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

DIRECTOR OF LABOR, **Complainant/Appellee,** **vs.** **CESAR J. SARMIENTO** **Respondent/Appellant.**	)))))))))	**Civil Action No. 99-698D** **DECISION AND ORDER**

I. INTRODUCTION

¶1 In this proceeding, Respondent Cesar J. Sarmiento seeks to reverse an administrative order of the Division of Labor revoking his work permit. For the reasons set forth below, the court affirms the ruling of the Secretary.

II. FACTUAL BACKGROUND

¶2 In 1996, Respondent filed a labor complaint against his former employer in which he sought unpaid wages and transfer relief. *See generally Garcia and Sarmiento v. De Leon Guerrero*, Labor Case No. 96-259 (Aug. 20, 1998) (Administrative Order). During the two years that transpired,[1] the Division of Labor discovered Respondent among a group of nonresident workers working a construction project without proper authority and subsequently initiated proceedings against him. *See Director of Labor v. Sarmiento*, Agency Case 98-025 (March 23, 1999) (Administrative Order on

[1] The Nonresident Worker's Act, 3 CMC § 4447(b) permits a nonresident worker aggrieved by the failure of his employer to comply with the employment contract to file a complaint with the Division of Labor. Upon the filing of a complaint, the Division of Labor is required to conduct an investigation, take appropriate action, and make a determination in writing within 30 days of the filing of the complaint. *See* 3 CMC § 4447(b). The Government has not informed the court of the reasons why it took the Division of Labor nearly two years to investigate Respondent's claims and reach a decision.

Appeal). On May 28, 1998, the Director of Labor issued an order in Case 98-025, denying Respondent's request to transfer to another employer and referring the matter to the Division of Immigration for voluntary repatriation or deportation. The Order in Case 98-025 was subsequently affirmed on appeal.

¶3 Three months later, the Hearing Officer issued an Order in Labor Case 96-259 finding Respondent to be without fault, awarding him unpaid wages and liquidated damages, and granting him sixty days to transfer to a new employer. *See Garcia and Sarmiento v. Guerrero*, Labor Case no. 96-0259 (Aug. 20, 1998) (Administrative Order) [hereinafter, the "August 20, 1998 Order"].[2] The August 20, 1998 Order, however, made no mention of Agency Case 98-025 or of any referral to the Division of Immigration for voluntary referral or deportation.

¶4 A few days later, the Hearing Officer issued an amended order in Labor Case 96-259, rescinding the transfer *sua sponte*. As grounds, the Hearing Officer claimed to have authorized transfer relief by mistake and without knowledge of the outstanding order of deportation in Agency Case 98-025. *See Garcia and Sarmiento v. Guerrero*, Labor Case No. 96-259 (Aug. 26, 1998) (Amended Order) at ¶ 5. At the same time that the Hearing Officer rescinded transfer relief, however, he also certified Respondent's eligibility for temporary work authorization and transfer relief during the time that he remained in the Commonwealth. *Id.*, at ¶ 6. Respondent timely appealed the Amended Order to the Secretary of Labor and Immigration.

¶5 While the appeal was pending but after the Amended Order had issued, Bird Island Development submitted an application for a one year employment permit for Respondent, attaching the August 20, 1998 Order and not the Amended Order. Shortly thereafter, the Division of Labor issued Respondent permit 112631.

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[2] The court takes judicial notice of applicable Labor and Immigration Regulations which provide, in material part, that the Hearing Officer may only grant transfer relief upon the conclusion of a 3 CMC § 4444(a)(2-3) administrative hearing if the complaining employee was not equally in the wrong concerning the matters which gave rise to the filing of the labor complaint. *See* Alien Labor Rules and Regulations, § VI.F.10.d, *reprinted in* 10 COM. REG. 5512 (Apr. 15, 1988).

¶6 On March 23, 1999, the Secretary issued his decision affirming the Amended Order on grounds that the Hearing Office could properly take judicial notice of its own files and records.[3/] *See Sarmiento v. Guerrero*, Labor Case 96-025 (March 23, 1999) (Administrative Order on Appeal). Ten days later, the Director of Labor filed a Determination and Notice of Hearing to revoke the work and entry permit and to impose sanctions against Sarmiento for obtaining a work permit while subject to deportation proceedings. *See Director of Labor v. Sarmiento*, C.A.C. No. 99-124-04(B) (April 1, 1999) (Determination and Notice of Hearing for Permit Revocation). Although Respondent promptly moved to dismiss the Determination on grounds that it failed to state a violation of the Nonresident Workers Act, the Hearing Officer concluded that the "Determination" amounted to nothing more than a routine request to revoke an erroneously issued permit. *See Director of Labor v. Sarmiento*, C.A.C. No. 99-124-04(B) (Aug. 16, 1999) (Administrative Order). Ruling further that the Division had the authority and responsibility to amend and revoke permits and orders that were issued erroneously, the Hearing Officer granted the Division of Labor's request to revoke the permit, notwithstanding the erroneous caption on the pleading.[4/] With regard to that portion of the Determination seeking sanctions against Sarmiento for misrepresenting the August 20 Order, however, the Hearing Officer ruled that the Determination did not provide sufficient notice to serve as an accusation of wrongdoing. The Hearing Officer then dismissed that portion of the Determination seeking sanctions against Respondent but referred him to the Division of Immigration for appropriate action consistent with the ruling and "earlier valid Orders outstanding in cases 96-259 and 98-025."

¶7 Respondent timely appealed the August 16, 1999 ruling of the Hearing Officer in Agency Case 99-124-03. *See Director of Labor v. Sarmiento*, Civil Action No. 99-0698D (Filed Nov. 12, 1999) (Complaint Appealing Final Agency Action) at Exhibit "B" (Appeal of Administrative Order). Following a summary affirmance of the appeal by the Secretary, Respondent timely filed the instant proceeding in this court.

[3/] The appeal was assigned to Hearing Officer Soll by the Secretary pursuant to 3 CMC § 4445. The Secretary approved the decision on appeal on May 23, 1999.

[4/] The Hearing Officer indicated that notwithstanding its mislabeled caption, what was filed was actually a standard petition to revoke, normally used by lay investigators who file pleadings in the Hearing Office. August 16, 1999 Order at 2, ¶1.

¶8 Respondent challenges the rulings of the Secretary and the Hearing Officer on three grounds: (1) in failing to identify any statute, rule, regulation, contract, or agreement that was purportedly violated in its Notice of Determination, the agency lacked jurisdiction to revoke Respondent's work permit and violated Respondent's constitutional rights to procedural due process; (2) absent the violation of some rule, regulation, contract, or agreement, the revocation of Respondent's work permit was arbitrary and capricious and therefore violated Respondent's constitutional right to substantive due process; and (3) the Secretary should have delegated the determination of Sarmiento's appeal of the August 16, 1999 Administrative Order to an impartial or disinterested hearing officer or other agency official, since the Secretary was a defendant in a federal civil rights suit filed by Respondent's attorney.

¶9 In response, the Division of Labor claimed authority to issue the Amended Order pursuant to its enforcement authority under 3 CMC § 4444(a). The Division further denied any substantive and procedural due process violations, but did not address Respondent's challenge to the Secretary's hearing of the matter.

III. QUESTIONS PRESENTED

¶10 Whether the Secretary, by virtue of his status as a defendant in a federal civil rights lawsuit brought by Sarmiento's attorney, should have disqualified himself from deciding the administrative appeal on grounds that his impartiality might reasonably have been questioned by a reasonable objective member of the public.

¶11 Whether the Department of Labor lacked jurisdiction to issue a Notice of Determination and revoke the work permit absent Respondent's violation of a specific statutory, regulatory, or contractual provision.

¶12 Whether the Commonwealth violated Respondent's constitutional rights to due process by taking judicial notice, subsequent to the hearing and the issuance of ruling, of earlier proceedings denying Respondent transfer rights.

¶13 Whether the revocation of Respondent's work permit was arbitrary and capricious, violating Respondent's rights to procedural and substantive due process.

IV. ANALYSIS

1 **A. The Right to an Impartial Decision Maker**

2 ¶14 On judicial review of an agency determination, the function of this court is not to reweigh the
3 evidence but merely to determine if the conclusion rests on such relevant evidence as reasonable minds
4 might accept as adequate, even if the court would not have reached the same conclusion as to the issues
5 in question. *See, e.g., In re Hafadai Beach Hotel Extension,* 4 N.M.I. 38, 43-44 & n.25 (1993). This
6 deferential standard is not controlling, however, where an agency is biased or prejudiced against a
7 claimant or is otherwise incapable of providing him with a fair hearing. *See, e.g., In re Murchison,* 349
8 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) ("a fair trial in a fair tribunal is a basic requirement
9 of due process").[5/] Since due process demands impartiality on the part of those who function in judicial
10 or quasi-judicial capacities,[6/] prior to reaching the merits of Respondent's claims, it is necessary first
11 to address Respondent's contention that his appeal was not decided by an impartial decision maker.
12 ¶15 There is a presumption of honesty and integrity in those who serve as adjudicators for
13 administrative proceedings. *See Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 1464, 43 L.Ed.2d
14 712 (1975). This presumption of integrity, moreover, can be overcome only by "a showing of conflict
15 of interest or some other specific reason for disqualification." *Schweiker,* 465 U.S. at 195, 102 S.Ct.
16 at 1670. *See also Burrell v. City of Los Angeles,* 209 Cal.App.3d 568, 257 Cal.Rptr. 427
17 (Cal.App.1989)(standard for disqualifying federal judges under 28 U.S.C. § 455 cannot apply to
18 administrative law judges, since, as employees of the very agency whose actions they review, they
19 would be required to recuse themselves in every case); *but see Sussel v. Civil Service Comm'n*, 71
20 Haw. 101, 784 P.2d 867 (19) (ruling that the "appearance of impropriety" required the disqualification
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22 [5/] The Court went on to note: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge
23 in his own case and no man is permitted to try cases where he has an interest in the outcome." *Id.*, 349 U.S. at 136, 75 S.Ct. at 624. The Court explained: "'Every procedure which would offer a possible temptation to the average man as
24 a judge ... not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.'" *Id.*, 349 U.S. at 136, 75 S.Ct. at 624 quoting *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed.
25 749. The Court concluded: "Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally." *349 U.S.* at 136, 75 S.Ct. at 624.
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27 [6/] *See Schweiker v. McClure*, 456 U.S. 188, 195-96, 102 S.Ct. 1665, 1670 (1982). Where a party can demonstrate impermissible bias or an unacceptable risk of impermissible bias on the part of a decision maker, the decision maker must
28 be disqualified. *See also Dairy Product Services, Inc. v. City of Wellsville,* 13 P.3d 581, 594 (Utah 2000) (noting categories of biasing influences that may be present in administrative proceedings).

of an administrative adjudicator). Regardless of the standard used to determine whether recusal is in order,[7] however, a person seeking to disqualify an administrative official in the Commonwealth is required to file a "timely and sufficient affidavit of personal bias and prejudice or other disqualification" to rebut the presumption. *See* 1 CMC § 9109(e)(2).[8]

¶16 Respondent contends that the Secretary of the Department of Labor and Immigration should have been disqualified from hearing the appeal because of his status as a defendant in a federal civil rights lawsuit, brought by Sarmiento's counsel at the time that the Secretary rejected Sarmiento's appeal. *See Gorromero v. Zachares, et al.*, Civil Action No. 99-0019 (D.N.M.I. March 22, 1999); *see also Director of Labor v. Sarmiento*, C.A.C. 99-124-03 (Sept.1, 1999) (Appeal of Administrative Order). Under other circumstances, the personal involvement of a judicial officer in a legal dispute brought by a party's attorney arguably creates an irreconcilable conflict of interest. *E.g., Hawaii v. Ross,* 89 Haw. 371, 379, 974 P.2d 11, 19 (1998) ("[A]side from the technical absence of bias or conflict of interest, certain situations may give rise to such uncertainty concerning the ability of the [adjudicator] to rule impartially that disqualification becomes necessary"); *In re Water Use Permit Applications,* 9 P.3d 409, 432-434 (Haw. 2000) (dual status as adjudicator and litigant reasonably casts doubt on ability to rule impartially). In this case, however, Respondent failed to file any affidavit of bias, and never even raised the issue of disqualification before the agency even though the facts giving rise to the alleged conflict were known to Respondent at the time he filed his appeal to the Secretary. *See* Appeal of Administrative Order, attached to Complaint as Ex. "B;" *see also* Mem. in Support of Mot. to Dismiss C.A.C. 99-124-03 (filed Ap. 9, 1999). Having failed to timely present the objection, either before the commencement of the proceeding or as soon as the facts calling for recusal become known, Respondent cannot now raise the matter as grounds for overturning the agency's decision. *See, e.g. Saipan Lau Lau Development Co. v. Superior Court*, Orig. Action No. 00-001 (N.M.I. Sup.Ct.

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[7] In light of Respondent's failure to comply with procedural prerequisites, the court need not reach this issue. The court notes, however, that where due process requires an administrative hearing, an individual has the right to a tribunal "which meets at least currently prevailing standards of impartiality." *Wong Yang Sung v.McGrath*, 339 U.S. 33, 50, 70 S.Ct. 445, 94 L.Ed. 616 (1950).

[8] Upon the filing of an affidavit, the Commonwealth's Administrative Procedure Act requires the agency to determine the matter as part of the record and order or decision in the case. 1 CMC § 9109(e)(2).

Dec. 1, 2000) (Order Denying Second and Third Motions to Disqualify Panel Members) (motion to disqualify on ground of bias or prejudice must precisely comply with procedural formalities);[9] *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326-327 (9th Cir.1995) (contentions of bias should be raised as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist); *In re Water Use Applications,* 9 P.3d at 434-435 ("The unjustified failure to properly raise the issue of disqualification before the agency forecloses any subsequent challenges to the decisionmakers' qualifications on appeal"); *In re Duffy,* 78 Wash.App. 579, 897 P.2d 1279, 1281 (1995) ("A litigant's assertion of the right to disqualify a judge, whether based upon statute or due process considerations, must be timely or the objection is waived").

B. Jurisdiction of the Division of Labor

¶17 In material part, 3 CMC § 4444(a)(2-3) permits the Chief of Labor to issue a notice of violation and conduct a hearing when he or she has reason to believe that any provision of the Nonresident Worker's Act, 3 CMC § 4411 *et seq.* [the "NWA"], any rule or regulation promulgated pursuant to the NWA, or any agreement or contract executed under the Act is being violated. Respondent argues because the Notice of Determination failed to state a violation of the NWA, applicable rules or regulations, or any contract or agreement, the agency lacked jurisdiction to proceed. The court disagrees.

¶18 Under the NWA, the Director of Labor, in conjunction with the Office of Immigration, issues each nonresident worker a certificate to be used both for labor and immigration purposes. *See* 3 CMC § 4435(b). To enforce violations of the NWA, applicable rules or regulations, or contracts executed pursuant to the Act, the NWA vests the Division of Labor with the authority to impose a variety of sanctions, including, but not limited to, the cancellation or modification of a nonresident worker's

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[9] In *Saipan Lau Lau*, the motion to recuse was brought under Canon 3(D)(c) of the Code of Judicial Conduct which, like § 9109(e)(2), contains an affidavit requirement. In *Saipan Lau Lau*, the CNMI Supreme Court ruled that any motion brought under Canon 3(D) must precisely comply with procedural formalities "to guard against the danger of frivolous attacks on the orderly process of justice." Slip Op. at 6, quoting *Travelers Ins. Co. v. St. Jude Med. Office Bldg.*, 843 F. Supp. 138, 141 (E.D.La.1994), *amended and supplemented by* 154 F.R.D. 143 (E.D. La. 1994). The Court further ruled that a motion to disqualify on grounds of bias or prejudice should be denied for failure to strictly comply with the procedures. Slip Op. at 6.

certificate. *See* 3 CMC § 4444(a). Thus, so long as appropriate procedures are followed, there is no question that the Division of Labor has the authority to cancel or revoke a work permit.

¶19 Petitioner maintains that where, as here, a work permit was issued erroneously, the Division also has the authority and the responsibility to correct it. Petitioner further maintains that even a cursory reading of the so-called Determination reflects that regardless of the caption, the Division was simply seeking to revoke the permit that it wrongly issued. Since an agency may, consistent with due process, correct an order or permit that has been erroneously issued,[10/] the court is not convinced that the mislabeling of a pleading which, at the same time, provides for a hearing on the merits and timely informs the parties of the issues and grounds for the proposed revocation deprives the agency of jurisdiction to revoke what was claimed to be an erroneously issued work permit.

C. Official Notice

¶20 Whether the agency was free, in the first place, to take official notice of another case to amend its order and then summarily revoke Respondent's right to transfer, without notice to the parties, is another matter. While agencies may, *sua sponte*, freely correct errors that may properly be described as clerical or as arising from oversight or omission, like courts, they may not simply amend an order because a hearing officer later perceives the original judgment to have been incorrect. *E.g., McNickle v. Bankers Life & Cas. Co.,* 888 F.2d 678 (10th Cir. 1989). Likewise, in a situation calling for a hearing under 1 CMC § 9109, an agency is not free simply to take official notice of proceedings or records in another case in order to supply facts essential to support some contention in a case then before it. *See, e.g.,* 1 CMC § 9109(g) (1) (persons presiding at hearings are prohibited from consulting any person, party, or representatives of persons or parties on a fact in issue or on applicable law, unless on notice and opportunity for all parties to participate).[11/] Thus, the court turns next to whether, in taking notice

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[10/] *See, e.g., Gagnon v. United States*, 193 U.S. 451, 24 S.Ct. 510, 48 L.Ed.745 (1904) ("The power to amend its records, to correct mistakes of the clerk or other officer of the court, inadvertencies of counsel, or to supply defects or omissions in the record, even after the lapse of the term, is inherent in courts of justice... This power to amend ... must not be confounded with the power to create. It presupposes an existing record, which is defective by reason of some clerical error or mistake, or the omission of some entry which should have been made during the progress of the case, or by the loss of some document originally filed therein.")

[11/] Persons presiding at hearings or participating in orders and decisions, however, are free to communicate with other members of the agency, except as limited by subsection 9109(g). *See* 1 CMC § 9109(h).

of the order in Administrative Case 98-025 without first affording Sarmiento the opportunity to respond, the agency violated Respondent's due process rights.

¶21 Judicial notice and its close parallel, administrative notice, permit a court or agency to take notice of an adjudicative fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See* Com..R. Evid. 201(b); *see also Castillo-Villagra v. INS,* 972 F.2d 1017, 1026 (9th Cir.1992). The scope of administrative notice, sometimes referred to as official notice, however, is broader than judicial notice. *Id.* at 1026-1027; *McLeod v. INS,* 802 F.2d 89, 93 n. 4 (3d Cir.1986). The wider scope of administrative notice emanates from the administrative agency's specialized experience in a subject matter area and its consequential ability to "take notice of technical or scientific facts that are within the agency's area of expertise." *McLeod,* 802 F.2d at 93 n. 4. It is also compelled by the repetitive nature of many administrative proceedings. *See Castillo- Villagra,* 972 F.2d at 1027.

¶21 An agency's discretion to take administrative notice, however, depends on the particular case before it. *See Castillo- Villagra,* 972 F.2d at 1028; *see also Gebremichael v. INS,* 10 F.3d 28, 39 (1st Cir.1993) (noting that, in the context of administrative notice-taking, the demands of due process ultimately depend on the circumstances). As the Ninth Circuit has recognized, "[i]t is not necessary to warn that administrative notice will be taken of the fact that water runs downhill. Some propositions, however, may require that notice not be taken, or that warning be given, or that rebuttal evidence be allowed. The agency's discretion must be exercised in such a way as to be fair in the circumstances." *Castillo-Villagra,* 972 F.2d at 1028. Moreover, even in cases where taking administrative notice may be appropriate, an individual must have notice and an opportunity to "rebut the inferences drawn." *Kowalczyk v. I.N.S.*, 245 F.3d 1143, 1147-1149 (10th Cir. 2001); *see also Gebremichael,* 10 F.3d at 39 (holding petitioner's due process rights were violated when he was not given opportunity to respond to a fact newly noticed by the BIA prior to an adverse decision against him); *Kaczmarczyk v. I.N.S.,* 933 F.2d 588, 596 (7th Cir. 1991) ("We believe the due process clause of the fifth amendment requires that petitioners be allowed an opportunity to rebut officially noticed facts.... [N]ot to allow petitioners an opportunity to rebut noticed facts would sanction the creation of an unregulated back door through

which unrebuttable, non-record evidence could be introduced against asylum petitioners outside of the statutorily-mandated hearing context ...." (citation omitted)); *Castillo-Villagra,* 972 F.2d at 1029 (holding that the BIA "erred in taking notice of the change of government without providing the petitioners an opportunity to rebut the noticed facts" because "due process requires that the applicant be allowed an opportunity to rebut [administratively noticed facts]").

¶22 In this case, the Hearing Officer took official notice of Respondent's referral to the Division of Immigration for deportation in Agency Case 98-025 to reverse that portion of the Order in case 96-259, awarding Respondent transfer relief. It is undisputed, moreover, that prior to issuing the Amended Order, Respondent had no opportunity to be heard as to the propriety of taking administrative notice of the enforcement proceeding, the purpose of the matter noticed, or to argue and rebut the inferences which the Hearing Officer drew from the order in Case 98-025. In spite of these facts, Petitioners nevertheless contend that this presents an especially strong case for judicial notice, in that the Hearing Officer who made the May 28, 1998 decision in Case 98-025, denying transferability, was the same Hearing Officer who issued the Order in Case 96-259, disposing of the wage claim and erroneously awarding Respondent transfer relief. It was the very same Hearing Officer, Petitioners point out, who also issued the Amended Order, rescinding transfer relief. *See In re Sarmiento*, L.C. 96-259 (Administrative Order on Appeal) (March 23, 1999). Respondent, on the other hand, insists that by relying on extra-judicial matters to rescind the right to transfer, after a decision had been rendered in Respondent's favor, the Hearing Officer essentially deprived Respondent of due process by preventing him from countering the evidence or arguing about the inferences to be drawn therefrom.[12]

¶23 In raising these arguments, Respondent fails to mention that by the time the Amended Order issued, he had already unsuccessfully made these arguments during the hearing in Case 98-025 and on appeal of the Hearing Officer's initial decision denying transfer eligibility. Since he failed to petition for judicial review of the decision in Case 98-025, moreover, the order denying transfer eligibility was

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[12] Respondent specifically challenged that portion of the Amended Order ruling that Respondent could not be authorized to transfer to a new employer as erroneous in light of the discretion afforded to the Hearing Officer to authorize consensual transfers under 3 CMC § 4444(e).

in full force and effect. More importantly, this is not a case where the Hearing Officer appears to have used new information to reconsider his ruling and thus relitigate matters that had been previously litigated and decided. Since the Hearing Officer was not taking official notice of his prior ruling to establish a fact in issue, the manner in which he learned of his mistake is of no consequence. *See* 1 CMC § 9109(g)(1). Accordingly, the court finds no due process violation.

D. Revocation of the Work Permit

¶24 Article I, § 5 of the Commonwealth's Constitution ensures that "[n]o person shall be deprived of life, liberty or property without due process of law." Like the due process provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution,[13/] this provision contains both procedural and substantive components. *See In re Seman,* 3 N.M.I. 57, 66-67 (1992). Procedural due process ensures that "'certain substantial rights--life, liberty and property--cannot be deprived except pursuant to constitutionally adequate procedures.'" *See Loudermill v. Cleveland Bd. of Educ.,* 470 U.S. 532, 541, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494, 503 (1985).[14/] Substantive due process, on the other hand, protects those rights that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental,"[15/] prevents governmental power from being used for purposes of oppression, and protects against governmental action that is "legally irrational in that it is not sufficiently keyed to any legitimate state interests." *See PFZ Properties, Inc. v. Rodriguez*, 928 F.2d 28, 31-32 (1stCir.), *cert. granted*, 502 U.S. 956, 112 S.Ct. 414, 116 L.Ed.2d 435; *cert. dismissed*, 503 U.S. 257, 112 S.Ct. 1151, 117 L.Ed.2d 400 (1991).

[13/] The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty or property without due process of law. *See Commonwealth v. Bergonia*, 3 N.M.I. 22, 36 (1992). The Fourteenth Amendment to the United States Constitution has been made applicable to the Commonwealth pursuant to Section 501(a) of the Covenant. *See In re "C.T.M.*," 1 N.M.I. 410, 413 (1990), *citing* COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, *reprinted in* CMC at B-101. Due process provisions of the Commonwealth Constitution afford the same protections as the Due Process Clause of the United States Constitution. *See Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 445 (1993).

[14/] Procedural due process "is flexible and requires only such procedural protections as the particular situation demands." *See Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 445 (1993), *citing Office of the Attorney General v. Deala*, 3 N.M.I. 110, 116 (1992); *see also Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18, 32 (1976).

[15/] *Reno v. Flores,* 507 U.S. 292, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993) (citations omitted); *Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937).

¶25 In the case at bar, Respondent had been granted a permit to work and remain in the Commonwealth. Under the law of the Commonwealth, Respondent's entire livelihood, along with his right to remain in the Commonwealth, depend upon the issuance and retention of a valid work authorization and entry permit.[16/] While the United States Supreme Court has cautioned against the expansion of the substantive component of the Due Process Clause,[17/] validly issued permits are analogous to a driver's licence, which the Washington Supreme Court has recognized to be the subject of a valid property interest. *See Broom v. Department of Licensing,* 72 Wash.App. 498, 505, 865 P.2d 28 (1994); *see also Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 576, 92 S.Ct. 2701, 2708-2709, 33 L.Ed.2d 548 (1972). The court therefore finds that Respondent had a constitutionally protected property interest in keeping his permit.

¶26 Prior to revoking Respondent's work permit, however, the Commonwealth provided Respondent with notice and a hearing at which he was permitted, with counsel, to raise all arguments and introduce evidence on his behalf. *See In re Director of Labor v. Sarmiento*, C.A.C. No. 99-124-03(B) (Aug. 16, 1999) (Administrative Order). As set forth above, the charging document notified Respondent that the Division was seeking revocation and proffered reasons to support the revocation. Respondent does not contend that he was prevented from commenting on the evidence or otherwise raising any arguments on his behalf. Likewise, there is no evidence that the decision to revoke was made in an arbitrary or capricious manner, but instead for the singular reason that the permit had mistakenly been issued, and never should have issued in the first place. On these facts, the court must conclude that since Respondent had sufficient notice and an opportunity to be heard prior to the revocation, and adequate administrative and judicial review procedures afterwards, no further process was required.

[16/] Indeed, it is well established that the " 'freedom to choose and pursue a career, "to engage in any of the common occupations of life," qualifies as a liberty interest which may not be arbitrarily denied by the State.' " *Parate v. Isibor,* 868 F.2d 821, 831 (6th Cir.1989) (quoting *Meyer v. Nebraska,* 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and *Wilkerson v. Johnson,* 699 F.2d 325, 328 (6th Cir. 1983).

[17/] *See, e.g., Collins v. City of Harker Heights, Texas,* 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992).

¶27 Based on the forgoing, Respondent's request to reverse the Administrative Order is DENIED.

So ORDERED this 4th day of September, 2001.

/S/

TIMOTHY H. BELLAS, Associate Judge