

8-24-99

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

OFFICE OF THE ATTORNEY
GENERAL and DIVISION OF
IMMIGRATION SERVICES,

Petitioners,

v.

CHI, MIN YUE,

Respondent.

Civil Action No. 98-1248B
Civil Action No. 98-1147B

ORDER OF DEPORTATION

OFFICE OF THE ATTORNEY
GENERAL and DIVISION OF
IMMIGRATION SERVICES,

Petitioners,

v.

ALICIA FABRICANTE,

Respondent.

I. PROCEDURAL BACKGROUND

This matter came before the Court in former Courtroom A on Petitioners' petition for order to show cause. Robert Goldberg, Esq. appeared on behalf of Petitioners. Joe Hill, Esq. appeared on behalf of Respondents. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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FOR PUBLICATION

Goldberg
Hill

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II. FACTS

In October 1998, the Attorney General and Division of Immigration Services (“Petitioners”) filed a Petition and Order to **Show Cause** against Respondent Alicia Fabricante (“Respondent”) alleging that Fabricante had overstayed her non-resident worker entry permit which expired in September 1992.

In November 1998, Petitioners filed another Petition and Order to Show Cause against Respondent Chi Min Yue (“Respondent”) alleging that Chi had overstayed her thirty-day business permit which expired in November 1995.

On December 1, 1998, a status conference was held in both matters. At this time, neither Respondent contested the fact that their respective overstay was a viable basis for their deportability. Instead, Respondents contended that since they now have United States citizen children, such status entitles them to be voluntarily deported. In the alternative, Respondents contended that the Court has the authority to grant the relief they seek since Commonwealth judges act in similar capacity to federal immigration judges. The Court ordered the parties to brief the issues put forth by Respondents and **and** set a hearing date of January 5, 1999, for oral **argument**.^{1/} Following oral argument, the Court took the matter under submission. In the interim, however, Petitioners filed an appeal **in a** different **case** challenging the Court’s authority and jurisdiction to grant the relief requested by the Respondents in this **case**.^{2/} As such, the Court ordered this matter to remain under submission until the Supreme Court issues a **ruling** on the appeal. Petitioners then filed a Petition for Writ of Mandamus seeking an order commanding this Court to deport Respondents. The Supreme Court denied the writ but urged this Court to issue a ruling in this matter.

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^{1/}On December 17, 1998, the Court ordered the *Fabricante* and *Chi* cases consolidated for purposes of briefing and hearings.

^{2/}Office of the Attorney General v. Sagun, Civil Action No. 98-1022B, Appeal No. 98-041.

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III. ISSUES

1. Whether the fact that a deportable alien parent has a United States citizen child is relevant to the immigration status of that alien parent?

2. Whether the Court has the authority to grant voluntary departures to deportable aliens?

Iv. ANALYSIS

A. Immigration status

In opposing voluntary deportation, Petitioners contend that the mere fact that a deportable alien parent gives birth to a child in the CNMI has no bearing on the immigration status of that alien parent.

The Court finds that a lengthy analysis on this issue is not required since it is a settled issue in the Commonwealth that the status of citizen children is irrelevant to the deportability of the parents. Office of the Attorney General v. Lieava, 2 CR 926, 929-930 (D.N.M.I.App.Div. 1986). Therefore, the fact that Respondents Chi and Fabricante bore children in the CNMI is irrelevant for purposes of determining whether Respondents themselves are deportable.

B. Voluntary departure

In opposition to Respondents' request for voluntary departure, Petitioners contend that the Court is without authority to grant such relief to deportable aliens since the authority to do so rests solely with the Executive Branch via the Attorney General. Respondents, however, contend that CNMI Superior Court judges can grant requests for voluntary departure since they exercise equivalent adjudicatory functions as immigration judges under the federal immigration system.

As suggested by Petitioners, two CNMI statutes appear to be relevant to the Court's inquiry. The first is 3 CMC § 4341, which provides the statutory framework for the commencement of deportation proceedings, as well as for hearings on and dispositions of petitions to show cause. This statute states in relevant part that:

“Any time prior to actual commencement of the hearing on the order to show cause the respondent may be permitted to voluntarily depart the Commonwealth at the discretion of the Attorney General . . .”.

3 CMC § 4343. Thus, although it is clear that the Attorney General has the discretionary authority to grant pre-hearing voluntary departures, 3 CMC § 4343 is silent as to whether the Court has similar

1 authority. The second statute at issue is 3 CMC § 4343, which provides for pre-hearing voluntary
2 **departures**. It provides in pertinent part that:

3 “A hearing on the **petition** to show cause shall be before the Commonwealth Trial Court. A
4 determination of deportability shall be made if there is clear and convincing evidence that the
5 facts alleged as grounds for deportation is true . . . ”.

6 3 CMC § 4341(e). Subsection **(f)** continues:

7 “If the trial court makes a determination of deportability, an order of deportation shall be
8 entered and the respondent shall forthwith be deported.”

9 3 CMC § 4341**(f)**. In other words, the Court must enter an order of deportation if a case of
10 **deportability** is proven by clear and convincing evidence. However, much like the conclusion
11 **regarding** § 4343 above, the language of § 4341(e) or **(f)** is silent as to whether the Court can **grant**
12 a respondent’s request for voluntary departure once the hearing on the order to show cause has
13 **commenced**.

14 Still, the Court does not end its inquiry here. As noted by Respondents, the Court has
15 **previously** ordered that a non-resident alien be allowed to voluntarily depart the Commonwealth upon
16 **stipulation** by the Attorney General even after the Court found the alien **deportable**.^{3/} Thus, it seems
17 **entirely** contradictory for Petitioners to suggest that the Court is without authority to grant voluntary
18 departures here, yet seek the Court’s approval for similar relief in other cases of proven deportability.

19 As a final area of discussion, the Court looks to federal immigration case law which both the
20 **Court** and Petitioners have used in the past as a guide to interpreting CNMI immigration law. The
21 **analogous** federal statute to 3 CMC § 4343 is 8 U.S.C. § 1254(e), which provides the United States
22 Attorney General **with** discretionary authority to permit a deportable **alien** to voluntarily depart the
23 United States. Despite the discretion provided to the Attorney General, federal immigration judges
24 also have the discretion to grant requests by deportable aliens for voluntary departure under this
25 statute. See Hernandez-Luis v. INS, 869 F.2d 496 (9th Cir. 1989).

26 ^{3/}See Attorney General v. Cabusao, C.A. No. 96-366 (Stipulation re Motion for Stay/Dismissal and
27 Relief from Order of Deportation/Order, dated June 13, 1997); Attorney General v. Tobias, C.A. No.
28 97-1 144 (Stipulation Motion for Stay/Dismissal **and** Relief **from** Order of Deportation/Order, dated
December 19, 1997).

1 While cases involving **voluntary** departure have routinely been resolved in the Commonwealth
2 Superior Court, the Government now seeks to challenge the Court's authority to grant such relief
3 where circumstances warrant it.' The loss of such discretionary authority may not only restrict the
4 ability of the Court, but that of the Attorney General as well, to expeditiously resolve immigration
5 cases. If it is found that the Court has no authority to grant voluntary departures, it could not do so
6 even if the Attorney General agrees to such relief. This issue will reappear frequently and should be
7 resolved by the CNMI Supreme Court on appeal. If the Court grants a voluntary departure to
8 Respondents and the ruling is **appealed** by Petitioners, there will be no one to litigate the issue on
9 appeal. This is precisely what occurred in the *Sagun* case, cited above. Conversely, if the Court
10 orders the Respondents deported, they will have a vested interest in pursuing a resolution of this
11 matter on appeal.

12 V. CONCLUSION

13 For the reasons stated above, Respondents Chi Min Yue and Alicia Fabricante are ordered to
14 be deported from the Commonwealth on September 24, 1999, or as soon thereafter as the Petitioners
15 **can** make the necessary arrangements.

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17 So ORDERED this 24 day of August, 1999.

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20 TIMOTHY H. BELLAS, Associate Judge