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

COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DIEGO CABRERA et. al., )  
 )  
Defendants. )

CRIMINAL CASE NO. 01-0477T  
**ORDER DENYING MOTION  
FOR DEPOSITION**

**I. OPINION**

The Commonwealth moves this Court to order the deposition of a witness/victim who is planning to move to the United States mainland prior to trial.<sup>1</sup> Because the Commonwealth has failed to demonstrate that the anticipated relocation would constitute an "exceptional circumstance" the court **DENIES** the motion.

**II. DISCUSSION**

Commonwealth Rule of Criminal Procedure 15 provides in relevant part:  
Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party to be taken and

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<sup>1</sup> This motion was argued before the Court on May 2, 2002. Assistant Attorney General Aaron Romano, Esq., appeared on behalf of the Government. Public Defender Douglas Hartig, Esq., appeared on behalf of Defendants.

1 preserved for use at trial, the court may upon motion of such party and notice  
2 to the parties, order that testimony of such witness be taken by deposition . . . .

3 Com. R. Crim. P. 15(a). Because Commonwealth Rule of Criminal Procedure 15 is modeled after  
4 Federal Rule of Criminal Procedure 15, interpretation of the federal rule is instructive. *Commonwealth*  
5 *v. Ramangmau*, 4 N.M.I. 227, 233 (1995).

6 Determining "[w]hether to grant or deny a motion to depose a proposed witness in a criminal  
7 trial is discretionary." *Furlow v. United States*, 644 F.2d 764, 767 (9th Cir. 1981). The trial court  
8 retains broad discretion in granting a Rule 15(a) motion, and considers the particular circumstances of  
9 each case to determine whether the "exceptional circumstances" requirement has been satisfied. *United*  
10 *States v. Omene*, 143 F.3d 1167, 1170 (9th Cir. 1998) (citing *United States v. Farfan-Carreon*,  
11 935 F.2d 678, 679 (5th Cir. 1991)); see also *United States v. Olafson*, 213 F.3d 435, 442 (9th Cir.  
12 2000) (citing *United States v. Hernandez-Escarsega*, 886 F.2d 1560, 1569 (9th Cir. 1989) ("The  
13 facts of each case must be separately considered to determine whether the exceptional circumstances  
14 contemplated by Rule 15(a) exist . . . .").

15 The granting of a Rule 15 motion is not to be taken lightly. The facts must be compelling. For  
16 example, the Ninth Circuit allowed the admission of a videotaped deposition taken in Thailand, at the  
17 government's request, because of the witness' "exceptional circumstances" of being incarcerated in a  
18 foreign country. *United States v. Sines*, 761 F. 2d 1434, 1438 (9th Cir. 1985); see also *United*  
19 *States v. Hayes*, 231 F.3d 663, 666 (9th Cir. 2000) (court allowed deposition of four foreign students  
20 planning to return to the United Arab Emirates); *United States v. Dragoul*, 1 F.3 d 1546, 1552-53  
21 (11th Cir. 1993) (court allowed deposition of seven Italian witnesses to be taken in Italy because  
22 witnesses were beyond subpoena power of district court and under treaty between United States and  
23 Italy, they could be ordered to testify in United States, but, if they refused, they could not be removed  
24 to the United States, and a government-proffered letter from an Italian judicial officer certifying that  
25 witnesses had declared in open court their unwillingness to testify in United States).

26 Under the current facts, the Commonwealth has stated in open court only that their  
27 witness/victim is contemplating a move to the United States mainland. The witness currently resides in  
28 Tinian and is a United States citizen. Unlike the witnesses in the above cited authority, the

1 Commonwealth's witness is currently under the subpoena power of the court. Further, the  
2 contemplated move by the witness is to the United States mainland, hardly a foreign country. At  
3 most, the situation faced by the Commonwealth is one of potential inconvenience. This situation falls far  
4 short of being "exceptional" within the meaning of Commonwealth Rule of Criminal Procedure 15.

5 The burden is on the moving party to satisfy the court that there are exceptional circumstances  
6 such that it is in the interests of justice to allow the taking of a deposition. *See Drogoul*, 1 F.3d at 1552.  
7 The Commonwealth has failed to satisfy their burden. Accordingly, the Commonwealth's motion is  
8 **DENIED**.

9 **III. CONCLUSION**

10 For the foregoing reasons, Defendants motion for a deposition is hereby **DENIED**.

11  
12 So ORDERED this 3rd day of May 2002.

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14  
15 /s/ David A. Wiseman  
16 DAVID A. WISEMAN, Associate Judge  
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