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Clerk
District Court

MAR 26 1996

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ISLAM W. SYED, et al.,	)	Civil Action No. 95-00025
	)	
Plaintiffs	)	ORDER GRANTING PLAINTIFFS'
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT; DENYING
	)	DEFENDANTS' MOTION FOR
SEBASTIAN ALOOT, et al.,	)	SUMMARY JUDGMENT; and,
	)	AWARDING ATTORNEY FEES
Defendants	)	AND COSTS

THIS MATTER came before the court on Friday, March 22, 1996, for hearing of the parties' cross-motions for summary judgment. Plaintiffs appeared by and through their attorney, V.K. Sawhney; defendants appeared by and through their attorney, Assistant Attorney General, William J. O'Roarty.

THE COURT, having considered the materials submitted by the parties and their written and oral arguments of counsel, and being otherwise advised, makes the following findings of fact¹ and conclusions of law:

¹ To the extent that a finding of fact should be deemed a conclusion of law, or a conclusion of law be deemed a finding of fact, it shall be so considered.

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1 Findings of Fact

2 The material facts are undisputed:

3 The Syeds

4 1. Plaintiff Margie Blelai Syed is a citizen of the Republic of Palau, residing on
5 Saipan. Plaintiff's Exhibit 1. (For clarity of reference and unless otherwise indicated, all
6 exhibits will refer to plaintiffs' numbered exhibits as attached to their summary judgment
7 motion filed February 21, 1996.)

8 2. Plaintiff Islam Wahidul Syed is a citizen of Bangladesh, who married plaintiff
9 Margie Blelai Syed on Saipan on March 26, 1991. Ex. 6.

10 3. Plaintiff Margie Blelai Syed does not work outside the family home.

11 4. Mr. Syed entered the Commonwealth of the Northern Mariana Islands (CNMI)
12 as a garment factory sewing machine operator, Ex. 4, pursuant to CNMI Department of
13 Labor and Immigration Permit No S-37392, issued June 7, 1990. Ex. 3. The permit was
14 issued pursuant to Section 706K of the Department of Labor and Immigration's
15 Regulations.

16 5. After his marriage on July 8, 1991, Mr. Syed was issued a "non-alien,
17 immediate relative" permit ("non-alien IR permit"), which used the same number as his
18 previous permit. Ex. 7.

19 6. The "non-alien IR" permit stated on its face that it was issued pursuant to Labor
20 and Immigration Regulation Section 706D.

21 7. Section 706D, entitled "Immediate Relatives of Nonalien Entry Permit," allows
22 "immediate relatives of persons who are not aliens to remain in the CNMI for one (1)
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1 year so long as the immediate relative status is in effect."

2 8. Mr. Syed renewed his "non-alien IR" permit on March 26, 1992 (Ex. 8), May
3 26, 1993 (Ex. 9), and June 7, 1994 (Ex. 10). At each renewal, the permit stated that it
4 was being issued pursuant to Section 706D.

5 9. On May 16, 1995, Mr. Syed sought to again renew his "non-alien IR" permit.
6 However, at the top of the first page of the two-page application the immigration official
7 processing his application wrote "706E," which was a reference to Labor and Immigration
8 Regulation 706E. Ex. 11.

9 10. Immigration Regulation Section 706E concerns permits for persons who are
10 immediate relatives of aliens, as opposed to 706D, which concerns immediate relatives
11 of non-alien. Section 706E provides that:

12 An immediate relative of an alien may enter under a permit for the same
13 term as the alien's entry if the alien posts cash as a bond with the Chief of
14 Immigration in the amount of twice the cost of a return travel (sic) to the
15 point of origin at the time of the application.

16 11. Mr. Syed was given no prior notice that his immigration status had been or
17 would be changed. For the first time, he was required to post a cash bond in the amount
18 of \$714.00, due to the unannounced decision by CNMI Immigration to change his status
19 to "alien IR." Ex. 12. By letter dated June 2, 1995, Mr. Syed's application was returned
20 to him as "incomplete" because he and his wife had not attached a receipt showing the
21 cash bond had been paid. Ex. 15.

22 12. On or about August 1, 1995, Mr. Syed was notified by letter that his
23 application had been denied for failure to post the cash bond. Ex. 16.

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1 required to post a bond, this time in the amount of \$570. Ex. 25. Mr. Chowdhury was
2 given no notice that his immigration status had been or would be changed.

3 20. On September 19, 1995, Mr. Chowdhury again renewed his permit, and again
4 was classified an "alien IR." Ex. 26.

5 21. Defendants have admitted the facts concerning the nationalities of the parties
6 and the two marriages, Defendants' Answer, ¶ 2, and the employment and permit history
7 of the parties. Deposition of George F. Camacho, p. 22, p. 26, l. 4 - p. 27, l. 27 (Dec. 13,
8 1995).

9
10 The Defendants

11 22. Defendant C. Sebastian Aloit was at all relevant times herein the Acting
12 Attorney General for the Commonwealth of the Northern Mariana Islands, charged with
13 overall supervision of both the Office of Immigration and Naturalization and the
14 Immigration Officer, and whose duties and responsibilities include the promulgation of
15 rules and regulations to enforce the Commonwealth's immigration and naturalization
16 laws. 3 Commonwealth Code (CMC) § 4312.

17 23. Defendant Virginia Sablan was at all relevant times the Assistant Attorney
18 General charged with the responsibility for giving legal advice on labor and immigration
19 matters to CNMI government agencies, and was the person who directed the Division of
20 Immigration to implement the edict which re-classified plaintiffs' immigration standing.

21 24. Defendant Thomas Sablan was at all relevant times herein the Acting
22 Secretary of the Department of Labor and Immigration, under whose aegis falls the Office
23 of Immigration and Naturalization.
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1 25. Defendant George F. Camacho was at all relevant times herein the Chief of
2 the Division of Immigration, responsible for the day-to-day supervision and administration
3 of the Office of Immigration and Naturalization, including the hiring, control, direction,
4 and supervision of inspectors, examiners, and all other employees of the office, and the
5 supervision and inspection of all persons entering the Commonwealth. 3 CMC § 4311.

6
7 The Legal Opinion

8 26. On September 13, 1994, CNMI Assistant Attorney General Henry
9 Wigglesworth sent a memorandum to George F. Camacho, the Acting Chief of
10 Immigration, which stated, in effect, that any person not a U.S. citizen, U.S. national, or
11 a "permanent resident" under CNMI P.L. 5-11 should be deemed an alien. Ex. 28.

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13 27. Defendant Camacho stated that although he had never seen the Attorney
14 General's opinion (which was addressed to him as Acting Chief of Immigration and which
15 states it was drafted in response to his request) it was his belief that CNMI Immigration
16 was relying on it to reclassify Micronesians from non-alien to alien status. Deposition of
17 George F. Camacho, p. 19, l. 15-25; p. 29, l. 2-8 (Dec. 13, 1995). Defendants deny that
18 the opinion was ever "officially" issued. Defendants' Answer, ¶ 2.

19
20 No Notice or Opportunity to Be Heard

21 28. After the date of Mr. Wigglesworth's letter, no CNMI government agency or
22 instrumentality ever held any public hearing or otherwise took any steps to inform other
23 Micronesians and/or their non-U.S. citizen spouses that their status has been changed
24 from "non-alien" to "alien," and that their spouses' status had been changed from "non-
25 alien, immediate relative" to "alien, immediate relative."
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29. Although the CNMI has allowed plaintiffs to reside in and work in the CNMI during the pendency of this lawsuit, plaintiffs have been injured and continue to suffer injury in that their right to remain in and work in the Commonwealth has been terminated and they are subject to the threat of immediate deportation at any time by Commonwealth officials.²

Conclusions of Law

1. The court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

2. Venue is proper in this district in that all parties reside here and the acts complained of occurred here.

3. Summary judgment shall be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56 (c).

4. Section 105 of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," P.L. 94-241, 90 Stat. 263 (Mar. 24, 1976) ("Covenant"), provides in relevant part:

² Defendants maintained at oral argument that there is no "case or controversy" because they have not yet taken any steps to enforce the change of immigration status which they have already imposed on these plaintiffs. The court disagrees; the injury plaintiffs have suffered is the change of status itself. As a result of that change of status, plaintiffs have lost or had severely curtailed their right to legally work and reside in the CNMI; their continued presence in the CNMI is at the caprice of defendants. For defendants to acknowledge that they have changed plaintiffs status but to argue that plaintiffs have suffered no injury because no steps have been taken to deport them offers cold comfort to plaintiffs, who must live with the knowledge that they are now in the CNMI "illegally."

1 The United States may enact legislation in accordance with its
2 constitutional processes which will be applicable to the Northern Mariana
3 Islands, but if such legislation cannot also be made applicable to the several
4 States the Northern Mariana Islands must be specifically named therein for
it to become effective in the Northern Mariana Islands.

5 5. Section 105 applies to federal laws enacted after January 9, 1978,³ the
6 effective date of the Commonwealth's Constitution. United States ex rel. Richards v. de
7 Leon Guerrero, 4 F.3d 749, 756 (9th Cir. 1993).

8 6. The Compacts of Free Association between the United States and the Federated
9 States of Micronesia and the Republic of Palau, respectively, are federal laws. "Compact
10 of Free Association Act of 1985," P.L. 99-239 (Jan. 14, 1986). The Compact between the
11 United States and the Federated States of Micronesia became effective on November 3,
12 1986 (Pres. Procl. No. 5564, Nov. 3, 1986, 51 F.R. 40399), and between the United
13 States and Palau on October 1, 1994 (Pres. Procl. 6726, Sep. 27, 1994, 59 F.R. 49777).

14 7. Accordingly, the Compacts of Free Association, as federal laws passed after
15 January 9, 1978, are federal laws "applicable to the several States" which automatically
16 apply to the Commonwealth of the Northern Mariana Islands pursuant to the terms of
17 Covenant § 105. Hillblom v. United States, 896 F.2d 426, 428 (9th Cir. 1990); U.S. ex
18 rel. Richards v. de Leon Guerrero, 4 F.3d 749, 754 (9th Cir. 1993)(recognizing that
19 Congress can pass legislation with respect to the Commonwealth that it could not pass
20 with respect to the states).

21 8. Section 503 of the Covenant provides in relevant part that the immigration
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26 ³ Covenant § 502 applies to federal laws passed prior to January 9, 1978. United
States ex rel. Richards v. de Leon Guerrero, 4 F.3d at 1993.

1 laws of the United States will not apply to the Northern Mariana Islands except in the
2 manner and to the extent made applicable to them by the Congress by law after
3 termination of the Trusteeship Agreement.

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5 9. The "Section by Section Analysis" from the Senate Committee on Interior and
6 Insular Affairs Report on the Covenant, in language identical to the section-by-section
7 analysis prepared by the Marianas Political Status Commission, states that "[f]ederal law
8 will control in the case of a conflict between local law (even a state's constitution) and
9 a valid federal law." S.Rep. No. 94-433, 94th Cong., 1st Sess. 65, 66 (1975), U.S. Code
10 Cong. & Admin. News 2nd Sess., p. 448 (1976).

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12 10. The "Section by Section Analysis" is "authoritative." Fleming v. Dept. of Public
13 Safety, 837 F.2d 401, 408 (9th Cir.), cert. denied, 488 U.S. 889, 109 S.Ct. 222 (1988).

14 11. Under Section 141(a) of the Compacts, "Any person [who is a citizen of the
15 Federated States of Micronesia or the Republic of Palau] in the following categories may
16 enter into, lawfully engage in occupations, and establish residence in the United States
17 and its territories and possessions without regard to [specified paragraphs] of the
18 Immigration and Naturalization Act[.]"

19
20 Subsection (a) goes on to say:

21 Such persons shall be considered to have the permission of the Attorney
22 General of the United States to accept employment in the United States.

23 Subsection (b) continues:

24 The right of such persons to establish habitual residence in a territory or
25 possession of the United States may, however, be subjected to
nondiscriminatory limitations provided for:

26 (1) in statutes or regulations of the United States; or

1 (2) in those statutes or regulations of the territory or possession concerned
2 which are authorized by the laws of the United States.

3 12. Section 104(e)(1) of the Compact of Free Association Act of 1985 states that,
4 in approving the Compact of Free Association law, "it is not the intent of the Congress to
5 cause any adverse consequences for the United States territories and commonwealths or
6 the State of Hawaii."

7 13. Subsection (5) of section 104(e) states in relevant part that, "[a]s used in this
8 subsection, the term 'United States territories and commonwealths' means ... the
9 Commonwealth of the Northern Mariana Islands."
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11 14. The Commonwealth of the Northern Mariana Islands is a "territory" of the
12 United States. See Micronesian Telecommunications Corporation v. National Labor
13 Relations Bd., 820 F.2d 1097, 1100 (9th Cir. 1987)(upholding NLRB's construction of the
14 term "territory" to include CNMI); Misch v. Zee Enterprises, Inc., 879 F.2d 628, 630-31
15 (9th Cir. 1989)(holding that the Jones Act, 46 U.S.C.App. §688(a), applies within and
16 to the CNMI and that CNMI is a territory of the United States within the meaning of the
17 Act); A&E Pacific Const. Co. v. Saipan Stevedore Co., 888 F.2d 68, 71 (9th Cir.
18 1989)(holding that the Shipping Act of 1984, 46 U.S.C. § 1701 et seq., applies to the
19 CNMI as one of the territories of the United States).
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21 15. At all relevant times, defendants, and each of them, were acting under color
22 of Commonwealth law in denying to plaintiffs the right to equal protection guaranteed
23 to them by the United States Constitution under the 14th Amendment, as made applicable
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1 to the Commonwealth under Covenant § 501(a).⁴

2 16. Plaintiffs have been denied procedural due process because they have been
3 deprived of their right to live and work without fear of reprisal in the Commonwealth
4 without notice and an opportunity to be heard. Greene v. McElroy, 360 U.S. 474, 79
5 S.Ct. 1400, 1411 (1959) (the right to hold private employment free from unreasonable
6 government interference comes within the "liberty" and "property" concepts of due
7 process).

9 17. Plaintiffs have been denied substantive due process because as lawfully
10 admitted aliens, they cannot be prevented from earning a living in the same way that
11 other state inhabitants earn a living. See Takahashi v. Fish and Game Comm., 334 U.S.
12 410, 418-19, 68 S.Ct. 1138, 1142 (1948).

14 18. Plaintiffs have been denied equal protection of the law. Lawful resident aliens
15 are entitled to equal protection. Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848,
16 1852 (1971). Equal protection extends to non-citizen residents "who work for a living
17 in the common occupations of the community." Sugarman v. Dougall, 413 U.S. 634, 93
18 S.Ct. 2842, 2847 (1973) quoting Truax v. Reich, 239 U.S. 33, 36 S.Ct 7, 10 (1915).

20 19. At all relevant times, defendants, and each of them, were not acting in
21 accordance with nondiscriminatory limitations provided by the statutes or regulations of

23 ⁴ Defendants continue to maintain that the change in status was not an "official" act
24 of the CNMI government. This argument is puzzling and unpersuasive, given that
25 defendants have never disavowed or revoked the edict, and have come into court to
26 defend it. At the least it is a de facto policy of defendants, which policy has already been
imposed as to these plaintiffs, and which presumably remains enforceable as to others
similarly situated.

1 the United States or the Commonwealth of the Northern Mariana Islands.

2 20. Plaintiff wives, as citizens of Compact states, have the right to enter into,
3 establish residence, and work in the Commonwealth of the Northern Mariana Islands,
4 subject only to nondiscriminatory limitations provided in the statutes or regulations of the
5 United States or the Commonwealth of the Northern Mariana Islands.
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7 21. Plaintiff husbands have the rights accorded "immediate relatives" of "non-
8 aliens."
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10 22. Injunctive relief pursuant to 42 U.S.C. § 1983 is available and appropriate in
11 these circumstances. DeNieva v. Reyes, 966 F.2d 480, 483 (9th Cir. 1992)(the court,
12 relying on Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304 (1989),
13 held that although neither CNMI nor its officers acting in their official capacity are
14 "persons" for purposes of 42 U.S.C. § 1983 damages action, officers are "persons" for
15 purposes of official-capacity suits for injunctive relief).

16 23. As prevailing parties, plaintiffs are entitled to attorney fees and costs under
17 42 U.S.C. § 1988.
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19 In summary, the court's ruling finds its basis in the language of the Covenant and
20 the Compact of Free Association Act. Covenant § 503 gives the Northern Mariana Islands
21 control over immigration "except in the manner and to the extent made applicable to
22 them by the Congress after termination of the Trusteeship Agreement." Section 503 is
23 not, therefore, a "fundamental provision" of the Covenant which requires bilateral
24 agreement to change. Covenant § 105 makes applicable to the CNMI all federal laws
25 enacted after January 9, 1978, which are applicable to the several states. The Compact
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1 of Free Association Act of 1985 is a federal law applicable to the several states by which,
2 under the language of subsections (e)(1) and (e)(5) of § 104 of the Act, Congress
3 intended that the rights of the citizens of the freely-associated states be honored by the
4 United States and all its territories, whether denominated "unincorporated territories,"
5 "commonwealths," or otherwise. The Act, while it does affect the CNMI's right to control
6 its immigration under § 503, preserves the CNMI's right to enact non-discriminatory
7 regulations or statutes regarding the citizens of the freely-associated states.
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9 FOR THE FOREGOING REASONS, plaintiffs' motion for summary judgment is
10 GRANTED and defendants' motion for summary judgment is DENIED. Defendants'
11 reclassification of plaintiffs was and is invalid under federal law, the Covenant, and CNMI
12 law. Having decided the matter on the grounds set forth above, it is unnecessary to
13 consider the other grounds for relief advanced by plaintiffs.
14

15 Defendants are enjoined from infringing upon the right of plaintiffs to establish
16 habitual residence in the Commonwealth unless and until the Commonwealth enacts
17 statutes or regulations which subject plaintiffs only to nondiscriminatory limitations.
18 Until that time, defendants are directed to immediately reinstate plaintiff wives' "non-
19 alien" status and plaintiff husbands' "non-alien, immediate relative" status.
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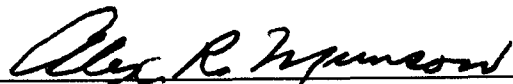
21 As prevailing parties, and in an exercise of the court's discretion, plaintiffs are
22 awarded attorney fees pursuant to 42 U.S.C. § 1988 and costs pursuant to 28 U.S.C. §
23 1920. Plaintiffs shall have until April 5, 1996, to submit their attorney fees petition and
24 cost bill. Defendants shall then have until April 12, 1996, in which to file an opposition
25 to plaintiffs' fee petition and cost bill. A hearing will be set if the court believes one is
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1 warranted.

2 A final judgment will not issue until resolution of the attorney fees petition and
3 cost bill.

4 IT IS SO ORDERED.

5 DATED this 26th day of March, 1996.
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10 ALEX R. MUNSON

11 Judge
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