

FILED
Clerk
District Court

JUN 22 2000

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

UTHAYACHANDRAN R. KANDIAH,
et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA and
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Defendants.

Civil Action No. 00-0005

ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND AND
FINDING DEFENDANT UNITED
STATES' MOTION TO DISMISS
MOOT

Defendant United States' Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted came before the Court on May 11, 2000. Defendant United States was represented telephonically by Cindy Ferrier of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice, and in person by Assistant United States Attorney Gregory Baka. Plaintiffs were not represented at the hearing and did not file opposition to the motion.

1 Upon consideration of the written and oral argument of defendant United States and
2 plaintiffs' pending motion to consolidate and amend, the Court GRANTS plaintiffs leave to
3 amend their complaint and finds defendant's motion to dismiss moot.

4 The United States filed their motion to dismiss on April 10, 2000 asserting
5 insufficiency of service of process and failure to state a claim upon which relief can be
6 granted as the basis for their motion. Prior to the United States filing their motion to
7 dismiss, plaintiffs filed a motion to consolidate and file a second amended complaint
8 indicating their desire to amend the complaint in this action.¹ The hearing on plaintiffs'
9 motion to consolidate and amend was continued by agreement of the parties, and
10 consequently, defendant's motion to dismiss came on for hearing before plaintiffs' motion
11 to amend. Because plaintiffs' motion to consolidate and amend is in the nature of a proper
12 motion to amend, and because leave to amend is to be granted freely when justice so
13 requires,² the Court grants plaintiffs leave to amend their complaint, thus defendant's
14 motion to dismiss for failure to state a claim is moot. Further, because the 120 day time
15 period for service of process had not yet run at the time defendant filed its motion to
16 dismiss, the Court finds defendant's motion based on failure of service of process was
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22 ¹Plaintiffs filed their Motion to Consolidate Cases (Civ. Action Nos. 99-0046 and 00-0005)
23 and File Second Amended Complaint on March 2, 2000. At the March 30th hearing on that
24 motion, the parties agreed to continue the hearing date to May 18, 2000. The United States
25 filed their motion to dismiss on April 10, 2000, to be heard May 11, 2000. The Court on this
date denied plaintiffs' motion to consolidate and motion to amend as proposed with respect
to Civil Action No. 99-0046.

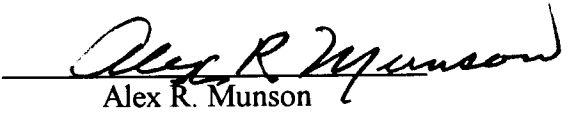
26 ²Fed.R.Civ.P. 15(a) provides that leave to amend "shall be freely given when justice so
requires."

1 premature.³

2 Accordingly, plaintiffs shall have 20 days from the date of this Order to file a second
3 amended complaint. Because the case has not progressed beyond the initial pleadings,
4 plaintiffs may amend their complaint to add new parties and new causes of action as
5 requested in their motion to consolidate and amend without resulting in prejudice to
6 defendants. Defendant's motion to dismiss is moot.
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8 IT IS SO ORDERED.

9 DATED this 22nd day of June, 2000.

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12 Alex R. Munson
13 District Judge
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25 ³The Court notes that during the time this motion was under advisement, plaintiffs filed
26 returns of service reflecting that the Commonwealth of the Northern Mariana Islands (CNMI),
the United States Attorney General and the Assistant United States Attorney in the CNMI
were served with process on May 24, 2000.