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

SHI YUNXIAO, **Petitioner,** **v.** **DONGHUI JEWELRY GROUP CORPORATION,** **Respondent,** **DEPARTMENT OF LABOR,** **Agency.**	**CIVIL ACTION NO. 23–0153** **DOL CASE NO. 19–038** **SECRETARY OF LABOR APPEAL NO. 23–003** **ORDER GRANTING PETITION TO SET ASIDE DEPARTMENT OF LABOR'S FINAL AGENCY DECISION AND REMANDING FOR EVIDENTIARY HEARING**

I. INTRODUCTION

THIS MATTER came before the Court on Petitioner Shi Yunxiao's ("Employee") request to reverse the Department of Labor's ("DOL") Final Agency Decision and Order of Dismissal and remand the case to the Administrative Hearing Office ("AHO") for an evidentiary hearing against Respondent Donghui Jewelry Group Corporation ("Employer"). As the parties did not request a hearing under Rule 6(c) of the Commonwealth Rules of Procedure for Administrative Appeals, *see* NMI R. P. ADMIN. APP. 6(c), the Court issues its decision based on the written arguments submitted in the briefs and the administrative record designated by the parties pursuant to Rule 4. *See* NMI R. P. ADMIN. APP. 4.

II. BACKGROUND

In 2019, the Employee filed a pro se complaint against the Employer, alleging unpaid wages, wrongful termination, unsafe work conditions, as well as intimidation and harassment claims. The

Employee amended his complaint twice; his attorney filed the Second Amended Complaint on April 22, 2022. (Pet'r's Second Am. Compl.)

The investigative arm of DOL determined that the Employee was owed approximately $14,000 in wages and issued a Determination and Notice of Violation ("Determination"). On March 5, 2020, the AHO denied the Employee's request to appear remotely. (AHO's Order.) The AHO explained that "[c]omplainants who have exited the [Commonwealth] do not typically appear telephonically or through videoconferencing, [although] the Administrative Hearing Office has conducted hearings [via videoconferencing] for claims filed in Rota and Tinian." (*Id.*) The AHO further stated that conducting a remote hearing in this case would present additional challenges, including administering oaths remotely, assessing the credibility of Employee's testimony, and ensuring the integrity of testimony by preventing external influences. (*Id.*) The AHO also noted Employer's right to confront the accuser and concluded that "the above-mentioned alternatives are not viable." (*Id.*) Given the COVID-19 pandemic and resulting travel restrictions, the AHO took the matter off calendar, noting that requiring the Employee's physical presence in the Commonwealth would pose an undue hardship. (*Id.*)

On March 16, 2021, a year later, the AHO ordered the parties to be physically present and testify within the Commonwealth (AHO's Order Requiring Party Presence & Testimony to be Made within the CNMI.) The AHO reiterated that "there is no [applicable] rule or regulation that allows the AHO to take testimony from a witness located outside the Commonwealth. (*Id.* at 2.) However, the AHO vacated the hearing, finding that: (1) the Employee established good cause for not returning due to intimidation and threats of violence by the Employer; (2) the COVID-19 public health emergency posed substantial health risks to the Employee's travel to Saipan; and (3) financial hardship, including the costs of quarantine and testing, created an additional burden. (*Id.* at 3.) The AHO also found that the Employee had not abandoned his claim and had remained in contact with

the AHO. (*Id.*) Dismissal under NMIAC § 80–20.1–485(b) was therefore denied, and a status conference was scheduled to address a future hearing date. (*Id.*)

On May 6, 2022, the AHO issued an Order to Show Cause ("OSC") after reviewing the complaint and finding several deficiencies. (AHO's OSC.) One such deficiency was the failure to specify the period of unpaid work and the number of hours worked. Additionally, the AHO questioned the inclusion of breach of contract and constructive discharge claims, noting that these claims are based on common law principles and appeared to be beyond the AHO's jurisdiction. (*Id.* at 1.) As a result, on June 15, 2022, the AHO dismissed the breach of contract and constructive discharge claims for lack of subject matter jurisdiction. ("AHO's June 2022 Order") (AHO's Order Dismissing Breach of Contract & Constructive Discharge Claims 1.) The AHO reasoned that these claims fell outside its statutory authority and criticized previous decisions that had improperly expanded its jurisdiction. (*Id*. at 2–3.)

On October 4, 2022, the AHO issued a scheduling order setting the administrative hearing for February 22, 2023, following multiple continuances due to the COVID-19 pandemic. (AHO's Order Cont. Hr'g.)

At the February 2023 hearing, neither party was personally present, prompting the AHO to issue an OSC as to why the case should not be dismissed. The Employee requested reconsideration of the AHO's prior denial of remote appearance, citing manifest injustice and a denial of due process. Conversely, the Employer moved to dismiss the case, arguing that the Employee failed to establish good cause for non-appearance and had delayed the proceedings, causing undue financial strain on the Employer.

On May 16, 2023, the AHO denied the Employee's reconsideration request on timeliness grounds. ("AHO's May 2023 Order") (AHO's Order of Dismissal 4.) The AHO acknowledged its discretion to conduct remote hearings but reiterated that such accommodations were typically limited

to parties in other islands within the Commonwealth. (*Id.* at 3.) Additionally, the AHO further noted its significant efforts to ensure procedural fairness, including scheduling hearings based on the party's availability, granting multiple continuances, and providing ample notice. (*Id*. at 3–4.)

The AHO determined that the Employee failed to establish good cause for his absence given that air travel from Japan to Saipan was available, and the public health emergency was set to expire on May 11, 2023. (*Id.* at 5.) The AHO rejected the Employer's argument that travel costs were prohibitive and exceeded the amount of damages he claimed. (*Id.*) Pursuant to NMIAC § 80–20.1–485(b), the AHO dismissed the case for abandonment. (*Id.*)

The Employer appealed the AHO's June 2022 Order and AHO's May 2023 Order. On July 7, 2023, the Secretary of Labor issued a Final Agency Decision, affirming the AHO's May 2023 Order in its entirety. The decision adopted the AHO's legal reasoning in full, including the dismissal of the breach of contract and constructive discharge claims and the findings that the Employee failed to demonstrate just cause for non-appearance at the February 22, 2023 hearing. (Sec'y of Dep't of Labor's Final Agency Dec. 7.) On August 3, 2023, the Employee timely petitioned for judicial review of the Final Agency Decision. (Pet. for Judicial Review of Final Agency Dec. Entered by Dep't of Labor.)

III. LEGAL STANDARD

A court's jurisdiction to review an agency action arises from Commonwealth Code. *See* 1 CMC § 9112(b).[1] Judicial review of final agency decisions in contested case proceedings under the Administrative Procedures Act ("APA") is governed by the Commonwealth Rules of Procedure for Administrative Appeals. *See generally* NMI R. P. ADMIN. APP.; *see also* 1 CMC §§ 9101–15. The Court has the authority to review properly appealed final decisions and must "decide all relevant

[1] "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review . . . in the Commonwealth Superior Court." 1 CMC § 9112(b).

questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." *See* 1 CMC § 9112(f).

To invoke judicial review, there must first be an "agency action." *See* 1 CMC § 9112(b). The APA defines "agency" as "each authority of the Commonwealth government, whether or not it is within or subject to review by another agency." *See* 1 CMC § 9101(b). "Agency action" includes "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 1 CMC § 9101(c). For an action to be "final" and subject to judicial review, it must (i) mark the consummation of the agency's decision-making process, and (ii) determine rights or obligations, or result in legal consequences. *See Cody v. N. Mar. I. Ret. Fund*, 2011 MP 16 ¶ 18. In reviewing agency action, the Court reviews the whole record or those parts of it cited by a party, giving due consideration to the rule of prejudicial error. *See* 1 CMC § 9112(f)(2)(vi).

Agency decisions are reviewed under the "arbitrary and capricious" standard. *See Pac. Sec. Alarm, Inc. v. Commonwealth Ports Auth.*, 2006 MP 17 ¶ 14 (citing *Wileman Bros. & Elliott, Inc. v. Espy*, 58 F.3d 1367, 1374 (9th Cir. 1995)); *see also* 1 CMC § 9112(f)(2)(i). "[T]he scope of review . . . is narrow and [the Court] is not to substitute its judgment for that of the agency." *Pac. Sec. Alarm*, 2006 MP 17 ¶ 14 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). A decision is arbitrary and capricious if it is a "willful and unreasonable action without consideration or in disregard of facts or without determining principle." *In re Blankenship*, 3 NMI 209, 217 (1992), reaffirmed in *Pac. Sec. Alarm*, 2006 MP 17 ¶ 14 (citing Black's Law Dictionary (5th ed. 1979)). It is also deemed arbitrary and capricious if the agency "has entirely failed to consider an important aspect of the problem." *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 45 n.33 (1993), reaffirmed in *J.G. Sablan Rock Quarry, Inc. v. Dep't of Pub. Lands*, 2012 MP 2 ¶ 45 (quoting *Arkansas v. Oklahoma*, 503 U.S. 91, 113 (1992)).

The APA authorizes the reviewing courts to set aside agency action that is "[a]rbitrary, capricious, an abuse of discretion, or otherwise not [in] accordance with law[.]" 1 CMC § 9112(f). An agency action may be set aside if it is "[c]ontrary to constitutional right, power, privilege, or immunity," exceeds "statutory jurisdiction, authority, or limitations," or violates required legal procedures. *Id*. The Commonwealth Supreme Court has interpreted Section 9112(f) to afford deference to agency decisions. *See* 1 CMC § 9112(f)(2); *Pac. Sec. Alarm*, 2006 MP 17 ¶ 14. However, no deference is given if the agency's interpretation is plainly unreasonable. *See Triple J Saipan, Inc. v. Muna*, 2019 MP 8 ¶¶ 16, 28.

An agency action is deemed arbitrary if it "relied on factors the Legislature has not intended it to consider, failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence . . ., or [provided reasoning] . . . so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Pac. Sec. Alarm*, 2006 MP 17 ¶ 14 (citing *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43). While the reasonableness is the defining test, no deference is given to an agency's interpretation if it is plainly unreasonable. *See Pac. Sec. Alarm*, 2006 MP 17 ¶ 12 (citing *In re San Nicolas*, 1 NMI 329, 333–5 (1990)).

IV. DISCUSSION

A. DOL Jurisdiction Over Foreign Worker Employment Claims

1. DOL's Enabling Statute

To determine DOL's jurisdiction over foreign national workers' labor claims, the review begins with the relevant parts of its enabling statute. In interpreting statutes, the court's primary objective is to determine and implement the intent of the legislature and implement that intent. *In re Commonwealth of the N. Mariana Islands*, 2015 MP 7 ¶ 11 (internal citations omitted). If the intent of the legislature is apparent from the face of the statute and the plain language of the statute is clear and unambiguous, a court must apply the statute as written. *See id.* However, when a provision is not

entirely clear, a court may review the statutory scheme as a whole to determine legislative intent. *See Torres v. Commonwealth Utils. Corp*., 2009 MP 14 ¶ 20. Legislative history may also be considered if the statute's plain language is unclear or ambiguous. *In re Commonwealth of the N. Mariana Islands*, 2015 MP 7 ¶ 11.

The broad language describing DOL's adjudication authority—particularly through the AHO—demonstrates that the agency has substantial jurisdiction to adjudicate foreign national workers' ("FNW") claims under its enabling statute. Specifically, DOL may adjudicate complaints from "[a]ny foreign national worker who is aggrieved by the failure of [their] employer to comply with an approved employment contract." 3 CMC § 4941. The term "foreign national worker" is defined as "a person. . . who entered the [Commonwealth] as a nonimmigrant for the declared purpose of being employed in the Commonwealth." 3 CMC § 4911(f).

Under the statute, the "Approved Employment Contract" generally means "a written contract between a foreign national worker and an employer, which has been approved by the Secretary [of DOL], specifying the terms and conditions" of employment." 3 CMC § 4911(a). However, the statutory language indicates that obtaining the Secretary's approval is not mandatory in every case, as employers "**may** apply to [DOL] for an approved employment contract." 3 CMC § 4922(b) (emphasis added). The seemingly contradictory language between these provisions is resolved by considering the cautionary language in Section 4911, which states that the definition of an Approved Employment Contract applies "**unless the context clearly indicates otherwise**." 3 CMC § 4911 (emphasis added).

Accordingly, Sections 4911(f) and 4922(b) establish two categories of approved employment contracts: (1) Contracts formally approved by the DOL Secretary through the process outlined in Section 4922; and (2) other employment contracts that, while not processed or approved by DOL, nevertheless establish the terms and conditions of employment between an FNW and an employer.

DOL's adjudicative authority is further explained in Section 4942, which grants the AHO "original jurisdiction to resolve **all matters involving alleged violations of the labor and wage laws of the Commonwealth**, including but not limited to any violation" of Sections 4911 through 4973, which govern the employment of foreign nationals. *See* 3 CMC § 4942(a) (emphasis added).

In addition, the AHO is empowered to "hear all claims of the foreign national worker or the employer in a single action" for which unasserted claims will "result in a waiver" and "bar [the] assertion [of such claims] in subsequent proceeding[s] to the fullest extent permitted by law." 3 CMC § 4942(b) (emphasis added).

In adjudicating these claims, the statute vests the hearing officer with broad authority, including the power to:

> (1) Award unpaid wages and overtime compensation, including amounts unlawfully deducted from wages or unlawfully required to be paid by a foreign national worker, and damages;
> (2) Award damages for unlawful termination of an approved employment contract and, where appropriate, damages for an employer's conduct that violates Commonwealth or federal law;
> (3) Assess liquidated damages equal to twice the sum of unpaid wages or overtime compensation in cases where a foreign national worker prevails on such claims, unless the hearing officer finds extenuating circumstances;
> (4) Determine an appropriate amount of liquidated damages where an employer's failure to pay wages or overtime is found to be willful or retaliatory;
> (5) Cancel or modify an identification card or an approved employment contract;
> (6) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;
> (7) Levy a fine of up to $2,000 for each violation of any provision of this chapter;
> (8) Issue declaratory or injunctive relief as necessary;
> (9) Award attorney's fees where appropriate, except that such fees shall not be recoverable against the Commonwealth;
> (10) Modify an umbrella permit;
> (11) Revoke umbrella permits for violations of Commonwealth law or condition their continuation to ensure compliance; and
> (12) Impose any other reasonable sanction, order, or relief necessary to effectuate Division 4, Title 3.

See 3 CMC §§ 4947(d)(1)–(11).

Additionally, "[i]f the [available] remedies are insufficient to provide a foreign national worker **the benefit of the bargain [under] the approved employment contract**, the hearing officer may grant a transfer. . . under a new approved employment contract." 3 CMC § 4947(e) (emphasis added). The provision underscores that the Legislature would not have vested DOL with such a remedy if its jurisdiction were narrowly limited to wage and hour claims.

Considering these provisions collectively, the Legislature granted DOL considerable authority to adjudicate FNW claims. Section 4941 explicitly vested the AHO with jurisdiction to hear foreign national worker claims, including breach of contract claims against employers.[2]

2. Findings and Purpose of PL 15–108 and PL 17–1

The current statutory framework authorizing DOL to adjudicate FNW claims originates from two public laws: PL 15–108, which took effect on January 1, 2008, and PL 17–1, which was approved on March 22, 2010, and made retroactive to November 28, 2009. The retroactive application of PL 17–1 corresponds with the enactment of U.S. PL 110–229, Title VII, which transferred immigration control from the Commonwealth to the federal government.

The findings and purpose section of PL 15–108 states that its provisions do not extend to "persons admitted to the Commonwealth as tourists, or to persons employed illegally, i.e. without the approval of the Department of Labor, or to those persons employing others illegally in the Commonwealth unless specific provision has been made herein." Pub. L. 15–108, § 2, at 5 (2008). Furthermore, the Legislature clarified its intent, stating that "persons illegally employing others or illegally employed [should] be prohibited from using the terms of this Act to receive or avail

[2] Public Law ("PL") 17–1 also granted FNWs the right to bypass DOL's administrative hearing process and initiate a suit in the Commonwealth Superior Court. *See* 3 CMC § 4950(a) (stating that "[a] foreign national worker [has the right to bring] a direct action in the Commonwealth courts against an employer. . . with respect to any obligation to pay wages, overtime, medical expenses, or other benefits secured by an employment contract").

themselves of a legal right or benefit." *Id.* This Act, however, does not bar any other remedy provided by law. *See id.*

The repeated use of the phrase "approved employment contract" in PL 15–108 underscores the Legislature's intent that only **valid** employment contracts may be enforced through the AHO adjudication process.

Following the enactment of U.S. PL 110–229 on November 28, 2009, the Commonwealth Legislature responded by passing PL 17–1, which took retroactive effect from the same date. Known as the Immigration Conformity Act of 2010, PL 17–1 repealed the sections of the Commonwealth Code relating to immigration functions while retaining most of the labor and employment provisions enacted by PL 15–108. *See* Pub. L. 17–1, § 1 (2010).

The Legislature explicitly acknowledged that "[U.S.] Public Law 110–229 does not ***ipso jure*** preempt the Commonwealth's labor laws," explaining that under the U.S. federal system, both state and federal governments share responsibilities in certain areas, including labor regulation. *See* Pub. L. 17–1, § 2, at 2 (2010) (emphasis in the original). The Act further states that "[t]he Federal government can regulate labor under the power to control interstate commerce and immigration. But the states remain free to regulate labor under the power to control intrastate commerce [and] under the general police power." *Id.*

With the enactment of PL 17–1, the Commonwealth affirmed that it "has all of the powers of a State in this area, as well as the powers of local self-government under the Covenant." *See id.* at 2–3. The Legislature explicitly stated that PL 17–1 is intended to amend the Commonwealth Code to reflect the federal government's assumption of immigration responsibilities. At the same time, it preserves the Commonwealth's authority to regulate labor conditions and practices to the fullest extent allowed under the Covenant, a power similar to the general police power exercised by the States.. *See id.* at 3.

Given the statutory framework established by PL 17–1 and its primary purpose of preserving the Commonwealth's authority over labor regulation, it is difficult to argue that DOL's AHO lacks jurisdiction to adjudicate FNW breach of contract or constructive discharge claims. The statutory grant of authority encompasses such claims, and had the Legislature intended to limit DOL's adjudicatory functions, it would not have used the expansive language found in PL 17–1 to define DOL's and AHO's jurisdiction.

3. Legislative History

The House Standing Committee Report on PL 17–1 reinforces the Legislature's intent to maintain the DOL's broad authority to regulate and adjudicate employment matters concerning FNW within the framework of federal immigration law. *See* H.R. Con. Res. 17–3 on H.B. 17–25 (2010).

Within two months of the Governor's approval of PL 17–1, DOL adopted revised employment regulations. Consistent with PL 17–1's delegation of broad adjudicatory authority to the AHO, the regulations affirm that AHO may adjudicate labor claims arising from "any breach of an employment contract or any breach of the undertakings in any document filed with [DOL]." NMIAC § 80–20.1–455(g). Further, AHO has possessed regulatory authority to hear claims regarding "any breach of an **approved** employment contract" since at least 2008. *See* Comm. Register, Vol. 30, No. 9, § 50.4–150(a), at 028699 (Sept. 25, 2008) (emphasis added).

4. DOL's Retrenchment

The DOL's Final Agency Decision affirming the AHO's June 2022 Order reflects a recent shift away from its prior assertion of jurisdiction over breach of contract or other common law claims following the enactment of PL 17–01. The AHO's June 15, 2022, Order and the Final Agency Decision concluded that DOL had misapplied the law and "improperly enlarged jurisdiction in violation of the separation of powers, canons of statutory construction, and general principles of administrative law." (Final Agency Dec. 3; AHO's June 2022 Order 3–4.)

DOL's current position is that the AHO may only assert jurisdiction over such claims if the Legislature expressly grants authority to adjudicate breach of contract and constructive discharge claims. In its view, the present statutory grant of adjudicating authority is insufficient. The AHO interpreted the relevant statutory language to mean that "any mention of breach of an employment contract refers to employment contracts approved by the Secretary[] prior to the federalization of immigration; since Petitioner's employment was post-federalization, the statute does not allow the AHO to adjudicate his breach of contract claims." (AHO's June 2022 Order 3.)

However, the Final Agency Decision and the AHO's June 2022 Order contradict the broad adjudicatory authority vested in the AHO by statute and the Legislature's clear intent to confer jurisdiction over FNW claims as part of the Commonwealth's exercise of self-government under its general police power over employment matters.

The statutory framework governing AHO's authority supports this conclusion. Section 4947(e) authorizes the AHO to transfer an aggrieved FNW to another employer "[i]f the other remedies are insufficient to provide the [worker] the benefit of the bargain made when entering the approved employment contract." 3 CMC § 4947(e). Moreover, under the "single action" language of Section 4942(b), a petitioner must raise all breach of contract and constructive discharge claims in a complaint before the AHO or risk losing the right to assert them in subsequent proceedings. *See* 3 CMC § 4942(b); *cf*. *Marianas Ins. Co. v. Commonwealth Ports Auth.*, 2007 MP 24 ¶ 23 (explaining that a vendor protesting a bid procurement "was not expected to simultaneously commence both a petition for judicial review and a tort action with its common law claims when the petition for judicial review alone was sufficient to resolve the dispute").

Rather than conducting a thorough analysis of the statutory framework governing the AHO's jurisdiction—including the authority to adjudicate breach of contract and common law claims—the AHO relied on general principles of administrative law to conclude that it lacked jurisdiction over

Employee's claims. However, a proper statutory analysis requires consideration of the language, purpose, and intent of the governing public laws.

PL 15–108 and 17–1, which reformed the Commonwealth's immigration and labor codes in alignment with U.S. PL 110–229, reflect the Legislature's intent to preserve the Commonwealth's self-governing authority under the Covenant, akin to the police power exercised by states. The amendments in PL 17–1 demonstrate a deliberate review of the Commonwealth's immigration, labor, and employment statutes, resulting in selective repeal, partial amendment, and retention of key provisions—including those conferring adjudicatory jurisdiction on the AHO to hear FNW claims against employers. *See* Pub. L. 17–1, § 2, at 2–4.

Even assuming arguendo that the AHO's authority is limited only to adjudicating breach of contract and common law claims arising from employment contracts approved by the Secretary before November 28, 2009—the effective date of U.S. PL 110–229—such an interpretation is inconsistent with the broad grant of adjudicatory authority conferred on the AHO through the Legislature's amendments to the Commonwealth's immigration and labor statutes under PL 17–1.

Accordingly, the Court finds no legal basis to affirm DOL's Determination that the AHO lacks jurisdiction to adjudicate the Employer's breach of contract and constructive discharge claims.

B. Employee's Request to Testify Remotely

The APA and the DOL's enabling statute do not explicitly address whether witnesses or parties may testify via videoconference or telephone from a location different from the designated hearing venue. However, the AHO has the discretion to "conduct a hearing telephonically or by video conferencing." *See* NMIAC § 80–20.1–480(b). This regulation introduces flexibility into the hearing process and implies that the hearing officer need not be physically present at the designated venue. Accordingly, the AHO has the discretion to approve a request to testify remotely, provided such discretion is exercised reasonably and in accordance with the law. The regulation does not limit the

type of hearings for which testimony via telephone or video conference is permitted and contemplates that the AHO may hold adjudication hearings, not just status conferences. At the conclusion of such hearings, the hearing officer "shall issue **findings, decisions, and orders** as are necessary **to resolve the matter**." *See id.* (emphasis added).

The labor statute empowers the AHO to adjudicate complaints filed by employees with FNW status. The regulation in NMIAC § 80–20.1–480(b) is particularly relevant given that FNWs may leave the Commonwealth before their complaints are resolved. Their departure does not nullify their complaints, as the regulation ensures that FNWs may continue to pursue their claims by testifying remotely, provided they do not abandon their claims. *See* NMIAC §§ 80–20.1–480(b), 485(b).

Under NMIAC § 80–20.1–485(b), an FNW's complaint may be dismissed if neither the party nor their representative appears at the scheduled hearing without good cause. Additionally, dismissal is proper if an FNW has left the Commonwealth for at least six months without notifying the AHO of their contact information. *See* NMIAC § 80–20.1–485(b). However, in the present case, these conditions for dismissal are not met. The Employee's attorney continued to represent him at hearings, including on February 22, 2023. Although the Employee has been absent from the Commonwealth for more than six months, the AHO had his contact information through his attorney. Rather than abandoning his claims, the Employee actively pursued them through local counsel. These facts repudiate the AHO's rationale for dismissing the complaint under Section 485(b).

The Court reviewed the AHO's reasons for denying the Employee's requests to appear remotely. The Employee consistently asserted that prohibitive travel expenses, work obligations, and fears of retaliation by the Employer constituted reasonable grounds for allowing remote testimony. Courts exercising discretion under civil procedure rules may permit remote testimony if "good cause in compelling circumstances" and "appropriate safeguards" are in place. *See* NMI R. CIV. P. 43; *see also* Fed. R. Civ. P. 43. Federal courts have found that limited financial resources, geographic

distance, employment obligations, and visa issues may constitute compelling reasons for remote testimony. *See Aoki v. Gilbert*, 2019 U.S. Dist. LEXIS 44155 at *4–5 (E.D.Cal. Mar. 18. 2019); *Matovski v. Matovski*, 2007 U.S. Dist. LEXIS 39766 at *2 (S.D.N.Y. May 29, 2007); *Dagen v. CFC Grp. Holdings Ltd.*, 2003 U.S. LEXIS 20029 at *4–5 (S.D.N.Y. Nov. 7, 2003). Courts have further determined that, with appropriate safeguards ensuring cross-examination, sworn testimony, and credibility assessments, remote testimony is permissible. *See Warner v. Cate*, 2015 WL 4645019, at *1 (E.D. Cal. Aug 4, 2015).

The Commonwealth Superior Court also has granted remote testimony under similar circumstances. *See Sarker v. Pacific Basic Ins. Co.*, Civ. No. 21–0117 (NMI Super. Ct. Oct. 7, 2024) (unpublished) (Order After Hr'g) (permitting a party to testify remotely from Bangladesh due to a visa issue preventing travel to the Commonwealth for a bench trial).

Despite this precedent, the AHO in this case imposed an unreasonably high standard for remote testimony, asserting among other things, that the Employer had a right to confront the Employee—a right applicable only in criminal cases under the confrontation clause. *See* NMI CONST. art. I. § 4(b); *see also* U.S. CONST. amend. VI. The AHO's refusal to exercise its discretion unnecessarily delayed the Employee's claims for several years. Although the AHO initially acknowledged the Employee's financial hardship and fear of retaliation, it continued to insist that it lacked authority to allow remote testimony despite NMIAC § 80–20.1–480(b) explicitly granting such authority.

The AHO's reluctance was evident in its concerns about administering oaths, assessing credibility, and preventing external influence during remote testimony. However, these concerns could have been mitigated through safeguards, such as requiring the Employee to testify via videoconference in a controlled environment. *See Sarker*, No. 21–0117 (NMI Super. Ct. Feb. 4, 2025) (unpublished) (Sua Sponte Order for Videoconf. Appearance & Connectivity Prep.) (requiring all

parties to ensure backup internet and communication options and mandating compliance with specific technological and environmental standards to avoid disruption and ensure due process during a bench trial). Moreover, these challenges are not unique to the Employee's case, as similar logistical issues arise when parties testify remotely from Rota or Tinian while the AHO is in Saipan.

While courts generally defer to agency decisions, deference is not absolute. An agency decision that misapplies a statute or rule, or lacks a reasonable basis, is arbitrary, capricious, and an abuse of discretion. *See Pac. Sec. Alarm*, 2006 MP 17 ¶ 14; *Triple J Saipan*, 2019 MP 8 ¶¶ 16, 28. After reviewing the AHO's orders, DOL's Final Agency Decision, the parties' briefs, and the legislative history of PL 15–108 and 17–1, the Court finds that DOL improperly dismissed the Employee's complaint, including his breach of contract and constructive discharge claims.

V. CONCLUSION

The Final Agency Decision is hereby set aside, and the case is remanded to the AHO of the DOL for an evidentiary hearing on all claims filed by the Employee against the Employer.

SO ORDERED, this 14th day of March 2025.

/s/
LILLIAN A. TENORIO, Associate Judge