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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,  
Petitioner,**

**vs.**

**DIONISIO BRANA and HAYDEE  
DAMASCO,**

**Respondents**

**Civil Actions Nos. 04-0583, 05-0006E**

**ORDER DENYING VOLUNTARY  
DEPARTURE**

**I. INTRODUCTION**

**THIS MATTER** came on for hearing September 8, 2005, at 1:30 p.m. for an Order to Show Cause. Assistant Attorney General Ian Catlett appeared on behalf of the Government. Respondents were represented by Stephen Woodruff. At the hearing, Respondents asserted that they had a due process right to a hearing regarding voluntary departure. The Government had refused their request for voluntary departure, deciding instead to proceed with involuntary deportation proceedings. Respondents then challenged the Government’s ability to disallow a voluntary departure.

**II. BACKGROUND**

Husband and wife Respondents are both aliens as defined in 3 CMC § 4303(a). Respondents entered the Commonwealth on Non-Resident Worker Entry Permits. Respondent Damasco’s permit expired on July 1, 2001. Respondent Brana’s permit expired November 1, 2003. It is alleged that Respondents failed to comply with the requirements or conditions of their respective entries into the Commonwealth by remaining in the Commonwealth after their permits expired in violation of 3 CMC

1 § 4340(e). As a result, Petitioner initiated deportation proceedings against Respondent Brana on  
2 December 23, 2004, and against Respondent Damasco on January 20, 2005.

3 At the September 8, 2005 hearing, Respondents asserted a due process right to a hearing by the  
4 Attorney General in order to determine Respondents' eligibility for voluntary departure in lieu of  
5 deportation. Petitioner refused voluntary departure of Respondents and sought to proceed with  
6 involuntary deportation proceedings. Respondents challenged Petitioner's ability to disallow a  
7 voluntary departure under the due process requirements of the U.S. and CNMI Constitutions.  
8 Respondent Damasco separately requested that the Court delay deportation proceedings pursuant to a  
9 labor claim she filed on or about September 8, 2005.

### 10 III. DISCUSSION

#### 11 A. **The CNMI Attorney General has the sole discretion to grant or deny voluntary departure 12 to aliens facing deportation pursuant to 3 CMC § 4341(e) and (f).**

13 The Commonwealth Legislature exercises plenary power with respect to  
14 Commonwealth immigration matters, pursuant to section 503 of the Covenant. 'For  
15 reasons including the population and size disparity between the CNMI and the rest of  
the U.S. and preservation of the unique CNMI's [sic] Chamorro and Carolinian ethnic  
and cultural heritage, the CNMI has been permitted to exercise plenary authority over  
its own immigration.'

16 *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 8, 6 N.M.I. 36, 38 (footnote omitted) (*quoting Tran*  
17 *v. Commonwealth*, 780 F. Supp. 709, 713 (D.N.M.I. 1991) *aff'd in an unpublished opinion*, 993 F.2d  
18 884 (9th Cir. 1993)). "With respect to Commonwealth immigration matters, the Commonwealth is  
19 sovereign and this Court is duty-bound to apply only the immigration laws of the Commonwealth."  
20 *Id.* at ¶ 8, 6 N.M.I. at 39 (footnote omitted).

21 "In the Commonwealth, deportation proceedings are governed by the terms of the  
22 Commonwealth Entry and Deportation Act of 1983, 3 CMC §§ 4301-4382. Sections 4341 and 4343  
23 govern deportation procedures at the hearing stage and set the terms for voluntary departure." *Id.* at  
24 ¶9, 6 N.M.I. at 39. Therefore, Respondents' request for voluntary departure rests on the express  
25 language of 3 CMC § 4343, wherein it is expressly recognized that the grant or denial of the relief of  
26 voluntary departure is at the "discretion" of the Attorney General, "prior to actual commencement of  
27 the hearing on the order to show cause." 3 CMC § 4343.

1 By contrast, the role of the Superior Court is limited to determining whether the alien is  
2 deportable pursuant to 3 CMC § 4340. 3 CMC § 4341(e) and (f); *see also Sagun*, 1999 MP 19, 6  
3 N.M.I. 36. In light of the express division of responsibilities between the Superior Court and the  
4 Attorney General’s Office in Commonwealth immigration law, this Court cannot interfere with the  
5 statutorily mandated discretion of the Attorney General’s Office to grant or deny voluntary departure,  
6 and will not do so in this case.

7 **B. The Attorney General’s discretionary refusal to grant Respondents’ request for voluntary  
8 departure does not violate Respondents’ due process rights.**

9 As explained *supra*, the Commonwealth immigration law provides the CNMI Attorney General  
10 with the ultimate discretion in determining whether to grant or deny voluntary departure. A plain  
11 reading of 3 CMC § 4343 reveals no requirement that the alien, against whom deportation proceedings  
12 are commenced receive a hearing with the Attorney General. 3 CMC § 4343.

13 Federal case law discussing an equivalent federal immigration statute granting such  
14 discretionary authority similarly provides no such procedural interludes. For example, in *Turcotte*, 12  
15 I. & N. Dec. 206 (U.S. Dep’t Justice 1967), the Board of Immigration Appeals noted voluntary  
16 departure is not an automatic act conditioned solely upon a showing of statutory eligibility, rather, it  
17 is a privilege and a matter of grace. *United States ex rel. Exarchous v. Murff*, 265 F.2d 504 (2nd  
18 Cir.1959) held that although the petitioner alien had made a showing of good moral character, the  
19 ultimate decision whether or not to allow a deportable alien to leave the country voluntarily is  
20 committed to the discretion of the Attorney General. The same result is found in numerous other cases  
21 including: *Parcham v I.N.S.*, 769 F.2d 1001 (4th Cir. 1985); *Harchenko v. I.N.S.*, 379 F.3d 405 (6th Cir.  
22 2004); *Khalaf v. I.N.S.*, 361 F.2d 208 (7th Cir. 1966); *Felzcerek v. I.N.S.*, 75 F.3d 112 (2nd Cir. 1996);  
23 *Cunanan v. I.N.S.*, 856 F.2d 1373 (9th Cir. 1988). *See also, Ali v. Ashcroft*, 366 F.3d 407 (6th Cir.  
24 2004) (failure to grant discretionary relief, such as voluntary departure, to an alien does not amount to  
25 a deprivation of liberty interest subject to due process protection).

26 Here, Respondents have allegedly overstayed their entry permits. Respondent Damasco’s entry  
27 status has allegedly been delinquent for more than four years. Similarly Respondent Brana has  
28 allegedly remained in the CNMI beyond his permit expiration for nearly two years. In accordance with

1 3 CMC § 4340(e) (which provides as grounds for deportation of an alien, “failure to comply with the  
2 requirements or conditions of his entry”), Petitioners initiated deportation proceedings against  
3 Respondents. Respondents provided no basis, other than general constitutional due process principles,  
4 to convince the Court that it should ignore the discretionary authority granted the Attorney General’s  
5 Office in deciding whether to grant voluntary departure. However, Respondents’ reliance on due  
6 process principles to challenge the Attorney General’s Office’s discretionary authority is misplaced.  
7 Process, in the form of a hearing, is only provided for in determining whether Respondents are  
8 deportable. *See supra*; 3 CMC § 4341(e) and (f).

9 **C. Respondent Damasco’s labor claim will not stay her deportation proceedings.**

10 Turning to the issue of whether deportation proceedings should be stayed against Respondent  
11 Damasco, pending the outcome of her labor claim, the Commonwealth Supreme Court has addressed  
12 this issue several times, finding that the Superior Court has jurisdiction over deportation matters even  
13 if there are pending claims before the Division of Labor. *See Office of the Attorney General v. Rivera*,  
14 3 N.M.I. 436 (1993). Further, “filing of [a] wage claim in the Division of Labor [does] not divest  
15 jurisdiction of the trial court over the deportation matter.” *Id.* at 442. As such, deportation proceedings  
16 will not be stayed. Rather, if a deportation order issues pursuant to deportation proceedings, the order  
17 may be stayed pending the resolution of the Division of Labor claim. *Id.* at 444-45.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Respondents’ request that the Court overrule the Attorney General’s  
20 decision regarding voluntary departure is DENIED. Respondent Damasco’s motion to Stay  
21 proceedings is also DENIED.

22 It is further ordered: the hearing on the Petition for an order to show cause why Respondents  
23 should not be deported shall be held on October 27, 2005, at 1:30 p.m.

24

25 **So ORDERED this 19th day of October 2005.**

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/s/ \_\_\_\_\_  
David A. Wiseman, Associate Judge