

1 Liang v. Goldberg, Civil Action No. 99-0046, came before the Court on December 7,
2 2000, for hearing on the Motion of Defendant United States of America, to Dismiss Second
3 Amended Complaint for Injunctive, Declaratory, and Further Relief. Bruce Jorgensen appeared
4 for plaintiffs. Gretchen Wolfinger and Cindy Ferrier of the United States Office of Immigration
5 Litigation, and Assistant United States Attorney Gregory Baka appeared on behalf of the United
6 States.

7
8 Defendant bases its motion in part on the argument that it was not served within the time
9 and manner prescribed by the Federal Rules of Civil Procedure. Defendant states it was not
10 served within 120 days of the filing the original complaint and that the United States Attorney
11 General was not served as required by Rule 4(i)(1)(B). Plaintiffs contend they complied with the
12 Court's June 22nd Order permitting amendment and service of the Second Amended Complaint
13 ("2nd AC").

14
15 Plaintiffs failed to effect service of their First Amended Complaint ("1st AC") within 120
16 days of the filing of the original complaint. On April 10, 2000, the 1st AC was dismissed as to
17 the United States for failure to plead with specificity; the dismissal was without prejudice to
18 amend and re-file. (Order Granting Def. United States' Mot. to Dismiss) On June 22, 2000, the
19 Court instructed plaintiffs to file their amended complaint within 20 days and to properly effect
20 service of process. (Order Den. Pls.' Mot. to Consolidate Cases and Den. Pls.' Permission to
21 File Consolidated Compl.) The Court did not, however, explicitly grant an enlargement of time
22 in which to effect service. At the September 7, 2000 hearing on defendant Commonwealth of the
23 Northern Mariana Islands' motion to dismiss, the Court granted plaintiffs an extension of the
24 period in which to effect service, nunc pro tunc, to the time when the 2nd AC was served.
25
26

1 Accordingly, plaintiffs were granted an extension of the time for service of process and
2 appear to have complied with the Court's June 22nd Order as evidenced by the Return of Service
3 of Summons, filed on July 5, 2000, showing that Attorney General Janet Reno was served by
4 certified mail, return receipt requested. Plaintiffs have not, however, produced the return receipt
5 to further confirm service upon the United States Attorney General in light of defendant's
6 contention that service has not been effected. Accordingly, plaintiffs shall have 7 days from the
7 date of this Order to produce the return receipt or show cause why the complaint should not be
8 dismissed as to the United States for failure of service of process, pursuant to the test set forth in
9 Jordan v. United States, 694 F.2d 833 (D.C. Cir. 1982).¹

11 Further, the plaintiffs are ordered to report to the Court within 30 days of the date of this
12 order, what actions, if any, have been taken on their applications for asylum and/or torture
13 protection, which were submitted by plaintiffs to the Immigration and Naturalization Service in
14 Saipan and Hawaii and the American Consulates in Bangkok, Thailand and Manila, Philippines
15 prior to the filing of their 2nd AC on June 30, 2000, and to report every 30 days thereafter until
16

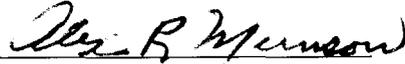
17
18
19
20
21
22
23 ¹Jordan v. United States held that where a plaintiff has failed to comply with Rule 4(d)(4) but the
24 defect is "technical," the court should not dismiss the complaint pursuant to Rule 4(j) if: (1)
25 necessary parties in the government have actual notice of the suit; (2) the government suffers no
26 prejudice from the technical defect in service; (3) there is a justifiable excuse for the failure to serve
properly; and (4) the plaintiff would be severely prejudiced if the complaint were dismissed. 694
F.2d at 836. (The provisions of Fed.R.Civ.P. 4(d)(4) and 4(j), referred to in the Jordan opinion, have
been transferred to Rules 4(i) and 4(m) respectively.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

such time as some action has been taken.

IT IS SO ORDERED.

Dated this 5th day of February, 2001.



Alex R. Munson
Judge