

**THE GOVERNOR and The Office  
of Immigration and Naturalization  
of the Commonwealth of the  
Northern Mariana Islands**

**vs.**

**Erlinda V. BONIFACIO**

**Appellate No. 81-9007  
Civil Action No. 81-09  
District Court NMI  
Appellate Division**

**Decided October 12, 1983**

**1. Jurisdiction - Primary**

The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question arising in the proceeding before the court; a court should not act upon any subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer.

**2. Jurisdiction - Primary**

Where trial court ruled as a matter of law that party's application for permanent resident status was a nullity, before Office of Immigration properly reviewed the application, the doctrine of primary jurisdiction requires that the trial court's decision be reversed and the Office of Immigration be directed to act upon the application.

FILED  
Clerk  
District Court

OCT 12 1983

For The Northern Mariana Islands  
by [Signature]  
(Attorney at Law)

IN THE DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS  
APPELLATE DIVISION

THE GOVERNOR and THE OFFICE ) D.C.A. No. 81-9007  
OF IMMIGRATION AND )  
NATURALIZATION OF THE ) (C.T.C. No. 81-09)  
COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS, )

Plaintiff-Appellee, )

OPINION

vs. )

ERLINDA V. BONIFACIO, )

Defendant-Appellant. )

Before: LAURETA and GILLIAM, District Judges and SOLL\*,  
Designated Judge

LAURETA, District Judge:

I. STATEMENT OF THE CASE

The Defendant-Appellant, Erlinda V. Bonifacio, appeals  
an order of the Commonwealth Trial Court denying her motion for a  
stay of deportation pending consideration of her application for  
permanent resident status under the laws of the Commonwealth of

\*Honorable Herbert D. Soll, Commonwealth Trial Court Associate  
Judge sitting by designation pursuant to 48 U.S.C. § 1694b.

1 the Northern Mariana Islands.

2 Appellant alleges: (1) that she was denied the effective  
3 assistance of counsel in proceedings before the trial court; (2)  
4 that the government is estopped from refusing to consider her  
5 application for permanent resident status; and (3) that the trial  
6 court usurped the function of the executive branch by denying her  
7 the right to an administrative hearing prior to any judicial  
8 review and decision.

9 For the reasons stated herein, we reverse the trial  
10 court's decision.

11  
12 **II. FACTS**

13 On January 15, 1981, the Governor and the Office of  
14 Immigration and Naturalization initiated proceedings in the  
15 Commonwealth Trial Court seeking the deportation of Appellant  
16 Bonifacio on the grounds that Bonifacio was an alien and not a  
17 citizen or legal resident of the Commonwealth. The trial court  
18 ordered that Bonifacio appear before the court on January 27, 1981  
19 to show cause why she should not be deported.

20 On January 27, 1981, Bonifacio appeared personally at  
21 the hearing and was represented by a trial assistant. At the  
22 hearing the trial assistant stipulated that Bonifacio was indeed  
23 deportable and that an order could issue setting a deportation  
24 date. At no time during the course of the hearing was any refer-  
25 ence made to Public Law No. 5-11, the statute under which Bonifacio  
26 could apply for permanent resident status.

1           On January 29, 1981, the trial court ordered Bonifacio  
2 to depart the Commonwealth on or before February 10, 1981. When  
3 Bonifacio failed to leave the Commonwealth as ordered the govern-  
4 ment secured a warrant of arrest and Bonifacio was brought before  
5 the Court on April 22, 1981, at which time she was represented by  
6 a licensed attorney for the first time. At this hearing the court  
7 was advised by counsel for Bonifacio that she was eligible for  
8 permanent resident status pursuant to Public Law 5-11. Conse-  
9 quently, the trial court continued the matter until May 4, 1981.

10           On April 23, 1981, Public Law No. 2-17 was signed into  
11 law and Public Law No. 5-11 was repealed as a result thereof.

12           On April 24, 1981, one day after the adoption of Public  
13 Law No. 2-17, Bonifacio filed her application for permanent resi-  
14 dent status with the Immigration Office, however, the application  
15 was never acted upon.

16           On May 4, 1981, the trial court rejected the Appellant's  
17 argument that Bonifacio was denied her right to an administrative  
18 determination before the Office of Immigration or that the govern-  
19 ment was estopped to refuse to consider her application for  
20 permanent resident status. The trial court ruled, in pertinent  
21 part, as follows:

22           Since the effective date of [P.L. 2-17] was  
23 upon the approval of the Governor... the  
24 Court finds as a matter of law that the  
25 application of the defendant was filed after  
26 the effective date of Public Law 2-17 and is  
a nullity, does not require any further action  
by the executive branch, and therefore does  
not give defendant any basis upon which to  
claim permanent residence status.

1           The Appellant thereafter requested a stay of  
2 execution of the deportation order but the trial court denied the  
3 stay. Subsequently, however, a stay was granted by the Presiding  
4 Judge of the Appellate Division of the District Court. The  
5 present appeal followed accordingly.

6  
7                           III. DISCUSSION

8           Without, at this time, ruling on the merits of Appellant's  
9 first two allegations, we turn to the question of whether the  
10 trial court usurped the function of the executive branch by  
11 denying Appellant the right to an administrative hearing prior to  
12 any judicial review and decision.

13           [1] Appellant correctly asserts that where a conflict  
14 arises involving the relationship between judicial functions and  
15 the functions of executive agencies, courts have developed the  
16 doctrine of "primary jurisdiction." This doctrine is explained  
17 in 3 Davis, Administrative Law Treatise, § 19.01 in the following  
18 terms:

19                           The precise function of the doctrine of  
20 primary jurisdiction is to guide a court  
21 in determining whether the court should  
22 refrain from exercising its jurisdiction  
23 until after an administrative agency has  
24 determined some question or source aspect  
25 of some question arising in the proceeding  
26 before the court...

                          \* \* \*

27                           The principal reason behind the doctrine is  
28 recognition of the need for orderly and  
sensible coordination of the work of agencies  
and or courts... [A] Court should not act  
upon any subject matter that is peculiarly  
within the agency's specialized field without  
taking into account what the agency has to offer...

1 Commenting on the doctrine of primary jurisdiction and the  
2 corresponding exhaustion rule, the United States Supreme Court in  
3 Aircraft and Diesel Equipment Company v. Hirsch, 311 U.S. 752,  
4 67 S.Ct. 1493, 91 L.Ed. 1796 (1946) stated the following:

5 The doctrine, whenever applicable, does  
6 not require merely the initiation of  
7 prescribed administrative procedures. It  
8 is one of exhausting them, that is, of  
9 pursuing them to their appropriate con-  
10 clusion and, correlatively, of awaiting  
11 their final outcome before seeking  
12 judicial intervention.

13 The very purpose of providing either an  
14 exclusive or an initial and preliminary  
15 administrative determination is to secure  
16 the administrative judgment either, in  
17 the one case, in substitution for judicial  
18 decision or, in the other, as foundation  
19 for or perchance to make unnecessary later  
20 judicial proceedings. Where Congress has  
21 clearly commanded that administrative judg-  
22 ment be taken initially or exclusively,  
23 the courts have no lawful function to anti-  
24 cipate the administrative decision with  
25 their own, whether or not when it has been  
26 rendered they may intervene either in pre-  
sumed accordance with Congress' will or  
because, for constitutional reasons, its  
will to exclude them has been exerted in an  
invalid manner. To do this not only would  
contravene the will of Congress as a matter  
of restricting or deferring judicial action.  
It would nullify the congressional objects  
in providing the administrative determination.  
91 L.Ed at 1806

27 In the present case the Legislature has clearly expressed  
28 its will in Public Law No. 5-11, Public Law No. 2-17 (repealing  
29 Public Law No. 5-11), Trust Territory Code (TTC) Title 17 Adminis-  
30 trative Law Act, and TTC Title 33 Immigration Control, all of  
31 which commit the function of deciding cases involving applications

1 for permanent resident status in the Chief of Immigration of the  
2 executive branch of government.

3 [2] Bonifacio submitted her application for permanent  
4 resident status with the Office of Immigration. Her application  
5 was never officially acted upon, the Office of Immigration refusing  
6 to accept what was considered a late application. A formal denial  
7 of permanent resident status was never issued; Bonifacio's appli-  
8 cation was merely returned from the Office of Immigration, and an  
9 oral explanation given to her counsel. Thus, before a formal  
10 administrative decision had been rendered on the merits of  
11 Bonifacio's application, the trial court ruled "as a matter of law"  
12 that the application was a nullity and therefore required no  
13 further action by the executive branch. This appeal brings  
14 squarely into focus the doctrine of primary jurisdiction in the  
15 context of the separation of powers between the judiciary and the  
16 executive branch of government.

17 This case presents an appropriate opportunity to deli-  
18 neate the separation of powers between our executive and judicial  
19 branches, and to illustrate the vital policy considerations which  
20 engendered the primary jurisdiction and exhaustion doctrines.

21 In Ideal Basic Industrices, Inc. v. Morton, 42 F.2d 1364  
22 (9th Cir. 1976) the Ninth Circuit properly summarized the rationale  
23 underlying the exhaustion doctrine by citing with approval the  
24 analysis contained in McCart v. United States, 395 U.S. 185, 194,  
25 89 S.Ct. 1657, 23 L.Ed.2d 194 (1969):

26 ///

1 ...[i]t is normally desirable to let the  
2 agency develop the necessary factual  
background upon which decisions should be  
based...

3 The administrative agency is created as a  
4 separate entity and invested with certain  
powers and duties. The courts ordinarily  
5 should not interfere with an agency until  
it has completed its action, or else has  
6 clearly exceeded its jurisdiction. As  
Professor Jaffe puts it, "[t]he exhaustion  
7 doctrine is, therefore, an expression of  
executive and administrative autonomy."  
8 42 F.2d 1364 at 1370-71

9 The trial court summarily dismissed a hearing on the  
10 merits of Appellant's application and ruled as a matter of law  
11 that the application was a nullity. Appellant asserts that by so  
12 ruling the trial court usurped the function of the executive branch  
13 thereby preventing any possibility of an administrative determi-  
14 nation.

15 We hold that while the act of the trial court was not  
16 intended to divest the Office of Immigration of its responsibility,  
17 it served to accept an imprecise practice and substandard discharge  
18 of responsibility from the administrative office. By so doing,  
19 the trial court precluded any possibility of an administrative  
20 determination by substituting its own decision for that of the  
21 administrative agency expressly charged by the Legislature with  
22 the authority to consider such matters.

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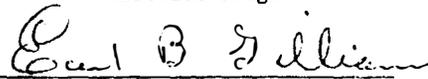
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1           The purpose of the principles of primary jurisdiction and  
2 exhaustion in the context of the separation of powers between the  
3 judiciary and the executive branch of government is to avoid the  
4 very situation which confronts this Court today. That is, the  
5 decision of the trial court to decide the merits of Appellant's  
6 application for permanent residency by advocating a "rule of law"  
7 which condones and encourages the Office of Immigration's failure  
8 to adequately perform its duty to give due process hearings and be  
9 accountable with clear findings supporting its decisions. Such a  
10 rule of law not only ignores the contemplation of executive and  
11 administrative autonomy as provided for in Public Law No. 5-11 and  
12 Public Law No. 2-17, but also serves to perpetuate a non-feasance  
13 of our legislated administrative law system.

14           For these reasons, we reverse the trial court's decision,  
15 and remand with instructions to direct the Office of Immigration  
16 to act upon the merits of Appellant's application for permanent  
17 residence status.

18           DATED this 12th day of October, 1983.

19  
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21             
22           Alfred Laureta  
              District Judge

23  
24             
25           Earl B. Gilliam  
              District Judge

26             
              Herbert D. Soll  
              Designated Judge