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Clerk
District Court

JUL 10 2003

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JACINTO A. SABANGAN, JR., et al., Plaintiffs, v. COLIN POWELL, as Secretary of State, Defendant.	Civil Action No. 02-0039 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS MOOT

On September 5, 2002, plaintiffs filed a Complaint seeking declaratory and injunctive relief that all persons born in the Northern Mariana Islands between January 9, 1978 and November 4, 1986 are U.S. citizens by birth. The action was brought pursuant to 28 U.S.C. § 2201 (declaratory judgments) and 8 U.S.C. § 1503.[1]

[1] 8 U.S.C. § 1503(a) provides:

(a) Proceedings for declaration of United States nationality. If any person who is within the United States claims a right or privilege as a national of the United States and

(continued...)

On March 3, 2003, defendant Colin Powell (hereinafter "Powell") filed a Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(1) and (6). On April 23, 2003, plaintiffs Jacinto A. Sabangan, Jr. and Esther Hae Jin Sohn filed a Memorandum in Support of a Motion for Summary Judgment and in Opposition to Defendant's Motion to Dismiss. On May 8, 2003, the defendant filed a Reply in Support of his Motion to Dismiss and an Opposition to Plaintiffs' Motion for Summary Judgment. On May 15, 2003, the plaintiffs filed a Reply to Defendant's Opposition to Plaintiffs' Motion for Summary Judgment.

On May 20, 2003, the court issued a Notice Regarding Oral Argument that informed the parties that it was the court's inclination to decide the pending motions without oral argument unless any party notified the court of its wish to be heard. Neither party indicated a desire to be heard. Therefore, the court finds defendant's Motion to Dismiss and plaintiffs' Motion for Summary Judgment suitable for decision without oral argument and relies on the pleadings filed by both parties. *See* Local Rule 7.1.a. ("Oral argument is at the discretion of the court....").

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[1](...continued)
is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28, United States Code, against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this or any other act, or (2) is in issue in any such removal proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is hereby conferred upon those courts.

8 U.S.C. § 1503(a).

AO 72
(Rev.8/82)

Upon consideration of the written arguments of counsel, defendant Colin Powell's Motion to Dismiss is GRANTED and plaintiffs Jacinto A. Sabangan, Jr. and Esther Hae Jin Sohn's Motion for Summary Judgment is DENIED as MOOT as set forth herein.

I. UNDISPUTED MATERIAL FACTS

All twenty-eight plaintiffs were all born of non-U.S. citizen parents in the Northern Mariana Islands between January 9, 1978 and November 4, 1986. Complaint ¶ 4 (Sept. 5, 2002). Plaintiffs Jacinto A. Sabangan, Jr. (hereinafter "Sabangan") and Esther Hae Jin Sohn (hereinafter "Sohn") applied unsuccessfully for U.S. passports with the Honolulu Passport Agency of the U.S. Department of State. Id. at ¶¶ 2 and 5. The Honolulu Passport Agency denied Sabangan's application in writing on June 16, 1999 and Sohn's application on August 26, 2002. Id. at Ex. A and B. Sabangan and Sohn are the only plaintiffs in the Complaint who have exhausted their administrative remedies. Id. at ¶ 5. The remaining twenty-six plaintiffs (hereinafter referred to as "plaintiffs #3 through #28") are joined in the lawsuit as permissive plaintiffs pursuant to FED. R. CIV. P. 20(a). Id. at ¶ 7.

II. APPLICABLE LEGAL STANDARDS

A. Motion to Dismiss

Defendant Powell moved to dismiss plaintiffs' claims under FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief may be granted. Dismissal is appropriate pursuant to Rule 12(b)(6) if a plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *See* Buckey v. County of Los Angeles, 968 F.2d 791, 794 (9th Cir.), *cert. denied*, 506 U.S. 999 (1992). Review is based on the

AO 72
(Rev 8/82)

contents of the complaint. Moore v. City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989). In considering a motion to dismiss for failure to state a claim, a court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. The court construes all material allegations in the light most favorable to the plaintiff. Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001). However, a court need not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *See, e.g.,* Pillsbury, Madison & Sutro v. Lerner, 31 F.3d 924, 928 (9th Cir. 1994) (internal quotation omitted).

B. Motion for Summary Judgment

Plaintiffs Sabangan and Sohn moved for summary judgment declaring that they are U.S. citizens. FED. R. CIV. P. 56 states, in part, that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

The party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the matters on record which it believes demonstrates the absence of a genuine issue of material fact. Celotex Corporation v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986).

The non-moving party must set forth by affidavit or as otherwise provided in Rule 56 specific facts showing that there is a genuine issue of material fact for trial. Kaiser Cement Corp.

AO 72
(Rev 8/82)

v. Fischbach & Moore, Inc., 793 F.2d 1100, 1103-1104 (9th Cir.), *cert. denied*, 107 S.Ct. 435 (1986).

III. DISCUSSION

The court will discuss the motions in the order in which they were filed.

A. Motion to Dismiss

Defendant Powell moved to dismiss plaintiffs' claims under FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief may be granted.

1. Lack of Subject Matter Jurisdiction

Defendant Powell argued that, pursuant to 8 U.S.C. § 1503, the court has no jurisdiction over actions by those plaintiffs who have failed to exhaust their administrative remedies or who have exceeded the statute of limitations. The court agrees.

Title 8, United States Code, Subsection 1503(a), states that a proceeding for declaration of United States nationality "...may be instituted only within five years after the final administrative denial of such right." 8 U.S.C. § 1503(a). Thus, a court lacks jurisdiction over a plaintiff in the absence of exhaustion of administrative remedies. *See* Said v. Eddy, 87 F.Supp.2d 937, 940 (D. Alaska 2000) (citing Garcia v. Brownell, 236 F.2d 356, 357 (9th Cir. 1956)).

The Complaint alleges that Sabangan and Sohn applied for U.S. passports with the Honolulu Passport Agency and both applications were denied in writing – Sabangan's on June 16, 1999 and Sohn's on August 26, 2002. Complaint ¶¶ 2 and 5 and Ex. A and B. The

AO 72
(Rev.8/82)

Complaint fails to allege the same for plaintiffs #3 through #28. There are no allegations that these plaintiffs applied for and were denied passports. Therefore, pursuant to 8 U.S.C. § 1503(a), the court lacks jurisdiction over plaintiffs #3 through #28. Accordingly, Powell's motion to dismiss for lack of subject matter jurisdiction as to plaintiffs #3 through #28 is GRANTED.

2. Failure to State a Claim

Plaintiffs Sabangan and Sohn argued that they became U.S. citizens by birth pursuant to the Section 1 of the Fourteenth Amendment[2] and § 501 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (hereinafter "COVENANT").[3] They argued that Congress intended the Citizenship

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[2] Section 1 of the Fourteenth Amendment states in full:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, §1. The first sentence of Section 1 is also known as the "Citizenship Clause" of the Fourteenth Amendment.

[3] § 501(a) of the COVENANT states:

> To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: ... Amendment Fourteen, Section 1;.... Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with the approval of the Government

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AO 72
(Rev.8/82)

Clause to apply within the Northern Mariana Islands (hereinafter "N.M.I.") because the language of § 501(a) of the COVENANT is clear and unambiguous when it states that, "the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: ... Amendment Fourteen, Section 1;...." COVENANT § 501(a). Therefore, plaintiffs argued that they are United States citizens by birth because they were born in the N.M.I. after the effective date of § 501(a).[4] Plaintiffs further argued that COVENANT § 301[5] is invalid as to them because it violates the Fifth

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[3](...continued)
of the Northern Mariana Islands and of the Government of the United States.

See "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," Act of Mar. 24, 1976, Pub. L. No. 94-241, 90 Stat. 263, *reprinted in* 48 U.S.C. § 1801 (1994) (note at 400)).

[4]

Sections 304, 501, and the other sections of the COVENANT enumerated in § 1003(b) came into full force and effect at eleven o'clock in the morning on January 9, 1978, Northern Mariana Islands local time. *See* Proclamation No. 4534, 42 Fed. Reg. 56,593 (1977).

Plaintiff Sabangan was born on November 30, 1983 and plaintiff Sohn was born on December 12, 1982.

[5]

§ 301 of the COVENANT states:

> The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are declared to be citizens of the United States, except as otherwise provided in Section 302:
>
> (a) all persons born in the Northern Mariana Islands who are

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and Fourteenth Amendments, made applicable in relevant part to the N.M.I. by COVENANT § 501(a).

Defendant argued that Congress did not intend § 501(a) of the COVENANT to confer U.S. citizenship to persons born in the N.M.I. because it set forth provisions in the COVENANT that clearly define who is entitled to U.S. citizenship. Specifically, in §§ 301, 302 (declaring intention to be a national but not a citizen of the U.S.), 303 (U.S. citizenship granted by birth in the N.M.I. upon termination of the TTPI) of Article III and, in §§ 503 (U.S. laws not applicable to the N.M.I.) and 506 (N.M.I. deemed part of the U.S. under the Immigration and Nationality Act only for limited,

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[5](...continued)

citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

AO 72
(Rev.8/82)

enumerated purposes) of Article V.[6] Defendant also argued that plaintiffs' reading of § 501(a) would render § 303 meaningless. Finally, defendant argued that the structure and legislative history of the COVENANT are clear that Article III is the only portion of the COVENANT conferring U.S. citizenship and nationality on persons born in the Northern Mariana Islands. The court agrees.

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America became effective in three stages: (1) upon enactment on March 24, 1976;[7] (2) upon establishment of the CNMI government at 11:00 a.m. on January 9, 1978; [8] and (3) upon the termination of the Trust Territory of the Pacific Islands (hereinafter "TTPI" or "Trusteeship Agreement") at 12:01 a.m. on November 4, 1986.[9] COVENANT § 1003 provides the effective dates for the various sections of the COVENANT. Section 503, among others, became effective on March 24, 1976, while §§ 304 (privileges and immunities enjoyed by N.M.I. citizens) and 501, among others, became effective on January 9, 1978. Sections 101 (N.M.I. sovereignty), 301, 302, 303, and 506 became effective on November 4, 1986.

Section 501(a) of the COVENANT makes Section 1 of the Fourteenth Amendment

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6 Article III of the COVENANT deals with citizenship and nationality matters, while Article V deals with the applicability of U.S. laws to the Northern Mariana Islands.

7 *See* Pub.L. 94-241, 90 Stat. 263, 48 U.S.C. § 1801 n.400 (1994).

8 *See supra* p. 7 n.4.

9 *See* Proclamation No. 5564, 51 Fed. Reg. 40,399 (1986).

AO 72
(Rev.8/82)

applicable to the N.M.I. "as if the Northern Mariana Islands were one of the several States." However, it does not follow that § 501(a) thereby confers U.S. citizenship on the plaintiffs, for the following reasons. First, the plain wording of § 501(a) states that Section 1 of the Fourteenth Amendment applies as if the N.M.I. were "one of the several States," not as if the N.M.I. were "in the United States." The Citizenship Clause requires that, to acquire citizenship by birth, a person must be both born or naturalized "in the United States" and be subject to its jurisdiction.[10] When § 501 was made effective on January 9, 1978, it did not deem the N.M.I. to be "in the United States" for purposes of the Citizenship Clause. Furthermore, § 503 of the COVENANT, which became effective on March 24, 1976, confirms that Congress did not consider the N.M.I. to be "part of the United States" as defined in the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(38),[11] prior to the termination of the TTPI. Section 503 provides that the laws of the United States,

> ...presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the

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[10] Generally, the Citizenship Clause does not apply of its own force to confer U.S. citizenship on persons born in U.S. territories. *See* Rabang v. I.N.S., 35 F.3d 1449, 1452 (9th Cir. 1994) (holding that birth in the Philippines during the territorial period does not constitute birth "in the United States" under the Citizenship Clause of the Fourteenth Amendment and thus does not give rise to U.S. citizenship).

[11] 8 U.S.C. § 1101(a)(38) states that, "[t]he term "United States," except as otherwise specifically herein provided, when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States." 8 U.S.C. § 1101(a)(38) (1997).

AO 72
(Rev 8/82)

> Trusteeship Agreement: (a) except as otherwise provided in Section 506,[12] the immigration and naturalization laws of the United States;....

COVENANT § 503. Because the U.S. immigration and naturalization laws do not apply in the N.M.I., except for specified purposes, it then follows that its provision, 8 U.S.C. § 1401(a), which defines nationals and citizens of the United States at birth, does not apply to persons born in the N.M.I.[13]

Next, when read together with all other relevant COVENANT provisions (i.e. §§ 301, 302, 303 of Article III and §§ 503 and 506 of Article V), plaintiffs' interpretation of § 501 would render § 303 meaningless. It is a "central tenet of [statutory] interpretation, that a statute is to be considered in all its parts when construing any one of them." Lexecon Inc., et al. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 36 (1998). Plaintiffs argued that all persons born in the N.M.I. after the effective date of § 501(a) are U.S. citizens by birth. This argument is misplaced because § 303, which confers citizenship to persons born in the N.M.I. after the termination of the TTPI, would then be completely unnecessary. The defendants argued, and the court agrees, that it is unlikely that Congress would have intended such a result. When Congress

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12 Section 506 provides that the N.M.I. would be "deemed to be a part of the United States under the Immigration and Nationality Act, as amended" for specified purposes only. *See* COVENANT § 506(a)-(d).

13 8 U.S.C. § 1401(a) states that:

> The following shall be nationals and citizens of the United States at birth:
> (a) a person born in the United States, and subject to the jurisdiction thereof;....

8 U.S.C. § 1401(a) (1997). This statute echoes the wording of the Citizenship Clause.

AO 72
(Rev 8/82)

previously dealt with conferring U.S. citizenship to certain inhabitants of various U.S. territories, it adopted various straightforward statutory provisions to do so. *See, e.g.,* Organic Act of Puerto Rico, ch. 145, § 5, 39 Stat. 951, 953 (1917) (conferring U.S. citizenship on some Puerto Rican citizens); Nationality Act of 1940, ch. 876, § 202, 54 Stat. 1137, 1139 (1940) (conferring U.S. citizenship on all those born in Puerto Rico after 1899); and Organic Act of Guam, ch. 512, § 4(a), 64 Stat. 384 (1950) (conferring U.S. citizenship on persons in Guam). Congress did the same with the N.M.I. and its inhabitants. Congress set forth a comprehensive scheme in the COVENANT at §§ 301, 302, and 303 of Article III and §§ 503 and 506 of Article V that clearly defines who are entitled to U.S. citizenship upon termination of the Trusteeship Agreement.

Finally, it is important to note that COVENANT § 501 deals with the application of the United States Constitution to the Northern Mariana Islands, not with the granting of U.S. citizenship. Congress's purpose in adopting § 501 was to:

> ...extend to the people of the Northern Marianas the basic rights of United States citizenship, just as those rights are enjoyed by the people in the states (sic). The Section is also intended to make applicable to the Northern Marianas, as if it were a state (sic), certain of the Constitutional provisions governing the relationship between the federal government and the states (sic).... Because the due process clause and equal protection clause of the Fourteenth Amendment will apply to the Northern Marianas as if it were a state (sic), the local government will also have to comply with many of the fundamental provisions of the Bill of Rights in its dealings with the local citizens.

HERMAN MARCUSE, COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS: BASIC DOCUMENT AND ANNOTATIONS 37 (excerpt from the Section-by-Section Analysis of the Covenant prepared by the Marianas Political Status Commission) (Sept. 1976). Section 501 does not say anything about granting U.S. citizenship prior to the termination of the

AO 72
(Rev.8/82)

TTPI. In addition, the structure and legislative history of the COVENANT show that Congress intended §§ 301, 302, 303, and 506 of the Covenant to be the scheme for granting U.S. citizenship and nationality to N.M.I. residents upon the termination of the Trusteeship Agreement. Section 301 clearly defines which persons residing in the N.M.I. upon termination of the TTPI would receive U.S. citizenship. Section 303 clearly gives citizenship to all individuals born in the N.M.I. after the termination of the TTPI. Sections 506(b) and (c) supplement §§ 301 and 303 by creating a mechanism to permit residency of a U.S. citizen or national parent in the N.M.I. to be counted as residency in the U.S. for purposes of conferring citizenship on a child born abroad, and to grant the benefits of "immediate relative" status to aliens with family members permanently residing in the N.M.I. as U.S. citizens. Section 1103(c) provides that U.S. citizenship was not conferred on any of these persons until November 4, 1986, the effective termination date of the TTPI. Lastly, a review of the Congressional reports on the COVENANT show that any mention of U.S. citizenship and nationality is confined to discussions of Article III and §§ 503 and 506 of Article V. *See* H.R. Rep. 94-363 (July 16, 1975); S. Rep. 94-433 (Oct. 22, 1975); and S. Rep. 94-596 (Jan. 27, 1976).

Accordingly, plaintiffs Sabangan and Sohn have failed to state a claim upon which relief may be granted. They are not entitled to U.S. citizenship under §501 of the COVENANT. Accordingly, defendant Powell's Motion to Dismiss is GRANTED WITH PREJUDICE.

B. Motion for Summary Judgment

Because the court previously granted defendant's motion to dismiss, plaintiffs' Motion for Summary Judgment is now DENIED AS MOOT.

AO 72
(Rev.8/82)

IV. CONCLUSION

For the foregoing reasons, defendant's Motion to Dismiss is GRANTED WITH PREJUDICE and plaintiffs' Motion for Summary Judgment is MOOT.

IT IS SO ORDERED.

Dated this 10th day of July, 2003.

Alex R. Munson
Chief Judge

AO 72
(Rev 8/82)