to prosecute.” *Id.* at 316.

¶9 The court finds that Respondent has made a sufficient showing that she would be substantially burdened by her inability to work pending the outcome of the District Court Litigation. Without a temporary work permit, Respondent is unable to obtain lawful work of any kind in the CNMI. She is therefore unable to provide for herself during the pendency of his case, which may take several months. By contrast, the Department of Labor and Immigration would not be prejudiced by the issuance of a temporary work permit for a limited duration. To the contrary: the court finds that issuing a temporary permit would further important public policy goal of encouraging the lawful employment of aliens already present in the Commonwealth, thereby eliminating the need to import new hires.

¶10 At this stage in the proceedings, neither this court nor the parties can know with any certainty the ultimate outcome of Respondent’s lawsuit. However, Respondent has demonstrated to the satisfaction of the court that the balance of hardships tips sharply in her favor. Unless she is permitted to work during the pendency of the District Court Litigation, she may be forced to leave the island and forgo her wage claim. The court finds these considerations sufficiently compelling to award the relief requested.

ORDER

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

- A. The Order of Deportation is hereby stayed pending the resolution of the District Court Litigation.
- B. The application of Respondent for injunctive relief is hereby GRANTED. The Department of Labor and Immigration shall forthwith issue a Memorandum to Seek Temporary Employment, and, if Respondent is able to obtain such employment, then issue her a Temporary Work Authorization permitting Respondent to support [p. 5]

herself during the stay of her deportation. This injunction shall stay in effect until further order of the court. Because the burden on Defendants is minimal and the filing of security by the Respondent would apparently be extremely onerous, the court finds it proper to order that Respondent not be ordered to file security for costs and damages. See Com. R. Civ. P. 65(c); *see also People ex. rel. Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1325-1326 (9th Cir. 1985).

So ORDERED this 16 day of May, 2001.

/s/
TIMOTHY H. BELLAS, Associate Judge