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

FERNANDO T. RIVERA)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 MARK ZACHARES, as Secretary)
 of Labor and Immigration and)
 DIRECTOR OF IMMIGRATION,))
)
 Defendants/Respondents.)
)

Civil Action No. 00-0375B
ORDER AND DECISION GRANTING
APPELLANT’S PETITION FOR
JUDICIAL REVIEW

¶1 At issue in this administrative appeal is an order directing Appellant to depart the CNMI. Appellant Fernando Rivera claims that he acquired permanent residency status in 1982 by virtue of his marriage to a Chamorro. In an order issued on July 24, 2000, however, the Director of Immigration denied Appellant’s request for a non-alien immediate relative entry permit and ordered him to depart the Commonwealth. Appellant seeks review of this order.

I. BACKGROUND

¶2 Appellant claims to have lawfully resided in the CNMI since 1982 on “permanent residency status.”^{1/} After losing his permanent residency card, however, he applied to the Division of

^{1/} Persons granted permanent residency status pursuant to Public Law 5-11 (more accurately known as DL 5-11) were exempted from the requirement of having to obtain an entry permit prior to entry into the Northern Mariana Islands. See 3 CMC § 4201, Commission Comment. Authority to enter into and remain in the Northern Mariana Islands for persons who were granted permanent residency status pursuant to the provisions of Section 1 of DL 5-11 were virtually identical to that of citizens of the Trust Territory of the Pacific Islands. Under Section 4 of DL 5-11, the Resident Commissioner was authorized to issue permanent identification cards to persons granted permanent residence status pursuant to the provisions of DL 5-11. DL 5-11, however, was repealed in 1981 by Public Law 2-17. See 3 CMC § 4201, Commission Comment. Public Law 2-17, § 2 (codified as 3 CMC § 4202) preserved the rights and status of persons who were granted or applied for permanent residency status pursuant to DL 5-11 prior to the effective date of PL 2-17.

1 Immigration in July of 2000 for a replacement. Instead of issuing a replacement card, however,
2 Division of Immigration personnel directed Appellant to apply for an “Immediate Relative of
3 Non-Alien Entry Permit” issued by the Department of Immigration pursuant to section 706.D of the
4 Department’s regulations.^{2/} See Declaration of Susana Rios Rivera dated December 13, 2000
5 (“Rivera Decl.”). On July 24, 2000, the Director of Immigration issued an order not only denying
6 Appellant’s application but also ordering him to depart the CNMI.

7 ¶3 Appellant claims that he timely appealed the Director’s decision on August 2, 2000.
8 Appellant admits, moreover, that aside from his verbal request to Antonette Palacios on July 3,
9 2000, he never made a formal request for, or appealed the failure or refusal of, the Division of
10 Immigration to issue him a replacement card. See Rivera Decl. at ¶¶ 3-5. On August 15, 2000, the
11 Secretary issued a letter affirming the Director’s decision to deny Appellant’s application for IR
12 status (Complaint, ¶ 10). Appellant claims that the Director erred in summarily ordering a
13 permanent resident of the Commonwealth to depart the CNMI and further seeks a mandatory
14 injunction vacating the deportation order and directing Defendants to issue Appellant a replacement
15 permanent residency card.

16 ¶4 Respondents claim that the application for IR status was properly denied pursuant to 3 CMC
17 §§ 4322(a), 4331(f), and 4340(a)(1) since Appellant had been convicted of a felony. With regard
18 to Appellant’s request for a replacement permanent residency card, however, Respondents challenge
19 the jurisdiction of the court to entertain the request since Appellant plainly never exhausted his
20 administrative remedies.

21 **II. QUESTIONS PRESENTED**

22 ¶5 Whether Defendants erred in summarily directing Appellant, an undisputed permanent
23 resident, to depart the Commonwealth.

24 ¶6 Whether Appellant is entitled to a mandatory injunction granting him a replacement
25 permanent residency card.

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28 ^{2/} See 7 COM. REG. 3797 (July 22, 1985).

1 **III. ANALYSIS**

2 ¶6 Although the record reflects no evidence establishing Appellant’s entitlement to or eligibility
3 for permanent residency status, Respondents do not dispute that Appellant qualifies as a permanent
4 resident. Likewise, Appellant does not take issue with the decision to deny him IR status.
5 Accordingly, the sole focus of his appeal turns on whether, or under what circumstances, Defendants
6 may compel a permanent resident to depart the Commonwealth.

7 ¶7 Under DL 5-11, permanent residency status was subject to cancellation only for cause and
8 after hearing upon application by the Resident Commissioner to the Trial Division of the High
9 Court.^{3/} With the enactment of Public Law 2-17 in 1981, however, DL 5-11 was repealed and
10 permanent residency status in the Commonwealth was abolished. See 3 CMC § 4201.
11 Notwithstanding the enactment of Public Law 2-17, the rights and status of any person granted or
12 otherwise entitled to permanent residency status prior to April 23, 1981 remained unaffected. As a
13 permanent resident, therefore, Appellant has acquired certain vested rights and is not deportable.
14 See, e.g., 3 CMC §§ 4303(a) and (t) (distinguishing “aliens” from permanent residents); § 4340
15 (confirming that only “aliens” are deportable from the Commonwealth); . Thus, regardless of the
16 circumstances that may trigger the revocation of permanent residency status, it is clear that the order
17 directing Appellant, a permanent resident, to depart the Commonwealth plainly violated the
18 Commonwealth Entry and Deportation Act.

19 ¶8 Although the Government attempts to avoid the question of why it failed or refused to issue
20 a replacement permanent residency card by claiming that Appellant never formally requested one,
21 the record before the court indicates otherwise. Susana Rios Rivera, Appellant’s spouse, testified
22

23 ^{3/} “Cause,” for purposes of revoking permanent residency status, consisted of:
24 (1) concealment or misrepresentation of a material fact in applying for permanent residency status; or
25 (2) advocacy of the overthrow or alteration of the Government of the Northern Mariana Islands or the
26 Government of the United States by unlawful means; or
27 (3) commission of, or attempt or preparation to commit, an act of espionage, sabotage, or sedition against the
28 Government of the Northern Mariana Islands or the Government of the United States, or conspiring with or aiding and
abetting another to commit such an act; or
(4) fraudulent or illegal entry into the Northern Mariana Islands, either prior to or after the grant of permanent
residence status; or
(5) travel, within five (5) years of the granting of permanent residency status, to any foreign country for the
purpose of establishment of permanent residence therein.

1 that on or about July 3, 2000, she accompanied Appellant to the Office of Immigration in order to
2 assist him in obtaining a replacement card. Ms. Rivera further indicates that Antonette Palacios, a
3 Division of Immigration employee, refused to grant a replacement card on grounds that she could
4 not locate Appellant's file. When Ms. Palacios subsequently required Appellant to apply for a non-
5 alien entry permit, Appellant complied out of respect for Ms. Palacios' lawful authority. *See* Rivera
6 Decl. at ¶¶ 4-5. Thereafter, Appellant duly protested the Division's ruling. The court finds that to
7 the extent that Appellant's protest of the Director's ruling did not expressly address Ms. Palacios'
8 refusal to issue a replacement card, further or additional exhaustion of Appellant's administrative
9 remedies is not required. Pursuant to 1 CMC § 9112(f)(1), the court has the authority and indeed
10 the obligation under the circumstances to compel agency action unlawfully withheld or unreasonably
11 delayed. Accordingly, and based upon the foregoing, the court issues the following ruling:

12 **ORDER**

13 ¶9 A. The Order of the Secretary of Labor directing Appellant to depart the Commonwealth
14 is not in accordance with law and is hereby VACATED.

15 B. Within ten (10) days of the entry of the court's order, Respondent Director of
16 Immigration shall issue to Appellant a permanent residency card to replace the one that he reported
17 missing or lost.

18 5. On the basis of the foregoing, judgment is hereby entered in favor of Appellant and
19 against Respondents. Appellant's Request for Judicial Review is GRANTED

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21 So ORDERED this 18th day of OCTOBER, 2001.

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23 /s/
24 TIMOTHY H. BELLAS, Associate Judge