COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS

****

COMMONWEALTH REGISTER

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COMMONWEALTH REGISTER

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TABLE OF CONTENTS

ADOPTED REGULATIONS

Public Notice of Certification and Adoption
On Regulations of the Student Attendance
Commonwealth Board of Education **041646**

Public Notice of Certification and Adoption
On Regulations of the Procurement
Commonwealth Board of Education **041648**

Public Notice of Certification and Adoption
On Regulations of the Background Investigation
And Routing of Contract
Commonwealth Board of Education **041650**

Public Notice of Certification and Adoption
On Regulations of the Sick Leave Re Bank
Commonwealth Board of Education **041652**

Public Notice of Certification and Adoption
On Regulations of the Sick Leave Re Family
Commonwealth Board of Education **041654**

Public Notice of Certification and Adoption
On Regulations of the Administrative Leave
Commonwealth Board of Education **041656**

Public Notice of Certification and Adoption
On Regulations of the §§60-20, 60-30.2 and 60-60-505
Commonwealth Board of Education **041658**

Public Notice of Certification and Adoption
On Regulations of the Certification and Licensure
Commonwealth Board of Education **041660**

Public Notice of Certification and Adoption
On Regulations of the (Fish size & species)
The Department of Lands & Natural Resources **041662**

Public Notice of Certification and Adoption
On Regulations of the (E-Gaming)
The Department of Finance **041664**

Public Notice of Certification and Adoption
On Regulations of the (Personnel)
The Commonwealth Ports Authority **041666**

ORDERS

Labor Case No. 19-024
Subject: Administrative Order of Dismissal
In the Matter of: Chunhui Pi v. Royal International Travel Corp. *dba* Royal International Travel Agent
Department of Labor **041668**

Labor Case No. 18-001(R) and 18-002(R)
Subject: Order of Dismissal
In the Matter of: Abdur Rahman and Md. Monirul Islam Dhali v. Charles A. Manglona, Jamal Fakir and Mannan Fakir, jointly and severally
Department of Labor **041670**

Labor Case No. 18-003
Subject: Administrative Order Dismissing Case
In the Matter of: Zajradhara, Zaji O. v. Bo Sea Corporation Dba Gold Beach Hotel
Department of Labor **041674**

Labor Case No. 18-041
Subject: Administrative Order
In the Matter of: Wang, XZingcong v. Green Life Noni Corporation
Department of Labor **041675**

Labor Case No. 18-049
Subject: Administrative Order
In the Matter of: Juan M. Pua v. Suwaso Corporation dba Coral Ocean Golf Resort

Department of Labor **041681**

Labor Case No. 18-059
Subject: Administrative Order
In the Matter of: Zaji O. Zajradhara v. Woo Jung Corporation
Department of Labor **041683**

Labor Case No. 18-060
Subject: Order of Recusal
In the Matter of: Zaji O. Zajradhara v. Jin Joo Corporation
Department of Labor **041693**

Labor Case No. 18-068
Subject: Administrative Order
In the Matter of: Julian John III M. Cacha v. Imperial Pacific (CNMI) LLC
Department of Labor **041695**

Labor Case No. CAC No. 17-001-02; DC No. 17-001
Subject: Administrative Order
In the Matter of: Department of Labor Enforcement and Compliance Section v. YWA Human Resource CNMI Corporation
Department of Labor **041697**

Labor Case No. D.C. No. 17-002
Subject: Administrative Order
In the Matter of: Sandcastle Saipan, LLC v Department of Labor— Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041710**

Labor Case No. D.C. No. 17-003
Subject: Administrative Order
In the Matter of: Bridge Capital, LLC v. Department of Labor— Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041716**

Labor Case No. D.C. No. 17-004
Subject: Administrative Order
In the Matter of: Bridge Capital LLC v. Department of Labor— Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041721**

Labor Case No. D.C. No. 17-005
Subject: Administrative Order
In the Matter of: Misa Enterprises, Inc. v Department of Labor— Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041727**

Labor Case No. D.C. No. 17-006
Subject: Administrative Order
In the Matter of: Fidel P. Mallari, Jr. v. Department of Labor—Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041731**

Labor Case No. D.C. No. 17-007
Subject: Administrative Order
In the Matter of: Herman's Modern Bakery, Inc. v. Department of Labor—Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041737**

Labor Case No. D.C. No. 17-008
Subject: Administrative Order
In the Matter of: Md. Nurul Islam Bhuiyan dba Island Protection Services v. Department of Labor—Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041744**

Labor Case No. 17-015
Subject: Administrative Order
In the Matter of: Aminul Islam v. Christopher G. Imbo dba MGI Manpower Group International
Department of Labor **041750**

Labor Case No. 17-018
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. Nippon General Trading Corporation dba Country House Restaurant
Department of Labor **041761**

Labor Case No. 17-019
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. Karis Company, Ltd.
Department of Labor **041763**

Labor Case No. 17-021
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. SPN China News Corporation
Department of Labor **041773**

Labor Case No. 17-025
Subject: Interlocutory Order and Briefing Schedule Re: Discovery Request
In the Matter of: Zajradhara, Zaji O. v. EAM Corporation
Department of Labor **041780**

Labor Case No. 17-029
Subject: Administrative Order Dismissing Case
In the Matter of: Zajradhara, Zaji O. v. Alba Prime Pacific, LLC
Department of Labor **041781**

Labor Case No. 17-040
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. Yen's Corporation
Department of Labor **041782**

Labor Case No. 17-040
Subject: Interlocutory Order Re: Closing of Evidentiary Record; Respondent's Closing Argument; Sanction of Complainant
In the Matter of: Zajradhara, Zagi O. v. Yen's Corporation
Department of Labor **041792**

Labor Case No. 17-043
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. Li Feng (USA) Corporation
Department of Labor **041794**

Labor Case No. 17-052
Subject: Administrative Order
In the Matter of: Zajradhara, Zaji O. v. Haitian Construction Group
Department of Labor **041803**

Labor Case No. 16-001
Subject: Administrative Order
In the Matter of: Marianas Taxi Corporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041808**

Labor Case No. 16-002
Subject: Administrative Order
In the Matter of: Radiocom Saipan, Inc., v. Department of Labor—Citizen Job Placement Section
Department of Labor **041810**

Labor Case No. 16-003
Subject: Administrative Order
In the Matter of: Leon P. Ganacias dba KWAW-FM v. Department of Labor—Citizen Job Placement Section
Department of Labor **041815**

Labor Case No. 16-004
Subject: Administrative Order on Reconsideration
In the Matter of: Rong Hua Corporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041819**

Labor Case No. 16-004
Subject: Administrative Order
In the Matter of: Rong Hua Corporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041823**

Labor Case No. 16-005
Subject: Administrative Order
In the Matter of: PSG Professional Corporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041828**

Labor Case No. 16-006
Subject: Administrative Order
In the Matter of: Hemine Ipwan Islam v. Department of Labor—Citizen Job Placement Section
Department of Labor **041835**

Labor Case No. 16-007
Subject: Administrative Order
In the Matter of: Commonwealth Pacific International, Inc. v. Department of Labor—Citizen Job Placement Section
Department of Labor **041840**

Labor Case No. 16-008
Subject: Administrative Order
In the Matter of: Man Bao Corporation dba Win Tour v. Department of Labor—Citizen Job Placement Section
Department of Labor **041846**

Labor Case No. 16-009
Subject: Administrative Order
In the Matter of: Yaong Corporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041850**

Labor Case No. 16-010
Subject: Administrative Order
In the Matter of: Big Bell, Inc. v. Department of Labor—Citizen Job Placement Section
Department of Labor **041855**

Labor Case No. 16-011
Subject: Administrative Order
In the Matter of: ZY Corporation dba Shun Fu Market v. Department Of Labor—Citizen Job Placement Section
Department of Labor **041860**

Labor Case No. 16-012
Subject: Administrative Order
In the Matter of: PSG Professional Corporation v. Department of Labor—Citizent Job Availability and Job Placement Section
Department of Labor **041867**

Labor Case No. 16-013
Subject: Administrative Order
In the Matter of: Northpac Corporation dba General Construction Contractor v. Department of Labor-Citizen Availabity and Job Placement Section
Department of Labor **041875**

Labor Case No. 16-014
Subject: Administrative Order
In the Matter of: Double Lee Corporation dba Green Consume Market v. Department of Labor—Citizen Job Availability and Job Placement Section
Department of Labor **041880**

Labor Case No. 16-015
Subject: Administrative Order
In the Matter of: Big Bell Inc. v. Department of Labor—Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041887**

Labor Case No. 16-016
Subject: Administrative Order
In the Matter of: TRI Enterprises, Inc. dba Marianas Visiting Nurses **v.** Department of Labor-Citizen Job Availability and Citizen Job Placement Section
Department of Labor **041893**

Labor Case No. 16-017
Subject: Administrative Order
In the Matter of: Pandiyan K. Sevugan v. ABO International Corporation, dba ABO Rent-a-Car
Department of Labor **041897**

Labor Case No. 16-018
Subject: Administrative Order
In the Matter of: Teresita Reyes v. ABO International Corporation Dba ABO Rent-a-Car
Department of Labor **041911**

Labor Case No. 16-025
Subject: Administrative Order
In the Matter of: Patrick C. Togawa v. Imperial Pacific International (CNMI) LLC dba Best Sunshine International Ltd.
Department of Labor **041922**

Labor Case No. 16-025
Subject: ORDER
In the Matter of: Patrick C. Togawa v. Imperial Pacific International (CNMI) LLC dba Best Sunshine International Ltd.
Department of Labor **041939**

Labor Case No. 16-025
Subject: Order Denying Respondent's Motion for Reconsideration
In the Matter of: Patrick C. Togawa v. Imperial Pacific International (CNMI) LLC dba Best Sunshine International Ltd.
Department of Labor **041941**

Labor Case No. 15-001
Subject: Administrative Order
In the Matter of: 3K Corporation v. Department of Labor-Citizen Job Placement Section
Department of Labor **041951**

Labor Case No. 15-002
Subject: Administrative Order
In the Matter of: ASC Arch Structure Corp., ASC Construction v. Department of Labor—Citizen Job Placement Section
Department of Labor **041957**

Labor Case No. 15-003
Subject: Administrative Order
In the Matter of: H.N.R., Incorporation v. Department of Labor—Citizen Job Placement Section
Department of Labor **041962**

Labor Case No. 15-004
Subject: Administrative Order
In the Matter of: Kalayaan, Inc. v. Department of Labor—Citizen Job Placement Section
Department of Labor **041967**

Labor Case No. 15-005
Subject: Administrative Order
In the Matter of: Success International Corporation, dba M&R Construction/Contractor and Success Auto Repair Shop v. Department of Labor—Citizen Job Placement Section
Department of Labor **041970**

Labor Case No. 15-006
Subject: Administrative Order
In the Matter of: Md. Kamrul Islam, dba Md. Islam Lawn Care Repair and Maintenance Services v. Department of Labor—Citizen Job Placement Section
Department of Labor **041976**

Labor Case No. 15-007
Subject: Administrative Order
In the Matter of: M.D.A. Enterprises, Inc. v. Department of Labor—Citizen Job Placement Section
Department of Labor **041981**

Labor Case No. 14-003
Subject: Administrative Order
In the Matter of: Triple J Saipan, Inc., dba Tony Roma's and Capricciosa v. Department of Labor—Citizen Job Placement Section
Department of Labor **041986**

Labor Case No. 14-004
Subject: Administrative Order
In the Matter of: Kimco Enterprises Corporation v Department of Labor—Cicitizen Job Placement Section
Department of Labor **041988**

Labor Case No. 14-005
Subject: Administrative Order
In the Matter of: Hong Ye Trading Company v. Department Of Labor—Citizen Job Placement Section
Department of Labor **041990**

Labor Case No. 14-006
Subject: Administrative Order
In the Matter of: No Ka Oi Termite and Pest Control (Saipan), Inc. v. Department of Labor—Citizen Job Placement Section
Department of Labor **041994**

Labor Case No. 14-007
Subject: Administrative Order
In the Matter of: Joven A. Mallari dba J.A.M. Construction Company v. Department of Labor—Citizen Job Placement Section
Department of Labor **041998**

Labor Case No. 14-008
Subject: Administrative Order
In the Matter of: Elena M. Yumul dba Yuman Construction v. Department of Labor—Citizen Job Placement Section
Department of Labor **042002**

Labor Case No. 14-008
Subject: Amended Administrative Order
In the Matter of: Elena M. Yumul dba Yuman Construction v. Department of Labor—Citizen Job Placement Section
Department of Labor **042005**

Labor Case No. 14-009
Subject: Administrative Order
In the Matter of: R.O.G.L. Corporation dba GMP Construction **v.** Department of Labor-Citizen Job Placement Section
Department of Labor **042008**

STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: *boe.admin@cnmipss.org*

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Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-20 Student Attendance
Volume 41, Number 03, pp 041504-041511, of March 28, 2019

Regulations of the State Board of Education: §60-20 Student Attendance

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

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Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-40 Procurement
Volume 41, Number 03, pp 041512-041523, of March 28, 2019

Regulations of the State Board of Education: §60-40 Procurement

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

STATE BOARD OF EDUCATION

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PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-30.2 Background Investigation and Routing of Contract
Volume 41, Number 03, pp 041524-041530, of March 28, 2019

Regulations of the State Board of Education: Removal of NASDTEC in §§60-30.2-106 Background 60-30.2-118 Investigation and Routing of Contract

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

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I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

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PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-30.2 Sick Leave re Bank
Volume 41, Number 03, pp 041538-041546 of March 28, 2019

Regulations of the State Board of Education: §60-30.2-720 Sick Leave re Bank

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

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I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

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PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-30.2 Sick Leave re Family
Volume 41, Number 03, pp 041531-041537, of March 28, 2019

Regulations of the State Board of Education: §60-30.2-720 Sick Leave re Family

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of February 6, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: boe.admin@cnmipss.org

Voting Members

Janice A. Tenorio, M.Ed.
Chairperson

Herman M. Atalig, SGM(Ret)
Vice Chairperson

MaryLou S. Ada, J.D.
Secretary/Treasurer

Andrew L. Orsini
Member

Phillip Mendiola-Long, AIFA, RF
Member

Non-Voting Members

Paul T. Miura
Teacher Representative

Galvin S. Deleon Guerrero
Non Public School Rep.

Pionnah R. Gregorio
Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-30.2-735 Administrative Leave
Volume 41, Number 03, pp 041547-041553, of March 28, 2019

Regulations of the State Board of Education: §60-30.2-735 Administrative Leave for 190-day Contracts

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

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I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: boe.admin@cnmipss.org

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Non Public School Rep.

Pionnah R. Gregorio
Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§§60-20, 60-30.2 and 60-60-505
Volume 41, Number 03, pp 041554-041576, of March 28, 2019

Regulations of the State Board of Education: Removal of EEO in §§60-20-401 Discrimination and Harassment Prohibited, 60-20-402 Sexual Harassment of Students, 60-20-403 Bullying, 60-30.2 Discipline & Grievance, 60-60-505 Head Start Equal Opportunity

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

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I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: boeadmin@cnmipss.org

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Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
§60-30.2 Certification and Licensure
Volume 41, Number 03, pp 041577-041611, of March 28, 2019

Regulations of the State Board of Education: §60-30.2 Certification and Licensure

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education (the Board), HEREBY ADOPTS AS PERMANENT regulations the PSS Rules and Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent, and now does so.

The Proposed Amendment to PSS Rules and Regulations as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed PSS Procurement Rules and Regulations, and that they are being adopted.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of January 11, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

STUDENTS FIRST

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Janice A. Tenorio, J.D., Chairperson
16th CNMI State Board of Education

05/17/19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.20.2019
Date

Commonwealth of the Northern Mariana Islands
Department of Lands and Natural Resources
Anthony T. Benavente
Lower Base, Caller Box 10007
Saipan, MP 96950
Tel: 670-322-9834 Fax: 670-322-2633

CNMI

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF
The Department of Lands & Natural Resources

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 39, Number 12, pp 040417-040424, of December 28, 2017

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands & Natural Resources ("DLNR"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The DLNR announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

> as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Department has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to 1 CMC § 2654

EFFECTIVE DATE: These regulations were proposed on December 28, 2017 and are hereby being adopted as Permanent Regulations of the Department of Lands and Natural Resources pursuant to 1 CMC §9102and §9104 (a) or (b), which, in this instance, is ten (10) days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153€ (To review and approve, as to form and legal sufficiency, al rules and regulations to be

promulgated by any department, agency or instrumentality of the Commonwealth government, including pubic corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 16 day of May, 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

ANTHONY T. BENAVENTE — Date: 5/16/19

Secretary, Department of Lands and Natural Resources

Filed and
Recorded by:

ESTHER SN. NESBITT — Date: 05.21.2019

Commonwealth Registrar

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated the 21st day of MAY, 2019.

EDWARD MANIBUSAN
Attorney General

Office of the Secretary
Department of Finance

P.O. Box 5234 CHRB SAIPAN, MP 96950 TEL (670) 664-1100 FAX: (670) 664-1115

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE DEPARTMENT OF FINANCE

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 41, Number 04, pp 041620-041626, of April 28, 2019

Regulations of the Department of Finance: Chapter 70-40.8 Electronic Gaming

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Finance ("DOF"), HEREBY ADOPTS AS PERMANENT the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The DOF announced that it intended to adopt them as permanent, and now does so. I also certify by signature below that:

As published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. These regulations were adopted as final on May 22, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, and 4 CMC § 1503.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the ___th day of May, 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Connie Agulto,
Acting Secretary of Finance

5.22.19
Date

Filed and
Recorded by:

Esther SN. Nesbitt
Commonwealth Registrar

05.22.2019
Date

COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. Box 501055, Saipan, MP 96950-1055
Phone: (670) 237-6500/1 Fax: (670) 234-5962
E-mail Address: cpa.admin@pticom.com
Website: www.cpa.gov.mp

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS FOR THE COMMONWEALTH PORTS AUTHORITY (CPA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED RULES AND REGULATIONS
Volume 41, Number 1, pp 041332–38, of January 28, 2019

Addition of NMIAC § 40-40-620 to the Commonwealth Ports Authority Personnel Rules and Regulations

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth Ports Authority HEREBY ADOPTS AS PERMANENT NMIAC § 40-40-620, which was published in the Commonwealth Register pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification.

PRIOR PUBLICATION: These regulations were published as Proposed Regulations in Volume 41, Number 1, pp 041332–38 of the Commonwealth Register.

AUTHORITY: The authority for promulgation of regulations for CPA is set forth in 2 CMC § 2122.

EFFECTIVE DATE: NMIAC § 40-40-620 will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

COMMENTS AND AGENCY CONCISE STATEMENT: During the 30-day comment period, the Authority received no comments regarding the proposed regulations. No individual requested the Authority issue a concise statement of the principal reasons for and against the adoption of the proposed amendments.

In March 2019, CPA inadvertently routed for signature a "Public Notice of Certification and Adoption of Regulations for the Commonwealth Ports Authority" for the adoption of the proposed regulations. That public notice was published in Volume 41, Number 3, pp 041423–24, of the March 28, 2019, Commonwealth Register. That notice mistakenly stated that the Personnel Committee recommended that the CPA Board of Directors adopted the proposed regulations on December 10, 2018, and that the Board of Directors adopted the proposed regulations as final at a December 18, 2018, Board of Directors meeting. The intent of this notice is to correct those errors and properly adopt the proposed regulation pursuant to the procedures of the Administrative Procedure Act.

At a Personnel Committee meeting held on March 14, 2019, the Committee agreed to recommend to the Board of Directors that the proposed regulations be adopted without further revisions. The Board of Directors adopted the proposed regulations as final at the May 10, 2019, Board of Directors meeting.

FRANCISCO C. ADA / SAIPAN INTERNATIONAL AIRPORT
Port of Saipan
P.O. Box 501055, Saipan, MP 96950

BENJAMIN TAISACAN MANGLONA INTERNATIONAL AIRPORT
Rota West Harbor
P.O. Box 561, Rota, MP 96951

TINIAN INTERNATIONAL AIRPORT
Port of Tinian
P.O. Box 235, Tinian, MP 96952

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED: The adopted regulation provides the new section NMIAC § 40-40-620. Section 40-40-620 is added to establish that directives and other memoranda issued by the Governor of the Commonwealth of the Northern Mariana Islands that affect personnel matters will be made applicable to the Commonwealth Ports Authority, and the Executive Director may interpret and modify substantive provisions of such directives and other memoranda in order to tailor such documents to the Commonwealth Ports Authority. Additionally, NMIAC § 40-40-620 suspends any rules or regulations that conflict with such directives, memoranda, or interpretations thereof until such directives, memoranda, or interpretations are deemed no longer effective or applicable to the Commonwealth Ports Authority.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the ____ day of _____, 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by: _____ Date: 5/17/19

CHRISTOPHER S. TENORIO
Executive Director

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the certified final regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

Dated this 21st day of May, 2019.

EDWARD MANIBUSAN
Attorney General

Filed and Recorded by: _____ Date: 05.24.25

ESTHER SN. NESBITT,
Commonwealth Register

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 19-024**
Chunhui Pi,	)	
Complainant,	)	**ADMINISTRATIVE ORDER OF DISMISSAL**
v.	)	
Royal International Travel Corp. *dba* Royal International Travel Agent,	)	
Respondent.	)	

I. INTRODUCTION

On May 10, 2019, mediation was held in in the above-captioned case. Complainant was present and unrepresented by counsel. Respondent was represented by Manager Xie "Joey" Wei. The parties were unable to settle the dispute.

II. LEGAL STANDARD

"The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth . . . ." 3 CMC § 4942.

> No labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event. In such instance no labor complaint may be filed more than six months after the date a complainant of reasonable diligence could have discovered the actionable conduct. . . .

3 CMC § 4962(b). "If the complaint is not resolved at mediation, a hearing officer may then examine the complaint for timeliness. If the complaint is not timely filed, the hearing office shall dismiss the complaint with prejudice." NMIAC § 80-20.1-465(e).

III. FINDINGS

1. On April 25, 2019, Complainant filed a labor compliant for unpaid wages against Respondent.
2. On May 10, 2019, mediation for the above-captioned case was conducted, but the parties failed to resolve their dispute.
3. Based on the allegations in the complaint, Complainant's claim for unknown amount of unpaid wages spans throughout Complainant's period of employment between June 10, 2016 to July 18, 2018.
4. Based on the information provided by Complainant, the last occurring event that is the subject of the complaint was Complainant's last day of employment.
5. Complainant's last of employment with Respondent was July 18, 2018.
6. Complainant's claim falls outside the six-month statute of limitations.

IV. CONCLUSION

Accordingly, pursuant to NMIAC § 80-20.1-465 (e), the above-mentioned complaint is **DISMISSED** with prejudice.

So ordered this **14th** day of May, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Abdur Rahman and Md. Monirul Islam Dhali, Complainants, **v.** Charles A. Manglona, Jamal Fakir and Mannan Fakir, jointly and severally, Respondents.	)	**L.C. No. 18-001(R) and** **L.C. No. 18-002(R)** **ORDER OF DISMISSAL**

This Order to Show Case hearing was conducted on May 3, 2018, in the Administrative Hearing Office of the CNMI Department of Labor. Complainants appeared and were represented by counsel Joe Hill. Respondents Charles A. Manglona and Mannan Fakir appeared; Respondent Jamal Fakir was absent. The Department of Labor appeared through investigator Eugene Ogo. Md. Jonayed Hossain and Hannan Fakir served as translators.[1] Mr. Roly Calayo served as Mr. Hill's paralegal assistant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Procedural History

Each Complainant filed his labor complaint in the Administrative Hearing Office on February 23, 2018. Each Complaint alleged that the complainant was recruited in Bangladesh to work in Rota, then travelled to the CNMI after signing a written employment contract. Each alleged that Respondents failed to provide work to them as had been promised in their contracts.

[1] The Hearing was conducted via an internet Skype connection with the Hearing Officer and Complainants and their counsel in Saipan at the Hearing Office and the remaining parties and attendees in Rota at the Rota Labor Office.

The Hearing Officer immediately noted that the dates of events cited in the Complaint raised an issue of whether the complaint would be barred under the statute of limitations applicable to labor claims brought in the Administrative Hearing Office. [See 3 CMC § 4962(b).] Before taking any action on possible dismissal of the complaint pursuant to 3 CMC § 4938(d)(4), the Hearing Officer wanted to provide the parties with appropriate notice and an opportunity to be heard, pursuant to due process principles and 3 CMC § 4947(a).

Accordingly, each complainant was ordered to appear at a hearing and to show cause as to why his complaint should not be dismissed based on the applicable statute of limitations. [See Orders to Show Cause and Notices of OSC Hearing, filed in LC No. 18-001(R) and 18-002(R), dated 4/24/2018.]

Labor Complaint No. 18-001(R): Complainant Abdur Rahman testified that he arrived in Saipan on October 27, 2016, and understood that he was supposed to wait for Jamal Fakir before proceeding to Rota. [Note: The parties dispute whether or not Complainant was instructed to fly to Rota. Complainant claims he was told to stay and wait in Saipan; Respondent Mannan Fakir claims he told Complainant to come to Rota immediately.] In the end, Complainant stayed on Saipan and no work was provided under the contract. With assistance of counsel, Complainant filed a labor complaint in the Administrative Hearing Office on February 23, 2018 – about 16 months after coming to the CNMI.

Labor Complaint No. 18-002(R): In his Complaint, Complainant Md. Monirul Islam Dhali alleged that he arrived in Rota in September 2016; he met with Charles Manglona on September 24, 2016, at which time Manglona allegedly explained that he had no work for Complainant and that he should go out and find his own job. [Complaint at ¶ 7.]. After struggling to support himself on Rota for three months, Complainant moved from Rota to Saipan in December 2016. [*Id.* at ¶ 8.] With assistance of counsel, he filed a labor complaint in the Administrative Hearing Office on February 23, 2018 – about 17 months after coming to the CNMI.

Upon reviewing the complaint in preparation for mediating the case, the Hearing Officer noted that all of complainants' allegations seemed based on conduct that had allegedly occurred more than six months prior to the filing of the complaints. If that were the case, both complaints might be barred by the 6-month statute of limitations applicable to administrative labor complaints, as set forth in 3 CMC § 4962(b).

CONCLUSIONS OF LAW

I. The Applicable Law.

The applicable statute of limitations for administrative labor claims filed in the Administrative Hearing Office is set forth at 3 CMC § 4962(b). The statute states that a complaint must be filed no later than six months after the "last-occurring event that is the subject of the complaint...." *Id.*

The Commonwealth Employment Act of 2007 ("Act") specifically empowers a hearing officer at the mediation stage "to dismiss a complaint as untimely under section 4962(b)." 3 CMC § 4938(d)(4).

II. Each of Complainants' Allegations Accrued More Than Six Months Prior to the Filing of the Complaint. Therefore, Each Complaint is Barred by the Applicable Statute of Limitations [3 CMC § 4962(b)] and Should Be Dismissed.

All allegations contained in the complaint letter occurred in a time period outside of the applicable 6-month statute of limitations of 3 CMC § 4962(b).[2] The gravamen of each Complaint was that Respondent promised to provide one year of work to each Complainant, as set forth in a written employment contracts, but then breached those contracts by failing to provide work after Complainants travelled to the CNMI to begin the contracts. Each case (LC. 18-001 and 18-002) was filed in February 2018 – more than 14 months after the "last occurring event that is the subject of the complaint."[3] 3 CMC § 4962(b).

In summary, 3 CMC § 4962(b) sets forth that an administrative labor complaint must be filed no later than six months after the "last occurring event" that gives rise to the complaint. In this case, complainants waited 16 months or more after their contract was allegedly breached by a failure to provide work, before filing

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[2] It should be noted that the Hearing Officer considers all allegations and inferences in favor of a complainant for purposes of deciding whether the Complaint's allegations fall within the applicable the statute of limitations.

[3] In the case of Mr. Rahman, the "last occurring event" could be considered his departure from Rota to live in Saipan in December 2016 – he filed his complaint 14 months later in February 2018. In the case of Mr. Dhali, the "last occurring event" could be considered his arrival in Saipan, at which point he waited for a work assignment which never issued – he filed his complaint 16 months later in February 2018.

their labor complaints. Accordingly, both Complaints should be dismissed pursuant to 3 CMC § 4938(d)(4) and 3 CMC § 4947(a).

Notwithstanding this ruling, Complainants' counsel hinted that he might consider refashioning these allegations to set forth another cause of action and file the case in Commonwealth Superior Court or U.S. District Court. This Order shall impose no impediment on the parties' right to seek redress for these alleged violations in an alternative forum. Accordingly, the dismissal shall be issued without prejudice.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Dismissal:** For the reasons stated herein, the Hearing Officer concludes that all of complainants' allegations occurred more than six months prior to the filing of the complaints [LC 18-001(R) and 18-002(R)], which were each filed on February 23, 2018. Therefore, each case is barred by the statute of limitations applicable to labor claims brought before the Hearing Office. 3 CMC § 4962(b). Accordingly, both complaints [LC 18-001(R) and 18-002(R)] are hereby DISMISSED without prejudice. 3 CMC § 4947(a).

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: May 9, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 18-003
Zajradhara, Zaji O.,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	**DISMISSING CASE**
Bo Sea Corporation,	)	
dba Gold Beach Hotel,	)	
Respondent.	)	
	)	

The above-captioned case was mediated at the Administrative Hearing Office on April 20, 2018. Respondent was represented by its corporate Secretary, Manuel Mangarero, and its accountant, Jess Guerra.

The Complaint alleges that Complainant had applied in January 2018 for a bartender position at the Gold Beach Hotel, but he had never been contacted about the application. During the mediation, Respondent testified that it does not own or operate a bar; it employs no bartenders and it has never submitted a CW Petition to employ bartenders. Based on these representations, which were recorded by the Hearing Office, Complainant asked that the case be dismissed without prejudice.

Based on the foregoing, the Hearing Officer finds that good cause exists to DISMISS this Labor Case.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Dismissal:** Based on the above-noted written request of Complainant to dismiss this case, Labor Case No. 18-003 is hereby DISMISSED without prejudice. 3 CMC §§ 4947(b) and (d)(11).

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: April 20, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 18-041
Wang, Xingcong,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Green Life Noni Corporation,	)	
Respondent.	)	
	)	

This case came on for hearing on August 22 and 29, 2018, in the Administrative Hearing Office of the CNMI Department of Labor ("DOL"). Complainant Wang, Xingcong appeared without counsel. Respondent Green Life Noni Corporation appeared through its representative, Jin, Yuji.[1] The DOL Enforcement Section appeared through investigator Ben Castro. Mr. Xuchong ("Steven") Liang served as translator for Mr. Wang; Sophie Delos Reyes served as translator for Ms. Jin. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

This labor complaint was brought by Complainant Wang, Xingcong ("Employee") against Green Life Noni Corporation ("Employer") on May 22, 2018. In essence, Complainant alleged that Employer had breached a written employment contract by failing to provide work to Employee in breach of its obligations under the contract. Complainant requested damages of "back pay" from the Employer, as well as reimbursement for certain expenses that he had been required by Employer to pay, which he claimed should have been the responsibility of Employer. [A copy of the letter Complaint was entered into evidence as Hearing Exhibit 2. The Complaint was signed and filed on 5/22/2018.]

[1] Ms. Jin, Yuji appeared at Hearing as a representative of Employer and presented a Power of Attorney to establish that she had been appointed in March 2016, by Employer's corporate President (her sister), Jin Wenji, to manage all transactions pertaining to the Corporation. A copy of the Power of Attorney was entered into evidence as Hearing Exhibit 1.

Employer owns and operates a small retail shop in Saipan that specializes in selling noni-related products (i.e., products containing noni). Employer is also engaged in developing, manufacturing and marketing certain noni-related products.

Power of Attorney: In March 2016, Employer's President, Jin Wenji, executed a Power of Attorney appointing her sister, Jin, Yuji, as her Attorney In Fact with authority to manage all transactions pertaining to the Corporation. [A copy of the Power of Attorney given to Jin, Yuji was entered into evidence as Hearing Ex. 1.]

Sales Agreement: On April 1, 2016, Employer and Linyi Mingkuang Trading Company entered into a Sales Agreement, pursuant to which Employer sold 400 shares or common stock or 40% of its company to Linyi Mingkuang Trading Company ("LMT"). [2] Under the terms of the Sales Agreement, LMT was to pay Employer $40,000 and provide laboratory equipment valued at $10,000. [A copy of the Sales Agreement was entered into evidence as Hearing Exhibit 4.] After the Sales Agreement was signed in 2016, Employee helped LMT to send to Employer $40,000 and the laboratory equipment.[3]

Employment Contract: On March 30, 2017, Employer and Employee entered into a written employment contract for the stated term of 12 months.[4] [A copy of the employment contract (hereinafter, "Contract") was entered into evidence as Hearing Exhibit 3.] (Employee had returned to Saipan from China in mid-March 2017, with new samples of cosmetic products that he had developed for Linyi Ming Kuang Trading Corporation.) Under the Contract, Employer agreed to employ Employee as a "formulation technician" at a wage of $1,800 per month; the principle place of work was designated as Chalan Kanoa. [*Id.* at p. 1, ¶ 4.] The Contract contained provisions for termination for cause as well as termination for economic necessity. [*Id.* at ¶¶ 9 and 10.] One contractual provision stated that the Contract constituted the "entire agreement of the parties" that would "supersede any other agreement, written, verbal or otherwise." [*Id.* at ¶ 13.]

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[2] It remains somewhat unclear whether the buyer in this transaction was LMT or Complainant Wang, Xingcong. The Sales Agreement states that Jin, Wenji represented Employer and Complainant Wang, Xingcong represented Linyi Mingkuang Trading Company. Nevertheless, Special Minutes of a meeting of the Board of Directors of Green Life Noni Corp., prepared on April 13, 2016, list Mr. Wang as both an officer (Vice President) and a shareholder of 800 shares of common stock of Green Life Noni Corporation

[3] On March 10, 2017, prior to signing the Employment Contract, Employee resigned as Vice President of Green Life Noni Corporation. On March 30, 2017, Complainant signed the employment contract to become an employee of Employer's company.

[4] The Contract stated: "The term of this contract is a period of twelve (12) months, commencing upon the date of the approval of this contract." [*Id.* at ¶ 3.]

CW-1 Visa: In about April 2017, Employer submitted a CW Petition to the U.S. Citizenship and Immigration Service (USCIS) to employ Employee in a CW-1 status. On January 5, 2018, USCIS approved the Petition and issued a Notice of Action, which noted that Employee had been approved for a CW1 status from 1/03/2018 to 10/01/2018. [A copy of USCIS's Notice of Action (Approval Notice) regarding Wang, Xingcong was entered into evidence as Hearing Exhibit 5.] In January 2018, Employee obtained a CW-visa to enter the CNMI; Employee arrived in Saipan on February 2, 2018. [Testimony of Mr. Wang.]

As soon as Employee arrived in Saipan, he met Jin, Yuji at Employer's store/factory in Chalan Kanoa and inquired as to when he could start working. At this point, Ms. Jin, Yuji, who was Employer's sole representative on Saipan, told Employee that she was leaving for a one month vacation, but that she would give him instructions when she returned to Saipan. After Jin returned to Saipan in March 2018, she informed Employee that he needed a food handler's permit before he could begin working. Both parties agree that Jin assisted Employee in filling out the necessary forms to obtain the permit. [Testimony of Mr. Wang and Ms. Jin.] Nevertheless, Jin, Yuji never gave Employee a workspace, noni products and tools so that he could perform his "reformulation" of noni-related products. *Id.*

Labor Claim: Over the course of the next 3-4 months (February to May 2018), Employer and Employee had discussions regarding the noni business that ultimately culminated in the breakdown of relations and Employee's filing of a labor complaint. Each party - Complainant Wang, Xingcong and Jin, Yuji for Respondent – presented starkly different versions of their dealings in this period.

Complainant (Employee) claims he was ready and willing to work for Employer from February to May 2018, but that Employer failed to provide him with the tools and location needed for him to perform his job. [Testimony of Mr. Wang.]

Employer denies that Employee was ready to work. Ms. Jin claims, instead, that in April 2018, Employee tried to negotiate a change in the Sales Agreement between Employer and LMT. Ms. Jin admitted that at one point, she offered to pay $78,000 to Employee to settle this dispute, provided that Employee would agree to leave the CNMI and cease his business operations here. Ms. Jin testified that in late April 2018, she offered to sell 100% of the shares of the Green Life Noni Corp. to Employee or MTC: Jin alleged that she even prepared an agreement to transfer the company's shares to Employee but later, Employee changed his mind and wanted to check with a lawyer. [Testimony of Ms. Jin.] In any case, Ms. Jin admits that

she did not terminate Employee despite her claim that he was refusing to perform work as set forth in the Contract.

On May 22, 2018, Employee filed a labor complaint in the Administrative Hearing Office, alleging that Employer had breached the Contract by failing to provide him with work promised in the Contract. [A copy of the Complaint was entered into evidence as Hearing Exhibit 2.]

Determination: DOL's Enforcement Section investigated this case and concluded that Employer had breached the Contract and violated CNMI labor laws or regulations by failing to provide work to Employee after he arrived in Saipan in February 2018. The investigator noted that even though Employer claimed that Employee had refused to begin working, Employer had not terminated Employee, as called for in the Contract. Additionally, Employer improperly required Employee to pay for his own processing fees, workman's compensation and his food handler's certificate. [A copy of the Determination was entered into evidence at Hearing Exhibit 7 - see Findings and Recommendation at pp. 2-3; and testimony of Mr. Castro.]

CONCLUSIONS OF LAW

Summary: Based on the facts presented, the Hearing Officer agrees with the Determination and finds that Employer breached the Contract by failing to provide work to Employee from the date of his arrival in Saipan until May 2018, when he filed his Complaint. After hearing the testimony and evaluating the credibility of the parties, the Hearing Officer finds Employee's version of events to be more credible than that of Employer. Even if Employer had reasons to argue that Employee had breached his own obligations, Employer failed to act to terminate the Contract. Accordingly, Employer remains liable for damages for breach of contract, as set forth below.

Employer Breached Its Contractual Obligation To Provide Work and Pay Salary To Employee Upon His Arrival In The CNMI In February 2018.

According to the Contract entered between the parties in March 2017, Employer agreed to pay Employee a salary of $1,800 per month in exchange for his performance as a "reformulation technician." The Contract term was 12 months although Employee's CW1 status was set to expire after 8 months – on October 1, 2018. [See contract at Hearing Exhibit 3; USCIS Notice at Hearing Exhibit 5.] In January 2018, Employee was granted a CW-1 visa that allowed him to work from

February until October 1, 2018. [Hearing Exhibit 5.] Employee arrived in Saipan on February 2, 2018, ready to perform his obligations under the contract. At that point, Employer had an obligation to provide Employee with the direction, work space and tools necessary to allow him to perform his services (the formulation of noni-related products) for the company.

Beginning in February 2018, Employer's management failed to provide direction, a viable workspace, raw materials or tools to Employee. Instead, Employer's manager left Saipan on vacation for one month. Upon her return, she continued to fail to adequately establish Employee in a factory location with the necessary tools and materials to perform his services. The breakdown in relations between the parties cannot be fully documented, given that both parties give versions of events that cause the Hearing Officer to question veracity. Nevertheless, if Employer had reason to believe that Employee was at fault, Employer could have acted to terminate the contract for cause (contract at ¶ 9); yet it failed to do so. After months of attempting to reach a "solution" that would provide him with his agreed-upon salary, Employee filed a labor complaint on May 22, 2018. [See Complaint at Hearing Exhibit 2.]

Contract Damages for Lost Wages: Enforcement investigated this case and determined that as a result of Employer's failure to provide a means for Employee to perform his work, the contract was breached; thereby supporting an award of damages for lost wages for a period of eight months: February through September 2018. Such wages amount to $14,400.00. [See Determination at Hearing Exhibit 14, p. 3 (Recommendation).] The Hearing Officer agrees with this conclusion and the calculation of damages.

Reimbursement for Expenses: Employer admitted at hearing that it failed to reimburse Employee for monies he had expended for his visa processing fee ($450), his workmen's compensation insurance ($275) and his food handler's certificate ($85). These expenses were substantiated by documentary evidence submitted by Employee at Hearing Exhibits 8, 9 and 10. Investigator Ben Castro found that Employee was entitled to reimbursement for these amounts in the total amount of eight hundred and ten dollars ($810). The Hearing Officer agrees that $810.00 should be paid to Employee as reimbursement for these expenses.

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The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the above findings and conclusions, judgment is hereby entered in favor of Complainant Wang, Xingcong and against Respondent Green Life Noni Corporation on Labor Case No. 18-041, filed on May 22, 2018 (Hearing Exhibit 2).

2. **Award:** Based on the above findings and conclusions, Complainant is awarded $14,400.00 in contractual damages for lost wages due to Respondent's breach of contract. In addition, Complainant is awarded $810.00 as reimbursement for costs he expended during the contract, which should have been paid by Respondent. The total award to Complainant Wang, Xingcong is $15,210.00. Respondent Green Life Noni Corporation is ORDERED to pay the award of $15,210.00 to Complainant by delivering a cashier's check or postal money order for that amount (payable to Wang, Xingcong) to the Hearing Office no later than thirty (30) days after the date of issuance of this Order.

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4948(a).

DATED: December 27, 2018

/s/
Jerry Cody
Hearing Officer

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 18-049**
Juan M. Pua,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	
Suwaso Corporation *dba* Coral Ocean Golf Resort,	)	
Respondent.	)	

This matter was scheduled for an Administrative Hearing on April 24, 2019 at 9:00 a.m. at the Administrative Hearing Office. Respondent was present and represented by Attorney Colin Thompson. Complainant failed to appear.

Pursuant to NMIAC § 80-20.1-480(l), "[e]xcept for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or content the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate."

Upon a review of the record, the undersigned hearing officer declares the following findings of fact and conclusions of law:

1. On October 15, 2018, Complainant Juan M. Pua ("Complainant") filed a labor complaint against Respondent Suwaso Corporation *dba* Coral Ocean Golf Resort ("Respondent") for wrongful termination, unpaid wages, negligence and discrimination;
2. On January 29, 2019, the parties attended mediation but failed to resolve the matter;
3. An Order Referring Parties for Investigation and Notice of Hearing was promptly issued and hand-delivered to the parties at the conclusion of mediation;
4. The notice indicated the date, time, and place of the scheduled Administrative Hearing;
5. Pursuant to NMIAC § 80-20.1-475(d), Complainant was duly served with adequate notice of the above-mentioned hearing date, time and location;

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6. The parties participated in an investigation conducted by the Department's Enforcement Section ("Enforcement");
7. Upon conclusion of the investigation, Enforcement issued and served a written determination recommending dismissal of Complainant's claim;
8. Unfortunately, the written determination also referenced the incorrect hearing date—which was obviously incorrect as the hearing officer has the sole authority to schedule or reschedule matters;
9. Much effort was made to correct and notify the parties of the correct date as staff from the Administrative Hearing Office and Enforcement made numerous attempts to contact and verbally notify the parties of the mistaken date;
10. On April 24, 2019, Complainant failed to appear for the Administrative Hearing;
11. At the Administrative Hearing, the aforesaid staff testified that, using the contact information provided by Complainant, Complainant systematically dodged calls from the Department's landline;
12. Further, when Enforcement called using an unknown number, an unnamed party answered and indicated that Complainant is, suddenly, no longer available;
13. Pursuant to NMIAC §80-20.1-475(c), it is the parties' responsibility to keep contact information in the Department's records up to date and accurate;
14. Testimony from staff demonstrated that Complainant was uncooperative, evasive, and unwilling to participate in the adjudicated proceedings; and
15. No other cause was shown for Complainant's failure to attend.

In consideration of the above findings and conclusions, the undersigned hearing officer deems default judgement is appropriate. Accordingly, pursuant to NMIAC §80-20.1-480(l), default judgement is hereby entered in favor of Respondent.

So ordered this **25th** day of April, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	**Labor Case No. 18-059**
Zaji O. Zajradhara, Complainant, v. Woo Jung Corporation, Respondent.	**ADMINISTRATIVE ORDER**

I. INTRODUCTION

This matter came for an Administrative Hearing on May 8, 2019 at 9:00 a.m. in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Zaji O. Zajradhara (hereinafter, "Complainant") appeared without counsel. Respondent Woo Jung Corporation ("hereinafter, "Respondent") appeared without counsel and was represented by Secretary Eunhee Chung and Translator/Agent for Service of Process Jin Koo Cho. The Department's Enforcement Section ("Enforcement") was also present and represented by Investigators Jerrick Cruz and Bonifacio Castro.

II. LEGAL STANDARD

The Administrative Hearing Office has original jurisdiction to resolve all employment preference claims. 3 CMC § 4525(b).

"Citizens and CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the Commonwealth." 3 CMC § 4521; *see also* NMIAC § 80-20.1-101 ("It is the policy of the Commonwealth that citizens, CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the private sector workforce in the Commonwealth. . . .").

"A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a)[1]; *see also* NMIAC § 80-20.1-455(f) ("Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as described in a job vacancy announcement, may file a complaint making a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."); *see also* NMIAC §80-20.1-220(a) ("No employer may hire a foreign national worker, transitional worker, or other nonimmigrant alien if a qualified citizen, CNMI permanent resident, or U.S. permanent resident applied for the job in a timely fashion.").[2]

The Department's regulations provide further guidance.[3] Thereunder, "[t]he term 'just' cause' for rejecting an application for employment includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, rejecting persons who present fraudulent or inaccurate documentation in support of the application; rejecting persons without an education degree necessary for the position, rejecting persons with unfavorable recommendations from prior employment, rejecting persons with an employment history indicating an ability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time; and similar just causes." NMIAC § 80-20.1-455(f)(1). Notably, the aforementioned list of "just causes" is not exhaustive. "Any criteria in making hiring decisions advanced in

[1] Section 4525 states, "[i]n the full-time workforce or any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives in the available private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer." 3 CMC § 4525. "The current percentage specified by the Department . . . is 30%." NMIAC § 80-20.1-210(c)(3). This provision, however, "shall not apply to employers of fewer than five employees, provided however, the Secretary may, by regulation, require each business to have a least one employee who is a citizen or CNMI permanent resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period. "No waivers are available with respect to the workforce participation objective." NMIAC 80-20.1-210(f); *contra* NMIAC §80-20.1-215.

[2] "The Secretary shall promulgate regulations to implement the intent of this chapter pursuant to the Administrative Procedures Act including any delegation of the Secretary's duties as imposed herein to any employee of the Department." 3 CMC § 4530.

[3] Section 4530 states, "The Secretary shall promulgate regulations to implement that intent of this chapter pursuant to the Administrative Procedures Act including any delegation of the Secretary's duties as imposed herein to any employee of the Department." 3 CMC § 4530.

support of just cause must be consistent with the published job vacancy announcement for the job and must be a part of the employer's established hiring procedures." NMIAC § 80-20.1-455(f)(2).

Violations of the Commonwealth employment preference statute may result to a damage award of up to six months' wages, as well as sanctions of up to $2,000 against the employer. 3 CMC § 4528(f)(1) and (f)(2). Appeals and judicial review, if any, are governed by 3 CMC § 4528(g) and (h), respectively.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On December 21, 2018, Complainant filed a labor case against Respondent.

2. The aforementioned complaint *simply* alleged:

> Woo Jung Corporation
> 18-09-63127
>
> On 9-30-2018, I sent a request to the Secretary of the CNMI dept [*sic*] of labor to please forward my resume to the company above-stated. I was informed that said request has been fulfilled. I was neither contacted nor interviewed. Through, the position was for a CW-1 Visa.
>
> I am requesting full back pay; plus disciplinary action taken upon this employer.

3. Complainant did not identify the legal basis of his claim and failed to cite the statute for the alleged violation. Based upon the record and verbal confirmation by the Complainant, the undersigned construes Complainant's claim to be a violation of the Commonwealth Employment Act of 2007, Public Law 15-108, and codified under 3 CMC §§ 4511 et. seq.

4. The Administrative Hearing Office has original jurisdiction of this claim.

5. Pursuant to NMIAC § 80-20.1-465(a), a mediation was noticed and held on February 27, 2019 at 1:30 p.m. at the Administrative Hearing Office. The parties failed to resolve the dispute.

6. Pursuant to 3 CMC §4528(c) and NMIAC § 80-20.1-470(a), the case was referred to the CNMI Department of Labor Enforcement Section ("Enforcement") for investigation.

7. An investigation was conducted and a written determination was issued, filed, and served by Enforcement.

8. A prehearing conference was noticed and held on May 8, 2019 at 9:00 a.m. at the Administrative Hearing Office. At that time, the parties waived conflicts for recusal. Subsequently, as required pursuant to the Notice of Prehearing Conference issued April 9, 2019, the parties exchanged witness lists, exhibits to be introduced at the Administrative Hearing, a declined to engage in additional settlement negotiations. Further, the Administrative Hearing Officer denied Complainant's request for additional discovery of USCIS Petitions ever filed by Respondent between a period of several months. In support of the denial, the Administrative Hearing Officer stated, on the record, that the request was overbroad and irrelevant and unnecessary to Complainant's preference claim in consideration of the proposed exhibits exchanged, specifically, the Respondent's workforce listing. The Administrative Hearing Officer granted Complainant's request to provide notice to Mr. James Ulloa from CNMI Department of Labor, Division of Employment Services ("DES") to attend the scheduled administrative hearing. No other motions or requests were submitted or filed with the Administrative Hearing Office.

9. An administrative hearing on the abovementioned complaint was held on May 8, 2019 at 9:00 a.m. at the Administrative Hearing Office.

10. During the administrative hearing, Complainant called two witnesses: (1) Mr. James Ulloa of DES; and (2) Mr. Jerrick Cruz of Enforcement.

11. Mr. Ulloa testified, in part, that:

    a. Respondent advertised a new position for a rental sales agent under Job Vacancy Announcement # 18-09-63217 ("JVA 18").
    b. The Opening Date for JVA 18 was September 21, 2018.
    c. Pursuant to his request, Complainant was referred to JVA 18 by the Department of Labor on October 1, 2018.
    d. The Closing Date for JVA 18 was October 6, 2018.
    e. There were 10 responses to or applicants for JVA 18.
    f. Respondent failed to respond to any of the applicants.

g. JVA 18 was ultimately cancelled on April 16, 2019 due to the devastation and reduction in business caused by Super Typhoon Yutu.
h. To date, no one—much less, a foreign worker—was hired in connection to JVA 18.

12. Mr. Ulloa also testified, that:
    a. Respondent advertised a renewed position for a rental sales agent under Job Vacancy Announcement # 19-03-70102 ("JVA 19").
    b. The Opening Date for JVA 19 was March 6, 2019.[4]
    c. There were 5 responses to or applicants for JVA 19.
    d. Complainant was not referred to and did not apply for JVA 19.
    e. The Closing Date for JVA 19 was March 21, 2019.
    f. Again, Respondent failed to respond to any of the applicants.

13. Mr. Ulloa's testimony was credible and uncontested. Further, Mr. Ulloa's testimony was corroborated by printouts of the above-referenced JVA's with notations from the internal system.

14. Of the proposed exhibits submitted during the Prehearing Conference, only the following Exhibits were admitted into evidence:

    a. Exhibit # 1 – JVA 18-09-63127 (i.e., "JVA 18")
    b. Exhibit # 2 – JVA 19-03-70102 (i.e., "JVA 19")
    c. Exhibit # 3 – Respondent's Total Workforce Listing for the 4th Quarter of 2018.

15. Mr. Cruz testified, in part, that:

    a. He was the assigned investigator to this case.
    b. Mr. Cruz conducted the interviews and investigation between the parties in this matter.
    c. During an interview with Respondent, a representative stated he was unaware of their responsibility to cancel JVA 18 if they no longer intended to hire a new rental sales agent.
    d. Mr. Cruz informed Respondent of their responsibilities and referred Respondent to DES, namely, Mr. Ulloa.
    e. Based on his interview and investigation, Mr. Cruz submitted a written determination recommending judgment in favor of Respondent.
    f. The written determination and recommendation stands as Complainant never applied for JVA 19.

[4] Notably, this opening date was well after Complainant filed the present complaint.

16. Complainant argued that informing Respondent of an employer's responsibility to respond and cancel was an improper impediment to the ongoing investigation. Complainant's argument is unpersuasive for the following reasons. First, advising the public of the Department's rules and regulations is a practice of Enforcement and there was no malicious intent or ulterior motive behind that practice other than general education and future compliance. Second, cancellation of the JVA has no prejudicial consequence in this particular claim since cancellation is not an element of Complainant's labor claim, rather speaks to Respondent's compliance with agency regulations. Complainant failed to understand that issue remains whether a foreign worker was hired over him.

17. Complainant argued certain points in the written determination should be considered "moot." Complainant's argument is unpersuasive and irrelevant in satisfying the elements of the preference case. Enforcement's written determination is simply a product of their investigation and recommendation to the administrative hearing officer. It is not binding or assigned any particular amount of deference during an Administrative Hearing. This is particularly true when any written or testimonial evidence to the contrary is introduced. While a written determination is reviewed and helpful in certain complex or adversarial cases, a written determination is taken in a totality of circumstances. Further, any findings, decisions, or orders will be based on the full record and credibility of witnesses. Therefore, a finding of mootness is not necessary and counterproductive to the issue at hand.

18. A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. 3 CMC § 4528(a).

19. Complainant fails to meet all the elements of his claim in connection to JVA 18. Here, there is no evidence to show that Respondent hired anyone, much less a foreign worker, over Complainant. In fact, evidence shows that no one was hired because Respondent cancelled the JVA as a business decision due to the devastation of Super Typhoon Yutu.[5] Accordingly, there is no showing that: (1)

[5] "After receiving a referral from the [Department], an employer may take any of the following actions: . . . (4) Employers may reevaluate employment needs and hire no one for the proposed position. In this case, the employer shall notify the Department that the vacancy no longer exists." NMIAC § 80-20.1-235(c)(4).

Respondent rejected Complainant's job application without just cause; and (2) Respondent hired a foreign national worker for the advertised position. Accordingly, Complainant's claim must fail.

20. It is well established precedent that a respondent's failure to hire a foreign worker over a U.S. citizen, U.S. permanent resident, or CNMI permanent resident is fatal to a complainant's claim for damages under the employment preference statute. *Zajradhara v. SPN China News Corporation*, LC-17-021 (Administrative Order issued July 12, 2018 at 4) ("There are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone to fill the advertised position. The gravamen of the statutory violation of 3 CMC § 4528(a) is that Employer has hired a foreign national worker over a qualified U.S. citizen [or permanent resident]. In this case where no one was hired for the vacant job, Complainant cannot prove this important element of the offense."); *see also Zajradhara v. Haitan Construction Group*, LC-17-052 (Administrative Order issued May 25, 2018 at 4) ("Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions with Foreign National Workers; Therefore, Complainant Cannot Prevail under 3 CMC § 4528(a)").[6]

21. It is unknown whether any of the 5 responses to or applicants for JVA 19 were US citizens, US permanent residents, or CNMI permanent residents. It is further unclear whether Respondent actually renewed a *foreign worker employee* for the position advertised under JVA 19.[7] The above-mentioned issues have no consequence for this particular labor case for the following reasons:

    a. The complaint in this matter never alleges a claim in connection to JVA 19; and,
    b. Complainant never applied for JVA 19.

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[6] Pursuant to the Administrative Procedures Act, agency orders are generally not valid or effective onto any person or party until published and filed with the Commonwealth Register and the Governor. 1 CMC § 9102(d). That provision, however, is not applicable to any person or party with actual knowledge of the order. *Id.* Here, the undersigned finds that reference to the yet published orders is valid and effective given that Complainant was a party to those cases and served with the order, thus had actual knowledge.

[7] Respondent's Total Workforce Listing for the Fourth Quarter of 2018, admitted into evidence as Exhibit #3, list two sales representatives with green cards. Respondent did not verify which employee, if any, was renewed under JVA 19.

22. Complainant argued that, since he applied for JVA 18, Respondent should have also considered him for JVA 19—despite the fact he never applied for JVA 19. Complainant failed to provide any legal support for this argument.[8]

23. Failure to respond to, self-refer, be referred to, or otherwise apply for an announced position is fatal to a claim for damages under the employment preference statute. To hold otherwise would be illogical, impracticable, and most importantly, unsupported by the requirements under law.

24. Further, precedent supports the finding that Complainant's argument with respect to JVA 19 must fail. *Zajradhara v. Karis Company, Ltd.*, LC-17-019 (Administrative Order issued December 28, 2017 at 6 ("Complainant failed to take reasonable steps to deliver his job application to Employer. Because Employer never received a job application or resume from Complainant, Complainant cannot prove that his application was unjustly rejected by Employer. Given that this is a requisite element of the job preference claim, failure to prove this element means that the alleged charge must fail."); *see also Zajradhara v. Li Feng*, LC 17-043 (Administrative Order issued July 11, 2018 at 6) ("Complainant failed to establish that Employer rejected Complainant's job application without just cause because Complainant declined Employer's offer to interview him for the job . . . The Hearing Officer notes that scheduling a job interview requires the cooperation of both parties. If Complainant fails to act responsibly, such conduct, in effect, gives Employer an excuse not to go forward with considering the job applicant for the vacant (or renewed) position."); *see also Zajradhara v. Yen's Corporation*, LC-17-040 (Administrative Order issued July 11, 2018 at 6).

25. The logic and reasoning in LC-17-019, LC-17-043, and LC-17-040 extends to a complainant who fails to even apply for a particular job or JVA. Entering into an employment relationship requires the participation of an applicant and employer. If an applicant does not submit an application in response to the JVA, the employment preference statute does not impose any additional requirements or duties onto the non-applicant.[9] Further, the Complainant cannot meet the elements of his claim, namely, to show that Respondent unjustly rejected his job application when he never applied for the job advertised under JVA 19.

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[8] "A motion to recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith shall be permitted pursuant to § 80-20.2-140 of this subchapter." NMIAC § 80-20.2-130(c)(5). "Any complainant or respondent may by motion, file and recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith." NMIAC § 80-20.2-140.

[9] Federal regulations, which falls outside the jurisdiction of this office, may differ.

26. This matter alludes to certain compliance violations, particularly, failure to take action on referrals pursuant to NMIAC § 80-20.1-235(c) and good faith effort to hire prior to renewals of foreign workers under NMIAC § 80-20.1-235(d). However, such violations are only brought forth by the discretion of the Department's Enforcement Section. Here, Enforcement did not file or consolidate a compliance case against Respondent. Imposition of sanctions for noncompliance, if any, without notice and opportunity to respond would be contrary to due process and improper under the Administrative Procedures Act. *See* 1 CMC §§ 9108-9110. Accordingly, the undersigned declines to make any findings or conclusions with regards to said compliance issues.

27. During closing arguments Complainant complained that the undersigned hearing officer interrupted him and was argumentative. Upon review of the record, the undersigned hearing officer finds that disruptions were appropriate since Complainant often mischaracterized testimony, spoke of matters that were not entered into evidence or wholly outside the record, was testifying instead of asking questions to his witnesses, was presenting cumulative evidence, and was asking questions not relevant to the elements of his claim. The undersigned hearing officer also finds that the interruptions was necessary to control the proceedings in consideration of Complainants violent and disruptive history at the Administrative Hearing Office. *See Zajradhara v. Yen's Corporation*, LC-17-040 (INTERLOCUTORY ORDER RE: Closing of Evidentiary Record; Respondent's Closing Argument; Sanction of Complainant issued January 22, 2018 at 1) (Complainant was sanctioned pursuant to NMIAC § 80-20.1-480(c) when he "erupted in an unprovoked outburst, then stormed out of the hearing room.").

28. Complainant also stated that "he's not an attorney" and, in sum, should not be expected to adhere to the legal processes and rules. However, during the prehearing conference, the parties were advised that, pursuant to NMIAC § 80-20.1-480(e), the Commonwealth Rules of Evidence applies to the Department's Administrative Hearings. While, strict adherence is not required and added accommodations are provided, enforcement of relaxed rules of evidence were necessary to prevent confusion of the issues and prejudice unto the opposing party. Both parties, who were unrepresented by counsel, were provided added accommodations in that the Hearing Officer instructed them as to process, made clarifying statements, cited rules and regulations verbatim, and examined witnesses with follow up questions in order to make a complete record of relevant facts.[10] Further, the undersigned finds that the rules are necessary to provide

[10] For instance, when Complainant forgot to question Mr. Ulloa on a relevant piece of evidence, namely Exhibit 2 or JVA 19, the undersigned hearing officer did so. Further, when Complainant questioned a witness regarding an unidentified Department Memorandum that was not entered into evidence, the undersigned hearing officer corrected

structure and guidance to unrepresented parties. Instead, Complainant is attempting to abandon all rules and structure to make arguments unsupported by law or any legal authority. Providing legal counsel and completely waiving all rules goes far beyond a hearing officer's duty to provide added accommodations. *See Zajradhara v. Nippon General Trading Corp. dba Country House Restaurant*, LC-17-018 (Administrative Order issued March 19, 2019 at 2).

IV. JUDGEMENT

Accordingly, based on the above findings of fact and conclusions of law, judgement is hereby entered in favor of Respondent, Woo Jung Corporation.

So ordered this **16th** day of May, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

Complainant that what he was actually referring to was an Executive Order suspending provisions regarding reductions in force, a matter wholly unrelated to a employment preference violation.

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	**Labor Case No. 18-060**
Zaji O. Zajradhara,	
Complainant,	**ORDER OF RECUSAL**
v.	
Jin Joo Corporation,	
Respondent.	

This matter came for a Prehearing Conference on May 16, 2019 at 9:00 a.m. in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Zaji O. Zajradhara (hereinafter, "Complainant") appeared without counsel. Respondent Jin Joo Corporation ("hereinafter, "Respondent") appeared without counsel and was represented by General Manager Jin Koo Cho. The Department's Enforcement Section ("Enforcement") was also present and represented by Investigators Jerrick Cruz and Bonifacio Castro.

At the Prehearing Conference, the undersigned advised the parties that, having conducted the mediation in the above-captioned case, presents a conflict of interest. Despite the undersigned's readiness and ability to remain impartial during adjudication, Complainant orally moved to recuse the undersigned.

Pursuant to NMIAC § 80-20.1-460, "[a] party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit based on facts as to which the affiant would be qualified to testify under the evidentiary rules with respect to hearsay. The hearing officer shall decide the request based only on the written affidavit." NMIAC § 80-20.1-460(d).

In this case, Complainant failed to provide any sworn affidavit based on facts to support his motion. However, the undersigned agrees that conducting a confidential mediation and

later adjudicating the matter presents a conflict of interest.[1] Considering said conflict, the undersigned finds that waiving the written affidavit requirement would not prejudice the parties but only create additional delay in the matter.[2] Accordingly, the undersigned waives the written affidavit requirement solely in this matter.

Complainant's oral motion to recuse the undersigned is hereby **GRANTED**.[3] Accordingly, the Administrative Hearing in this case is vacated. This matter will be taken under advisement until such time the Administrative Hearing Office can procure a Hearing Officer Pro Tem.

So ordered this **16th** day of May, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

[1] This practice has been done solely because there are no available mediators and the current budget only allows for the employment of a single hearing officer at the Administrative Hearing Office.

[2] "Upon notice to all parties, a hearing officer may, with respect to matters pending before that hearing officer, modify or waive any rule herein upon a determination that no party will be prejudiced and the ends of justice will be served." NMIAC § 80-20.1-460(a).

[3] The motion was granted solely due to the conflict created by conducting mediation. The undersigned rejects any argument negating ability to be impartial in this matter.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	**Labor Case No. 18-068**
Julian John III M. Cacha,	
Complainant,	**ADMINISTRATIVE ORDER**
v.	
Imperial Pacific International (CNMI) LLC,	
Respondent.	

This matter was scheduled for an Administrative Hearing on May 15, 2019 at 9:00 a.m. at the CNMI Department of Labor, Administrative Hearing Office. Respondent was present and represented by Bertha Leon Guerrero and Attorney Kelley Butcher. CNMI Department of Labor, Enforcement Section was present and represented Investigators Bonifacio Castro and Jerrick Cruz. Complainant failed to appear.

Respondent moved for entry of default judgement.

Pursuant to NMIAC § 80-20.1-480(l), "[e]xcept for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or content the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate." "When an application for an entry of default or a default judgment occurs such application is a representation that due service has been made of all pleadings or papers required by [the regulations] to be made as a condition to the relief sought." NMIAC 80-20.2-135(a).

Upon a review of the record, the undersigned hearing officer declares the following findings of fact and conclusions of law:

1. On December 28, 2018, Complainant Mr. Julian John III M. Cacha ("Complainant") filed a labor complaint against Respondent Imperial Pacific International (CNMI) LLC

("Respondent") for unpaid wages, a violation of the WARN Act, nonpayment of paid time off, bonuses, and front pay of 60 days notice.

2. On March 5, 2019, the parties attended mediation. At mediation, Complainant was represented by Attorney Joe Hill. Attorney Joe Hill did not file a notice or entry of appearance for his limited representation. The parties failed to resolve the dispute.
3. On March 6, 2019, an Order Referring Parties for Investigation and Notice of Hearing was issued and served to the parties at the Administrative Hearing Office.
4. The above-mentioned notice indicated the date, time, and place of the scheduled Administrative Hearing.
5. Pursuant to NMIAC § 80-20.1-475(d), Complainant was duly served with adequate notice of the above-mentioned hearing date, time and location.
6. The parties participated in an investigation conducted by the Department's Enforcement Section ("Enforcement");
7. On April 9, 2019, a Notice of Prehearing Conference was issued which scheduled a Prehearing Conference for May 2, 2019 at 9:00 a.m. at the Administrative Hearing Office.
8. On April 24, 2019, Enforcement issued determination recommending judgment in favor of Respondent or dismissal of Complainant's claim;
9. The written determination reiterated the Administrative Hearing date, time, and location;
10. Enforcement served its Determination onto Complainant via mail service on April 24, 2019 and onto Respondent, via personal service on April 30, 2019.
11. On May 2, 2019, a Prehearing Conference in the above-captioned case was held. Enforcement and Respondent was present. Complainant failed to appear. Enforcement submitted written verification that Complainant departed the CNMI on March 16, 2019.
12. On May 15, 2019, Complainant failed to appear for the Administrative Hearing.
13. Enforcement submitted written verification that Complainant has not returned to the CNMI.

In consideration of the above findings and conclusions, the undersigned hearing officer deems default judgement is appropriate. Accordingly, pursuant to NMIAC §80-20.1-480(l), default judgement is hereby entered in favor of Respondent.

So ordered this **15th** day of May, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	CAC No. 17-001-02
Department of Labor Enforcement	)	DC No. 17-001
and Compliance Section,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
YWA Human Resource CNMI Corporation,	)	
Respondent.	)	
	)	

This Compliance Agency Case/Denial Case came on for hearing on March 9, March 28, and May 2, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department of Labor Enforcement and Compliance Section was represented by James Ulloa. Respondent YWA Human Resource CNMI Corporation appeared through its President, Matthew S. Fejeran, its General Manager, Benigno T. Fejeran, and its accountant, Rogelio C. Valguna. Real Party In Interest Zaji Zajradhara testified in support of his claim. Employee Rosalee Abejo testified in support of Respondent. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

AGENCY CASE

This case is based on a Determination, Notice of Violation and Notice of Hearing ("Determination") filed by the Department of Labor Enforcement and Compliance Section ("Enforcement") in the Hearing Office on February 17, 2017, against respondent YWA Human Resource CNMI Corporation ("Employer"). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The Determination (Hearing Exhibit 1) alleges that Employer failed to comply with several labor regulations and statutes:

(1) Employer failed to post numerous Employer Declarations on the Department of Labor ("DOL") website in 2016, in connection with job

vacancy announcements ("JVAs") posted for 17 jobs in violation of CNMI Employment Rules and Regulations ("Regs."), codified in the Northern Marianas Administrative Code ("NMIAC") at § 80-20.1-235(e).

(2) Employer failed to make a good faith effort to hire U.S. status-qualified citizens for job vacancies in violation of Regulations at NMIAC § 80-20.1-235(d).

(3) Employer failed to give a citizen, Zaji Zajradhara, job preference for employment in the private sector. [Regs. at NMIAC § 80-20.1-220.] Moreover, Employer unjustly rejected that qualified U.S. citizen for a job, giving rise to damages under 3 CMC §§ 4528(a) and 4528(f)(1).

* * * * *

1. Employer Failed to Post "Employer Declarations" to Prospective Job Applicants.

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the DOL website (www.marianaslabor.net) in cases where the employer posted a job vacancy, then failed to hire a U.S.-status qualified job applicant who was referred for that particular job. [Regulations at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response to each responder, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.* If a U.S. citizen is hired for the position, the employer is not required to post a declaration to the other job applicants. *Id.*

In its Determination, Enforcement charged that Employer failed to post Employer Declarations with respect to 17 JVAs that Employer posted in 2016:

JVA No.	Job Title	JVA: Opening Date
16-10-42266	Kitchen Helper	10/21/16
16-10-42205	Childcare	10/15/16
16-10-42206	Childcare	10/15/16
16-10-42182	Carpenter	10/13/16
16-10-42101	Maid & Housekeeping	10/10/16
16-10-42094	Forman – Septic System Operation	10/08/16
16-10-42095	Carpenter	10/08/16
16-10-42096	Plumber	10/08/16

16-10-42019	Painter	10/05/16
16-10-41880	Greeters	9/29/16
16-10-41124	Hairstylist/Beautician	8/12/16
16-10-41106	Marketing Research Analyst	8/11/16
16-10-40802	Sales Representative-Org. Produce	7/23/16
16-10-39914	General Maintenance	6/15/16
16-10-38265	Greeters	5/20/16
16-10-37308	Maid & Housekeeping	4/07/16
16-10-36603	Childcare	3/04/16

At Hearing, Employer testified that the company had decided to cancel the first 10 of the above-listed JVAs (Kitchen Helper through Greeters) when it learned that the federal cap for hiring CW1-status workers for 2017 had been reached and that no further CW1 petitions for 2017 employment would be granted by USCIS. [Testimony of Mr. Benigno T. Fejeran.] Although Employer decided to abandon these JVAs, Employer never notified DOL or took steps to cancel the JVAs, and never posted declarations to the online responders for these jobs. (See further discussion of this conduct on page 4, item 2.)

As to the remaining 7 positions, Employer did not hire U.S. citizens or permanent residents for 6 of these positions (excepting Greeters), but instead hired CW1-status workers. Employer failed to post declarations to the online responders. At Hearing, Employer then admitted it had not posted declarations, but noted that it did consider the responders for these jobs. Employer sent each responder an invitation to appear for a job interview, yet none of them showed up. [Testimony of Ben T. Fejeran, Matthew S. Fejeran, and Rogelio Valguna.] Enforcement did not challenge Employer's assertions that it properly considered responders in 5 out of the 7 posted JVAs; however, two JVAs were contested. As to those two JVAs (Greeter and Events/ Marketing Coordinator), testimony was taken with respect to allegations made by a U.S. citizen, Zaji Zajradhara. (See discussion on pp. 5-8).

Holding: Employer violated the Regulation [NMIAC § 80-20.1-235(e)] by failing to send "declarations" to online responders of 16 of the above-listed JVAs, explaining why they had not been hired to those jobs.[1] As to the first 10 JVAs that Employer claims to have abandoned, a simple notification should have been sent, informing each applicant that Employer had decided not to proceed with the hiring.

[1] As to the JVA for Greeter (JVA 16-10-38265), Employer was not legally required to file declarations because it hired U.S. citizens to fill the positions. [See language of NMIAC § 80-20.1-235(e).]

As to the remaining JVAs, Employer should have sent "declarations" to each responder after it made its hiring decisions.

Enforcement recommended that Employer be sanctioned for its conduct. The Hearing Officer agrees that sanctions should be assessed. The amount of such sanctions will be addressed at the conclusion of this Order (see "Sanctions" at pp. 10-11).

2. Employer failed to make a good faith effort to hire U.S. status-qualified citizens for job vacancies in accordance with Regulations at NMIAC § 80-20.1-235(d).

Employer admitted that it abandoned 10 JVAs when it learned that the cap for CW1 Petitions had been reached for 2017. [Testimony of Ben Fejeran.] Mr. Fejeran's answer reveals an uncomfortable truth about this Employer's manpower operation – namely, that these manpower jobs were designed to protect employment for *particular CW1 workers*. The evidence demonstrates that Employer had no interest in opening up the field to possible employment of U.S. citizens. This is why Employer closed its job search for 10 positions as soon as it learned that the CW workers in these jobs could not be renewed.

Such conduct evidences a lack of good faith with respect to affording U.S. citizens and permanent residents their legal preference in employment. [Regs. at NMIAC § 80-20.1-220]. In addition, Employer's treatment of Zaji Zadradjara with respect to the Events/Marketing Coordinator job evidences a failure to make a good faith effort to hire U.S. citizens. [See discussion at pp. 6-7 regarding the Events and Marketing Coordinator job.]

3. Employer failed to give a U.S. citizen, Zaji Zajradhara, job preference for employment in the private sector, in violation of Regulations at NMIAC § 80-20.1-220. In addition, Employer unjustly rejected this qualified U.S. citizen for a job. 3 CMC § 4528(a).

Enforcement charged that Employer failed to give preference in employment to U.S. citizen, Zaji Zajradhara (hereinafter, "Zaji"), with respect to two jobs – Greeter and Events and Marketing Coordinator - for which Zaji claimed he had attempted to submit job applications. These two JVAs are discussed separately below.

A. Greeter

Employer posted a JVA (JVA No. 16-05-38265) from May 20 to June 4, 2016, advertising five positions for "Greeter." [A copy of the JVA was entered into evidence as Hearing Exhibit 3.]

On about May 25, 2016, Mr. Zaji emailed Employer about the JVA and attached his resume. Zaji stated that he was attaching his resume "for the JVA position 16-05-38265." [A correct copy of the JVA was entered into evidence as Hearing Exhibit 4.] Employer's staff, Rose Abejo, replied to Zaji about an "electrician position," stating that Employer had emailed Zaji back in April 2016, but he never showed up.[2] *Id.* Zaji replied that "this resume submission was for the position as advertised as 'greeters' (JVA) 16-05-38265." Employer's accountant, Mr. Valguna, then replied: "Oh, ok, but the hiring is filled up already. We will notify you next time hiring. Thanks, Roger." *Id.*

Employer testified that it posted this "Greeter" JVA for its client, Imperial Pacific International (CNMI) LLC, *dba* Best Sunshine International ("Best Sunshine"), which sought greeters for its casino operation. Employer's practice was to post the JVA, then contact the online responders and invite them to come to Employer's office on a certain date. On that date, Employer would send the applicants to Best Sunshine's office to be interviewed. Best Sunshine would choose which applicants it wished to employ; Employer would follow Best Sunshine's instructions and hire the individuals that its client had selected. [Testimony of Ben T. Fejeran and Matthew S. Fejeran.]

As to the Greeter position posted in May 2016, Employer testified that it sent two U.S. citizen walk-in applicants (Matthew Fejeran's nephew and a U.S. citizen named Ethan P. Reyes) to Best Sunshine to interview for the Greeter job; these two applicants were hired. After selecting the two applicants, Best Sunshine informed Employer that it did not need more Greeters. At that point, Employer considered the job search closed and it stopped sending applicants to Best Sunshine to be interviewed. Employer neglected to officially "cancel" the JVA by contacting DOL's Job Placement Section. [Testimony of Mr. Valguna and Ms. Abejo.]

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[2] At Hearing, Rose Abejo testified that when she received Zaji's email (Hearing Exhibit 4), she mistakenly thought he was re-applying for an electrician position that Employer had posted months earlier. In fact, Zaji was trying to apply for the "Greeter" job. [Testimony of Ms. Abejo.]

The evidence shows that by the time Zaji contacted Employer about the Greeter job on May 25, 2016, the two U.S. citizen applicants had already been hired and Employer had heard from Best Sunshine that it no longer needed Greeters. For that reason, Mr. Valguna informed Zaji that the position was closed. [Testimony of Mr. Valguna; Hearing Exhibit 4.]

Holding: The Department of Labor does not prohibit an employer from cancelling a JVA. Based on the facts presented, Employer acted reasonably in not forwarding Zaji's resume to Best Sunshine and in telling Zaji that the position was closed. After all, Best Sunshine had already selected two U.S. citizen greeters and informed Employer that it did not wish to hire any more. Employer can be faulted for failing to officially cancel the JVA, but otherwise, this conduct does not constitute a failure to abide by CNMI preference laws.

B. Events and Marketing Coordinator

In early June 2016, Employer's client, Best Sunshine, informed Employer that Best Sunshine had been using a CW1 worker (Joel Tagalicud) through a manpower arrangement with St. Trading and now, Best Sunshine wanted the worker transferred from St Trading to Employer. [Testimony of Mr. Valguna and Ms. Abejo.]

Obliging its client, Employer posted a JVA (JVA No. 16-06-40026) advertising the job of "Events and Marketing Coordinator." The JVA was posted on DOL's website from June 18 to July 3, 2016. [A correct copy of the JVA was entered into evidence as Hearing Exhibit 9.]

On June 19, 2016, Zaji sent an email to Employer with a subject line that read: "JVA No. 16-06-40026." Zaji attached his resume and stated: "Attached you shall find my resume for the position as advertised. I thank you in advance for your consideration." [A copy of this email was entered into evidence as Hearing Exhibit 10; Zaji's resume was entered into evidence as Hearing Exhibit 11.]

Employer received Zaji's email but never responded to it. Ms. Abejo testified that when she received the email, she paid no attention to the listed JVA number; instead, she searched Zaji's name in the company's records and believed he was applying for construction work. [Testimony of Ms. Abejo.]

Ms. Abejo testified that after posting the JVA, Employer sent an email to the five persons who had posted online responses to the JVA, inviting them to come to

Employer's office for interviews on June 24 and 27, 2016. Nobody showed up for the interview. Shortly thereafter, Employer hired the CW1-status worker (Joel Tagalicud) who had been referred by Best Sunshine for the position.

In its Determination, Enforcement charged that Employer had failed to give legal preference in employment to Zaji Zajradhara, a U.S. citizen, in violation of the Regulations. [Regs. at NMIAC § 80-20.1-220.] By oral motion, Enforcement also invoked the provisions of 3 CMC § 4528(a) and its damage provisions; and thereby recommended that Zaji be awarded damages amounting to six months of wages, based on the employer's unjust rejection of his application. [Hearing Exhibit 1 at p. 3, recommendation "b."]

(1) Mr. Zajradhara's Claim Under 3 CMC § 4528(a).

The four elements of an offense under 3 CMC § 4528(a) are: (1) the U.S. citizen is qualified for a job; (2) the employer has not met the requirements of 3 CMC § 4525; (3) the employer rejects the citizen's application for the job without just cause; and (4) the employer then hires a person who is not a U.S. citizen or permanent resident, such as a CW1-status worker, for the position.[3]

Based on the evidence presented, the Hearing Officer finds that each element of the offense has been met. First, Zaji appears qualified for the advertised job. The JVA (Hearing Exhibit 9) listed the job requirements as "With 2 years work experienced. Hardworking and can handles pressure. Can work night shift and flexible to any type of works." The JVA described the job duties using convoluted descriptions and obtuse phrases. One such example, taken from the job duties section, states: "Analyze research, data, or technology to understand user intent and measure outcomes for ongoing optimization." At Hearing, Employer's Accountant described the job duties in simpler terms. According to Mr. Valguna, the job of Events and Marketing Coordinator involved communicating with local hotels to do the promotion and marketing for the casino. This included distributing fliers, monitoring greeters who distribute fliers at the airport, talking to travel agents and interacting with hotel management to promote the casino operation. [Testimony of Mr. Valguna.]

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[3] 3 CMC § 4528(a) states: "A citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of Section 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."

Zaji's resume (Hearing Exhibit 11) was not a model of clarity, but it did set forth nine separate jobs he claims to have held during the past 20 years. The jobs contained no dates of service, but Zaji testified as to those dates. According to Zaji, one job at "The Source, Blaze and Mixer Magazine(s)," held from 1995 to 1998 in New York City, involved supervising teams in the distribution of hip-hop promotional fliers. Zaji also worked as a research assistant, a bar owner, a part-time English instructor, a technician, and the co-owner of a rental leasing business. [*Id.* and Testimony of Mr. Zajradhara.] Zaji's work history, though eclectic, satisfies the vague requirement of two years of unspecified work experience that was listed in the JVA. Given Zaji's resume and the posted JVA requirements, he should have been interviewed, and he appeared qualified, for the advertised job.

The second element of a Section 4528(a) offense is that employer has not met the requirements of 3 CMC § 4525. That statute requires employers to maintain a minimum workforce participation goal of 30%, meaning that 30% of Employer's full-time workforce must consist of U.S. citizens or U.S. permanent residents. [3 CMC § 4525 and Regs. at NMIAC § 80-20.1-210(c)(3).] Employer currently employs 66 full-time employees, of which only 13 employees are U.S. citizens or permanent residents and 53 employees are CW1-status workers. [Total Workforce Listing submitted by Employer on 5/03/17.] Thus, Employer's current workforce participation percentage is 19.6%, well below the minimum requirement of 30%. Accordingly, this second element of the offense is met.

The third element of a Section 4528(a) offense is met if the employer rejects an application for the job without just cause. Employer, in effect, rejected Zaji's application without just cause when the Employer failed to respond to Zaji's clear attempt to apply for the position of Events and Marketing Coordinator.[4]

The fourth element of a Section 4528(a) offense is satisfied if the employer then hires a person who is not a citizen, etc., such as a CW1-status worker. That occurred in this case when Employer filed a CW1 Petition and hired the transfer employee from St. Trading (Joel O. Tagalicud) who had been referred to the Employer by Best Sunshine. [Testimony of Mr. Valguna.]

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[4] As stated earlier, Ms. Abejo testified that she simply made an "honest mistake" when she failed to read the JVA number in Zaji's email (Hearing Exhibit 10) and therefore, she failed to schedule Zaji for an interview for the Events and Marketing Coordinator job. The Hearing Officer finds that Ms. Abejo's testimony lacks credibility. Zaji expressly stated the JVA number in his simple, straightforward email (see Hearing Exhibit 10). Employer's failure to read the JVA number posted in the subject line, cannot be explained away as an "honest mistake."

(2) Damages under 3 CMC § 4528(f)(1):

For violations under 3 CMC § 4528(a), the Hearing Officer is authorized to "award actual and liquidated damages in an amount up to six months' wages for the job for which a citizen...applied." 3 CMC § 4528(f)(1). If Zaji had been properly interviewed and hired for the Events and Marketing Coordinator job, he would have been paid $9.00 per hour (Hearing Exhibit 9); total wages for six months (July through December 2016) would have amounted to $9,360.00. The Hearing Officer looks to whether Zaji was able to mitigate his damages by obtaining other employment during the six-month period following the JVA. Mr. Zaji reported that he remained unemployed from July 1, 2016, until November 28. 2016; however, on November 28, 2016, Zaji became employed and worked through December 31, 2016, earning a total of $1,960.12 in wages. [Email from Mr. Zajradhara, sent in response to question from Hearing Officer, on 5/04/17.]

Holding: The Hearing Officer finds that the appropriate damage award for this violation should be the maximum statutory amount (six months' wages totaling $9,360) minus the wages earned by Zaji during the six-month period ($1,960), for a total award of $7,400.00. In addition, Employer should be required to pay a monetary sanction for such conduct, pursuant to 3 CMC § 4528(f)(2). [See Discussion under Sanctions, at pp. 10-11.]

DENIAL CASE

On January 31, 2017, DOL's Job Placement Section issued a Notice of Denial ("Denial") of Employer's Request for a Certificate of Good Standing. This case is based on appellant YWA Human Resource CNMI Corporation's timely appeal of that Denial: D.C. No. 17-001. [The caption of the Denial Case should read: *YWA Human Resource CNMI Corporation (Appellant) vs. Department of Labor – Citizen Job Availability and Citizen Job Placement Section (Appellee).*]

The Department's Denial was based on the same charges that form the basis of the above adjudicated Agency Case. [See items 1-3, listed herein, on pp. 1-2.] As discussed in detail above, the Hearing Officer finds that Employer committed the offenses charged in the Compliance Agency Case and this Denial.

In the Compliance Agency case, Employer shall be ordered to pay both sanctions and damages, amounting to more than $10,000.00. [See Order at pp. 11-13, ¶¶ 1-7.] Employer testified that the jobs of its 66 full-time employees could be placed in jeopardy if Employer fails to obtain a Certificate of Good Standing. [Testimony

of Ben T. Fejeran and Rogelio Valguna.] Presumably, these employees are blameless with respect to the cited charges, yet they might bear the burden of the penalty by losing their jobs, if a Certificate of Good Standing were denied to this Employer.

Although Employer's conduct deserves to be sanctioned, no useful purpose would be served by denying it a Certificate, if Employer also pays substantial fines and damages for its conduct. For this reason, the Hearing Officer holds that as soon as Employer has paid the sanctions and damages ordered herein in the Compliance Agency Case (CAC No. 17-001-02), the Denial of the Certificate of Good Standing should be reversed, and a Certificate issued to Appellant YWA Human Resource CNMI Corporation. [Order at p. 12, ¶ 6.]

SANCTIONS

In its Determination, Enforcement asked that Employer be sanctioned with the maximum fine of $2,000 for *each* violation. [Hearing Ex. 1 at p. 3.] If sanctions were to be assessed for each separate JVA, it would result in a sanction of $34,000 against Respondent. At Hearing, Enforcement indicated that it would accept the Hearing Officer's discretionary ruling in this matter. [Testimony of Mr. Ulloa.]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2). The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14). The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified.

In this case, the evidence established that Employer committed three violations. First, it failed to post employer declarations with respect to 16 JVAs, more than half of which were cancelled by Employer when the cap for CW1 workers was reached for 2017. [NMIAC § 80-20.1-235(e).] Employer noted that it attempted to schedule job interviews with the responders to many JVAs, but no one showed up. Nevertheless, Employer admitted that it neglected to send "declarations" to each responder. The Hearing Officer finds that for this first charge of failure to

post declarations, Employer should be ordered to pay sanctions of $2,000, with half suspended for a period of two years.

Second, Employer failed to make a good faith effort to employ U.S. citizens and permanent residents in violation of CNMI preference laws. [NMIAC § 80-20.1-235(d).] This violation was evidenced by Employer's admission that it cancelled 10 JVAs after it became known that the cap for the employment of CW1 workers in 2017 had been reached. The Hearing Officer finds that this violation should result in sanctions of $2,000, with half of that amount suspended for a period of two years.

Third, Employer failed to give job preference to a particular U.S. citizen, Zaji Zajradhara, who applied for the Events and Marketing Coordinator position. [Regs. at NMIAC § 80-20.1-220.] Moreover, Employer unjustly rejected that qualified U.S. citizen (Zaji) for a job for which he applied, thus justifying an award of damages and sanctions. 3 CMC §§ 4528(f)(1)-(2). For this conduct, Employer should be ordered to pay $1,000 in sanctions in addition to the $7,400 damage award.

In conclusion, Employer, for its various violations of law, shall be ordered to pay total sanctions of $5,000, with $2,000 of that fine suspended for a period of two years. In addition, Employer shall be ordered to pay $7,400 in damages to Mr. Zaji Zajradhara. Finally, the Denial of the Certificate of Good Standing shall be reversed, and a Certificate issued to Employer, as soon as Employer has fully paid the sanctions and damages, as ordered below.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent YWA Human Resource CNMI Corporation on the following charges: (1) failing to post employer declarations regarding 16 JVAs during 2016 [Regs. at NMIAC § 80-20.1-235(e)]; (2) failing to make a good faith effort to provide jobs to U.S. citizens and permanent residents [Regs. at NMIAC § 80-20.1-235(d)]; (3) failing to give preference in employment to a U.S. citizen for the position of Events and Marketing Coordinator [Regs. at NMIAC § 80-20.1-220]; and unjustly rejecting that qualified U.S. citizen for the job. 3 CMC § 4528(a). For these violations, Respondent shall be ordered to pay sanctions and damages, as set forth below.

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2. **Sanctions:** Respondent YWA Human Resource CNMI Corporation is hereby SANCTIONED a total of five thousand dollars ($5,000) for its conduct; however, $2,000 of the sanction shall be SUSPENDED for a period of TWO YEARS, then extinguished, provided that Respondent commits no violations of Labor regulations or statutes in that period. Respondent is ORDERED to pay the remaining $3,000 in sanctions no later than **thirty (30) days** after the date of issuance of this Order. Proof of payment shall be submitted to the Hearing Office on or before the due date. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Damages:** Respondent YWA Human Resource CNMI Corporation is hereby ORDERED to pay damages to Zaji Zajradhara in the amount of seven thousand and four hundred dollars (**$7,400**) to compensate Mr. Zajradhara for the wages he would have earned working as Events and Marketing Coordinator. [3 CMC §§ 4528(f)(2).] Respondent is ORDERED to pay these damages by cashier's check or postal money order, made payable to Zaji Zajradhara. Payments shall be delivered to the Hearing Office in two installments, as follows: $3,400.00 due on or before June 15, 2017; and $4,000.00 due on or before July 15, 2017.

4. **Posting Employer Declarations:** Respondent is ORDERED to post employer declarations to each online responder for jobs posted in the future by Employer in accordance with Regulations at NMIAC § 80–20.1-235(a). Respondent shall hire U.S. citizen and permanent resident job applicants when they are qualified to work.

5. **Reinstatement of Suspended Fine:** The obligations described above are continuing obligations. If Respondent fails to comply with the terms of this Order, or commits further labor violations, it shall be subject to a possible reinstatement of the suspended sanctions ($2,000) plus additional monetary sanctions, after a due process hearing on this issue.

6. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certificate of Good Standing for Appellant YWA Human Resource CNMI Corporation is hereby REVERSED, provided that Appellant complies with all terms of this Order. The Department is instructed to issue the Certificate of Good Standing to Appellant as soon as Employer has paid $3,000 in sanctions and the $7,400 damage award.

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[CAC No. 17-001-02; DC No. 17-001]

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: May 11, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Sandcastle Saipan, LLC, Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-002 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 2, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Sandcastle Saipan, LLC, was represented by its Human Resources Manager, Kezia E. Sablan, and its Operations Manager, Ravenal Valencia. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on January 31, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated February 10, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Sandcastle Saipan, LLC ("Employer") operates a magic show out of the Hyatt Regency Hotel in Garapan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to post Employer Declarations on the DOL website in 2016, in connection with a job vacancy announcement ("JVA") for Operations Manager that was posted by Employer. Employer Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-235(e). [Hearing Exhibit 1.]

(2) Employer failed to submit a Workforce Plan in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510; and

(3) Employer failed to submit any quarterly Total Workforce Listing documents in 2015 and 2016, as required by the Regulations at NMIAC § 80-20.1-505(b-c).

1. **Failure to Post "Employer Declarations" For Prospective Job Applicants.**

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Employment Rules and Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with a JVA that Employer posted for its Operations Manager in 2015. [Hearing Exhibit 1.]

In October 2015, Employer posted the JVA for Operations Manager on the DOL website, which ran from October 21, 2015 to November 4, 2015. Department records show that 10 online responses were posted to the website,[1] but that Employer failed to post any responses to these responders. [A printout of the JVA, listing the 10 listed responses, was entered into evidence as Hearing Ex. 3.]

At Hearing, Employer admitted that it never posted responses to any of the 10 responses posted in response to the JVA. Employer's current Human Resources ("HR") Manager, Ms. Kezia E. Sablan, testified that the company's JVAs used to be posted by its former HR Manager, Gloria Sherry, until she left the company in August 2015. The HR Manager's position remained vacant from August 2015 until October 2016, and it was during that time that this JVA was posted. It is not

[1] These names were either posted on the website by the job seeker, himself, or else submitted automatically by the Citizen Job Placement computerized system that automatically refers persons to certain JVAs, based on pre-established, programmed criteria. [Testimony of Mr. Ulloa.]

clear whether Employer ever reviewed the JVA responses in 2015. In any case, no online declarations were posted by Employer in 2015. [Testimony of Ms. Sablan.]

Recently, Employer reviewed the resumes and work history of the responders and concluded that none of these responders had the job experience required for the Operations Manager job. In February 2017, Employer logged into the DOL website and posted online responses to the ten responders. [Testimony of Ms. Sablan.]

Enforcement (Mr. Ulloa) testified that it also reviewed the resumes of each of the 10 responders and agrees with Employer that none of the responders met the job qualifications for Operations Manager. [Testimony of Mr. Ulloa.]

Based on the evidence, Enforcement requested an order sanctioning Employer for failing to post employer declarations with respect to the 10 responders who had responded to the JVA in 2015. [Regs. at NMIAC § 80-20.1-235(e).]

2. <u>Failure to Submit Workforce Plans for 2015 and 2016</u>.

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] In this case, the evidence shows that Employer failed to submit Workforce Plans in either 2015 or 2016. [Testimony of Mr. Ulloa.]

Employer admitted that it had not filed Workforce Plans in 2015 and 2016. Again, Ms. Sablan testified that the company had relied on the services and advice of its former HR Manager, Ms. Sherry, and that after Ms. Sherry resigned, the company failed to file the required documents. [Testimony of Ms. Sablan.] After receiving the Denial, Employer prepared Workforce Plans for 2015 and 2016. [Copies of the Workforce Plans for 2015 and 2016 were entered into evidence as Hearing Exhibits 4 and 5, respectively.]

Based on the evidence, Enforcement requested that Employer be sanctioned for failing to file Workforce Plans in 2015 and 2016. [Regs. at NMIAC § 80-20.1-510.]

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3. **Failure to Submit Quarterly Total Workforce Listings for 2015 and 2016.**

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for all four quarters of 2015 and 2016. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The four Listings for 2015 were entered collectively as Hearing Exhibit 7; the four Listings for 2016 were entered collectively as Hearing Exhibit 8.] Again, Employer's current HR Manager, Ms. Sablan, noted that after the former HR Manager left the company in August 2015, the company had not realized that it was obligated to submit quarterly Total Workforce Listings. As soon as it received the Denial, it promptly took steps to correct the deficiencies.

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file two years of quarterly Total Workforce Listings in 2015 and 2016.

DISCUSSION

The evidence established that: (1) Employer failed to post employer declarations to responders of a JVA for Operations Manager, posted in October 2015; (2) Employer failed to submit Workforce Plans for 2015 and 2016; and (3) Employer failed to submit any quarterly Total Workforce Listings in 2015 and 2016. [Regs at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

As stated above, after it received the Denial, Employer took immediate steps to correct each of the above deficiencies by submitting new documents. [See Hearing Exhibits 4-8.] As to the missing declarations, it was determined that none of the responders qualified for the job vacancy. The Total Workforce Listings showed that in 2015, Employer had 4 full-time employees: 2 U.S. citizens and 2 CW-1 employees. In 2016, the number of CW-1 status workers dropped to one, when one of the CW-1 status employees obtained federal authorization to work, then obtained permanent residency status. [Testimony of Mr. Valencia.]

Recently, Employer's only CW-1 status employee left his employment. As of the date of Hearing, Employer's full-time workforce consists of 3 employees: two U.S. citizens and one permanent resident. Employer employs no full-time CW-1 status workers at this time. [See Hearing Exhibit 6 - Workforce Plan for 2017.]

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for its numerous failures to submit census-related documentation over a two-year period. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given that Employer failed to post employer declarations in 2015, and did not submit Workforce Plans and Total Workforce Listings for two full years. As mitigating factors, the Hearing Officer notes (1) that Employer promptly filed its missing documentation after it received the Denial; and (2) Employer has remained above the minimum workforce participation goal of 30% in its total, full-time workforce since 2015.[2] Based on the foregoing, the Employer shall be sanctioned in the amount of $1,500; however, $1,000 of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no further violations of CNMI labor law during the two-year period following the issuance of the Order.

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[2] The minimum Workforce Participation goal of 30% (percentage of U.S. status-qualified workers in an employer's total workforce) is established in the Commonwealth by statute (3 CMC § 4525) and regulation (Regs. at NMIAC § 80-20.1-210(a)).

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Sandcastle Saipan, LLC is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (i.e., Certificate of Good Standing) to Appellant as soon as the $500 portion of the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Sandcastle Saipan, LLC is hereby FINED one thousand five hundred dollars ($1,500); however, $1,000 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining $500 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant Sandcastle Saipan, LLC is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** If Appellant fails to comply with its continuing obligation to comply with Department's statutes and regulations during the suspension period, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 7, 2017

Jerry Cody
Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Bridge Capital, LLC, Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-003 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 13, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Bridge Capital, LLC, was represented by its counsel, Jordan Sundell. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 3, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated February 15, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Bridge Capital, LLC ("Employer") operates a lending and real estate business in Saipan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to submit the 2nd, 3rd and 4th quarterly Total Workforce Listing documents in 2015, as required by the Employer Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-505(b-c); and

(2) Employer failed to submit a Workforce Plan in 2015 in accordance with Regulations at NMIAC § 80-20.1-510.

1. **Failure to Submit Quarterly Total Workforce Listings for 2015 and 2016.**

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for the 2nd, 3rd and 4th quarters of 2015. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The three Listings for 2015 were entered collectively as Hearing Exhibit 3.] Mr. Sundell, who overseas Employer's compliance matters, testified that Bridge Capital had not realized that it was obligated to submit Total Workforce Listings on a quarterly basis. As soon as it received the Denial, it promptly took steps to correct the deficiencies.

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file two years of quarterly Total Workforce Listings in 2015 and 2016.

2. **Failure to Submit a Workforce Plan in 2015.**

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.]

In this case, the evidence shows that Employer submitted a 2014 Workforce Plan in March 19, 2014, but then failed to update that Plan within 12 months as required by the Regulation. *Id.* [Testimony of Mr. Ulloa; Hearing Exhibit 4 – copy of 2014 Workforce Plan.] Later in 2015, months after the deadline to update, it appears that Employer submitted a Workforce Plan that did not identify a year. [Hearing Exhibit 5a – copy of Workforce Plan, signed on 10/29/15.] After receiving this Denial, Employer submitted a revised 2015 Workforce Plan, signed on February 16, 2017. [See Hearing Exhibit 5b – copy of a *revised* 2015 Workforce Plan, signed on 2/16/17.]

At Hearing, Employer admitted that it failed to submit a timely updated Workforce Plan for 2015 within 12 months of the submission of the 2014 Workforce Plan. Employer's explanation was that it was not aware until receiving the Determination that Workforce Plans are due on an **annual** basis. [Testimony of Mr. Sundell.]

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to submit a timely updated Workforce Plan in 2015. [Regs. at NMIAC § 80-20.1-510.]

DISCUSSION

The evidence established that: (1) Employer failed to submit three quarterly Total Workforce Listings in 2015; and (2) Employer failed to submit a timely Workforce Plan for 2015. [Regs at NMIAC §§ 80-20.1-505(b) and 510.]

As stated above, after it received the Denial, Employer took immediate steps to correct each of the above deficiencies by submitting new documents. [See Hearing Exhibits 3 and 5b.] The Total Workforce Listings showed that in 2015, Employer had 12 full-time employees, consisting of 9 U.S. citizens and 3 H1-B employees.

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for its failure to submit census-related documentation in 2015. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a fine should be assessed against this Employer, given that Employer failed to submit a timely Workforce Plan for 2015 and Total Workforce Listings for three quarters in 2015. As mitigating factors, the

Hearing Officer notes that (1) Employer promptly filed its missing documentation after it received the Denial; and (2) Employer has remained well above the minimum workforce participation goal of 30% in its total, full-time workforce since 2015.[1] [Hearing Exhibit 3.] Based on the foregoing, the Employer shall be sanctioned in the amount of $1,500; however, $1,000 of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no further violations of CNMI labor law during the two-year period following the issuance of the Order.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Bridge Capital, LLC is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (i.e., Certificate of Good Standing) to Appellant as soon as the $500 portion of the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Bridge Capital, LLC is hereby FINED one thousand five hundred dollars ($1,500); however, $1,000 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining $500 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant Bridge Capital, LLC is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** If Appellant fails to comply with its continuing obligation to comply with Department's statutes and regulations during the suspension period, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

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[1] The minimum Workforce Participation goal of 30% (percentage of U.S. status-qualified workers in an employer's total workforce) is established in the Commonwealth by statute (3 CMC § 4525) and regulation (Regs. at NMIAC § 80-20.1-210(a)).

[D.C. No. 17-003]

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 30, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Bridge Capital, LLC, Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-004 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 13, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Bridge Capital, LLC, was represented by its counsel, Jordan Sundell. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 3, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated February 15, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Bridge Capital, LLC ("Employer") operates a lending and real estate business in Saipan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing two grounds:

(1) Employer failed to post Employer Declarations with respect to seven JVAs posted by Employer in 2016, as required by the Employer Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-235(e); and

(2) Employer failed to submit quarterly Total Workforce Listings for the 1st and 2nd quarters in 2016, as required by Regulations at NMIAC § 80-20.1-505(b).

1. **Failure to Post Employer Declarations With Respect To 7 Posted JVAs.**

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regulations at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with seven JVAs that Employer posted in 2016. [Hearing Exhibit 1.] These JVAs were for the following positions:

Accountant
Bookkeeper
Business Development Manager (China)
Translator (Lao language)
Translator (Khymer language)
IT Manager
Controller

At Hearing, Employer admitted that it never posted responses to responders to any of the above-listed JVAs. Mr. Sundell, who overseas Employer's compliance matters, testified that Bridge Capital had not realized that it was obligated to post individual responses to each online responder once it made its hiring decision. Nevertheless, Mr. Sundell assured the Hearing Officer that Employer reviewed each of the responders' resumes to determine whether they were qualified. [Representations of Mr. Sundell.]

Mr. Sundell provided the following details as to each of the posted JVAs. First, Employer decided to cancel three of the job searches - for accountant, bookkeeper and business development manager for China - during the time that the JVA was running on DOL's website. For these positions, Employer never reviewed

responders' resumes because Employer considered the matter cancelled. Employer never hired anyone for those positions. *Id.*

Employer sought translators in the Lao and Khymer languages. [Copies of these JVAs were entered into evidence as Hearing Exhibits 3 and 4.] The Department's automatic referral system posted 102 responders for each position.[1] Employer reviewed the resumes of each of the 102 responders and found none of them to be qualified, given that none of the responders spoke the relevant language (Lao or Khymer). Employer stressed that although it did not post "declarations" to each responder, it did review each of the posted resumes to determine whether anyone was qualified. [Representations of Mr. Sundell.]

As to the IT Manager position, Employer reports that 3 responders posted on DOL's website. Employer contacted all three responders and concluded that none of them was qualified for the job. *Id.* [See Hearing Exhibit 5 – copy of JVA for the IT Manager position.] Employer admits it neglected to post Employer Declarations to any of the responders for this position, but it did review and consider the responders. *Id.*

As to the Controller position, Employer reports that 10 responders posted on DOL's website. Employer reviewed all posted resumes and contacted at least one responder by telephone, plus one walk-in applicant. Employer concluded that none of these persons was qualified for the job. *Id.* [See Hearing Exhibit 6 – copy of JVA for Controller position.] Employer admits that it neglected to post Employer Declarations to any of the responders for this position, but it did review and consider the responders. *Id.*

2. **Failure to Submit Quarterly Total Workforce Listings for two quarters in 2016.**

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505(b).] This information is submitted in a document called the Total Workforce Listing. The Department

[1] This case illustrates a problem with DOL's automatic referral system. Here we have 102 referrals for a translator in the Khymer and Lao languages. None of the referrals spoke Khymer or Lao; yet their names and resumes were referred to the employer, which then obligated that employer to (a) review the resumes and (b) post online responses to each of the 102 responders. This process can be time-consuming even for a large company. For a smaller company, the process can become burdensome.

requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for the 1st and 2nd quarters of 2016. After receiving the Denial, Employer prepared and submitted the missing Total Workforce Listings. [See Hearing Exhibit 2 – copies of Total Workforce Listings for the 1st and 2nd quarters of 2016.] Mr. Sundell, who overseas Employer's compliance matters, testified that Bridge Capital had not realized that it was obligated to submit Total Workforce Listings on a **quarterly** basis. As soon as Employer received the Denial, it promptly took steps to correct the deficiencies.

DISCUSSION

The evidence established that: (1) Employer neglected to post Employer Declarations as to numerous JVAs posted in 2016; and (2) Employer failed to submit two quarterly Total Workforce Listings in 2016. [Regs at NMIAC §§ 80-20.1-505(b) and 510.]

Employer introduced evidence in support of its argument that the Denial should be reversed and any sanction should be mitigated. As to the first charge, Employer admitted that it had not posted "declarations" to online responders, but Employer presented uncontested evidence that it actually reviewed and considered each posted response, including the voluminous responses to the translator positions, which amounted to a waste of Employer's time. Furthermore, Employer noted that 3 of the 7 posted JVAs had been cancelled (unofficially) by Employer during the time that the JVA was running. [Representation of Mr. Sundell.] As to the missed deadlines to submit Total Workforce Listings, Employer took immediate steps to correct these deficiencies by submitting new documents after it received the Denial.

The Hearing Officer finds it relevant that Employer actually reviewed responders' resumes, even though Employer neglected to file "declarations." As to Employer cancelling its own JVAs, the Hearing Officer notes that although an employer is allowed to cancel a job search, this Employer should be faulted for never notifying DOL or the responders that the JVAs had been cancelled.

At the conclusion of the Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer paid a monetary sanction for the violations detailed above. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." [Regs. at § 80- 50.4-820(h) and (o).]

In this case, Employer is subject to a fine for its failure to comply with two Regulations: (1) failure to post Employer Declarations with respect to several posted JVAs; and (2) failure to submit Total Workforce Listings for two quarters in 2016. Employer noted several facts in support of its argument that its fine should be reduced. First, as to Employer Declarations, Employer noted that even though it mistakenly neglected to file online responses, nevertheless, it had reviewed the resume of every responder in good faith and been ready to pursue qualified candidates. Second, although it had missed the deadline to submit Total Workforce Listings, it corrected this deficiency soon after it received the Denial.

The Hearing Officer agrees that the standard fine for Employer Declaration violations should be reduced to $500, in recognition of the fact that Employer actually reviewed and considered each posted response, including the voluminous responses to the translator positions, which amounted to a waste of Employer's time. As to the failure to post two quarterly Total Workforce Listings, the Hearing Officer believes that $200 is an appropriate sanction for this deficiency, particularly given that Employer recently was sanctioned in a separate order for failure to produce the same type of documents in 2015. [See Administrative Order re D.C. No. 17-003, issued on 3/30/2017.]

In conclusion, based on the foregoing, the Hearing Officer holds that this Denial should be reversed, provided that Employer pays a sanction of $700 for its multiple deficiencies.

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Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Bridge Capital, LLC is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (Certificate of Good Standing) to Appellant as soon as Appellant has paid the full sanction set forth below.

2. **Sanctions:** For the reasons stated above, Appellant Bridge Capital, LLC is hereby FINED seven hundred dollars ($700). Appellant is ORDERED to pay the sanction no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 31, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Misa Enterprises, Inc., Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-005 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 19, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Misa Enterprises, Inc. was represented by its President, Misako Kamata, and its Assistant Manager, Sonia G. Siwa. The Department's Citizen Job Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 13, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated February 20, 2017, was entered into evidence as Hearing Exhibit 3.]

Appellant Misa Enterprises, Inc. ("Employer") operates a building rental business. Employer's workforce consists of two full-time employees: one U.S. citizen and one holder of E-2 status. [Testimony of Ms. Kamata.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to post a job vacancy announcement ("JVA") on the Department's website (www.marianaslabor.net) in 2016, for a job filled by a CW-1 status employee, in violation of the Regulations codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2015 and 2016 in accordance with Regulations at § 80-20.1-510;

(3) Employer failed to submit quarterly Total Workforce Listing documents for four quarters in 2015 and two quarters in 2016, in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-20.1-505.

1. Failure to Post Job Vacancy on DOL's Website.

Departmental Regulations require employers who are hiring or renewing CW-1 status workers to post job announcements on the Department's website. [Regs. at NMIAC § 80-20.1-225(a).] In this case, the Job Placement Section alleged that Employer had not posted a JVA on the Department of Labor ("DOL") website for a general maintenance position in 2016. At Hearing, Employer explained that it had employed one general maintenance employee whose CW1 status expired in July 2016; Employer had not renewed that worker's employment and it did not replace him with another employee. [Testimony of Ms. Siwa.]

The evidence established that the Department was incorrect in charging this employer with failing to post a JVA for the general maintenance position in 2016. Therefore, this charge should not be used to deny a request for a Certificate of Good Standing.

2. Failure to Submit Workforce Plans for 2015 and 2016.

Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510. In this case, DOL alleged that Employer had failed to submit Workforce Plans for 2015 and 2016. Employer admitted that it did not submit a Workforce Plan in 2015; however, Employer noted that it filed a Workforce Plan in April 2016. [A copy of the Plan submitted in April 2016, was entered into evidence at Hearing Exhibit 2.]

Mr. Ulloa noted that the Plan submitted in April 2016, was incomplete as it left blank the last two columns of information (specific vocational preparation and timemetable) on the form. [Testimony of Mr. Ulloa.] In any case, the Hearing Officer finds that no useful purpose would be served by requiring Employer to correct its previously submitted 2016 Workforce Plan.

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3. Failure to Submit Quarterly Total Workforce Listings in 2015 and 2016.

Department Regulations require employers to submit information ***on a quarterly basis*** regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505 *et seq.*] The Department requires employers to submit this information in a document called the Total Workforce Listing in order to qualify for a Certificate of Good Standing. [*Id.*; testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for all quarters in 2015 and for the 2nd and 3rd quarters of 2016.[1] In support of its request for a Certification of Good Standing, Employer filed a Total Workforce Listing, signed on April 13, 2016. [The Total Workforce Listing, dated 4/13/2016, was entered into evidence as Hearing Exhibit 3.]

DISCUSSION

Employer was cleared of the first charge regarding alleged failure to post a JVA. Employer admitted that the company failed to submit a Workforce Plan in 2015 and submitted an incomplete Workforce Plan in 2016. Employer failed to submit any quarterly Total Workforce Listing documents in 2015, but submitted a quarterly Total Workforce Listing for the first quarter of 2016; it then missed filing the Listing for the second and third quarters of 2016.

President Kamata promised to be more diligent in the future in submitting census-related reports to DOL in a timely manner. [Testimony of Ms. Kamata.]

Employer asked that it not be denied a Certification of Good Standing, as the Certificate is needed for the company's business to remain viable. *Id.*

Employer's testimony reveals that Employer's workforce is comprised of one U.S. citizen and one foreign citizen holding an E-2 visa workers. Thus, Employer's workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [NMIAC § 80-30.2-120(c)].

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[1] Employer did produce one Total Workforce Listing for the 1st quarter of 2016, in response to a written document request served on the company by a DOL investigator. [Testimony of President Kamata.]

Employer's failure to submit Workforce Plans and Total Workforce Listing documents for two years, justifies the imposition of sanctions. Nevertheless, Employer gave credible testimony that is now understands its obligations to file these documents in a timely manner and President Kamata promised to ensure that this will be done correctly in the future. [Testimony of Ms. Kamata.]

At Hearing, Job Placement recommended reversing its Denial and issuing a warning to Employer to submit census-related documents in a timely manner, when required in order to comply with DOL regulations in the future. [Testimony of Mr. Ulloa.] Job Placement left the decision to the discretion of the Hearing Officer.

Given the facts presented, the Hearing Officer finds that Employer should be given the opportunity to demonstrate that it can comply with Departmental regulations in the future. For this reason, the Hearing Officer shall issue a warning to Employer that future failures to file census-related documents may result in monetary sanctions or the denial of a Certificate of Good Standing.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Misa Corporation, is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as practicable.

2. **Warning:** Appellant Misa Corporation is hereby WARNED that if it employs foreign national workers, it has a continuing obligation to provide census-related documents such as the annual Workforce Plan and quarterly Total Workforce Listings. Any failure by Appellant to submit such documents, when required, may be grounds for denial of a Certificate of Good Standing, and may subject Appellant to possible monetary sanctions after a due process hearing on the issue. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 28, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Fidel P. Mallari, Jr., Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-006 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 30, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Fidel P. Mallari, Jr. appeared together with the General Manager of his business, Victor P. Mallari. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 3, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

Appellant Fidel P. Mallari, Jr., *dba* Reliable Manpower ("Employer") operates a manpower company on Saipan. The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds:

(1) Employer failed to post job vacancy announcements on the DOL website for five maintenance worker positions in 2016, and one general support worker job in 2015 and 2016, as required by Employer Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-225(a). [Hearing Exhibit 1.]

(2) Employer failed to post Employer Declarations on the DOL website in 2015, in connection with job vacancy announcements ("JVAs") for general maintenance workers, a construction supervisor and carpenters, that were posted by Employer. Regulations at NMIAC § 80-20.1-235(e). [Hearing Exhibit 1.]

(3) Employer failed to submit Workforce Plans in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510;

(4) Employer's 2017 Workforce Plan is deficient in certain respects; and

(5) Employer failed to submit quarterly Total Workforce Listings in 2015 and 2016, as required by the Regulations at NMIAC § 80-20.1-505(b-c).

1. **Failure to Post Job Vacancy Announcements on DOL's Website For Numerous Positions in 2015 and 2016.**

Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted JVAs on the Department of Labor ("DOL") website for its five general maintenance CW-1 status employees in 2016. Employer's General Manager Victor Mallari admitted that the company had not posted JVAs on DOL's website in 2016 for those renewals. [Testimony of Mr. Victor Mallari.] Mr. Mallari noted that his company advertised the jobs using a local radio station instead of the Department's website because Employer was running out of time to file the CW Petitions. *Id.* In addition, Employer admitted that it had neglected to post a JVA in 2015 and 2016 for a general support worker position. [Hearing Exhibit 2.]

2. **Failure to Post "Employer Declarations" For Prospective Job Applicants.**

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regs. at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with three JVAs that Employer posted on August 1, 2015. [Hearing Exhibit 1.]

The Hearing Officer notes that one day after Employer posted the JVAs, on August 2, 2015, Typhoon Soudelor slammed into Saipan and knocked out power to the island for many weeks. Mr. Ulloa confirmed that DOL's website was "down" for more than two months. In short, Employer was physically incapable of posting any Employer Declarations on DOL's website in the months following its August 1, 2015 posting. Given this history, the Hearing Officer finds that Employer should be excused from this charge.

3. <u>Failure to Submit Workforce Plans for 2015 and 2016</u>.

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] In this case, the evidence shows that Employer failed to submit Workforce Plans in either 2015 or 2016. [Testimony of Mr. Ulloa.]

Employer admitted that it had not filed Workforce Plans in 2015 and 2016. General Manager Malari testified that he had been unaware in those years that Employer was required to file a Workforce Plan.

4. <u>Employer Submitted a Deficient Workforce Plan for 2017</u>.

Recently, Employer submitted a Workforce Plan for 2017. [A copy of the Plan was entered into evidence as Hearing Exhibit 2.] Mr. Ulloa testified that the Plan that Employer submitted is deficient in that it leaves two categories blank: specific vocational preparation (SVP Range) and timetable for accomplishing the replacement of foreign national workers. [Testimony of Mr. Ulloa.]

At Hearing, Employer took note of the deficiencies and promised to correct the document in the near future. [Testimony of Mr. Victor Mallari.]

5. <u>Failure to Submit Quarterly Total Workforce Listings for 2015 and 2016</u>.

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is

submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer admits that it failed to submit Total Workforce Listings for all quarters of 2015 and 2016. In preparation for requesting the Certificate of Good Standing in February 2017, Employer prepared and submitted all of the missing Total Workforce Listings for 2016. [The four Listings for 2016 were entered into evidence collectively as Hearing Exhibit 3(a-d).] The documents show that as of December 31, 2016, Employer employed 7 full-time workers: 5 CW-status workers, one holder of an EAD (Employment Authorization Document) and one permanent resident. [See Total Workforce Listing for 4th Quarter of 2016 at Hearing Exhibit 3d.] [1]

DISCUSSION

The evidence established that: (1) Employer failed to post JVAs for 5 general maintenance worker positions in 2016 and one JVA for a general support worker in 2015 and 2016; (2) Employer failed to submit Workforce Plans for 2015 and 2016; (3) Employer submitted a deficient Workforce Plan for 2017; and (4) Employer failed to submit quarterly Total Workforce Listings in 2015 and 2016. [Regs at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

Employer shall be excused from the charge that it failed to file Employer Declarations in response to JVAs posted on August 1, 2015, due to the fact that Typhoon Soudelor hit Saipan the day after the posting, knocking out the DOL website and cutting off the Department's electricity for more than two months.

In February 2017, Employer took steps to correct some of the deficiencies by submitting Total Workforce Listings for all four quarters of 2016. [See Hearing Exhibits 3(a-d).]

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for the above-cited violations. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

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[1] The Total Workforce Listings produced by Employer all listed Fidel P. Mallari Jr. as an employee with a salary. The Hearing Officer notes that as a sole practitioner, Fidel Mallari cannot employ himself. Therefore, Mr. Mallari should refrain from listing himself as an employee in future Total Workforce Listings.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." [Regs. at § 80- 50.4-820(h) and (o).]

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given that Employer intentionally chose not to post 6 JVAs in 2016, and did not submit Workforce Plans and Total Workforce Listings for two full years. As mitigating factor, the Hearing Officer notes that Employer recently filed its missing documentation for 2016 and attempted to submit a Workforce Plan for 2017. Additionally, Employer expressed remorse at its past failure to comply with the Regulations and promised to be more compliant in the future.

Based on the foregoing, the Hearing Officer holds that Employer should be sanctioned $2,000; however, $500 of the fine shall be suspended for one year, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no further violations of CNMI labor law during the one-year period following the issuance of the Order. Additionally, Employer shall be ordered to file a corrected Workforce Plan for 2017 within thirty days. Finally, Employer asked that it be allowed to pay the sanction in several installments due to his ongoing cash-flow problems. This request, which was unopposed by the Department of Labor, shall be granted.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Fidel P. Mallari Jr. is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (i.e., Certificate of Good Standing) to Appellant as soon as the $1,500 portion of the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Fidel P. Mallari Jr. is hereby FINED two thousand dollars ($2,000); however, $500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $1,500 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant Fidel P. Mallari Jr. is ORDERED to pay the $1,500 portion of the fine in five $300 installments, with each installment due on or before the 15th day of each month, beginning in April 2017, and continuing each month thereafter until fully paid. Payment shall be made to the CNMI Treasury; a copy of each payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **2017 Workforce Plan:** Appellant Fidel P. Mallari Jr. is ORDERED to submit a corrected Workforce Plan for 2017 to the Department's Citizen Job Placement and Citizen Job Availability Section (attn.: James Ulloa) no later than **thirty (30) days** after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-510.]

5. **Warning:** If Appellant fails to comply with its continuing obligation to comply with DOL's statutes and regulations during the suspension period, he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 31, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Herman's Modern Bakery, Inc., Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-007 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 6, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Herman's Modern Bakery, Inc., was represented by its General Manager, Anna G. Hayes, and its President, Herman T. Guerrero. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 8, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated March 22, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Herman's Modern Bakery, Inc. ("Employer") operates a bakery, food service and catering business with several locations on Saipan. The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds:

(1) Employer failed to post Employer Declarations with respect to 17 JVAs posted by Employer in 2016 and 2017, as required by the Employer Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-235(e);

(2) Employer provided insufficient justification for its failure to hire a status qualified citizen or permanent resident for the JVA (No. 16-05-38238) posted for the job of "restaurant server," as required by Regulations at NMIAC § 80-20.1-235.

(3) Employer failed to submit a Total Workforce Listing for the 2nd quarter of 2016, as required by Regulations at NMIAC § 80-20.1-505(b).

1. **Failure to Post Employer Declarations With Respect To 17 Posted JVAs.**

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regulations at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with 17 JVAs that Employer posted in 2016 and 2017. [Hearing Exhibit 1.] These JVAs were for the following positions: catering coordinator, baker, cook, expediter, baker, executive secretary, maintenance technician, food service manager, cake decorator, cook assistant, packer, production manager, production clerk, refrigeration and aircon technician, maintenance technician, sales representative, food service worker, sales representative and baker's helper. [Hearing Exhibit 1 - Determination at pp. 1-2.]

At Hearing, Employer admitted that it had not posted responses to responders to any of the above-listed JVAs. Ms. Hayes, who overseas Employer's compliance matters, testified that the company had assigned a Human Resources assistant to oversee labor matters, but that person resigned in February 2016. Thereafter, the company began neglecting its obligation to file declarations. Nevertheless, Ms. Hayes testified that Employer had reviewed many of the responders' resumes to determine whether they were qualified. Ms. Hayes notes that the vast majority of referrals lacked qualifications for the JVAs. Furthermore, Employer notes that it hired many U.S. citizens or permanent residents for these open positions. [Testimony of Ms. Hayes.]

Employer also complained that most of the online responses posted with respect to JVAs turn out to be unqualified or not interested in the jobs. Yet, DOL regulations require an employer to review each response and then post a response as to why that person is not being considered for the job. Employer notes that this process wastes valuable management time and constitutes a burden. [Testimony of Ms. Hayes; Employer's appeal letter at Hearing Exhibit 2.]

DOL maintains an automated system of job referrals that automatically forwards many job applicants' names and resumes in response to JVAs based on pre-programmed criteria. [Testimony of Mr. Ulloa.] Admittedly, this system results in many responders being forwarded to JVAs on jobs for which they are not qualified. Correcting this system lies beyond the capability of the Hearing Office. However, the Hearing Officer notes the burden that the current automated system places on employers to post responses to unqualified responders.

2. **Failure to Hire a U.S. Status-Qualified Worker For A Restaurant Server Position as Advertised in JVA No. 160-05-38238.**

In its Denial, Job Placement charged that Employer provided insufficient justification for its failure to hire a status qualified citizen or permanent resident for the JVA (No. 16-05-38238) posted for the job of "restaurant server" from May 19 to June 3, 2016. [Regs. at NMIAC § 80-20.1-235. A copy of the JVA was entered into evidence as Hearing Exhibit 7.]

At Hearing, Ms. Hayes testified that, in fact, Employer had hired a U.S. citizen for the posted job of "restaurant server" in June 2016. That job applicant, who was a walk-in applicant, was hired on June 7, 2016, but did not last more than a month. In mid-July 2016, Employer hired a second U.S. citizen for the position. That person began working for Employer on July 28, 2016, then resigned on September 19, 2016. [Testimony of Ms. Hayes.]

Evidently, Employer never informed the Job Placement Section that a U.S citizen had been hired for JVA No. 160-05-38238. The Regulations (Regs. at NMIAC § 80-20.1-235) clearly state that if an employer hires a U.S. citizen or permanent resident for a posted job vacancy, the Employer has no obligation to post declarations to responders, or even to notify DOL of the hiring. [1] Nevertheless, as

[1] Regulation section 80-20.1-235(e) states: "Employer Declaration. In the event that a citizen, CNMI permanent resident, or U.S. permanent resident was not hired,...the employer shall file a declaration...with respect to the

a practical matter, Employers would be well advised to notify Job Placement when a U.S. citizen is hired for a posted position, in order to avoid misunderstandings with the Department of Labor.

3. **Failure to Submit A Quarterly Total Workforce Listing for the 2nd Quarter of 2016.**

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505(b).] This information is submitted in a document called the "Total Workforce Listing." The Department requires employers to submit this information in order to qualify for a Certificate of Good Standing. [Testimony of Mr. Ulloa.]

The evidence established that Employer had submitted two Total Workforce Listings to DOL for 2016: one Listing covered the period from October 2015 through April 2016; the second Listing covered the period from May 2016 through January 2017. [Copies of these Total Workforce Listings were entered into evidence as Hearing Exhibits 5 and 6, respectively.]

The above-noted Listings included the months of the second quarter of 2016; however, the three months comprising the second quarter were not segregated from other months. After receiving the Denial, Employer prepared and submitted a Total Workforce Listing that tracked only the 2nd Quarter of 2016, covering only those three months of the second Quarter (April, May and June of 2016). [A copy of the Total Workforce Listing for the 2nd Quarter of 2016 was entered into evidence as Hearing Exhibit 3.]

Ms. Hayes explained that Employer had not realized that the Department wanted the information tracked *by each quarter*. As soon as Employer realized its mistake, it took immediate steps to correct the deficiency by producing the missing document.

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citizens and permanent residents who applied for the job....**No declaration is required if a citizen or permanent resident is hired.**" [Emphasis added.]

DISCUSSION

The evidence established that: Employer neglected to post "declarations" as to numerous JVAs posted in 2016 and 2017 [Regs. at NMIAC § 80-20.1-235]; but Employer did not commit the second violation noted in the Denial. The third alleged violation was excused after it was shown that Employer had submitted the information in a different format. As soon as Employer discovered the mistake, it corrected the deficiency by submitting the correct quarterly Total Workforce Listing in 2016 (Hearing Exhibit 3). [Regs at NMIAC § 80-20.1-505(b-d).]

At Hearing, Employer asked that the Denial be reversed and any sanction be reduced or eliminated. As to the first charge, Employer admitted that it had not posted "declarations" to online responders, but Employer presented uncontested evidence that it actually reviewed and considered many of the responders. Many of the U.S. citizens who were interviewed and hired by Employer were walk-in applicants who had seen the job vacancy posted on the website, but chose to come to Employer in person. [Testimony of Ms. Hayes.]

Employer's General Manager testified that the company has difficulty retaining the U.S. citizens that it hires to work in the bakery business. Ms. Hayes stated that management is forced to terminate dozens of local employees because they have poor work habits or dismal attendance records. To substantiate this point, Employer submitted a list of 71 U.S. citizens or permanent residents who Employer had terminated in 2016 and 2017 [Hearing Exhibit 4 – listing 71 citizens and/or permanent residents and 17 foreign workers terminated in 2016 and 2017.]

At Hearing, Job Placement, noting Employer's good record of employing many U.S. citizens and permanent residents, recommended that the Denial be reversed and that Employer should not be sanctioned, but should receive a "warning" to file employer declarations in the future.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is

authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings." [Regs. at § 80- 50.4-820(h) and (o).]

This Denial was based on three charges. First, the Department correctly faulted Employer for failing to post Employer Declarations with respect to numerous posted JVAs in 2016 and 2017. On the other hand, as stated, the employer had no obligation to post declarations if a U.S. citizen or permanent resident was hired for an advertised position (see footnote 1). At least some of the 17 JVAs noted in the Denial fall into this category. Also, Employer noted that its failure to post declarations was an oversight on its part that occurred after its Human Resource assistant resigned from the company. Employer also noted that it reviewed many of the responders' resumes and found those responders to be unqualified for the offered jobs. The second charge of the Denial was countered by Employer's uncontested testimony that it had hired a U.S. citizen for the "restaurant server" position. The third charge was satisfied when Employer produced the missing Total Workforce Listing in the correct format.

Employer presented other facts in support of its request for leniency. Employer noted that it is the oldest Chamorro-owned business in the CNMI and that it has been operating with a good labor record for decades. Ms. Hayes testified that the company remains deeply committed to hiring qualified local workers. Employer currently employs 122 full-time employees, consisting of 60 U.S. citizens or permanent residents, 56 CW1-status workers and 6 holders of EADs (Employment Authorization Documents). [Testimony of Ms. Hayes.] Employer's Workforce Participation percentage is nearly 50%, which is well above the minimum of 30% mandated by CNMI statute and Regulations. [3 CMC § 4525 and Reg. at NMIAC § 80-20.1-210(c)(3).]

The Hearing Officer agrees that given Employer's long-standing record of hiring U.S. citizens and permanent residents, the standard fine for Employer Declaration violations should be reduced to a warning in this instance. Based on the foregoing, the Hearing Officer holds that this Denial should be reversed, provided that Employer is given a warning: Employer is warned that any failure on its part to post declarations to online responders in the future, may result in Agency charges and substantial monetary sanctions.[2]

[2] Again, if a U.S. citizen is hired for a posted job announcement, the Employer is not required to post "declarations" but, as a practical matter, it should notify Job Placement that such hiring has occurred. [Regs. at NMIAC § 80-20.1-235.]

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certificate of Good Standing for Appellant Herman's Modern Bakery, Inc., is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certificate of Good Standing to Appellant as soon as practicable.

2. **Warning:** Appellant Herman's Modern Bakery, Inc., is hereby WARNED that it has a continuing obligation to post online "employer declarations" to responders in cases where U.S. citizens or permanent resident applicants have not been hired and a foreign national worker has been chosen instead for the job. Any failure by Appellant to post such declarations in the future may be grounds for denial of a Certificate of Good Standing, and may subject Appellant to possible monetary sanctions after a due process hearing on the issue. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 12, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Md. Nurul Islam Bhuiyan, *dba* Island Protection Services, Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 17-008 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on August 7, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Md. Nurul Islam Bhuiyan was represented by counsel Brian Flaherty, appearing on behalf of appellant's counsel, Robert T. Torres. The Department's Citizen Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Mr. Zahid Islam appeared and testified in support of Appellant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on April 20, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Appellant's Appeal of Denial of Certificate of Good Standing, dated May 5, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Md. Nurul Islam Bhuiyan, *dba* Island Protection Services ("Employer"), operates a business primarily engaged in providing security services to contracting clients in Saipan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to submit Total Workforce Listings for the 1st, 2nd, 3rd and 4th quarters in 2016, as required by the Employer Rules and Regulations

("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-505(b-c);

(2) Employer failed to submit a Workforce Plan for 2016 in accordance with Regulations at NMIAC § 80-20.1-510; and

(3) Employer failed to post Employer Declarations to responders regarding 23 posted Job Vacancy Announcements ("JVAs") from 2015 until the present. [Regs. at NMIAC § 80-20.1-235(e).]

1. **Failure to Submit Quarterly Total Workforce Listings for Four Quarters in 2016.**

Department of Labor Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505(b).] This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for all four quarters of 2016. Employer testified that prior to the Denial, he had not realized that he was obligated to submit Total Workforce Listings on a quarterly basis. As soon as he received the Denial, he took immediate steps to correct the deficiencies. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The four quarterly Listings for 2016 were entered into evidence collectively as Hearing Exhibit 3.] [Testimony of Mr. Bhuiyan.]

Employer brought to the Hearing his Total Workforce Listing for the Second Quarter of 2017, which he had filed with the Department of Labor ("DOL") on August 3, 2017. [A copy of this Total Workforce Listing was entered into evidence as Hearing Exhibit 5.] A review of the document revealed several mistakes, including that Mr. Bhuiyan erroneously listed himself as an employee (an employer cannot employ himself); and that employee Benjamin Abraham was listed as a CW-1 even though he evidently has a green card. [Testimony of Mr. Bhuiyan.]

After the hearing, on August 17, 2017, Employer submitted an Amended Total Workforce Listing for the Second Quarter of 2017. This document corrected the

erroneous entries in the prior Total Workforce Listing (Exhibit 5). This amended document has been entered into evidence as Hearing Exhibit 5a.

2. Failure to Submit a Workforce Plan for 2016.

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.]

At Hearing, Employer admitted that he had not submitted a Workforce Plan for 2016. According to Employer, he had not known about the regulations requiring this submission until he received this Denial. Meanwhile, Employer prepared a current Workforce Plan for 2017 and submitted it with his Request for a Certificate of Compliance. (See Workforce Plan at Hearing Exhibit 4.) Upon reviewing the submitted Plan, Mr. Ulloa testified that the document is acceptable to the Placement Section.

3. Failure to Post Employer Declarations With Respect to 23 JVAs Posted From 2015 to April 2017.

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the DOL website (www.marianaslabor.net) in cases where the employer has rejected a U.S. citizen or permanent resident applicant for a particular job and instead, hired a foreign national worker for the position. [Regs. at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In this case, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with 23 JVAs that Employer posted during the period from 2015 through March 2017. [Hearing Exhibit 1.] These JVAs were for the following positions:

2017
Accountant (1 JVA)
Security Officer (1 JVA)
Operations Manager (1 JVA)
Security Supervisor (1 JVA)
Security Guard (1 JVA)

2016
Accountant (3 JVAs)
Security Officer (3 JVAs)
Operations Manager (1 JVA)
Security Supervisor (1 JVA)
Security Guard (4 JVAs)

2015
Security Officer (2 JVAs)
Security Supervisor (2 JVAs)
Security Guard (2 JVAs)

At Hearing, Employer admitted that he never posted responses to responders of JVAs that he had posted in 2015 and 2016. Mr. Bhuiyan stated that he had not understood his legal obligation to post responses, but he noted that since receiving the Denial, his staff has reviewed all job applicants' resumes and conducted in person or phone interviews with all interested applicants. For the accountant positions, tests were administered to determine applicants' abilities to do the job. [Testimony of Mr. Bhuiyan and former Operations Manager, Zahid Islam.]

Employer noted that as to JVAs filed in March 2017, the security guard position has been filled by a U.S. citizen, but the other posted jobs (accountant, security officer, operations manager, and security supervisor) have not been filled. [Testimony of Mr. Bhuiyan.]

DISCUSSION

The evidence established that: (1) Employer failed to submit four quarterly Total Workforce Listings in 2016; (2) Employer failed to submit a timely Workforce Plan for 2016; and (3) Employer neglected to post Employer Declarations to responders with respect to 23 JVAs posted during a 3-year period, from 2015 through March 2017. [Regs at NMIAC §§ 80-20.1-505(b) and 510.]

In mitigation, after receiving the Denial, Employer took steps to correct the above deficiencies by submitting the missing documents (See Hearing Exhibits 3 and 4). Employer also produced a copy of his Total Workforce Listing, filed with DOL on 8/03/17 (Hearing Ex. 5); as well as his Amended Total Workforce Listing, filed with DOL on 8/17/17 (Hearing Exhibit 5a). Moreover, Employer and his former Operations Manager (Zahid Islam) testified that Employer had carefully reviewed the resumes of all job applicants who applied for the posted JVAs in 2017, to determine if they were qualified for the positions and interested in the jobs. Employer testified that any qualified U.S. citizens or permanent residents have been offered jobs for which they applied; some responders indicated that they were no longer interested in the positions. [Testimony of Mr. Bhuiyan and Mr. Islam.]

Employer's Amended Total Workforce Listing, filed on August 17, 2017, shows that Employer currently employs 30 full-time employees and out of that number,

10 are U.S. citizens or green card holders, 19 are CW-1 status workers and 1 holds an EAD. Thus, Employer's workforce satisfies the minimum 30% ratio of U.S. status-qualified workers that is required under 3 CMC § 4525, and the Regulations [NMIAC § 80-20.2-120(c)].

At Hearing, Job Placement testified that it would not object to a reversal of its denial, provided that Employer is sanctioned monetarily for his failure to submit census-related documents in 2016 and his failure to post Employer Declarations during a 3-year period. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions. [Testimony of James Ulloa.]

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at §§ 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a fine should be assessed against this Employer for its numerous regulatory violations, including: failure to submit a timely Workforce Plan for 2016 and Total Workforce Listings for four quarters in 2016; and failure to post Employer Declarations for 23 JVAs. As mitigating factors, the Hearing Officer notes that (1) Employer filed his missing documentation after he received the Denial; (2) Employer made a concerted effort to review and consider U.S. citizen job applicants for the positions he posted in March 2017; and (3) Employer is currently above the minimum workforce participation goal of 30% with respect to its total, full-time workforce. [Hearing Exhibit 5a.] Based on the foregoing, the Hearing Officer finds that Employer should be sanctioned with a fine of $1,500; however, half ($750) of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no violations of CNMI labor law during the two-year period.

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Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Md. Nurul Bhuiyan is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certificate of Good Standing to Appellant as soon as Appellant has paid the $750 portion of the sanction (see below).

2. **Sanctions:** For the reasons stated above, Appellant Md. Nurul Bhuiyan is hereby FINED one thousand five hundred dollars ($1,500); however, $750 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining $750 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant Md. Nurul Bhuiyan is ORDERED to pay the $750 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** If Appellant Bhuiyan fails to comply with its continuing obligation to comply with Department's statutes and regulations during the suspension period, he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: August 22, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Aminul Islam, Complainant, v. Christopher G. Imbo, *dba* MGI Manpower Group International, Respondent.	)	**L.C. No. 17-015** **ADMINISTRATIVE ORDER**

This labor case came on for hearing on October 26, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Complainant Aminul Islam appeared *pro se*. Respondent Christopher G. Imbo, *dba* MGI Manpower Group International, appeared and was represented by attorney Charity R. Hodson. Investigator Ben Castro appeared on behalf of the Department of Labor Enforcement and Compliance Section. Mr. Hafizul Islam testified for Complainant. Md. Serajul Islam served as interpreter for Complainant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a labor complaint filed by complainant Aminul Islam ("Employee") in the Hearing Office on June 12, 2017, against respondent Christopher G. Imbo, *dba* MGI Manpower Group International ("Employer"). [A copy of the complaint was entered into evidence as Hearing Exhibit 1.] The complaint alleged that Employer breached an employment contract by failing to provide work to Employee after Employee arrived in Saipan to work for Employer.

The evidence presented at hearing established the following facts. Employee's brother, Hafizul Islam, has lived and worked in Saipan for about 20 years. In about 2014, he began trying to find a job in Saipan for his brother, Aminul Islam, who lived in Bangladesh. In late 2015, shortly after Typhoon Soudelor slammed into Saipan, Employer began hiring dozens of foreign-based workers and arranging for them to come to Saipan with CW-1 visas, to work on various construction

projects. In about October 2015, Hafizul Islam approached Employer and convinced him to offer employment to his brother, Aminul Islam (Employee), who would come from Bangladesh to work in Saipan.

The Contract: In October 2015, Employer drafted and sent a written Employment Contract to Employee in Bangladesh, which Employee signed and sent back. The parties executed the Employment Contract ("Contract") with signatures, dated October 5, 2015. [A copy of the Contract was entered into evidence at Hearing Exhibit 3.] Under the terms of the Contract, Employer agreed to provide full-time work to Employee for the duration of the term of the Contract. *Id.*

Contract Term: The Contract stated that the contract period would commence upon Employee's "arrival in Saipan" until the expiration of his CW-1 status. [Contract at paragraph ¶ 1 ("Contract Period").] Employer did not insert any specific start date into the Contract, requiring Employee to be on Saipan by a specific month or day.[1] *Id.* In early 2016, the expiration of Employee's CW-1 status was set as January 17, 2017. [See Hearing Exhibit 4.]

After the Contract had been signed by both parties, Employer submitted the Contract together with a CW-1 Petition to USCIS, asking for permission to employ Employee. In March 2016, Employer received an Approval Notice from USCIS indicating that it had approved the CW-1 Petition for Employee to work in Saipan. [A copy of the Approval Notice from USCIS, dated 3/15/2016, was entered into evidence at Hearing Exhibit 4.] Employer then forwarded the Approval Notice to Employee in Bangladesh with instructions to obtain a visa to enter the CNMI. [Testimony of Mr. Imbo.]

Arrival on August 26, 2016: It took Employee several months to obtain his visa from the U.S. Embassy in Bangladesh. He obtained his visa from the U.S. Embassy in mid-August 2016, then booked his airline ticket to Saipan with money he had borrowed from a relative. In mid-August 2016, Employee contacted his brother Hafizul to inform him about his arrival in Saipan. Employee arrived in Saipan on August 26, 2016. [Testimony of Employee and Mr. Hafizul Islam.]

September-October 2016: On August 29, 2016, three days after arriving in Saipan, Employee and his brother, Hafizul, visited Employer's office but were told by the secretary that Employer was off-island for several weeks. Several weeks

[1] Employer knew from experience that Employee would need to obtain a visa from the U.S. Embassy in Bangladesh before he could travel to Saipan to work. [Testimony of Mr. Imbo.]

later, in mid-September 2016, Employee and his brother met Employer Christopher Imbo in person at Employer's office. Mr. Imbo complained that Employee was "late" in arriving on Saipan. Employer said he had no work for Employee at that time, but that Employee should "wait" and Employer would make inquiries to determine if he or his supervisor could find work for him. [Testimony of Mr. Imbo and Mr. Aminul Islam.]

At this first meeting and in the months that followed, Employer did not terminate the Contract nor take any steps to repatriate Employee. *Id.*[2]

At the first meeting in mid-September 2016, Hafizul left his cell phone number with Employer so he could be contacted if Employer found work for Employee. Several weeks after the first meeting, Mr. Imbo saw Hafizul at the Fiesta Resort and told him that he was not optimistic that he could find work for Employee. Imbo told Hafizul to call him in a few weeks, when Imbo returned from Guam. Mr. Imbo testified that he does not recall if Hafizul ever called his office again. [Testimony of Mr. Imbo.] Hafizul gave credible testimony that he spoke on the telephone with Mr. Imbo one or two times after their September meeting and that Imbo assured him that he was continuing to look for work for Employee. [Testimony of Mr. Hafizul Islam.]

November 2016 to January 17, 2017: After October 2016, Employer and Employee had little or no contact. Employer testified that he never spoke to Hafizul, either by telephone or in person, from November 2016 through January 2017. (Employer has no knowledge of whether Hafizul ever contacted his office while Employer was off-island.) Employer admits that during this period, he had Hafizul's cell phone number and knew where Hafizul was working; thus, he could have contacted Hafizul if he had wanted to speak with him. Employer admits that he never tried to contact Hafizul. [Testimony of Mr. Imbo.] For his part, Hafizul maintains that he tried several times to call Employer, but he got no answer. Hafizul testified that he visited Employer's office several times in this period, but Mr. Imbo was off-island, except for one meeting that Hafizul claimed they had in November.[3]

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[2] Employer testified that at the first meeting with Employee and Hafizul in September 2016, Employer was considering terminating the Contract and repatriating Employee; instead, he decided to give Employee the chance to find alternative employment. Mr. Imbo admitted under oath that he told Employee and brother Hafizul that he (Imbo) would ask around to see if he could find work for Employee. [Testimony of Mr. Imbo.]

[3] Whether the parties spoke to each other in November is disputed. Employer maintains the parties never spoke, either in person or by phone. Hafizul Islam claims they met face-to-face in November in

The parties never spoke to one another in December 2016 or January 2017. [Hafizul Islam testified that he and Employee visited Employer's office in mid-December 2016 and early January 2017, but were told by office staff that Mr. Imbo was off-island; Mr. Imbo testified that he did not speak with Hafizul or Employee during these two months. Employer stated that he had no knowledge of whether Employee or Hafizul visited his office when he was off-island during that period.]

Summary: Employer never provided work for Employee nor terminated the Contract. After their first meeting in mid-September 2016, they had either two or three conversations. Other than a brief encounter at the Fiesta Resort and one or two phone calls that occurred after the first meeting, the parties did not talk again. [Testimony of Mr. Imbo and Hafizul Islam.] Hafizul visited Employer's office every month to ask about work for Employee, but he was told by a secretary that Mr. Imbo was off-island. Employee continued to hope that Employer would inform him that he had work for him. Employer had Hafizul's phone number and could have contacted him at any time, but did not attempt to make contact. *Id.*

The Contract expired on its own terms at the end of Employee's CW-1 status - January 17, 2017. Employee filed his labor claim in the Hearing Office on June 12, 2017.

CONCLUSIONS OF LAW

I. Employer breached its contractual obligation to provide continuous, full-time work to Employee for the duration of the Contract.

Based on the express terms of the Contract signed by the parties, the Hearing Officer finds that Employer had a continuing legal obligation to provide full-time work to Employee for the duration of the Contract. The contract term ran from the arrival of Employee in the CNMI until the expiration of Employee's CW-1 status (January 17, 2017). [Hearing Exhibit 1 (Contract) at ¶ 1.]

Employer breached its contractual obligation to provide work when he failed to provide work to Employee from the date of their first meeting (September 15, 2016) until the expiration of the contract term (January 17, 2017). That period

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Employer's office and that Hafizul asked Imbo if he would renew Employee's CW-1 employment. Based on the demeanor of the witnesses and the substance of their testimony, the Hearing Officer finds Employer's testimony on this issue to be more credible than that of Hafizul Islam. In short, the Hearing Officer finds that this alleged meeting never occurred.

amounts to 124 days or about 18 weeks.[4] Contractual wages were set in the Contract at $6.05 per hour, but increased by law on September 30, 2017, to $6.55 per hour. The full amount of lost wages amounts to **$4,676.00.**[5]

II. Employer's Argument That His Contractual Obligation To Provide Work Was Excused By Employee's "Late Arrival," is Rejected.

Employer argues that Employee breached the Contract by arriving late for this job; thereby excusing Employer's non-performance (failure to provide work). Mr. Imbo testified that when he offered employment to Employee, he had planned to assign Employee to work on a particular large construction project in Saipan. Because it took Employee several months to arrive in Saipan, Employer no longer needed him for that particular project. [Testimony of Mr. Imbo.] The Hearing Officer rejects this argument for the reasons detailed below.

Under standard contract analysis, the drafter of the contract is held to have borne a risk of which he was aware at the time of contract formation, but which he failed to address in the contract. In this case, Employer knew when he agreed to hire Employee that it would take a certain amount of time to obtain approval of a CW-1 Petition from USCIS, and for Employee to obtain a visa from the U.S. Embassy in Bangladesh. Employer, who drafted the Contract, could have inserted a provision requiring Employee to arrive and begin working in Saipan by a certain date; however, Employer chose not to insert such a provision into the Contract. Thus, Employer is held to have assumed the risk that Employee would arrive "late" to Saipan as a result of bureaucratic delays in obtaining his visa.

Furthermore, there was no evidence presented that Employer ever informed Employee that he was needed by a certain date. Thus, Employee did not know he was required to arrive in Saipan to begin work by a particular date. Finally, no evidence was submitted to establish that the delay was the fault of Employee.

For these reasons, Employer shall not be excused from his contractual obligations as a result of the so-called "late" arrival of Employee to Saipan.

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[4] Given that 124 days amounts to 17 weeks and 5 days, the Hearing Officer reasoned that the last five days should be considered a full work week for purposes of calculating damages; hence, the total of 14 weeks in the damage calculations.

[5] This calculation was made as follows: 18 x $262/week = $4,716.00, minus $40 to adjust for the lower wage rate ($6.05) in the last two weeks of September 2016. $4,716.00 minus $40 = $4,676.00.

III. Employee's Labor Claim Is Partially Barred By The Statute of Limitations Applicable to Labor Claims. [3 CMC § 4962(b).]

Employer's next argument is that Employee's labor claim is completely barred by the applicable 6-month statute of limitations because the cause of action "accrued" in September 2016, when Employer first informed Employee that he had no work for him. [Respondent's Motion to Dismiss, filed on 10/19/2017, and arguments made by Respondent's counsel at Hearing.]

The statute of limitations contained in the Commonwealth Employment Act of 2007 at 3 CMC § 4962(b), states that "no labor complaint may be filed more than six (6) months after the date of the last-occurring event that is the subject of the complaint...." The statute refers to the "last occurring event" but does not define the term. Generally, at common law, a cause of action accrues when it is complete with all of its elements – wrongdoing, harm and causation. The "last occurring event," otherwise known as the "last element" accrual rule, has been held to mean that the statute of limitations runs from the "occurrence of the last element essential to the cause of action." *Aryeh v. Canon Business Solutions, Inc.*, 55 Cal.4th 1185, 1191 (2013) (citations omitted).

Employer argues that Employee's claim accrued at the face-to-face meeting of the parties in September 2016, when Mr. Imbo told Employee that he could not provide work for him. Using this date of accrual, Employee would have only six months from the date of that first meeting (Sept 15, 2016) – until March 15, 2017 – in which to file his labor complaint. Given that Employee filed his claim on June 12, 2017, Employer contends that the labor claim is entirely barred under 3 CMC § 4962(b).[6]

The Hearing Officer acknowledges that the fact that Employee waited to file a labor claim until months after the Contract expired, leads to a statute of limitations problem. Nevertheless, the Hearing Officer finds that under the "continuous accrual doctrine," Employee's claim is only partially barred.

The "continuous accrual doctrine" holds that separate, recurring invasions of the same right can each trigger their own statutes of limitations. *See, e.g., Aryeh at* 1198.

[6] At hearing, Employer's counsel argued that even if one considered the last occurring event to be a conversation between Mr. Imbo and Employee's brother in late October or early November 2016, the labor complaint filed on June 12, 2017, would still be barred by the 6-month statute of limitation.

> Generally speaking, continuous accrual applies whenever there is a continuing or recurring obligation: 'When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period.' (Citation omitted.) Because each new breach of such an obligation provides all the elements of a claim – wrongdoing, harm, and causation (citation omitted) – each may be treated as an independently actionable wrong with its own time limit for recovery.

Aryeh, at 1199.

The Hearing Officer finds that Employer's contractual duty to provide work under the Contract in this case amounted to a continuing contractual obligation that accrued each day, as long as the Contract remained in effect – in other words, until January 17, 2017.[7]

The continuous accrual doctrine supports recovery only from breaches that fall within the limitations period. *Aryeh*, at 1199 (*citing Jones v. Tracy School Dist.*, 27 Cal.3d 99 (1980)). Thus, some conduct causing damage may be barred from recovery while other conduct may be actionable.

Applying the continuous accrual doctrine to this case means that the complaint was timely filed, but only as to those breaches occurring within the 6-month limitations period. Employee may claim lost wages occurring within six months (180 days) of the date on which he filed his labor complaint (i.e., within 180 days of June 12, 2017). In effect, damages (lost wages) may be claimed only for the period of December 14, 2016, until the expiration of the Contract – January 17, 2017.

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[7] Having found no CNMI caselaw as to this specific issue, the Hearing Officer looks to other jurisdictions for guidance. In certain jurisdictions, actions arising from alleged breaches of a continuing contractual obligation are not wholly barred by the statute of limitations merely because one or more of those alleged breaches occurred earlier in time. *Aryeh*, at 1198-1201; *Singer Co. v. Balt. Gas & Elec. Co.*, 558 A.2d 419, 425 (Md. Ct. Spec. App. 1989). Rather, "where a contract provides for continuing performance over a period of time, each successive breach of the obligation begins the running of the statute of limitations anew, with the result being that accrual occurs continuously and a plaintiff may assert claims for damages occurring within the statutory period of limitations." *Id.* at 426.

See also *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*, 116 Cal.App.4th 1375, 1388 (2004); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1321 (9th Cir. 1998) (Ninth Circuit held that plaintiffs' claim for royalty payments was not time-barred because defendant had a continuing obligation to pay a portion of profits and royalties for one song as it got used over time.) *Id.*

IV. BREACH OF CONTRACT

Based on the foregoing, the Hearing Officer finds that Employer breached the Contract by failing to provide full-time work to Employee for the duration of the Contract. [3 CMC §§ 4947(d)(1) and 4931(f).] Accordingly, Employee shall be awarded unpaid wages in the amount set forth below. [8]

Statute of Limitations: As stated above, Employer's contractual obligation to provide work to Employer was a continuing obligation that accrued each day, as long as the contract remained in effect – in other words, until January 17, 2017. Employee filed his labor claim on June 12, 2017, within six months of the last accrual period of the claim (i.e., within the 6-month statute of limitations). 3 CMC § 4962(b). Nevertheless, the fact that Employee waited five months after the Contract expired before filing his labor complaint, results in a portion of the wage claim falling beyond the statute of limitations. *Id.*

Calculation of Damages: Based on the filing date of the complaint and the applicable statute of limitations [3 CMC § 4962(b)], Complainant may recover damages for Employer's failure to provide work from December 14, 2016, until the end of the contract on January 17, 2017. That period is comprised of 35 days, or 5 weeks. Employee's wage rate was $6.55 per hour; a full week's wages would total $262.[9] Therefore, the 5-week period of the claim amounts to **lost wages of $1,310.00** (5 x $262 = $1,310.00).

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[8] For the record, the Hearing Officer does not accept the argument that the claim accrued on the date of the first meeting between the parties in September 2016. The evidence shows that during their first meeting, Employer encouraged Employee to "wait" while Employer asked around the community to find other construction work for Employee. Employer did not terminate the Contract on that date or any date thereafter; and Employer's comments gave this unsophisticated employee some reason to hope that he might soon be provided with work. Having induced the Employee's patience in obtaining work, Employer should be estopped from arguing, in effect, that Employee should have ignored his comment to "wait," and instead, filed a labor complaint. In any case, given the Hearing Officer's reliance on the continuous accrual doctrine, the start date for accrual of this action is not dispositive on the issue of damages. The present Order denies Respondent's Motion to Dismiss the entire claim, but grants a partial bar on damages based on the statute of limitations and the continuous accrual doctrine.

[9] As stated earlier, the Contract set a wage rate at $6.05 per hour; however, that rate increased by operation of law to $6.55 per hour, on September 30, 2016. Thus, one week's wages amount to $262.00 (40 hrs x 6.55 = $262.00).

V. LIQUIDATED DAMAGES

Under the Commonwealth Employment Act of 2007, at 3 CMC § 4947(d)(2), the Hearing Officer is authorized to assess liquidated damages in an amount equal to the amount of unpaid wages in any case in which a foreign national worker prevails on unpaid wages, unless the hearing officer finds extenuating circumstances.

Having found no extenuating circumstances and mindful of the fact that Employee was required to pursue this labor complaint through the entire hearing process to obtain a judgment, the Hearing Officer finds that liquidated damages are justified and should be assessed in an amount ($1,310.00) equal to the amount of lost wages. [See Order below, at paragraph 2.]

VI. SANCTIONS

In its Determination, Enforcement recommended that Employer be sanctioned the maximum fine of two thousand dollars, citing the Employment Rules and Regulations at NMIAC § 80-20.1-455(g). [Hearing Exhibit 2 at p. 3.] However, the cited regulation does not concern sanctions. It simply states that any employee or employer may file a complaint in the Administrative Hearing Office regarding any violation of the Commonwealth Employment Act of 2007, or any breach of an employment contract. *Id.*

In cases of violations of the Commonwealth Employment Act of 2007, the Hearing Officer is authorized, but not required, to levy a fine not to exceed $2,000 for each violation of any provision of Chapter 3 (Employment of Foreign Nationals). 3 CMC § 4947(d)(6).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14). The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified.

In this case, Employer induced a foreign worker to enter the CNMI by arranging for CW status to be granted based on a written employment contract. When that worker arrived, Employer knew or should have known he had a contractual

obligation under the Contract to provide work to Employee. Alternatively, if Employer believed that the Contract was void or voidable for some reason, he could have moved to terminate or rescind the Contract and repatriate the Employee. Instead of acting responsibly to remedy the situation, Employer abandoned Employee to the care of his brother and did nothing except make vague promises of work to Employee and his brother, which were never fulfilled.

The above-described conduct is not directly addressed in the statutory provisions of Chapter 3 of the Commonwealth Employment Act of 2007 (Act); however, the Hearing Officer is authorized under 3 CMC § 4947(d)(11) to assess sanctions that reasonably give effect to the purposes of the Act. The Hearing Officer finds that the above conduct is egregious and should be sanctioned. Accordingly, Employer shall be sanctioned one thousand dollars for his conduct. 3 CMC § 4947(d)(11).

Procedural Note: Finally, the Hearing Officer notes that the statute of limitations contained in the Commonwealth Employment Act of 2007, 3 CMC § 4962(b), does not purport to foreclose any other type of civil remedy that may be available under Commonwealth law. Under the Commonwealth Code of Civil Procedure, a plaintiff can bring a contractual claim based on breach of a written contract within the six-year, catch-all statute of limitations at 7 CMC § 2502(a)(2). As this issue lies beyond the scope of this labor claim and has not been raised by the parties, the current Order does address whether Employee may pursue additional remedies in the Commonwealth Superior Court.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Christopher G. Imbo, *dba* MGI Manpower Group International, for breach of the contractual duty to provide work to Complainant Aminul Islam. Pursuant to the applicable statute of limitations [3 CMC § 4962(b)], Complainant's claim for damages (lost wages) is limited to $1,310,00. [3 CMC §§ 4947(d)(1).] In addition, Complainant shall be awarded liquidated damages amounting to an additional $1,310.00 (see below). The total judgment entered in favor of Complainant amounts to $1,310.00, plus an equal amount in liquidated damages, for a total of **$2,620.00**.

2. **Liquidated Damages:** For the reasons set forth above, Respondent Christopher G. Imbo is hereby ORDERED to pay **$1,310.00** in liquidated damages to Complainant Aminul Islam [3 CMC § 4947(d)(2).]

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3. **Payment Terms:** Respondent Christopher G. Imbo is ORDERED to pay the total award of $2,620.00 to Complainant by delivering a check or money order, made payable to Aminul Islam, to the Hearing Office no later than thirty (30) days after the date of issuance of this Order.

4. **Sanctions:** Respondent Christopher G. Imbo is hereby SANCTIONED in the amount of one thousand dollars ($1,000) for his conduct in failing to provide work to Complainant in breach of the written employment contract, as well as other conduct described herein. Respondent is ORDERED to pay the sanction by check made payable to the CNMI Treasury and delivered to the Hearing Office no later than forty-five (45) days after the date of issuance of this Order. 3 CMC §§ 4947(d)(6) and 4947(d)(11).

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: October 5, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 17-018**
ZAJRADHARA, ZAJI O.,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	
NIPPON GENERAL TRADING CORPORATION, DBA COUNTRY HOUSE RESTAURANT,	)	
Respondent.	)	

The Respondent has moved the Hearing Office for an Order dismissing this labor complaint. Respondent relies on the fact that Complainant has filed a Complaint that is false on its face and has furnished a resume that contains false information. In addition, Respondent alleges that Complainant was entertained with an interview for the position in which he failed the test designed to determine whether or not he possessed the requisite skills for the position.

The Labor Complaint bears the filing stamp of the Department of Labor dated June 2, 2017. The Complaint claims that an application for a position advertised by Nippon General Trading Corporation (hereinafter NGT) was applied for by Complainant on March 23, 2017 and that as of June 2, 2017 no communication had been received from NGT.

Both from the verified motion and the Complainant's Response in Opposition it is without contradiction that the content of the letter of Complaint is false. In several parts of the pleadings Complainant discusses events that occurred on or about April 23 when he was examined for the position by the Respondent. A written exhibit sent from the Complainant to the Respondent and making reference to the April interview/ examination is also part of the record. The Response filed by Complainant offers no clear explanation to the allegation that the complaint is false on its face. One can only guess that the misstatement of facts was being addressed by paragraph 1. of his Response which reads:

> The complainant simply made mistakes on the dates and or times of the filing, which shouldn't be misunderstood as overt false statements nor perjurious statements.

While it is agreed that an Administrative Tribunal should show patience in adjudicating the claims of laymen it is beyond the call of duty to require the Hearing Officer to have to guess at the intention of the above statement and to what allegation in the Respondent's motion to apply it. If it is intended to explain the factual misrepresentation in the original Complaint, it falls far short of doing that.

Employment applications often request a list of past experience and personal references to assist the prospective employer in evaluating the skills and the character of the applicant. The verified Motion to Dismiss alleges that an officer of the NGT attempted to check two of the locations claimed to be places of past employment of Complainant in Japan. Both locations raised doubt as to the accuracy of Complaint's statement that they had been places of employment. Again, the Response did not give an accurate explanation to the assertion of the claim by the Respondent that these work places did not exist. A prospective employer is within his rights to require references and an employment history from a job applicant. It is a time honored practice. A discovery of falsification of references or misstatement of employment justifies a lack of confidence in the applicant to the point of rejection.

Having found for the Respondent on the two assertions discussed above I find it unnecessary to consider the bartender's test and other matters brought up in the Motion.

After consideration of the request for attorneys' fees it was decided to give weight to the earlier stated practice of giving leeway to lay parties in overcoming disadvantages that they may suffer. The request for attorneys' fees is thereby denied.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. That the Motion to Dismiss, brought by the Respondent NGT Corporation, is granted and that Labor Case 17-018 is dismissed;
2. Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of the issuance of this Order.

DATED, March 19, 2019

Herbert D. Soll
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-019
Zajradhara, Zaji O.,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Karis Company, Ltd.,	)	
Respondent.	)	
	)	

This case came on for hearing on December 12, 2017, in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Zaji O. Zajradhara appeared without counsel. Respondent Karis Company, Ltd. appeared through its General Manager, Han Eun Soo, and its registered agent, Cho Jin Koo. The Department of Labor Enforcement Section appeared through its investigator Patrick C. King. James Ulloa of the Department's Employment Services Division, testified by telephone. Mr. Cho also served as translator for Mr. Han. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

This labor complaint was brought by a U.S. citizen job applicant, Zaji O. Zajradhara ("Complainant") against Karis Company, Ltd. ("Employer"), alleging that the Employer violated the CNMI job preference laws by failing to consider Complainant's application for a job that Employer advertised in March 2017. Complainant requests damages against Employer pursuant to 3 CMC § 4528(a). [Complaint at Hearing Exhibit 1, filed on 6/2/2017; Testimony of Mr. Zajradhara.]

Employer operates a bed and breakfast business in Saipan, known as "Karis Villa," as well as a wholesale business and a retail shop. [Testimony of Mr. Han.] The company employs 6 full-time employees: 4 CW-1 status workers and 2 U.S. citizens or green card holders. [Testimony of Mr. Han; Total Workforce Listings entered into evidence as Hearing Exhibits 7a-c.]

On March 22. 2017, Employer posted a job vacancy announcement ("JVA") – JVA no. 17-03-47920 – on the Department of Labor ("DOL") website for the job of Assistant Manager. [A copy of the JVA for Assistant Manager was entered into evidence as Hearing Exhibit 3.] The JVA was listed as being open from March 22 through April 6, 2017. The JVA listed an "anticipated start date" for the job as October 1, 2017. *Id.*

As of March 2017, Employer already employed a CW-1 status worker, named Ms. Kim Jung Jon, in the position of Assistant Manager. In March 2017, Employer, with the help of its agent, Boo Boo Office, was preparing to file a CW-1 Petition with the U.S. Citizenship and Immigration Services ("USCIS") to renew Ms. Jon's job as Assistant Manager. Employer's document handler, the Boo Boo Office, prepared both the renewal Petition and the JVA for the Assistant Manager job. [Testimony of Mr. Cho.]

Complainant read the JVA for "Assistant Manager" on the DOL website and decided to apply for the job. On March 26, 2017, Complainant emailed the Employer, attaching his resume, and sent the email to the email address that Employer had posted on its JVA: han_karisco@yahoo.com. [1] Shortly thereafter, Employee received an error message (daemon message) indicating that the email could not be delivered because the recipient email address was invalid. [A copy of error message was entered into evidence at Hearing Exhibit 2.]

On March 27, 2017, Employee forwarded the error message to James Ulloa, then-acting Director of DOL's Employment Services Division. Mr. Ulloa also attempted to send an email message to that same email which was listed on Employer's JVA, but the message bounced back with the same error message indicating that Employer's email address was invalid. Mr. Ulloa testified that he took no further action regarding this Employer, because he was busy with many other employment-related matters. [Testimony of Mr. Ulloa]

Employer's JVA for Assistant Manager received 3 online responses on the DOL website from three potential U.S. citizen applicants. [See Hearing Exhibit 8 - copy of the JVA printout listing the responses.] All three responses were logged on

[1] Employer (Mr. Han) testified that the email address, han_karisco@yahoo.com, was closed by yahoo and has not worked for several years. Mr. Han testified that he had not realized that the wrong email address was listed on the JVA because he never looked at the JVA. Employer's valid email address is karissaipan@karissaipan.com. After the case was filed, In about August 2017, Mr. Cho inserted the correct email address for Employer into the records of DOL's Employment Services. [Testimony of Mr. Han.]

March 22, 2017, the opening date of the announcement. (Complainant's name was not listed because he had not applied through the DOL website system, but had applied directly to Employer's listed email address.) *Id.*

Employer never reviewed, contacted or interviewed any of the job applicants who had posted responses to the JVA. [Testimony of Mr. Han.] Employer testified that in April 2017, Employer's document handler, Mr. Cho of the Boo Boo Office, printed out the names of responders to the JVA and showed them to General Manager Han. [Testimony of Mr. Cho and Mr. Han.] Mr. Han admitted that he had received the list from Mr. Cho but stated that had not contacted or reviewed any of the names on the list because he had "already submitted the CW-1 Petition" to renew his co-worker, Ms. Kim Jung Jun. [Testimony of Mr. Han.]

Employer submitted a Petition to USCIS to renew Ms. Jun's CW-1 status on March 29 or 30, 2017 – midway through the job announcement process. In May or June 2017, USCIS returned the Petition to Employer because of a problem with the amount of fees. [Testimony of Mr. Cho.] Within one day, the Employer corrected the fee and returned the Petition to USCIS. As of the date of Hearing, Employer has not received a decision from USCIS regarding the Petition. [Testimony of Mr. Cho and Mr. Han.]

Ms. Kim Jung Jon became ill in April 2017. Shortly after becoming ill, Ms. Jon left the CNMI to recuperate in another country. She has not returned to the CNMI since leaving in April 2017. Employer testified that he expects that USCIS will deny the renewal Petition in the near future. Meanwhile, the Assistant Manager position remains vacant at this time. [Testimony of Mr. Han.]

Determination: DOL's Enforcement Section investigated this case and concluded that Employer had violated 3 CMC § 4963(d), which states that an "Employer... shall not make a materially false statement or [give] materially misleading information, orally or in writing, to the Department or employee or officer of the Department..." [Determination at Hearing Exhibit 2.] Investigator Patrick King testified that Employer's placement of an incorrect email address in its JVA constituted a false or misleading statement giving rise to this violation. [Testimony of Mr. King.] For this violation, Enforcement requested a monetary sanction of $2,000. As for the U.S. job preference violation, DOL took no firm position in the Determination as to whether Employer had violated the law. [*Id.*; Determination at Hearing Exhibit 2.]

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CONCLUSIONS OF LAW

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. The Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a).

The Commonwealth Employment Act of 2007, 3 CMC § 4528(a), states, in part, that "[a] citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if ...the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."

In order to win his claim for damages under this statute, Complainant must prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the Employer without just cause; (3) that Employer then hired a foreign national worker for that position; and (4) that Employer failed to meet the so-called 30% requirement (ratio of citizens/permanent residents employed) in employer's full-time workforce. 3 CMC § 4528(a).

Three of the Four Elements of the Job Preference Charge Were Proven.

Based on the evidence presented, the Hearing Officer finds that Complainant proved three of the four elements of the Section 4528(a) offense.

First, evidence established that Employer has not met the 30% requirement of 3 CMC § 4525.[2] As of March 2017, Employer employed 5 full-time employees, consisting of one U.S. permanent resident and 4 CW1-status employees. [Total Workforce Listing submitted by Employer on 12/18/17.] Thus, Employer's workforce participation percentage was 20%, which was below the minimum requirement of 30%. Accordingly, this element of the offense is met.

Another element of a Section 4528(a) offense is to establish that Complainant was qualified for the job for which he applied. Employer posted simple qualifications on the JVA for this Assistant Manager position, such as: good communication skills, strong conflict resolution skills, team building capability, basic business math, etc. [See JVA at Hearing Exhibit 3.] Based on Complainant's work history

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[2] That statute requires employers to maintain a minimum workforce participation goal of 30%, meaning that 30% of Employer's full-time workforce must consist of U.S. citizens or U.S. permanent residents. [3 CMC § 4525 and Regs. at NMIAC § 80-20.1-210(c)(3).

as reflected in his resume, Complainant was arguably qualified for the Assistant Manager's job. [Complainant's Resume was submitted post-hearing, by stipulation, at Hearing Exhibit 9.] Therefore, this element of the offense was established.

Another element of a Section 4528(a) offense is satisfied if the employer, after rejecting the citizen, goes on to hire or renew a person who is not a citizen or permanent resident, such as a CW1-status worker. In this case, Employer re-hired its CW-1 status Assistant Manager, in essence, when it submitted a Petition to USCIS for her renewal on March 29 or 30, 2017. .

Complainant Failed To Prove that Employer had Unjustly Rejected His Job Application; Therefore, Complainant Cannot Prevail Under Section 4528(a).

Perhaps the most crucial element of a job preference case is proving that Employer rejected Complainant's job application without just cause. This Employer argued that it could not be found to have "rejected" Complainant's job application because it never received the application. The Hearing Officer finds this reasoning to be correct, and therefore, holds that this important element of the Section 4528(a) offense has not been proven.

As stated in the Findings, Employer never received Complainant's job application. This occurred for two reasons: (1) because Employer posted an invalid email address at the front of the JVA that appeared on DOL's website; and (2) because Complainant took no steps to notify Employer after learning that his emailed application had not been delivered due to the invalid email address. While it is true that Complainant informed the Director of Employment Services about Employer's invalid address, this did not lead to Employer being informed about Complainant or his intention to apply for the Assistant Manager job.

At Hearing, Complainant argued that he had fulfilled his obligation by notifying DOL's Employment Services Director about Employer's invalid website. On the other hand, Employer argued that Complainant had not taken reasonable steps to get his job application to the Employer after he learned that the email address was invalid. Employer noted that Complainant could have used the telephone number printed on the JVA and telephoned Employer to ask how to apply for the job.

The Hearing Officer finds that Complainant failed to take reasonable steps to reach the Employer to apply for this job. First, as Employer noted, Complainant could have simply called the local telephone number printed on the JVA and asked

Employer for its correct email address. Complainant explained that he did not call employer because he was afraid of being misunderstood, maligned or misquoted by Employer. The Hearing Officer finds this excuse to be inadequate. The needed phone call would have consisted of a single question posed in ten seconds, such as: "I am trying to email a message to your company, but your email address seems to be incorrect; could you please give me your valid email address?"

Second, Complainant could have posted his resume using the DOL website, in which case he would have been automatically input into the official responses to the JVA. Again, the reasons Complainant gives for not using the website are confusing and unconvincing.[3] If Complainant had posted his response to the JVA using DOL's system, Employer could not have argued that it did not receive the application, as it would be deemed to have constructive notice of all applicants posting responses to the job application. Since Complainant chose to bypass the official DOL website system, given the evidence presented, Employer has a valid defense to the job preference charge that it never received Complainant's job application.

The Hearing Officer concludes that Complainant failed to take reasonable steps to deliver his job application to Employer. (Although notifying the Director of Employment Services was a responsible act, it did not result in Employer actually receiving Complainant's job application or resume.) Because Employer never received a job application or resume from Complainant, Complainant cannot prove that his application was unjustly rejected by Employer. Given that this is a requisite element of the job preference claim, failure to prove this element means that the alleged charge must fail.

Employer Violated 3 CMC § 4963(d) by Giving Materially Misleading Information to the Department of Labor.

Based on its investigation of this case, DOL's Enforcement Section concluded that Employer had violated 3 CMC § 4963(d) by posting an incorrect email address on its Job Vacancy Announcement. Section 4963(d) states that an "Employer… shall not make a materially false statement or give materially misleading information,

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[3] Complainant gave four reasons for not using the DOL website to post his response to a JVA: (1) it's "easier" to send his resume by email directly to the employer; (2) the DOL website is "cumbersome;" (3) the DOL email server does not detect false email addresses; and (4) it's "futile" to use that system because employers ignore the postings anyway. [Testimony of Mr. Zajradhara.] Complainant further testified that he did not wish to involve DOL in his job search because, as he stated: "I'm not going to go through an Agency that I know ain't doing nothing for my behalf." *Id.*

orally or in writing, to the Department or an employee or officer of the Department..." [See Determination at Hearing Exhibit 2.] At Hearing, Enforcement noted that Employer's placement of an invalid email address in its JVA constituted a false or misleading statement given to the Department; thus, giving rise to this violation. The Hearing Officer agrees that, at a minimum, posting the invalid email was misleading to the public, resulting in both a job applicant and the Director of Employment Services having difficulty in communicating by email with the employer. For this violation, Enforcement requested a monetary sanction of two thousand dollars.[4] The amount of the sanction is discussed below (see p. 8).

Employer Failed To Engage in Good Faith Hiring Practices and Failed to Give Preference in Hiring to Online Responders To the Employer's JVA.

CNMI job preference Regulations require all employers to give preference to U.S. citizens and permanent residents over foreign national workers in employment and obligate employers to engage in good faith hiring practices in this regard. [See Regs. at NMIAC §§ 80–20.1-220 and 235(d).]

Employer's testimony at Hearing shows that it completely neglected its own published JVA before moving to renew its CW-1 status Assistant Manager. Employer's General Manager admitted that the company filed its Petition to renew its CW-1 status Assistant Manager about one week after the JVA began being advertised for her position. In other words, Employer did not bother to wait for the job announcement to run its course before filing to renew its CW-1 employee. Moreover, Employer never even bothered to check the JVA before filing its Petition. If it had checked after the first day of the JVA, if would have discovered that three responses had been posted by citizens interested, or potentially interested, in the offered job. [See Hearing Exhibit 8 – JVA showing three responses posted on 3/22/2017.]

Mr. Han testified that his document handler did not give him a copy of the JVA with the responses until April 2017, weeks after Employer had sent in its Petition to renew its CW-1 worker for the Assistant Manager position. Moreover, Han

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[4] The Hearing Officer notes that if a DOL investigator, during the course of his investigation of the labor complaint, finds that Respondent committed other related labor violations, DOL may either file a separate Compliance Agency Case or add Agency charges to the Labor Case. If the charges are added to the Determination, Respondent may object to the adjudication of the charge and force a separate hearing on the matter. In this case, after this option was explained to Employer, Employer chose to waive any objection and allow the charge to be adjudicated in the present hearing. [Testimony of Mr. King and Mr. Han.]

admitted that once he received the list of responders from Mr. Cho, Han did not review the list or contact the applicants because he knew the Petition had already been filed. [Testimony of Mr. Han.]

Furthermore, Employer's conduct calls into question whether it engaged in fraud in connection with its CW-1 Petition. The USCIS Petition contains an "attestation clause" in which the employer is required to attest, under penalty of perjury, that no qualified U.S. citizens or permanent residents are available for the position. It is completely disingenuous for an employer to attest that no citizens are available and interested in the offered job if the employer has not allowed the JVA to run its course and has not reviewed the resumes of those who did, in fact, post interest in the advertised position. [It should be noted that determining whether federal immigration regulations or statutes have been violated lies beyond the scope of this case. Therefore, no findings or sanctions shall be issued with respect to the USCIS Petition.]

The above conduct demonstrates that Employer had no intention of looking in the available work force for a qualified citizen or resident. The fact that the Petition was filed even before the JVA had run and that Employer made no effort to review the responders' resumes shows that Employer was not looking for any job applicant other than the CW-1 employee who already held the position. Such conduct violated the above-cited CNMI job preference Regulations that obligate employers to engage in good faith hiring practices and require all employers to give preference to U.S. citizens and permanent residents over foreign national workers in employment. [Regs. at NMIAC §§ 80–20.1-220 and 235(d).]

Procedural Note: The above-noted evidence concerns Employer's conduct with respect to those U.S. citizen job applicants who posted on DOL's website in response to the Assistant Manager job. That issue was not specifically raised in the Complaint or the Determination. Although the matter was addressed at the Hearing with the implied consent of the parties [see Regs. at NMIAC § 80–20.1-480(j)], Enforcement never moved to add charges related to this conduct. Accordingly, the findings regarding Employer's failure to review the three online responders to the JVA shall not be used as a basis for additional sanctions against this Employer.

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SANCTIONS

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2). In addition, violations of 3 CMC § 4963(d) may result in a sanction of up to $2,000, pursuant to 3 CMC § 4964(j).

Based on the facts presented, the Hearing Officer agrees with the Enforcement Section that a sanction is justified. Employer posted false and/or misleading information in the form of an invalid web address which led to at least one applicant failing to have his application received by Employer. Such misinformation constituted a violation of 3 CMC § 4963(d), which justifies an assessment of monetary sanctions against Employer, pursuant to 3 CMC § 4964(j).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings." [Regs. at § 80- 50.4-820(h) and (o).]

Based on the above facts, the Hearing Officer concludes that the Employer's violation of 3 CMC § 4963(d), as described above, justifies a monetary sanction of $1,000.

In summary, judgment shall be entered in favor of the Respondent (Employer) and against Complainant on the issue of Complainant's claim under 3 CMC § 4528(a). Because Complainant was not able to prove all the elements of an offense under 3 CMC § 4528(a), he shall not be awarded damages. However, Complainant should be commended for bringing this matter to the attention of the Department of Labor.

Secondly, judgment shall be entered in favor of the Department of Labor and against Respondent on the Agency charge of violating 3 CMC § 4963(d) (see Determination at Hearing Ex. 2), which was heard by stipulation of the parties. [Regs. at NMIAC § 80–20.1-480(j).] For providing false and/or misleading information to the Department in violation of 3 CMC § 4963(d), Respondent shall be sanctioned one thousand dollars ($1,000), pursuant to 3 CMC § 4964(j).

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The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment (Labor Complaint):** Based on the above findings and conclusions, judgment is hereby entered in favor of Respondent Karis Company, Ltd. and against Complainant Zaji O. Zajradhara on the labor complaint filed on June 2, 2017 (Hearing Exhibit 1).

2. **Judgment (Agency Charge):** Based on the above findings and conclusions, judgment is hereby entered in favor of the Department of Labor and against Respondent Karis Company, Ltd. on the Agency charge of violating 3 CMC § 4963(d), which was heard by stipulation of the parties, pursuant to Regulations at NMIAC § 80–20.1-480(j).

3. **Sanctions:** Respondent Karis Company, Ltd. is hereby SANCTIONED in the amount of one thousand dollars ($1,000) for its submission of false and misleading information to the Department of Labor in violation of 3 CMC § 4963(d). Respondent is ORDERED to pay the fine (payable to the CNMI Treasury) no later than **thirty (30) days** after the date of issuance of this Order. Proof of payment shall be submitted to the Hearing Office on or before the due date. [3 CMC § 3 CMC § 4964(j).]

4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: December 28, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-021
Zajradhara, Zaji O.,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
SPN China News Corporation,	)	
Respondent.	)	
	)	

This case came on for hearing on April 17, 2018, in the Administrative Hearing Office of the CNMI Department of Labor ("DOL"). Complainant Zaji O. Zajradhara appeared without counsel. Respondent SPN China News Corporation appeared through its President, Betty Bai. The DOL Enforcement and Compliance Section ("Enforcement") appeared through its investigator Patrick King. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

INTRODUCTION

This labor complaint was brought by a U.S. citizen job applicant, Zaji O. Zajradhara ("Complainant") against SPN China News Corporation ("Employer"), alleging that Employer had violated the CNMI job preference laws by failing to interview or hire Complainant for a job that Employee applied for in April 2017. [The Complaint was entered into evidence as Hearing Exhibit 1. The Complaint was signed on 4/06/2017, and filed with the Hearing Office on 6/2/2017.]

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. The Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a). At Hearing, Complainant confirmed that he was seeking damages from the Employer pursuant to 3 CMC § 4528(a). That statute gives an individual the right to sue for damages if an employer unjustly rejects the job application of a qualified citizen or permanent resident in favor of a foreign national (i.e., CW-1 status) applicant.

FINDINGS OF FACT

Employer publishes a local weekly newspaper in the Chinese language, called the "Saipan Chinese News." The company, which has been in business in Saipan for many years, is operated entirely by its corporate President, Betty Bai. As of April 2017, and at present, Employer has no employees; Ms. Bai publishes the newspaper without the assistance of any employees. [Testimony of Ms. Bai.]

In 2017, Employer began looking for a sales agent who could help Employer find new advertisers within the growing Chinese tourist market in the CNMI. [*Id.*]

In March 2017, Employer posted a job vacancy announcement ("JVA") on DOL's website for an Advertising Sales Agent. [A copy of the JVA - JVA no. 17-03-47596 - was entered into evidence as Hearing Exhibit 2.] Employer's President testified that she used a part-time accountant, Viray Enterprises, to assist her in posting the above-noted JVA.

The JVA listed job requirements, but did not list any foreign language requirement for this position. [Hearing Exhibit 2.]

Complainant read the JVA for "Advertising Sales Agent" on the DOL website and decided to apply for the job. In late March 2017, Complainant sent a message to Employer, attaching his resume, and sent the email to the email address that Employer had posted on its JVA: *saipanchinanet@gmail.com*. Complainant never received any response from Employer. On April 6, 2017, Complainant lodged his Complaint at the Hearing Office. (The Complaint letter was officially accepted for filing by the Hearing Office on June 2, 2017, after Complainant's application for waiver of fees was granted. The case was filed as L.C. 17-021.)

Employer never read Complainant's email during the months from March through August 2017. During discovery, Employer discovered Complainant's email in the "spam" folder of Employer's website. [Testimony of Ms. Bai.]

Employer's President admitted at hearing that she never checked the website to review the six respondents who had posted an interest in the position. [See JVA with responses at Hearing Exhibit 2.] [Testimony of Ms. Bai.]

Employer never hired any person to fill the advertised position. As of the date of hearing, the position remained open.

Determination: This case was referred to Enforcement after the parties were unable to reach a settlement in mediation. Enforcement investigator Patrick King issued an Amended Determination, Notice of Violation and Notice of Hearing (hereinafter, Determination) on April 4, 2018. [A copy of the Determination was entered into evidence as Hearing Exhibit 3.]

The investigator found that Complainant meets the qualifications stated in the JVA, based on Complainant's submitted resume. The Determination recommended that Complainant be granted an interview by Employer for the Advertising Sales Agent position. [See Recommendation at Hearing Exhibit 3 at p. 3.] [Testimony of Mr. King.]

The Determination did not discuss the fact that the Employer had neglected to list one of her primary requirements for the position; namely, that the job applicant be bilingual in English and Mandarin. Employer had informed the investigator of this fact during investigation, but the investigator based his conclusions solely on the content of the posted JVA. [Testimony of Mr. King; Hearing Exhibit 3.]

CONCLUSIONS OF LAW

I. Complainant Did Not Prove All Elements of a Claim For Damages Under 3 CMC § 4528(a); therefore, Complainant's Request For Damages is DENIED.

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. To the extent that Complainant moved for "damages" the Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a). As stated above, this statute is the only CNMI-based statute that gives an individual job applicant the right to sue for damages provided that certain specific elements are proven.

The Commonwealth Employment Act of 2007, 3 CMC § 4528(a), states, in part, that "[a] citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if ...the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job." Violations of this statute may lead to a damage award of up to six months' wages, as well as sanctions of up to $2,000 against the employer. 3 CMC §§ 4528(f)(1) and (f)(2).

In order to prevail on a claim for damages under this statute, Complainant must prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the Employer without just cause; (3) that Employer then hired a foreign national worker for that position; and (4) that Employer failed to meet the so-called 30% requirement (ratio of citizens and permanent residents to non-U.S. based employees) in employer's full-time workforce. 3 CMC § 4528(a).

There are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone, to fill the advertised position. The gravamen of the statutory violation of 3 CMC § 4528(a) is that Employer has hired a foreign national worker over a qualified U.S. citizen. In this case, where no one was hired for the vacant job, Complainant cannot prove this important element of the offense.

Given that failure to prove the 4th element causes the claim to fail, the Hearing Officer shall not analyze whether other elements of the Section 4528(a) offense were satisfied.

Notwithstanding the above, the evidence presented in this case revealed serious deficiencies in the Employer's performance which are important to review as part of the record of this case. That record is reviewed below.

II. Employer Provided Materially Misleading Information to DOL Regarding its JVA for Advertising Sales Agent in violation of 3 CMC § 4963(d).

The Commonwealth Employment Act of 2007, at 3 CMC § 4963(d), provides that:

> An employer…shall not make a materially false statement or give materially misleading information, orally or in writing, to the Department or any employee or officer of the Executive Branch with respect to any requirement of [employment of foreign national workers].

Employer testified with respect to her search for an advertising sales agent, that she needs a person who is bilingual in the English and Mandarin languages. Ms. Bai testified that this was one of her primary requirements for the advertising sales agent job that she posted by means of a JVA on DOL's website in March 2017. In fact, during February and March 2017, Employer published a job announcement,

written in Mandarin, in its own newspaper, the Saipan Chinese News. ***In the job advertisement that Employer published in its own newspaper, Employer listed the ability to speak both English and Chinese languages as a requirement of the job.*** [Copies of these job advertisements, published on 2/17/17 and 3/03/17, were entered into evidence as Hearing Exhibits 4a and 4b, respectively.]

Despite its own listing of bilingual ability in its job advertisement in the Saipan China News, Employer omitted any reference to a bilingual requirement when it posted the JVA on DOL's website. Such an omission constituted a materially false statement and/or materially misleading information. 3 CMC § 4963(d).

When asked, under oath, why she neglected to put the bilingual requirement in the JVA posted on DOL's website, Employer's President, Ms. Bai, gave a completely unconvincing, inadequate response. Ms. Bai noted that she was "unsophisticated" and that she had used an accountant to help her prepare the JVA. The Hearing Officer finds this excuse to be disingenuous, given that Ms. Bai is highly educated, quite sophisticated and speaks fluent English. Ms. Bai has had more than a decade of experience as a newspaper owner in the CNMI and appears well able to understand and follow labor laws and regulations.

The above facts support a finding that Employer provided "materially misleading information" to DOL regarding the offered job. Such conduct violated 3 CMC § 4963(d), which makes it a violation for an employer to make a materially false statement or give materially misleading information, orally or in writing, to Department of Labor personnel.

Procedural Note: The above-noted issue was not specifically raised in the Determination. Although the matter was addressed at the Hearing with the implied consent of the parties [see Regs. at NMIAC § 80–20.1-480(j)], Enforcement never moved to add charges related to this conduct. Accordingly, the finding that Employer violated 3 CMC § 4963(d) in connection with the JVA in this case shall not be used as a basis for additional sanctions against this Employer.

Enforcement is reminded that is has authority to add Agency charges in a Compliance Agency Case and it may issue a Notice of Violation regarding such charges and schedule hearing on the same for the same date and time as the already scheduled Labor Hearing. On the day of hearing, the Hearing Officer may take evidence on both the Labor and Compliance Agency Case in the same proceeding unless the Respondent-Employer objects to such a procedure.

III. The Bilingual Requirement For the Sales Position Is Justified Under The Circumstances. Respondent Should Re-post its JVA for the Sales Associate Job with this Bilingual Requirement Added.

At Hearing, Complainant took issue with Employer's insistence that bilingual ability was required for this position. Complainant noted that given that about 80% of advertisers who place ads in the Saipan Chinese News are local businesses, an Advertising Sales Agent could readily tap the local advertising market without having to speak Mandarin. [Testimony of Mr. Zajradhara.]

Employer responded that it was seeking to expand its marketing efforts to businesses on the mainland of China who might consider advertising in the CNMI. To this end, Ms. Bai believes that she needs a person who can converse in Mandarin with potential Mandarin-speaking advertisers. [Testimony of Ms. Bai.]

The Amended Determination recommended that Complainant be granted an interview by Respondent for the position of Advertising Sales Agent. [Hearing Exhibit 3, at p. 3.] Enforcement made its recommendation based on the fact that the JVA had omitted any reference to bilingual ability. [Testimony of Mr. King.]

Although it is a close case, the Hearing Officer finds that Employer made a credible argument for needing a sales associate who is bilingual in the English and Mandarin languages. It would serve no useful purpose to order Employer to hire a job applicant who cannot meet its expectations for the job. Nearly all of the newspaper's subscribers, and many of its advertisers, speak Mandarin as their primary, if not only, language. Any effort to lure advertisers from mainland China will necessarily require a Mandarin speaker to communicate effectively with those potential advertisers. Under the circumstances presented here, it is legitimate to require bilingual ability for this position.

Given that Employer intentionally omitted the bilingual requirement for this job in its initial JVA, and that Employer testified at hearing that she still needs to fill this position, Employer shall be ordered to re-post the JVA with the bilingual requirement. [See Order below at page 7.]

CONCLUSION

Based on the facts presented at the hearing, judgment shall be entered in favor of the Respondent (Employer) and against Complainant as to Complainant's claim under 3 CMC § 4528(a). Because Complainant was not able to prove the 4th

element of an offense under 3 CMC § 4528(a) – that Employer hired a foreign national worker after rejecting a U.S. citizen or permanent resident - Complainant shall not be awarded damages.

Secondly, the Hearing Officer finds that Employer provided false and/or misleading information to the Department of Labor when it omitted a bilingual requirement from its JVA for the Sales Agent position. This conduct violated 3 CMC § 4963(d); however, as Enforcement did not file separate Agency charges in connection with this case, no sanction shall be issued for this violation. [If charges were filed and judgment entered, Employer could be sanctioned monetarily up to two thousand dollars, pursuant to 3 CMC § 4964(j).]

Finally, Employer admits that bilingual ability is crucial for the position and that this requirement was not contained in its previously posted JVA. At a minimum, Employer should be ordered to re-post the JVA to include bilingual ability as well as any other legitimate prerequisites for the sales associate job.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the above findings and conclusions, judgment is hereby entered in favor of Respondent SPN China News Corporation and against Complainant Zaji O. Zajradhara on Labor Case No. 17-021, filed on June 2, 2017.

2. **Re-Posting of JVA:** Based on the above findings, Respondent SPN China News Corporation is hereby ORDERED to re-post its job vacancy announcement for the sales associate position, listing bilingual ability in English and Mandarin languages as a required skill. The new JVA shall be posted on DOL's website (www.marianaslabor.net) no later than 30 days after the date of issuance of this Order. Failure to comply with this order may lead to monetary sanctions after a due process hearing. 3 CMC § 4947(11) and Regs. at NMIAC §§ 80-20.1-485(c)(13) and 485(c)(14).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4528(g) and 4948(a).

DATED: July 12, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**L.C. No. 17-025**
Zajradhara, Zaji O.,	)	
Complainant,	)	**INTERLOCUTORY ORDER**
v.	)	**AND BRIEFING SCHEDULE**
	)	**RE: DISCOVERY REQUEST**
EAM Corporation,	)	
Respondent.	)	
	)	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

On February 8, 2018, Complainant Zajradhara submitted to the Hearing Office, by email, a request for discovery in the above-captioned case, listing seven categories of documents that Complainant was asking Respondent to produce. [Laymans; Request For Discovery Items, dated 2/08/2018.] The Hearing Officer construes the email as an official request for discovery, filed pursuant to the Employment Rules and Regulations at NMIAC § 80-20.1-470(i). Having considered the matter, the Hearing Officer issues the following Discovery Briefing Schedule. 3 CMC § 4947(d)(11); Regs. at NMIAC § 80-20.1-485(c)(13).

Responses and/or Objections: Respondent EAM Corporation is ORDERED to file and serve written Responses and/or Objections to the Discovery Request, on or before **February 23, 2018, at 3:00 p.m.,** in the Hearing Office. The Responses and/or Objections shall state, with respect to each category of requested documents, whether the Respondent agrees to provide copies of the documents, or else, objects to having to produce the documents. All Objections should state the legal basis for the objection.

Reply: Complainant shall have until **February 26, 2018, at 3:00 p.m.** to file and serve a Reply to the Responses and/or Objections.

Document Production: As to those document requests, if any, to which there are no objections, Respondent is ORDERED to produce the requested documents, or copies of the documents, on **March 6, 2018, at 10:00 a.m.** in the Hearing Office.

DATED: February 13, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-029
Zajradhara, Zaji O.,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	**DISMISSING CASE**
	)	
Alba Prime Pacific, LLC,	)	
Respondent.	)	
	)	

This case was heard in the Administrative Hearing Office on April 10, 2018. During the hearing, Respondent presented uncontested testimony that it never hired anyone to fill a "marketing specialist" position that it had advertised on the DOL website in 2017. Based on this testimony, Complainant agreed to dismiss the case and submitted a written request to dismiss the case. (The handwritten request by Mr. Zajradhara, dated 4/10/2018, was entered into evidence as Hearing Exhibit 6.)

Based on the request, the Hearing Officer finds that good cause exists to DISMISS this Labor Case without prejudice.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Dismissal:** Based on the above-noted request submitted by Complainant to dismiss this case, Labor Case No. 17-029 is hereby DISMISSED without prejudice. 3 CMC §§ 4947(b) and (d)(11).

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: April 10, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-040
Zajradhara, Zaji O.,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Yen's Corporation,	)	
Respondent.	)	
	)	

This case came on for hearing on January 16 and 19, 2018, in the Administrative Hearing Office of the CNMI Department of Labor ("DOL"). Complainant Zaji O. Zajradhara appeared without counsel. Respondent Yen's Corporation appeared through its President, Chien-li ("Tony") Yen, and its counsel, Oliver M. Manglona, of the law offices of Robert T. Torres. The DOL Enforcement Section appeared through investigator Patrick King. The DOL Employment Services Section appeared through James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

This labor complaint was brought by a U.S. citizen job applicant, Zaji O. Zajradhara ("Complainant") against Yen's Corporation ("Employer"). In essence, Complainant alleged that Employer violated CNMI job preference laws by rejecting Complainant's application for a job to which Employee applied in April 2017. Complainant requested damages of "back pay" from the Employer. [A copy of the Complaint was entered into evidence as Hearing Exhibit 1. The Complaint was signed on 5/2/2017, and filed with the Hearing Office on 6/2/2017.]

Employer is a small business engaged in document handling and translation services. As of March 2017, Employer employed only two persons: President Tony Yen, who holds an EAD (employment authorization document), and a Manager named Ms. Wang, Yan, who held CW-1 status.

Mr. Yen ceased his employment at the company in September 2017 when his EAD expired, but he continued serving as corporate President. On October 5, 2017, Employer hired a U.S. citizen, named Samson Shinder Hsieh, for the position as Manager, but also retained its CW-1 status Manager, Wang, Yan. As of the date of Hearing, Employer's work force consists of the two Managers. [Test. of Mr. Yen.]

In March 2017, Employer was planning to renew its CW-1 status Manager, Ms. Wang, by filing a renewal Petition with the U.S. Citizenship and Immigration Services ("USCIS"). The Petition needed to be filed with USCIS no later than April 2017, in order to be considered by the USCIS. *Id.*

In late March 2017, Employer posted a job vacancy announcement ("JVA") on DOL's website for the job of Manager. [A copy of the JVA (JVA no. 17-03-48291) for Manager was entered into evidence as Hearing Exhibit 2a.] The JVA listed an "anticipated start date" for the job as October 1, 2017, and opening and closing dates for the JVA as October 1 and October 16, 2017, respectively. The JVA listed the job duties as: "Manages business operations such as document handling and other related duties." *Id.*

After posting the JVA, President Tony Yen signed and filed a renewal Petition for its CW-1 status Manager, Ms. Wang, with USCIS. Prior to filing the Petition, Mr. Yen did not review the resumes of three applicants who had posted online responses to the JVA on March 28, 2017. [Testimony of Mr. Yen; Hearing Exhibit 2b (JVA including responses posted by job applicants).]

In April 2017, Complainant read the JVA for "Manager" on the DOL website and decided to apply for the job. On April 26, 2017, Complainant emailed the Employer, attaching his resume; he sent his email to the email address that Employer had listed on its JVA: *yenscorpspn@gmail.com.* Six days later, on May 2, 2017, Complainant submitted a Complaint letter to the Hearing Office, stating that he wanted to file a labor complaint because Employer had failed to contact him to consider him for the position. (The Complaint letter was officially accepted for filing by the Hearing Office on June 2, 2017, after Complainant's application for waiver of fees was granted. The case was filed as L.C. No. 17-040.)

At Hearing, Employer's President, Tony Yen, claimed he never realized that Complainant had emailed the company until September 2017. Mr. Yen testified that he had not opened the company website for many months; therefore, he had not known that Complainant had sent his resume to Employer until Employer received the Notice of Mediation in September 2017, indicating that a complaint

had been filed against Employer. On September 10, 2017, Mr. Yen and Complainant met in the Hearing Office's mediation session to discuss this case. The parties failed to resolve the case at that time.

Although Employer's JVA for Manager was published on DOL's website in March 2017, the JVA listed opening and closing dates of October 1 and 16, 2017, respectively. Complainant was off-island for the entire month of October 2017. In the first week of October 2017, the parties engaged in a series of email exchanges regarding the "manager" position. Below is a summary of the exchanges:

> **October 2, 2018:** Employer informed Complainant by email that the position required two years' work experience in document handling services and that Employer intended to hire a U.S. citizen, Mr. Hsieh, who was capable of speaking both English and Chinese. [Hearing Exhibit 5a.]
>
> **October 2, 2018:** Zaji responded: "I shall continue my lawsuit." [Ex. 5b.]
>
> **October 3, 2018:** Employer responded: "Since this job position is still open, I would like to schedule you for interview for tomorrow 10/04/17." [Hearing Ex. 5c.]
>
> **October 3, 2018:** Zaji responded: "Unfortunately, I am out of town on business. I wish that you could have given me a better notice regarding this matter." [Hearing Ex. 5d.]
>
> **October 3, 2018:** Employer responded: "When are you returning back to Saipan, please let me know your schedule, so I can set the interview date for you. [Hearing Ex. 5e.] Complainant never responded to this email. [Testimony of Mr. Yen and Mr. Zajradhara.]

On October 5, 2017, Employer hired Mr. Hsieh for the Manager job. [Testimony of Mr. Yen.]

On October 16, 2017, a representative of another company, Li Feng (USA) Corporation (Wenfeng Chen: lifengspn@gmail.com), emailed Complainant, stating: "we would like to set up a interview date for you to our company for the position of sales person, thank you." Complainant responded by email: "Thanks, currently I am off island for business. Shall return on nov. 2." [Hearing Exhibit 9.]

On November 2, 2017, Complainant returned to the CNMI. Complainant sent Li Feng (USA) Corporation an email announcing his arrival and stating that he was available for a job interview, but Complainant never responded to Mr. Yen's last email of 10/03/17, asking to set an interview date.

On about November 28, 2017, Employer sent another Employer Attestation (signed by Chien-Li Yen on 11/28/17) to USCIS with a request that read: "We advertised at CNMI Labor website, we've hired Samson Shinder Hsieh an US citizen on October 05, 2017 for the position of manager. We're requesting to continue process of this CW-1 petition for the business operation needs." [A copy of this document was entered into evidence as Hearing Exhibit 8.] Evidently, USCIS agreed to Employer's request, as Mr. Yen testified that Ms. Wang's CW-1 status was renewed by USCIS in December 2017. [Testimony of Mr. Yen.] In December 2017, Employer posted on the JVA of the DOL website that the Manager position had been filled.

Determination: DOL's Enforcement Section investigated this case and concluded that Employer had not violated any CNMI labor laws or regulations in this case. The investigator based his Determination on a finding that Employer was willing to interview Complainant but Complainant failed to respond back to Employer to set up the interview. [Determination at Hearing Exhibit 3, Findings at p. 2, ¶ 1; and testimony of Mr. King.]

CONCLUSIONS OF LAW

1. Employer's Early Posting of its JVA Did Not Violate CNMI Labor Statutes or Regulations.

Employer posted the JVA in March 2017, but listed an "opening date" for the JVA ***seven months*** in the future, on October 1, 2017. Complainant argued that Employer's early posting of this JVA was improper and/or unlawful. DOL's Employment Services Section provided a representative to testify as to its position on this issue. Mr. James Ulloa of DOL's Employment Services Section testified that such a practice (posting a JVA on DOL's website months before the official "opening" date of the JVA) could cause a "chaotic" situation, but that the practice did not violate any CNMI labor statute or regulation. [Testimony of Mr. Ulloa.] Indeed, the Hearing Officer finds no CNMI labor statute or regulation that imposes an obligation on Employer to limit the opening date of its JVA. The Hearing Officer concludes that Employer's early posting of its JVA was not unlawful.

2. Employer's Hiring of Mr. Samson Hsieh Did Not Violate CNMI Labor Statutes or Regulations.

Employer interviewed and hired a U.S. citizen as its full-time employee "Manager" during the JVA's official publication period (October 1 to 16, 2017). [Testimony of Mr. Yen; Hearing Exhibits 2a (JVA) and 4b (Total Workforce Listing).] Mr. Yen testified that he interviewed the job applicant, Samson Hsieh, on about October 1, 2017. Yen told Complainant on October 3, 2017, that he planned to hire Mr. Hsieh because, among other reasons, he was bilingual in English and Mandarin. Yen hired Mr. Hsieh two days later, on October 5, 2017. [Testimony of Mr. Yen.]

The CNMI Department of Labor does not scrutinize an employer's judgment as to which U.S. citizen to hire among citizen/permanent resident job applicants. The Employment Rules and Regulations state that "[a]ny citizen, CNMI permanent resident or U.S. permanent resident may be hired rather than a person referred without any justification required to be submitted to the Department." [Regs. at NMIAC § 80-20.1-235(c)(1).] Thus, an Employer's hiring decision between U.S. citizen job candidates is not normally subject to scrutiny by the CNMI Department of Labor.

In this case, the facts were examined more carefully due to the fact that Employer sought to renew its CW-1 status Manager even after it hired a U.S. citizen for the position. Mr. Yen testified that after he had hired Mr. Hsieh as Manager, he filed a written request with USCIS in mid-November 2017, asking to be allowed to renew Employer's foreign national worker, Ms. Wang, Yan. [A copy of Mr. Yen's submission to USCIS was entered into evidence as Hearing Exhibit 8.] In December 2017, USCIS approved the renewal Petition for Ms. Wang, Yan. [Testimony of Mr. Yen.]

3. Complainant Failed To Establish That Employer Rejected Complainant's Job Application Without Just Cause.

Holding: Complainant failed to establish that Employer rejected Complainant's job application without just cause because Complainant failed to respond to Employer's invitation to interview for the job.

Employer might have been required to hire Complainant over Ms. Wang, Yan, but Complainant never followed through on setting up a date to be interviewed by Employer. Mr. Yen sent an email to Complainant on October 3, 2017, asking

Complainant to contact him after he returned to the CNMI in November 2017, so that an interview date and time could be arranged. [Hearing Exhibit 5e.] Complainant admitted that he never answered that email either before or after he returned to Saipan on November 2, 2017. [Testimony of Mr. Zajradhara.]

At Hearing, Complainant argued that although he had not emailed directly to Tony Yen, Mr. Yen knew Complainant was returning to Saipan on November 2, 2017, because Complainant had informed Li Feng (USA) Corporation (hereinafter, "Li Feng Corp.") of that fact and Tony Yen was that company's authorized representative.[1]

The Hearing Officer does not accept Complainant's argument that notice to Li Feng Corp. amounted to notice to Yen's Corporation. Complainant responded to Li Feng Corp. on October 16, 2017, to a job interview for "sales person" – not manager; that request for an interview was made by Li Feng Corp. – not Yen's Corporation. Mr. Yen was not required to make assumptions about Complainant's continuing interest in the "manager" job, based on a response to a JVA for a "sales person" job from a different company. Further, Complainant neglected to follow up or clarify the situation after his return to Saipan on November 2, 2017. A simple message upon his return would have served to inform Employer that Complainant remained interested in interviewing for the "manager" job. Complainant made no effort to contact the Employer after he returned to the CNMI on November 2, 2017.

The Hearing Officer notes that scheduling a job interview requires the cooperation of both parties. If Complainant fails to act responsibly, such conduct, in effect, gives Employer an excuse not to go forward with considering the job applicant for the vacant position.

In this case, Complainant was primarily at fault for failing to cooperate and participate in a job interview for the manager job in November 2017. Admittedly, this is a close decision, given that Employer created confusion with its emails in October 2017, first telling Complainant that it intended to hire a qualified U.S. citizen who had bilingual ability, then sending a second email noting that the position was still "open" and asking Complainant to interview for the job. [See Hearing Exhibits 5a and 5c.] However, by not responding to Employer's request

[1] On October 16, 2017, Complainant emailed Wenfeng Chen of Li Feng Corp. that he would return to Saipan on November 2, 2017. [See Hearing Exhibit 9.] On November 2, 2017, Complainant emailed Wenfeng Chen that he was back in Saipan and available for an interview. [Testimony of Mr. Zajradhara.]

for an interview, Complainant caused Respondent to believe that he was no longer interested in the manager position. In short, it was Complainant's refusal to cooperate to schedule a job interview that caused the process to fail.

4. Complainant Failed To Prove That Employer's Conduct Violated The CNMI's Job Preference Law at 3 CMC § 4528(a).

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. To the extent that Complainant moved for "back wages," the Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a). This statute is the only CNMI-based statute that gives an individual job applicant the right to sue for lost wages if certain elements are proven.

The Commonwealth Employment Act of 2007, 3 CMC § 4528(a), states, in part, that "[a] citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if ...the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job." Violations of this statute may lead to damages of up to six months' lost wages, as well as monetary sanctions against the employer. 3 CMC §§ 4528(f)(1) and (f)(2).

In order to win his claim for damages under this statute, Complainant must prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the Employer without just cause; (3) that Employer then hired a foreign national worker for that position; and (4) that Employer failed to meet the so-called 30% requirement (ratio of citizens/permanent residents employed) in employer's full-time workforce. 3 CMC § 4528(a).

Complainant failed to meet the second element of this claim. As to the second element, Employer asserted that it did not "reject" Complainant's application; rather, Employer attempted to arrange to interview Complainant when he returned from an off-island trip in November 2017, but Complainant failed to follow up on Employer's offer to interview him. The Hearing Officer accepts Employer's argument as valid and therefore, finds there is insufficient evidence to prove that Complainant's job application was rejected without just cause – a second element of a charge under 3 CMC § 4528(a).

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Respondent's arguments regarding the first and fourth elements are unpersuasive. Employer also argued that it did not violate 3 CMC § 4528(a) because: (1) Employer hired a U.S. citizen (Mr. Hsieh) for the Manager position; and (2) Complainant failed to establish that he was qualified for the job. [See Respondent Yen's Corporation's Written Closing Arguments at pp. 5-7.]

First, the Hearing Officer disagrees with Employer's contention in its Closing Arguments that it satisfied its legal obligations by hiring a U.S. citizen for the Manager position. The fact that one U.S. citizen (Mr. Hsieh) was hired does not end the inquiry as to Complainant's job application because Employer also sought to renew its CW-1 Manager (Ms. Wang, Yan) and Complainant retained a legal preference under 3 CMC § 4528(a) for that job, if he was qualified.

Second, the Hearing Officer disagrees with certain arguments made by Employer in its Closing Arguments as to qualifications for the job. Employer's list of job duties in its JVA (Hearing Ex. 2) was so terse - stating that the applicant "manages business operations such as document handling and other related duties") that Complainant's work history appears sufficient to qualify him for the basic task of document handling. [Hearing Ex. 6 (resume) and testimony of Mr. Zajradhara.] In any event, Mr. Yen testified that the primary skill needed for the position was bilingual ability, which skill had been intentionally omitted from the published JVA. The issue of whether Complainant's lack of bilingual ability was sufficient grounds to reject his application was not fully addressed,[2] given that Complainant's failure to prove the second element (below) determined the outcome of this case.

Notwithstanding the above findings as to job qualifications, Complainant's claim under 3 CMC § 4528(a) must fail because Complainant did not establish the claim's second element – that Employer rejected Complainant's job application without cause.

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[2] One issue is whether the Employer could impose a bilingual requirement on the job, having failed to list that requirement in the JVA. A second issue is whether the bilingual requirement was justified. Given Mr. Yen's testimony that his customer base consisted nearly entirely of individuals speaking Mandarin, Employer made a strong case for needing a bilingual Manager; however, no ruling was made on this issue, or the first issue, given that Complainant's failure to prove the second element of the offense was dispositive of the entire case. [See below for discussion that Employer's failure to list the bilingual requirement in the JVA constitutes a potential violation of 3 CMC § 4963(d).]

5. Employer Should Be Faulted For Not Listing Bilingual Ability As A Requirement In Its JVA for Manager – The Omission Is A Potential Violation of 3 CMC § 4963(d).

At Hearing, Mr. Yen testified that Employer needs its managers to be bilingual in the English and Chinese languages because most, if not all, of Employer's clients are primarily Chinese-speaking individuals who need assistance with document handling issues. [Testimony of Mr. Yen.] Indeed, Employer eventually hired a U.S. citizen (Mr. Hsieh) who is bilingual in English and Mandarin and Employer's existing CW-1 Manager is bilingual.

When Employer submitted its JVA for Manager to DOL's Employment Services Section in March 2017, Employer did not list any language requirement in the "requirements" section of the JVA (see Hearing Exhibit 2a). ***Mr. Yen testified that he intentionally omitted reference to a language requirement because he didn't want "trouble" from DOL.*** [Testimony of Mr. Yen.]

The above facts, which were admitted by Mr. Yen under oath, support a finding that Employer provided "materially false" or "materially misleading information" to DOL regarding the offered job. Such conduct appears to violate 3 CMC § 4963(d), which states:

> An employer…shall not make a materially false statement or give materially misleading information, orally or in writing, to the Department…with respect to any requirement of this chapter [Chapter 3 – Employment of Foreign Nationals – beginning at 3 CMC § 4911].

Procedural Note: The above-noted issue was not specifically raised in the Determination and the Department of Labor did not file Agency charges against Employer for violating 3 CMC § 4963(d). Although the matter was addressed at the Hearing with the implied consent of the parties [see Regs. at NMIAC § 80–20.1-480(j)], Enforcement never moved at Hearing to add charges related to this conduct. Accordingly, the above-noted finding shall not be used as a basis for sanctions against this Employer.

The Hearing Officer notes that Enforcement has the authority to open a Compliance Agency Case to add charges to a Labor Case, if Enforcement concludes during a labor investigation that violations of law have occurred. In such cases, Enforcement may issue a Notice of Violation regarding the Agency charges and schedule the Agency hearing for the same date and time as the hearing

of the Labor Case. On the day of hearing, the Hearing Officer may take evidence regarding both cases in the same proceeding, or hear the cases separately if the Respondent objects to hearing the cases together and justice is served by bifurcating the hearing.

CONCLUSION

In summary, based on the facts presented, judgment shall be entered in favor of Respondent (Employer) on Complainant's labor claim. Because Complainant did not respond to Employer's efforts to arrange a job interview in November 2017, Complainant did not prove that Employer rejected Complainant's job application without just cause – a requisite element of an offense under 3 CMC § 4528(a). Therefore, Complainant shall not prevail on this alleged claim.

The hearing record establishes that Employer provided false and/or misleading information to the Department of Labor when it omitted a bilingual requirement from its JVA for the Manager's position. Although this conduct may have violated 3 CMC § 4963(d), Enforcement did not file separate Agency charges in connection with this case; therefore, no sanction shall be issued with respect to this finding.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the above findings and conclusions, judgment is hereby entered in favor of Respondent Yen's Corporation and against Complainant Zaji O. Zajradhara on Labor Case No. 17-040 (Hearing Exhibit 1).[3]

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 11, 2018

Jerry Cody
Hearing Officer

[3] It should be noted that Complainant Zaji O. Zajradhara was sanctioned for his unprovoked outburst which ended the hearing on January 19, 2018. As a sanction, Complainant was prohibited from filing or otherwise submitting a Closing Argument in this case, pursuant to 3 CMC § 4947(11) and Regs, at NMIAC § 80-20.1-480(c). [See Interlocutory Order Re: Closing of Evidentiary Record; Respondent's Closing Argument; Sanction of Complainant, issued by this Hearing Officer on January 22, 2018.]

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	L.C. No. 17-040
Zaji O. Zajradhara,	)	
Complainant,	)	**INTERLOCUTORY ORDER RE:**
	)	**Closing of Evidentiary Record;**
v.	)	**Respondent's Closing Argument;**
	)	**Sanction of Complainant**
Yen's Corporation,	)	
Respondent.	)	
	)	

As the parties are aware, near the end of the testimony on January 19, 2018, the hearing ended abruptly when Complainant erupted in an unprovoked outburst, then stormed out of the hearing room. At that point, the hearing was suspended.

I. Closing of Evidentiary Record

After Complainant stormed out of the hearing room, Respondent's counsel Oliver Manglona indicated that he had been about two questions from the end of his case when the outburst occurred. Mr. Manglona stated on behalf of his client that he had no objection to ending the evidentiary hearing at this point.

Based on the above facts, the Hearing Officer hereby rules that the evidentiary record is now concluded.

II. Closing Argument

So that it is not prejudiced in its defense, Respondent shall be given an opportunity to submit a written closing argument to the Hearing Officer. This submission is optional – if submitted, Respondent's Closing Argument shall be limited to 10 pages and filed no later than January 29, 2018, at 3 p.m.

III. Sanction of Complainant Zaji O. Zajradhara

The Department's Employment Rules and Regulations states, in part: "A hearing officer may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to

reasonable standards of orderly...conduct...." [Regs. at NMIAC § 80-20.1-480(c).] The Hearing Officer finds that Complainant should be sanctioned for his unprovoked outburst that disrupted the hearing of this case on January 19, 2018. Complainant had disrupted the hearing on an earlier date (January 16, 2018) and had been warned that any further similar conduct would lead to sanctions. As a sanction, Complainant shall be prohibited from filing a Closing Argument. If Complainant attempts to file a Closing Argument, that document shall be stricken from the record and shall not be read or considered by the Hearing Officer.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Close of Evidentiary Record:** Based on the foregoing, the evidentiary record in this case is hereby closed. 3 CMC § 4947(11).

2. **Respondent's Closing Argument:** Respondent is hereby granted leave to file a written Closing Argument (limited to 10 pages in length), provided that it is filed no later than January 29, 2018, at 3:00 p.m. 3 CMC § 4947(11).

3. **Sanctions:** Respondent Zaji O. Zajradharr is hereby SANCTIONED for his unprovoked outburst which ended the hearing on January 19, 2018. As a sanction, Complainant is hereby prohibited from filing or otherwise submitting a Closing Argument in this case. 3 CMC § 4947(11); and Regs. at NMIAC §§ 80-20.1-480(c).

DATED: January 22, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-043
Zajradhara, Zaji O.,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Li Feng (USA) Corporation,	)	
Respondent.	)	
	)	

This case came on for hearing on January 3, 2018, in the Administrative Hearing Office of the CNMI Department of Labor ("DOL"). Complainant Zaji O. Zajradhara appeared without counsel. Respondent Li Feng (USA) Corporation appeared through its President, Chen Wenfeng, its authorized representative, Chien-li ("Tony") Yen, and its counsel, Robert T. Torres and Oliver M. Manglona. The DOL Enforcement Section appeared through investigator Ben Castro. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

This labor complaint was brought by a U.S. citizen job applicant, Zaji O. Zajradhara ("Complainant") against Li Feng (USA) Corporation ("Employer"). In essence, Complainant alleged that Employer violated CNMI job preference laws by rejecting Complainant's application for a job to which Employee applied in April 2017. Complainant requested damages of "back pay" from the Employer. [A copy of the Complaint was entered into evidence as Hearing Exhibit 1. The Complaint was signed on 5/17/2017, and officially filed on 6/2/2017.]

As of March 2017, Employer operated a small retail shop in Garapan called the "Mini Gift Shop," and a small tour business. Tony Yen served as authorized representative of the company and Chen, Wenfeng served as President. Employer employed two full-time employees: a salesperson, named Ms. Jiang Li, who left the company in June 2017, and a tour guide who resigned from the company in

May 2017. Both workers held CW-1 status. [See Total Workforce Listing at Hearing Exhibit 3.]

As of April 2017, Employer was planning to renew its CW-1 status Salesperson, Ms. Jiang Li, by filing a renewal Petition with the U.S. Citizenship and Immigration Services ("USCIS"). Given filing deadlines, the Petition needed to be filed with USCIS no later than April 2017, in order to be considered for fiscal year 2018. [Testimony of Mr. Yen.] After posting the job vacancy announcement ("JVA") described below, Employer filed the Petition with USCIS to renew Ms. Jiang Li. Several months later, however, Jiang Li left the CNMI due to a family emergency; the Petition was returned to Employer in early December 2017. *Id.*

In April 2017, Employer posted a JVA on DOL's website for the job of salesperson. [A copy of the JVA (JVA no. 17-04-49063) for "salesperson" was entered into evidence as Hearing Exhibit 2.] The JVA listed an "anticipated start date" for the job as October 1, 2017, and opening and closing dates for the JVA as October 1 and October 16, 2017, respectively *Id.* The JVA listed the job duties as: "Sells variety outlets to the public and other related duties." *Id.*

Complainant read Employer's JVA on the DOL website and decided to apply for the salesperson job. On April 26, 2017, Complainant emailed a message and his resume to the email address that Employer had listed on its JVA. Complainant received back an error message and reported to Mr. Ulloa at the DOL Employment Services Section that the email appeared invalid.

On May 18, 2017, Complainant submitted a Complaint letter to the Hearing Office, stating that he was filing a labor complaint because Employer had failed to contact him to consider him for the position. (The Complaint letter was officially accepted for filing by the Hearing Office on June 2, 2017, after Complainant's application for waiver of fees was granted. The case was filed as L.C. No. 17-043.)

At Hearing, Employer claimed it never realized that Complainant had emailed the company until October 2017. Employer's representative, Tony Yen, testified that he had not opened the company website for many months; therefore, he had not known that Complainant had sent his resume to Employer. Mr. Yen admitted that the website was not working; he claimed that it had been de-activated because he had not properly updated it. He also claimed that Employer had not received the Notice of Mediation; therefore, he only learned about this case when DOL's Enforcement Section contacted Employer in connection with its investigation of

the complaint. [Testimony of Mr. Yen.] (The Hearing Officer finds this portion of Mr. Yen's testimony to be credible.)

On October 3, 2017, Mr. Yen met with investigator Ben Castro about this case and was informed that Complainant had tried to send his resume and application for the salesperson job months earlier. Mr. Yen told the investigator that Employer would give Complainant an opportunity to interview for the salesperson job and would then make the decision of whether or not to hire him. [Testimony of Mr. Castro and Mr. Yen.]

Complainant was off-island for the entire month of October 2017. During that month, the parties exchanged emails about setting up a job interview for the salesperson position. [Testimony of Mr. Zajradhara and Mr. Yen.]

On October 16, 2017, a representative of Li Feng Corporation (Wenfeng Chen: lifengspn@gmail.com) emailed Complainant, stating: "we would like to set up a interview date for you to our company for the position of sales person, thank you." Complainant responded by email: "Thanks, currently I am off island for business. Shall return on nov. 2." [See copy of email excerpt at Hearing Exhibit 5(E).]

On November 2, 2017, Complainant returned to the CNMI and wrote to the Employer, stating: "Good day. I have now retruned (*sic*) to Saipan, if the position is still open you may contact me, again." [See copy of email at Hearing Ex. 5(C).]

In November 2017, Employer did not contact Complainant to set up an interview. Instead, Employer cancelled the JVA for salesperson. Employer's agent, Tony Yen, testified that Ms. Jiang Li had already left the CNMI due to a family emergency and she decided not to return to the CNMI. Mr. Yen claimed that sometime in November, he decided to cancel the JVA. He then visited DOL's Employment Services Section and sought assistance as to how to cancel the Employer's JVA for salesperson. [Testimony of Mr. Yen.]

As of late November and early December 2017, Employer did not intend to continue with the job interview; however, after discussing the matter with investigator Ben Castro on December 5, 2017, Employer decided to show "good faith" by continuing its discussions with Complainant about the salesperson job. [Testimony of Mr. Yen and Mr. Castro.]

On December 6, 2017, Employer responded: "Good day Zaji, can we meet today at 4:00 pm for interview? You can reach me at (phone number)." On December

6th in the early evening (5:28 pm), Complainant responded that he had just returned home and read the email – he suggested that the parties meet the following day. He also asked Mr. Chen, Wenfeng to telephone him as soon as possible.

On December 6 and 7, 2017, the parties engaged in further settlement discussions but were unable to agree on terms to settle this case. [Testimony of Mr. Zajradhara and Mr. Yen.]

On December 7, 2017, at 3:00 pm, Employer wrote: So, let me set up a interview date for you, how's your time?" Complainant responded at 3:04 p.m., stating: "No thank you. You attempted a settlement it has been recorded. So, now Mr. Cody will make the final determination. Have a great day. See you at the hearing. I guarantee you he will lose."

On December 18, 2017, Employer hired a lawful permanent resident, named Hong Ru Babauta, for the salesperson job.

On December 19, 2017, DOL's investigator Ben Castro issued a Determination against Employer (see below) based on Employer's failure to update the investigator by December 14, 2017, regarding whether Employer had interviewed Complainant or was planning to hire him. [Testimony of Mr. Castro.]

Determination: DOL's Enforcement Section investigated this case and concluded that Employer had violated CNMI labor laws or regulations by failing to hire a qualified U.S. citizen in this case. The investigator based his conclusion on the fact that Employer had promised on December 5, 2017, to update the investigator after it interviewed Complainant, but Employer had failed to do so as of December 12, 2017. [Determination at Hearing Exhibit 3, Findings, at p. 2, ¶ 1; and testimony of Mr. Castro.]

CONCLUSIONS OF LAW

Summary: As set forth below, the Hearing Officer ultimately finds that Employer did not violate the CNMI job preference statute at 3 CMC § 4528(a) because (a) Employer never actually rejected Complainant for the salesperson job; (b) Complainant declined to participate in a job interview for the position; and (c) Employer ultimately hired a lawful permanent resident to replace its CW-1 status salesperson.

Notwithstanding the above finding, the Hearing Officer notes that Employer's conduct was not blameless. First, Employer published an inaccurate or outdated email address with its JVA, which caused Complainant's email message to be rejected. Moreover, Employer's actions to consider Complainant, a U.S. citizen, for the salesperson job, were entirely contradictory. In mid-October 2017, Employer claimed it wanted to set up a job interview with Complainant; but then, upon learning that Complainant had returned to the CNMI on November 2, 2017, Employer did nothing. On the contrary, Employer took steps to cancel the JVA in November 2017, and made no effort either to interview Complainant or inform him of the cancelled JVA. On December 5, 2017, Employer changed its stance again, this time after discussing the matter with investigator Ben Castro. Evidently concerned with how its actions might be viewed by the Enforcement Section, Employer then engaged in settlement discussions with Complainant and, when those failed, again sought to schedule a job interview with him. In the end, Complainant's refusal to participate in the interview caused his own claim to fail. Then, at the eleventh hour, Employer found and hired a lawful permanent resident for the salesperson job, which enabled it to demonstrate "good faith" to counter the charge that it had ignored its obligation to consider and hire U.S.-qualfied workers over a foreign national worker.

Early Posting Of JVAs Is Not Unlawful: It should be noted from the outset that Employer's early posing of the JVA in April 2017, for a job with an anticipated start date of October 2017, was not improper or unlawful. The Hearing Officer has found no statute or regulation that makes the filing of a JVA months ahead of the anticipated start date, to be unlawful.

Wrong Email Address Listed on JVA: The fact that a bogus email address may have been listed in Employer's JVA is noted, but not dispositive of the issues in this case. Given that the anticipated start date was in October 2017, Employer was not under an obligation to interview job applicants back in April or May 2017. Having said this, of course, employers should take care to only list valid and operational email addresses on their published JVAs. For an employer to list a non-operational web address creates an inference that it may be intentionally avoiding email communication. The inference may be rebutted with testimony, as here, that the Employer took prompt steps to correct the error after learning that the email address was non-operational.

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Employer's Hiring of a Lawful Permanent Resident in December 2017 Did Not Violate CNMI Labor Statutes or Regulations:

The CNMI Department of Labor does not interfere with an employer's judgment as to which U.S. citizen to hire among several citizen/permanent resident job applicants. The Employment Rules and Regulations state that "[a]ny citizen, CNMI permanent resident or U.S. permanent resident may be hired rather than a person referred without any justification required to be submitted to the Department." [Regs. at NMIAC § 80-20.1-235(c)(1).]

In this case, DOL scrutinized Employer's hiring of the lawful permanent resident because of the timing of the hiring as well as the erratic conduct of the Employer.[1] Employer's conduct raised questions as to the sincerity of its expressed intent to consider Complainant for the job; however, the evidence shows that Complainant declined to be interviewed for the position several weeks before Employer chose to hire someone else for the job. Based on the facts presented, the hiring of the lawful permanent resident appears proper and lawful.

Complainant Failed To Prove That Employer Rejected Complainant's Job Application Without Just Cause.

Holding: Complainant failed to establish that Employer rejected Complainant's job application without just cause because Complainant declined Employer's offer to interview him for the job on December 7, 2017.

The Hearing Officer notes that scheduling a job interview requires the cooperation of both parties. If Complainant fails to act responsibly, such conduct, in effect, gives Employer an excuse not to go forward with considering the job applicant for the vacant (or renewed) position.

In this case, settlement discussions between the parties continued in early December 2017, during the time in which Employer was trying to set up a job interview with Complainant. On December 7, 2017, Employer made a last attempt

[1] A brief review of the chronological facts illustrates Employer's ever-shifting position: Employer informed Enforcement in early October 2017 that it would interview Mr. Zajradhara for the salesperson job; in mid-October 2017, Employer contacted Complainant to set up an interview and learned that Complainant would be available to be interviewed after November 2, 2017. In November 2017, Employer did not interview Complainant; instead, it cancelled the JVA. In early December 2017, Employer decided to interview Complainant after speaking about the matter with the labor investigator. On December 7, 2017, Complainant declined to be interviewed. On December 18, 2017, Employer hired a lawful permanent resident for the position.

to schedule a job interview with Complainant. Complainant expressly declined to participate in the interview, instead preferring to proceed to hearing at the Administrative Hearing Office. [See email correspondence at Hearing Exhibit 5.]

Complainant's refusal to interview for this job gave Employer an argument that it was Complainant, not Employer, who was obstructing the hiring process. Given that Complainant seemed to be dropping out of the competitive application process for this job, Employer was free to consider and hire a different job applicant. In this case, that applicant was a lawful permanent resident who is a U.S-qualified worker.

Complainant was primarily at fault for failing to participate in a job interview for the salesperson job in December 2017. By expressly declining Employer's request to conduct an interview for the position, Complainant caused Employer to believe that he was no longer interested in working for Employer. Complainant's refusal to cooperate to schedule the job interview caused the process to fail and gave the Employer a legitimate reason not to consider Complainant as a candidate for the job.

Complainant Failed To Prove Two Elements Of A Claim Under The CNMI's Job Preference Law at 3 CMC § 4528(a).

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. To the extent that Complainant moved for "back wages," the Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a). This statute is the only CNMI-based statute that gives an individual job applicant the right to sue for lost wages if certain elements are proven.

The Commonwealth Employment Act of 2007, 3 CMC § 4528(a), states, in part, that "[a] citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if ...the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job." Violations of this statute may lead to damages of up to six months' lost wages, as well as monetary sanctions against the employer. 3 CMC §§ 4528(f)(1) and (f)(2).

In order to win his claim for damages under this statute, Complainant must prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the Employer without just cause; (3) that Employer

then hired a foreign national worker for that position; and (4) that Employer failed to meet the so-called 30% requirement (ratio of citizens/permanent residents employed) in employer's full-time workforce. 3 CMC § 4528(a).

Complainant failed to meet two crucial elements of this claim. As to the second element, Employer asserted that it did not "reject" Complainant's application; rather, Employer attempted to arrange to interview Complainant in December 2017, but Complainant rejected Employer's offer to interview him. The evidence clearly shows that on December 7, 2017, Complainant expressly rejected Employer's attempt to schedule a job interview. [See email correspondence at Hearing Exhibit 5.]

As to the third element of the offense, the evidence supports Employer's defense rather than Complainant's case. Employer did not renew its CW-1 status worker, Ms. Jiang Li, for the salesperson job. Rather, Ms. Li resigned and returned to China, and Employer hired a lawful permanent resident for the position. Therefore, the third element of a claim under Section 4528(a) – that a foreign national worker was hired for the position for which the citizen or permanent resident was rejected – did not occur in this case.

Given that at least two of the four elements of a charge under 3 CMC § 4528(a) cannot be proven by Complainant and, instead, weigh in favor of Employer, the evidence does not support Complainant's allegations that Employer violated CNMI preference law [3 CMC § 4528(a)] in this case.

CONCLUSION

In summary, based on the facts presented, judgment shall be entered in favor of Respondent (Employer) on Complainant's labor claim. Two crucial elements of the claim under 3 CMC § 4528(a) were found in Employer's favor. First, there was no evidence that Employer rejected Complainant's job application without just cause because, in fact, it was Complainant who rejected Employer's efforts to arrange a job interview in December 2017. Second, Employer did not employ a foreign national worker in the subject job, but instead, hired a lawful permanent resident for the position. Given that two requisite elements of a CNMI job preference offense could not be proven by Complainant, judgment shall be entered in favor of the Respondent Employer in this case.

It should be noted that Employer's erratic conduct as to scheduling a job interview with Complainant sent mixed messages that would lead a reasonable person to

question whether an employer's request to interview Complainant in December 2017, was done in good faith. Nevertheless, by failing to participate in the interview, Complainant caused his own claim to fail. Furthermore, Employer has now replaced its CW-1 status salesperson with a lawful permanent resident – thus, no violation of the CNMI's job preference statute [3 CMC § 4528(a)] has occurred.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the above findings and conclusions, judgment is hereby entered in favor of Respondent Li Feng (USA) Corporation and against Complainant Zaji O. Zajradhara on Labor Case No. 17-043, filed on June 2, 2017 (Hearing Exhibit 1).

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 11, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 17-052
Zajradhara, Zaji O.,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Haitian Construction Group,	)	
Respondent.	)	
	)	

This case came on for hearing on May 15, 2018, in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Zaji O. Zajradhara appeared without counsel. Respondent Haitian Construction Group appeared through its corporate Secretary, Congxiang S. Palacios, and its counsel, Colin Thompson. The Department of Labor Enforcement Section appeared through its investigator, Ben Castro. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

This labor complaint was brought by a U.S. citizen job applicant, Zaji O. Zajradhara ("Complainant") against Haitian Construction Group ("Employer"), alleging that the Employer violated the CNMI job preference laws by failing to consider Complainant's application for a job that Employer advertised in May 2017. Complainant requests damages against Employer pursuant to 3 CMC § 4528(a). Testimony of Mr. Zajradhara. [A copy of the handwritten Complaint, filed on 9/06/2017, was entered into evidence at Hearing Exhibit 1.]

During 2017, Employer employed 603 workers – all foreign national workers - to work in construction-related jobs on one or more construction projects in the CNMI. All of the workers had CW-1 status which expired during 2017. At Hearing, Employer's representatives stated that after posting job vacancy announcements ("JVAs") on DOL's website to renew certain workers in mid-2017,

Employer ultimately decided not to renew any of its CW-1 status workers. [Testimony of Ms. Palacios and representation of Mr. Thompson.]

Employer documented its drastic change of business plan in two Total Workforce Listings. The first Total Workforce Listing (entered into evidence as Hearing Exhibit 4) lists all 603 CW-1 status workers employed by Employer during the year of 2017. The next Total Workforce Listing (Hearing Exhibit 3), applicable to the 1st Quarter of 2018, represents that Employer employed no employees whatsoever during that first quarter of 2018. Both Listings were signed by corporate Secretary Congxiang S. Palacios, who testified at Hearing.

Employer offered no detailed testimony about its decision not to renew its foreign national workers at the end of 2017. Although Secretary Palacios confirmed that none of the 2017 CW-1 employees were renewed by Employer, Ms. Palacios was unable to give the reason for that business decision.[1] Attorney Colin Thompson surmised that Employer reacted to news that USCIS was not going to approve CW-1 workers in the construction industry in 2018; nevertheless, Mr. Thompson's comment remains conjecture. In any event, it seems that no workers' Petitions for renewal were approved and by the beginning of 2018, Employer no longer employed any foreign national workers in the CNMI.[2]

For the record, Employer does not dispute complainant's allegation that Employer never reviewed, contacted or interviewed complainant about the posted "road worker" job. [Statement at Hearing by Mr. Thompson.]

As summarized above, Employer never filled the posted road worker job with any foreign national worker – or with anyone else. As Ms. Palacios and Mr. Thompson confirmed, Employer abandoned its plan to employ road workers sometime after June 2017. *Id.*

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[1] Although she was labelled a consultant and given a corporate title, it appears that Ms. Palacios did not make high-level management decisions and was not aware of the details of why Employer decided not to pursue renewal of its construction employees. Management and control appeared to remain with Employer's President who resides in China. [Testimony of Ms. Palacios; representations of Mr. Thompson.]

[2] Many details regarding this business decision remain unknown, such as whether Employer submitted CW-1 Petitions and then backed out of the renewals, or simply decided not to submit renewal Petitions to USCIS. Employer's representatives also could not identify even the month that Employer decided to reduce its workforce to zero. [Testimony of Ms. Palacios and statements of Mr. Thompson.]

Determination: DOL's Enforcement Section investigated this case and concluded that Respondent had committed no violation of law or regulation. It recommended that Respondent not be sanctioned or found liable in this matter. [A copy of the Determination was entered into evidence as Hearing Exhibit 2.] Testimony of Mr. Castro.

CONCLUSIONS OF LAW

Complainant, a non-lawyer, did not cite the statute upon which his Complaint was based. The Hearing Officer construes the Complaint (Hearing Ex. 1) as alleging a violation of the CNMI job preference statute at 3 CMC § 4528(a).

The Commonwealth Employment Act of 2007, 3 CMC § 4528(a), states, in part, that "[a] citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job may make a claim for damages if ...the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."

In order to win his claim for damages under this statute, Complainant must prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the Employer without just cause; (3) that Employer then hired a foreign national worker for that position; and (4) that Employer failed to meet the so-called 30% requirement (ratio of citizens/permanent residents employed) in employer's full-time workforce. 3 CMC § 4528(a).

Three of the Four Elements of the Job Preference Charge Were Proven.

Based on the evidence presented, the Hearing Officer finds that Complainant proved three of the four elements of the Section 4528(a) offense.

First, evidence established that Employer in 2017 did not meet the 30% requirement of 3 CMC § 4525.[3] In fact, 100% of Employer's workforce in 2017 – 603 employees- consisted of foreign national workers who held CW-1 status. [See Total Workforce Listing at Hearing Exhibit 4.] In short, Employer's workforce participation percentage was well below the minimum requirement of 30%. Accordingly, this element of the offense is met.

[3] That statute requires employers to maintain a minimum workforce participation goal of 30%, meaning that 30% of Employer's full-time workforce must consist of U.S. citizens or U.S. permanent residents. [3 CMC § 4525 and Regs. at NMIAC § 80-20.1-210(c)(3).

Another element of a Section 4528(a) offense is to establish that Complainant was qualified for the job for which he applied. Employer posted simple qualifications on the JVA for this unskilled, "road worker" position. Based on Complainant's work history as reflected in his resume, the evidence supports a finding that Complainant was qualified to work in this unskilled job. Therefore, this element of the offense was established.

Another element of a Section 4528(a) offense is satisfied if the employer unjustly rejects the U.S. citizen for the job. In this case, that element was not completely adjudicated and established, but evidence suggests that Employer had no just cause to ignore or disregard Complainant's job application. Although all the facts are not entirely known and could not be developed through the testimony of Ms. Palacios who Employer asked to testify on its behalf. Employer admitted that it took no action to consider Complainant for the advertised position. Thus, it was entirely likely that Complainant would prevail on this element of the claim.

Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions With Foreign National Workers; Therefore, Complainant Cannot Prevail Under 3 CMC § 4528(a).

The final element of a job preference case is proving that Employer filled the vacant job with a foreign national worker after rejecting Complainant's job application without just cause. Employer argued that this element could not be proven as it had never filled the road worker jobs in 2018, but instead, allowed all of its CW-1 employees' status to terminate without renewal. The Hearing Officer agrees with Employer's argument.

Based on the above facts, the Hearing Officer holds that this important element of the Section 4528(a) offense cannot be established. Accordingly, Complainant cannot satisfy all of the elements of the offense and his request for damages should be rejected.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the above findings and conclusions, judgment is hereby entered in favor of Respondent Haitian Construction Group and against Complainant Zaji O. Zajradhara on Labor Complaint No. 17-052, filed on September 6, 2017 (Hearing Exhibit 1).

[L.C. No. 17-052]

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: May 25, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Marianas Taxi Corporation, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	**D.C. No. 16-001,** **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 14, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Marianas Taxi Corporation ("Employer"), appeared through its President, Thongyai Carroll, and its Secretary, Anowar Hossain. The Department of Labor Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 10, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

In its Denial, the Job Placement Section denied Employer's request for a Certification of Compliance, based on its assertion that the Employer had failed to post job vacancy announcements for the taxi driver job in 2014 and 2015, in accordance with the Department's Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80–20.1-225(a).

Departmental Regulations require employers who are hiring or renewing CW-1 status workers to post job announcements on the Department of Labor ("DOL") website. *Id.*

The Denial alleged that Employer missed posting the JVA on DOL's website for two years: 2014 and 2015. As to 2014, Enforcement admitted during the Hearing that the Denial was mistaken in asserting that no JVA had been posted by Employer in 2014. In fact, Employer had posted a JVA for the taxi driver job in 2014. Therefore, Enforcement made an oral motion to strike that portion of its Denial and the motion was granted.

As to 2015, Mr. Hossain testified that in July 2015, as the Employer prepared to advertise this position, Saipan experienced a major disruption and outage of its internet communications after the island's only ocean cable was cut during a storm. For weeks during July 2015, DOL's website was not operational. Mr. Hossain testified that in mid-July 2015, he approached the Director of Employment Services, Yvonne Taisacan. Ms. Taisacan advised Employer that, since DOL's website was "down," the Employer should advertise the job in a local newspaper.

Employer did as instructed by Ms. Taisacan and advertised the job in the Marianas Variety. The JVA was published in the Marianas Variety on July 16, 22 and 29, 2016. [Testimony of Mr. Hossain; Hearing Exhibit 3 - a copy of the Certificate of Publication, issued by Marianas Variety on July 30, 2015, which lists the dates on which the Job Vacancy Announcement was published.]

The facts of this case establish that Employer took appropriate steps under the circumstances that existed in July 2015, to advertise this JVA through the only medium available at that time – a local newspaper. Based on the foregoing, the Hearing Officer finds that Employer has a valid excuse for not posting JVAs on DOL's website; therefore, the present Denial should be reversed.

Good cause having been shown, IT IS HEREBY ORDERED:

Denial is reversed: For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Marianas Taxi C, is hereby REVERSED. The Department is instructed to issue the Certification of Compliance to Appellant as soon as possible.

DATED: March 14, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-002
Radiocom Saipan, Inc.,	)	
dba RadioCom,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job	)	
Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on April 13, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Radiocom Saipan, Inc., was represented by its corporate Director, Leo Jun M. Ganacias. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 29, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

Appellant Radiocom Saipan, Inc. ("Employer") operates a relatively small construction business on Saipan, consisting of 15 full-time employees. Five of the employees are U.S. citizens; 7 employees are CW-1 status workers. [Testimony of Mr. Ganacias.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to post job vacancy announcements ("JVAs") for CW-1 status renewals on the Department's website (www.marianaslabor.net) in accordance with the Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2015 in accordance with Regulations at § 80-20.1-510;

(3) Employer failed to submit several quarterly Workforce Listing documents in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-20.1-505. [1]

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted any JVAs on the Department of Labor ("DOL") website for its seven CW-1 status employees in 2015. Employer admitted that its Administrative Assistant had used a local radio station instead of posting the JVAs on DOL's website. [Testimony of Mr. Ganacias.]

Workforce Plan for 2015: Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510. In this case, Employer submitted a Workforce Plan for 2015 to the Job Placement Section only after the Denial had been received. Furthermore, the Workforce Plan was not completely filled out. [Testimony of Mr. Ulloa; copy of Workforce Plan, signed on 3/11/2016, entered into evidence at Hearing Exhibit 3.]

Quarterly Total Workforce Listings: Department Regulations require employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer failed to submit its quarterly Total Workforce Listings for the 1st, 2nd, and 3rd quarters of 2014. After it received the Denial in 2015, Employer filed these documents along with its appeal letter. [Appeal letter from Mr. Ganacias, dated 3/17/2016, was entered into evidence as Hearing Exhibit 2; the four Total Workforce Listing documents were entered into evidence collectively as Hearing Exhibit 4.]

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[1] Specifically, the Department stated that Employer failed to submit its quarterly Workforce Listing for the 1st, 2nd and 3rd quarters of 2015 and Quarterly Withholding Tax and Monthly Business Gross Revenue Returns for the same period. (Hearing Exhibit 1.)

DISCUSSION

Employer's Director, Leo Jun M. Ganacias, gave credible testimony in which he admitted he had failed to produce required documents and failed to post job announcements on DOL's website. Mr. Ganacias admitted these failures, agreed to comply with the DOL's regulations in the future, and agreed to pay a substantial fine for past conduct.

Employer urged that it not be denied a Certification of Good Standing as this would make it impossible for Employer to proceed with its current and prospective business ventures. According to Employer, the Certification is needed for the company to qualify to be placed on the Northern Mariana Housing Corporation's Contractors List. *Id.*

The Total Workforce Listing documents produced by Employer with its appeal letter, reveal that more than 30% of Employer's workforce is comprised of U.S. citizens or permanent residents. [Hearing Exhibit 4.] In short, Appellant's workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [§ 80-30.2-120(c)].

At Hearing, Job Placement noted that Employer's deficient conduct - its failure to produce several reporting documents and its failure to post JVAs on DOL's website - could justify a denial of the Certification of Compliance. In this case, Job Placement is willing to agree to reverse the denial, provided that Employer pays a monetary sanction for its deficiencies and takes immediate steps to file a completed Workforce Plan. [Testimony of Mr. Ulloa.]

Sanctions:
The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given that Employer failed to post seven job vacancies on the DOL website. Many of the job listings were for construction positions that might have drawn applications from a number of U.S. citizens. The Hearing Officer shall sanction Employer the maximum amount of $2,000; however, $1,000

of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining $1,000 portion of the fine, submits an updated Workforce Plan for 2016 within ten days, and submits timely reporting documents to the Job Placement Section during the two-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Radiocom Saipan, Inc., is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance to Appellant as soon as the $1,000 portion of the sanction has been paid (see below).

2. **Sanctions:** For the reasons stated above, Appellant Radiocom Saipan, Inc., is hereby FINED two thousand dollars ($2,000); however, $1,000 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining $1,000 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

3. **Payment Terms:** Appellant is ORDERED to pay the $1,000 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Updated Workforce Plan:** Appellant is ORDERED to file a complete Workforce Plan for 2016 with the Citizen Job Placement Section (attn.: James Ulloa) in accordance with Regulations at NMIAC § 80–20.1-510, within ten (10) days of the date of issuance of this Order.

5. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at NMIAC § 80–20.1-225(a). Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

6. **Warning:** Appellant has a continuing obligation to post job vacancies on DOL's website and to submit Total Workforce Listing documents to the Department on a quarterly basis. If Appellant fails to comply with these obligations, it

shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 22, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Leon P. Ganacias, *dba* KWAW-FM, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-003 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 13, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Leon P. Ganacias, *dba* KWAW-FM ("Employer"), was represented by his son, Manager Leo Jun M. Ganacias. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 29, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Employer operates a radio station in Garapan, Saipan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

1. Employer failed to post several job vacancy announcements ("JVAs") for radio announcer positions on the Department's website for its CW-1 status hirings and renewals in accordance with the Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

2. Employer failed to submit a Workforce Plan for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-510(c); and

3. Employer failed to submit four quarterly Total Workforce Listings for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b). [1]

Each of these separate grounds is discussed below:

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department of Labor ("DOL") website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted job announcements in 2015 on DOL's website for CW-1 status employees filling jobs as radio announcers. [Printout of Employer's posting history; Testimony of Mr. Ulloa.]

At Hearing, Manager admitted that he had filed the CW-1 renewal petitions on Employer's behalf in December 2015 without advertising those positions on the DOL website. [Testimony of Mr. Ganacias.]

Workforce Plan for 2015: Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer never submitted a complete Workforce Plan for 2015 to the Job Placement Section. [Testimony of Mr. Ganacias.] After he received the Denial, Employer attempted to submit a Workforce Plan, but it was incomplete. [Copy of Workforce Plan, submitted by Employer on March 15, 2016, was entered into evidence as Hearing Exhibit 4.]

Quarterly Total Workforce Listings: Department Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

[1] The Denial also alleged, citing Regs. at NMIAC § 80-20.1-505, that Employer failed to submit Employer's Quarterly Withholding Tax documents and Monthly Business Gross Revenue Returns for 2015. At Hearing, the Department moved to strike this portion of the Denial. The Hearing Officer granted the oral motion to strike.

Employer failed to submit Total Workforce Listings for all four quarters of 2015. After receiving the Denial and in preparation for the Hearing, Employer prepared these documents and offered them into evidence. [The four Total Workforce Listings were entered collectively as Hearing Exhibit 3.]

The Total Workforce Listing is required to be submitted at the end of each quarter – not all at once after a Denial has been issued.

CONCLUSIONS OF LAW

Employer's Director, Leo Jun M. Ganacias, gave credible testimony in which he admitted he had failed to produce required documents and failed to post job announcements on DOL's website. Mr. Ganacias admitted these failures, agreed to comply with the DOL's regulations in the future, and agreed to pay a substantial fine for past conduct.

The Total Workforce Listing documents produced by Employer with its appeal letter, reveal that Employer employs 3 full-time workers: two CW-1 status workers and one U.S. citizen. This meets the minimum workforce participation percentage set by regulation. [NMIAC § 80-30.2-120(c).]

Job Placement noted that it is willing to agree to reverse the denial, provided that Employer pays a monetary sanction for its deficiencies and takes immediate steps to file a completed Workforce Plan. [Testimony of Mr. Ulloa.]

For this conduct, the Hearing Officer finds it appropriate to sanction Employer one thousand dollars; however, $500 of the fine shall be suspended for one year, then extinguished, provided that Employer commits no further violations. Additionally, Employer shall be ordered to produce a complete Workforce Plan for 2016 to the Citizen Job Placement Section (attention: James Ulloa) within ten (10) days following the date of issuance of this Order.

The Denial shall be reversed provided that Employer pays the sanction and submits the revised Workforce Plan in accordance with the terms of this Order.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Leon P. Ganacias, is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set

forth below. The Department is instructed to issue the Certification of Compliance to Appellant after Appellant complies with the terms set forth below.

2. **Sanctions:** For the reasons stated above, Appellant Leon P. Ganacias, is hereby FINED one thousand dollars ($1,000); however, $500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $500 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

3. **Payment Terms:** Appellant is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Updated Workforce Plan:** Appellant is ORDERED to file a complete Workforce Plan for 2016 with the Citizen Job Placement Section (attn.: James Ulloa), in accordance with Regulations at NMIAC § 80–20.1-510, within ten (10) days of the date of issuance of this Order.

5. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at NMIAC § 80–20.1-225(a). Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

6. **Warning:** Appellant has a continuing obligation to post job vacancies on DOL's website and to submit Total Workforce Listing documents to the Department on a quarterly basis. If Appellant fails to comply with these obligations, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 22, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Rong Hua Corporation, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-004 **ADMINISTRATIVE ORDER ON RECONSIDERATION**

Background:

This denial appeal came on for hearing on March 17, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Rong Hua Corporation ("Employer"), was represented by its General Manager, Liu Yan Qiong, its Manager and processing agent, Tony Sablan, and its Spa Manager, Lou Jing Xia. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Ms. Lou served as translator for Ms. Liu. Hearing Officer Jerry Cody, presiding.

Order: After the hearing, this Hearing Officer issued an Administrative Order that adopted Findings of Fact and Conclusions of Law. (Administrative Order in D.C. No. 16-004, issued by J. Cody on March 18, 2016.)

Appeal: On April 1, 2016, Employer appealed the Administrative Order to the Secretary of Labor. In support of its appeal, Employer supplemented the record with evidence and affidavits to demonstrate that it was Employer's General Manager's detrimental reliance on its former manager and agent, Tony Sablan, that caused the past compliance issues.

Remand: On July 7, 2016, the Secretary of Labor issued the Secretary's Order On Appeal (SA 2016-004, appeal from D.C. 16-004) remanding this case back to the Hearing Officer for reconsideration. The Secretary's Order instructed the Hearing Officer to reconsider the matter based on newly produced evidence. The following reconsideration complies with the Secretary's Order.

Based on a review of the prior hearing record, plus evidence submitted by Rong Hua Corporation in support of its appeal, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

For purposes of this reconsideration, the Hearing Officer adopts and incorporates the findings of fact contained in the prior Administrative Order, issued on March 18, 2016, as modified by further findings in the present Order.

In support of its appeal, Employer requested that the Secretary allow supplementation of the record, pursuant to 3 CMC section 4948(b), and submitted the following supplemental evidence for consideration:

1. **Affidavit of General Manager Liu, Yan Qiong:** This affidavit explains the company's reasonable reliance on Mr. Sablan, and the General Manager's decision to terminate Mr. Sablan when she found out he had not performed the duties he was paid to perform.
2. **Evidence of Job Vacancy Announcements in Saipan Tribune**: These job vacancy advertisements for various positions at O2 Spa published December 12, 15, and 18, 2014, and September 4, 11 and 18, 2015, demonstrate that Rong Hua took active measures to comply with and meet the workforce participation goal.
3. **Evidence of Job Vacancy Announcements Published on the Department of Labor Website**: These 2016 postings indicate that as soon as Rong Hua found out about Mr. Sablan's failure to comply with regulations, the company took prompt action to come into compliance.
4. **Updated Total Workforce Listing and Workforce Plan**: These updated documents, filed with the Department on March 28, 2016, demonstrate the employer terminated Mr. Sablan, and has achieved the workforce participation goal.
5. **Certification of Compliance**: This certification, issued March 28, 2016, demonstrates that as soon as Rong Hua became aware of the extent of Mr. Sablan's failure to submit required documentation and advertisements, the employer acted quickly to rectify the situation.

In essence, Employer argues that its General Manager relied on Mr. Tony Sablan to her detriment. As a person with limited English skills, the General Manager was at a distinct disadvantage in understanding that Mr. Sablan was not accomplishing tasks that needed to be accomplished in order to keep the company in compliance.

At Hearing, Ms. Liu was given the opportunity to supplement the record with her testimony; however, she was not able to articulate in the hearing the extent to which she had relied on Mr. Sablan. In her Affidavit submitted on appeal to supplement the record, Ms. Liu stated that Mr. Sablan had informed her that he would take care of the job posting, and that Ms. Liu had "relied on him to properly post the job advertisements." Affidavit of Yanqiong Liu re: Compliance with CNMI Labor Regulations, at ¶ 6.

Ms. Liu further noted that after she received the Administrative Order, she decided to terminate Mr. Sablan. She has now hired an attorney and is working with an interpreter and the CNMI Department of Labor to ensure that Rong Hua Corporation does not have any future compliance issues. *Id.* at ¶¶ 7, 9.

CONCLUSIONS OF LAW

Holding: The Hearing Officer adopts and incorporates the prior conclusions of law as set forth in the Administrative Order, issued on March 18, 2016, with the following modified conclusions.

The testimony and Affidavit of General Manager Liu, Yan Qiong, establish that she detrimentally relied on the assurances of Tony Sablan that be would correct deficiencies and comply with CNMI regulations with respect to the hiring of CW-1 workers. Despite his assurances, Sablan failed to ensure that the Employer was in compliance with Department regulations regarding posting of job vacancy announcements on DOL's website.

Since the issuance of the Administrative Order, Employer has taken steps to bring itself into compliance with respect to the Total Workforce Listing and Workforce Plan. In particular, Employer has hired an attorney and interpreter in an effort to improve Employer's communication with the CNMI Department of Labor. These positive steps will correct the prior difficulties and hopefully, lead to future compliance by this Employer with all applicable labor statutes and regulations.

Based on the foregoing, the Hearing Officer concludes that the prior denial of Employer's request for a certification of compliance, should be REVERSED.

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IT IS HEREBY ORDERED:

1. **Prior Order is Vacated:** The present Order vacates and replaces the prior Administrative Order in this case, issued by this Hearing Officer on March 18, 2016.

2. **On reconsideration, the Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Rong Hua Corporation, is hereby REVERSED.

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 11, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Rong Hua Corporation, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-004 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 17, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Rong Hua Corporation ("Employer"), was represented by its General Manager, Liu Yan Qiong, its Manager and processing agent, Tony Sablan, and its Spa Manager, Lou Jing Xia. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Ms. Lou served as translator for Ms. Liu. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 14, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Employer operates a Chinese restaurant and a massage parlor/spa in Garapan, Saipan. The General Manager utilizes the "paper-handling" services of Tony S. Sablan, who lists himself on official company documents as a full-time "Manager," but operates more like a part-time processing agent to the company. Evidently, the General Manager gives considerable authority to the Spa Manager, Lou Jing Xia, to manage Employer's massage and spa business.

The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

1. Employer failed to post six job vacancy announcements ("JVAs") on the Department's website for its CW-1 status renewals in accordance with the Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

2. Employer failed to submit a Workforce Plan for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-510(c); and

3. Employer failed to submit four quarterly Total Workforce Listings for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b). [1]

Each of these separate grounds is discussed below:

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department of Labor ("DOL") website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted job announcements in 2015 on DOL's website for six CW-1 status employees: one General Manager, two cooks, one (spa) manager and two masseuses. [Printout of Employer's posting history; Testimony of Mr. Ulloa.]

At Hearing, Manager Tony Sablan admitted that he had filed the CW-1 renewal petitions on Employer's behalf in December 2015 without advertising those positions, either by newspaper or on the DOL website. [Testimony of Mr. Sablan.] Mr. Sablan testified to being somewhat overwhelmed by the tasks of arranging for renewal applications in December 2015. *Id.*

Spa Manager Lou, Jing Xia admitted that she had not posted JVAs for two masseuses because, as she explained, she had not been aware that Employer needed to post job announcements with DOL instead of using a local newspaper. In February 2016, Ms. Lou visited the Job Placement Section and posted JVAs in February 2016 for the two masseuses whose CW-1 petition had been filed with USCIS back in about December 2015. [Testimony of Manager Lou, Jing Xia.]

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[1] The Denial also alleged, citing Regs. at NMIAC § 80-20.1-505, that Employer failed to submit Employer's Quarterly Withholding Tax documents and Monthly Business Gross Revenue Returns for 2015. At Hearing, the Department moved to strike this portion of the Denial. The Hearing Officer granted the oral motion to strike.

In fact, Employer was a respondent in an Agency Case, decided in March 2015, in which the subject of an Employer's obligations to advertise jobs was discussed. (See CAC No. 14-070-12, Admin. Order issued on 3/04/15.) That case involved allegations that Employer had not properly considered a U.S. citizen who had applied for a waitress job. Ultimately, Employer agreed to hire that worker and the case was dismissed. However, in the Administrative Order, issued on March 4, 2015, the Hearing Officer issued the following warning to the Employer:

> **Posting on Website and Interview of Referrals:** Respondent Rong Hua Corporation is WARNED of its continuing obligation to post all job vacancies and job renewals in the future on the Department's website and to interview and hire any qualified U.S. citizen or permanent resident job applicants in accordance with Regulations at § 80–30.3-205. If a U.S. citizen or permanent resident job applicant applies but is not hired for a job, Employer should file its Employer Declaration in accordance with Regulations at § 80–30.3-240.

Despite this warning, Employer petitioned to renew six CW-1 status workers in about December 2015 without having posted any JVAs on DOL's website.[2] The Employer now proposes to remedy the violation by posting JVAs in March for the CW-1 Petitions already filed with USCIS. This remedy is unacceptable.

Workforce Plan for 2015: Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer never submitted a Workforce Plan for 2015 to the Job Placement Section. [Testimony of Mr. Sablan.] No credible explanation was given for this failure.

Employer has hired Tony S. Sablan to act as its processing agent and "Manager." Mr. Sablan is an experienced processing agent and a former employee of the Department of Labor, who evidently holds himself out to employers as a knowledgeable agent. This Employer evidently relied on Mr. Sablan's knowledge and expertise, to its detriment.

Quarterly Total Workforce Listings: Department Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs.

[2] The Hearing Officer is aware that the General Manager, Liu, Yan Qiong, speaks very little English. However, the General Manager brought a translator to the Hearing in February 2015, and was obligated to read the Administrative Order once it is issued.

at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for all four quarters of 2015. After receiving the Denial and in preparation for the Hearing, Employer prepared these documents and offered them into evidence. [The four Total Workforce Listings were entered collectively as Hearing Exhibit 2.] Unfortunately, the documents, which are meant to be signed under the penalty of perjury, were improperly filled out. Manager Sablan signed the forms without filling in required blanks and without dating his signature. Moreover, the entry regarding Sablan;s own employment by the company, appears false or inaccurate.

Mr. Sablan first testified that he works "full-time" for Employer, but he later changed his testimony, explaining that Employer pays him a retainer of "about $300 or $500" per month. In Total Workforce Listing documents, which he signed under penalty of perjury, Mr. Sablan lists himself as a full-time Manager, paid at the rate of $6.05 per hour. In fact, full-time work at that rate – even at 32 hours per week – would amount to about $800 per month rather than $500. Something, or indeed – everything, about these figures is suspect. Adding to the confusion of Mr. Sablan's role at Rong Hua Corporation is the fact that Sablan also works full-time for the National Park Service as a maintenance worker. [Testimony of Mr. Sablan.]

Employer's submission of incomplete Total Workforce Listings at the Hearing amount to "too little, too late." The Total Workforce Listing is required to be submitted at the end of each quarter – not all at once after a Denial has been issued.

Finally, the Total Workforce Listing for the 4th Quarter of 2015, records that Employer employs 8 full-time workers (not including Mr. Sablan in his part-time arrangement), all of whom are CW-1 status workers. Given this census, the Employer's failure to have an updated Workforce Plan for 2015 on file is all the more egregious.

CONCLUSIONS OF LAW

Holding: The Job Placement Section denied Employer's request for a Certificate of Compliance based on the grounds stated above. First, the evidence shows that Employer failed to comply with Regulations that require employers to report to the Department of Labor on workforce census. Second, Employer did not file a

Workforce Plan for 2015 even though nearly its entire staff consisted of CW-1 status workers. Third, Employer neglected to meet, or willfully disregarded, its obligation to advertise jobs on DOL's website that it intended to offer to six CW-1 status workers. In the case of two positions, the Spa Manager was unaware of the obligation to utilize the DOL website instead of a local newspaper advertisement. [Testimony of Ms. Lou.] As to four other positions, however, the Employer failed to post the jobs *anywhere* – either on the DOL website or a local newspaper or radio. Such conduct blatantly ignores Employer's obligation to consider U.S. citizens or permanent residents for offered jobs. Regs. at NMIAC § 80-20.1-220 (Job Preference Requirement).

In filing renewal petitions for CW-1 status without advertising these jobs, Employer also acted in blatant disregard of an Administrative Order, issued in March 2015, in which this Hearing Officer specifically warned Employer that it had a "continuing obligation to post all job vacancies and job renewals in the future on the Department's website and to interview and hire any qualified U.S. citizen or permanent resident job applicants in accordance with Regulations...." Employer's General Manager and Manager Tony Sablan attended the hearing in that case. These individuals offered no explanation in the current case that would excuse or justify their failure to advertise CW-1 renewal positions. Such failures are numerous and not easily remedied. In any event, they should not be remedied by any reversal of the current Denial. Good cause exists for the Denial and it shall be affirmed.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is affirmed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Rong Hua Corporation, is hereby AFFIRMED.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 18, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: PSG Professional Corporation, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-005 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 19, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant PSG Professional Corporation ("Employer"), was represented by its General Manager, Jesus Pantaleon. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued to Employer by the Job Placement Section on March 3, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

Employer operates a multifaceted business on Saipan, involving accounting, document handling, printing services, commercial rental and help supply services. [Testimony of Mr. Pantaleon.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing four grounds:

1. Employer failed to submit a Workforce Plan for 2015 to the Department in accordance with Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-510(c);

2. Employer failed to submit four quarterly Total Workforce Listings for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b);

3. Employer failed to post a job vacancy announcement ("JVA") on the Department's website in 2015 for a computer operator position that was later filled by its CW1-status employee [Regulations at NMIAC § 80-20.1-225(a)]; and

4. Employer allegedly provided false or misleading information regarding its employee's part-time employment status on the 4th Quarter 2015 Total Workforce Listing.[1]

Each of these separate grounds is discussed below:

Workforce Plan for 2015: Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer did not submit a 2015 Workforce Plan to the Job Placement Section in 2015. When Employer applied for a Letter of Compliance in February 2016, it submitted a Workforce Plan for 2016. [Testimony of Mr. Pantaleon.] [A copy of the Workforce Plan submitted on March 15, 2016, was entered into evidence as Hearing Exhibit 4.]

Quarterly Total Workforce Listings: Department Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). The Department requires employers to submit this information in a form entitled a "Total Workforce Listing" in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit any Total Workforce Listings in 2015. When Employer applied for a Letter of Compliance in February 2016, in response to the Checklist, Employer submitted Total Workforce Listings for all four quarters of 2015. [These documents were entered collectively into evidence as Hearing Exhibit 3.]

Job Posting on the Department of Labor Website: Department Regulations require employers who intend to hire or renew CW1-status employees "on a full-time basis" to post those job announcements on the Department of Labor website. [Regs. at NMIAC § 80-20.1-225(a).] In this case, Employer petitioned

[1] The Denial also alleged that Employer had failed to submit Employer's Quarterly Withholding Tax documents and Monthly Business Gross Revenue Returns for 2015. At Hearing, the Department moved to strike this portion of the Denial. The Hearing Officer granted the oral motion to strike.

the United States Citizen and Immigration Service ("USCIS") for permission to employ its long-time CW1 employee (Aristeo Sacramento) on a part-time basis for a computer operator job. Employer did not post a job vacancy announcement ("JVA") for the job on the Department of Labor ("DOL") website.

Employer's General Manager admitted that he deliberately bypassed the DOL website regarding this computer operator job because he understood that the Regulation only applies to full-time employment, yet this was a part-time job.[2] The Regulation states: An employer who intends to employ a foreign national worker...on a full-time basis...must post a job vacancy announcement on the Department's website, www.marianaslabor.net. [Regs. at NMIAC § 80-20.1-225(a).]

The Department maintains that Employer should have posted a JVA for this position on DOL's website because this employment was actually full-time employment. [Testimony of Mr. Ulloa.] A review of Employer's tax records indicate that the Employer's part-time computer operator job, in fact, involved full-time work with weekly overtime, for 9 out of 12 months in 2015.

> In the 1st Quarter of 2015, Employer reported that Mr. Sacramento earned $3,062 in wages – an average of $235 per week. This averages about 39 hours per week in regular wages (39 x $6.05 per hour = $235.95).[3]
>
> In the 2nd Quarter of 2015, Employer reported that Mr. Sacramento earned $5,406 in wages – an average of $362 per week. This averages $242 in regular wages (40 x $6.05 per hour), plus **$174 per week in overtime**).
>
> In the 3rd Quarter of 2015, Employer reported that Mr. Sacramento earned $4,706 in wages – an average of $416 per week. This averages $242 in regular wages (40 x $6.05 per hour), plus **$120 per week in overtime**).
>
> In the 4th Quarter of 2015, Employer reported that Mr. Sacramento earned $3,803 in wages – an average of $292 per week. This averages $242 in regular wages (40 x $6.05 per hour), plus **$50 per week in overtime** wages.

[2] Employer claims he did advertise the part-time job on a local radio station. [Testimony of Mr. Pantaleon.]

[3] All figures in this analysis were taken from the Business Gross Revenue Tax documents (Hearing Exhibit 4) that Employer produced in support of its application for a Certificate of Good Standing.

Mr. Pantaleon testified that he never deliberately misled USCIS or DOL when he submitted a Petition for part-time CW1 employment. He claims he simply did not realize that Employer's printing business would become so active, but the business quickly picked up and the company then needed Mr. Sacramento to work a full-time schedule for the printing business. The business was busy throughout 2015, but then Employer's offset printer left the CNMI and Employer's printing business ceased. When its printing business closed, Employer's need for a computer programmer ended as well. As of 2016, Employer has decided to move Mr. Sacramento into a part-time general maintenance position. [Testimony of Mr. Pantaleon.]

The Hearing Officer finds General Manager Pantaleon's testimony to be plausible but not entirely believable. The General Manager believed that he could avoid posting a JVA on DOL's website if he listed the available job as "part-time." When asked whether he ever considered posting this computer programmer job on DOL's website, Mr. Pantaleon said he considered posting it, but when his company posts jobs on DOL's website, they get so many responses that he must then spend time to sift through the applicants. *Id.* The Hearing Officer notes that this is precisely the point of posting job announcements – to notify the local workforce about available openings so that those U.S. citizens and permanent residents, who have legal preference for the jobs over CW1 status workers, may apply for those jobs.

CONCLUSIONS OF LAW

I. Employer Failed to Comply With DOL Regulations By Failing To Submit Timely Documents.

The evidence established that Employer failed to submit a 2015 Workforce Plan and several quarterly Total Workforce Listings, as required by Department Regulations. At hearing, Employer's General Manager testified that he was "confused" about the obligation to file these documents. Mr. Pantaleon was under the mistaken impression that these documents were only required when Employer was applying for a Certificate of Good Standing or when the Department served Employer with a document request. This is incorrect; Employer is required to submit periodic updates of these documents even without being asked to do so.

As noted, each employer is required to file a Total Workforce Listing *at the end of each quarter*, regardless of whether it has been requested by the Department. [Regs. at NMIAC § 80-20.1-505(b).] Similarly, each employer is required by

regulation to update its Workforce Plan every 12 months, regardless of whether it is requested to do so. [*Id.* at § 80-20.1-510(c).] Employer submitted a Workforce Plan in October 2014; therefore, it was required to update that Plan no later than October 2015. It failed to file the required document in a timely manner.

II. Employer Failed to Comply With Regulations by Failing to Post A Job Vacancy Announcement on DOL's Website.

Employer's position as to the Job Vacancy Announcement is suspect. Though it Petitioned USCIS for part-time CW1 status, and treated the advertisement as if it were for a part-time job, Employer went on to employ Mr. Sacramento on a full-time basis – indeed, giving him substantial overtime work for much of 2015.

Based on the facts, the Hearing Officer finds that Employer should have advertised the "computer programmer" job on DOL's website as a full-time position. The fact that Employer mischaracterized the position as "part-time" to USCIS does not excuse Employer from its obligation to advertise the job on the Department's website. The Employer's Quarterly BGRT records (Hearing Exhibit 4) establish that from the outset, this was essentially full-time employment. The General Manager's testimony suggests that he was well aware of the posting Regulation and appeared to "game the system" to avoid posting this job.

III. Employer Did Not Commit Fraud or Deception When it Listed Mr. Sacramento as "Part-Time" on the Total Workforce Listing.

The Department also charged that Employer submitted false or misleading information when it listed Mr. Sacramento as a "part-time" worker on its Total Workforce Listing, because the employee had actually worked more than 40 hours per week in that job. Employer defended by noting that Mr. Sacramento had been issued a "part-time" CW1 status by USCIS, therefore, it was arguably accurate to list Mr. Sacramento as a part-time employee.

The Hearing Officer accepts Employer's "CW1 status" defense as a reasonable explanation of why Mr. Sacramento was listed as a part-time employee on the Total Workforce Listing. I do not find the designation to be deceitful or any willful attempt to mislead. In the future, the Department may wish to clarify in its instructions to the Total Workforce Listing that a "part-time" classification needs to be based solely on the actual hours worked by the employee, rather than some other criterion.

IV. Holding: The Denial Shall Be Affirmed.

Each of the regulatory violations, cited above, supports the Department's decision to deny this Employer a Certificate of Good Standing for 2016. At Hearing, the Department representative argued that based on the facts, its denial of Employer's request for a Certification should be affirmed. This Hearing Officer agrees.

Employer's failure to file timely documents, taken alone, might have been "excused" by imposing monetary sanctions instead of denying the Certification; however, other factors in this case mitigate in favor of imposing the stricter penalty of denying the Certificate of Good Standing. First, Employer's failure to file these (Workforce Plan and Total Workforce Listing) documents is more egregious given that Employer is in the "document handling" business and advises other business clients in how to prepare and file documents. Second, Employer erroneously characterized this full-time employment as part-time employment, then failed to post the job on the DOL website. Third, Employer admitted in testimony that it prefers not to post jobs on the website because it takes time to review the many responses it receives from U.S. status-qualified applicants. [Testimony of Mr. Pantaleon.] This response, though honest, demonstrates this Employer's cynical manipulation of the "system" to create a safe haven for a particular CW employee. (Thus, the Employer deftly shifted Mr. Sacramento in 2016 from a computer programmer job to a "part-time" general maintenance position.) Finally, Mr. Pantaleon's testimony suggests that Employer PSG has no concrete business plan that would require the Certification.[4] These factors, taken together, weigh in favor of denying a Certificate of Good Standing.

For the foregoing reasons, the Hearing Officer hereby affirms the denial of a Certificate of Good Standing for this Employer for 2016.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is affirmed:** For the reasons stated above, the Department's Denial of a Certification of Compliance (i.e., Certificate of Good Standing) for Appellant PSG Professional Corporation, is hereby AFFIRMED.

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[4] Mr. Pantaleon claims that his company needs the Certificate of Good Standing in order to compete for jobs in new lines of business at the Northern Mariana Housing Authority. When Pantaleon was pressed as to what new types of businesses he was referring, he could only refer vaguely to possible jobs in ground maintenance or cleaning. [Testimony of Mr. Pantaleon.]

[D.C. No. 16-005]

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 29, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-006
Hemine Ipwan Islam,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job	)	
Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on April 14, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Hemine Ipwan Islam ("Employer") appeared through her manager and husband, Md. Kamrul Islam. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 14, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Employer operates a security business in Garapan, Saipan. The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

1. Employer failed to post numerous job vacancy announcements ("JVAs") on the Department's website for its CW-1 status renewals in accordance with the Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

2. Employer failed to submit a Workforce Plan for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-510(c); and

3. Employer failed to submit four quarterly Total Workforce Listings for 2015 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b). [1]

Each of these separate grounds is discussed below:

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department of Labor ("DOL") website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged, and Employer admitted, that Employer had not posted job announcements in 2015 on DOL's website for two CW-1 status employees renewing jobs as security guards. [Notice of Denial; testimony of Mr. Ulloa and Mr. Islam.]

At Hearing, Mr. Islam testified that he had been unable to post job announcements on DOL's website due to the major disruption of electricity and internet communications after Typhoon Soudelor hit Saipan on August 2, 2015. DOL's website was not operational during part or all of August, September and October 2015. As a result, Employer posted advertisements for the security guard positions on the radio instead of using DOL's website. [Testimony of Mr. Islam; see copies of Certificates of Publication, issued by the local radio station, KWAW-FM, certifying that Employer placed job advertisements on the radio for 5 days in September and in November, 2015.]

Based on the above facts, it appears that Employer took appropriate steps under the circumstances that existed in July 2015, to advertise this JVA through an alternate medium available at that time – a local radio station. Based on the foregoing, the Hearing Officer finds that Employer has a valid excuse for not posting JVAs on DOL's website in 2015.

Workforce Plan for 2015: Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer submitted a 2015 Workforce Plan to the Job Placement Section in December 2015; however, the document was incomplete. [Copy of Workforce Plan, entered into evidence as Hearing Exhibit 2; Testimony of Mr. Ulloa.] This deficiency was never corrected.

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[1] The Denial also alleged, citing Regs. at NMIAC § 80-20.1-505, that Employer failed to submit Employer's Quarterly Withholding Tax documents and Monthly Business Gross Revenue Returns for 2015. At Hearing, the Department moved to strike this portion of the Denial. The Hearing Officer granted the oral motion to strike.

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for three of four quarters in 2015. In December 2015, Employer submitted a Total Workforce Listing for the 3rd Quarter of 2015, but the document, which should be signed under penalty of perjury, was not signed by Employer.

Employer's submission of one incomplete Total Workforce Listing for only one quarter, was inadequate. The Total Workforce Listing is required to be submitted at the end of each quarter – and, of course, it should be *signed*.

CONCLUSIONS OF LAW

The Job Placement Section denied Employer's request for a Certificate of Compliance based on three deficiencies; failure to post JVAs, failure to submit a timely Workforce Plan, and failure to submit quarterly Total Workforce Listing documents.

As to the posting of JVAs, Employer is excused from this requirement due to the special circumstances created after Typhoon Soudelor hit Saipan. As to the second ground, Employer submitted a Workforce Plan that was incomplete. As to the third ground, Employer submitted one unsigned Total Workforce Listing document covering just one quarter of 2015. These deficiencies need to be corrected.

At Hearing, the Job Placement Section took the position that it would agree with reversing the Denial provided that Employer pays a monetary sanction for its deficiencies and takes immediate steps to submit a completed Workforce Plan and Total Workforce Listing.

For this conduct, the Hearing Officer finds it appropriate to sanction Employer one thousand dollars; however, all except $300 shall be suspended for one year, then extinguished, provided that Employer commits no further violations. Additionally, Employer shall be ordered to produce the following documents to the Citizen Job Placement Section (attention: James Ulloa) within ten (10) days following the date

of issuance of this Order: (1) a complete Workforce Plan for 2016; and (2) a complete, executed Total Workforce Listing for the 4th Quarter of 2015.

The Denial shall be reversed provided that Employer submits the above-noted documents in accordance with this Order and pays the monetary sanction within twenty days.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Department's Denial of a Certification of Good Standing for Appellant Hemine Ipwan Islam, is REVERSED, provided that Appellant complies with the terms of this Order, as set forth. The Department is instructed to issue the Certification of Compliance to Appellant after Appellant has paid the $300 sanction and submitted the documents specified in paragraph 4, below.

2. **Sanctions:** For the reasons stated above, Appellant Hermine Ipwan Islam is hereby FINED one thousand dollars ($1,000); however, $700 of the fine shall be SUSPENDED for one year, then extinguished, provided that Appellant pays the unsuspended ($300) portion of the sanction and complies with the other terms set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant is ORDERED to pay the $300 portion of the fine no later than twenty (20) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Updated Documents:** Appellant is ORDERED to submit (1) a revised Workforce Plan for 2016; and (2) a Total Workforce Listing for the 4th Quarter of 2015 to the Job Placement Section no later than ten (10) days after the date of issuance of this Order.

5. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80-30.3-205. Appellant shall hire U.S. citizen/ permanent resident job applicants when they are qualified and available to work.

6. **Warning:** If Appellant fails to comply with the terms of this Order, she shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

[D.C. No. 16-006]

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 28, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-007
Commonwealth Pacific International, Inc.,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on April 26, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Commonwealth Pacific International, Inc., was represented by its authorized representative, Tony Sablan. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Accountant Cristina B. Laquian, an employee of Phan, Inc., appeared and testified on behalf of appellant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on March 22, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

Appellant Commonwealth Pacific International, Inc. ("Employer"), operates a gift shop and commercial rental business on Saipan, consisting of 5 full-time employees: a President, supervisor, sales rep. and two maintenance repairers. Two of the employees are U.S. citizens; three employees are CW-1 status workers. [Testimony of Mr. Sablan.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing two grounds:

(1) Employer failed to submit any quarterly Total Workforce Listing documents in 2015 in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-20.1-505;

(2) Employer provided a false or misleading account of their employees on the 4th Quarter 2015 Total Workforce Listing.

Quarterly Total Workforce Listings: Department Regulations require employers to submit information ***on a quarterly basis*** regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit any Total Workforce Listings for any quarter in 2015. In February 2016, in support of its request for a Certification of Compliance, Employer filed a Total Workforce Listing, signed by Tony Sablan on February 5, 2016. [A copy of the Total Workforce Listing, signed on 2/05/2016, was entered into evidence as Hearing Exhibit 2; a copy of a prior Total Workforce Listing, signed on 3/27/2015, was entered into evidence as Hearing Exhibit 3.]

Alleged False or Misleading Information: The Job Placement Section alleges that Employer submitted false information on its Total Workforce Listing for the 4th Quarter of 2015 in that the document was signed by Tony Sablan as "Assistant Manager of Commonwealth Pacific International, Inc." In his testimony at the Hearing, Mr. Sablan clarified that he is employed by Phan, Inc. – not Commonwealth Pacific International, Inc., but that President Ta Bun Kuy has assigned Mr. Sablan to function as Assistant Manager for all six of Mr. Kuy's companies.

The Hearing Officer finds that Mr. Sablan was incorrect to sign the Total Workforce Listing as "Assistant Manager" of Commonwealth Pacific International, Inc.; but Mr. Sablan's action was an oversight rather than an intentional act of deception. This is supported by the fact that Sablan did not add his name to the list of employees on page 1 of the Total Workforce Listing. Furthermore, this matter may be easily corrected in the future if Mr. Sablan simply signs the Total Workforce Listing as "authorized representative" of the company.

DISCUSSION

Tony Sablan appeared as authorized representative of Employer. Mr. Sablan testified that he is employed by Phan, Inc. another company owned by President Ta Bun Kuy, but that he functions as Assistant Manager for all six of Mr. Kuy's companies. Mr. Sablan admitted that the company had failed to submit Total

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Workforce Listing documents for each quarter in 2015. Sablan testified that he was not aware of the regulation that requires employers to submit the Total Workforce Listings on a quarterly basis.

At Hearing, Job Placement also discussed Employer's Quarterly Withholding Tax Return for the 2nd, 3rd, and 4th quarters of 2015. Accountant Cristina B. Laquian appeared at the request of the Hearing Officer to answer questions as to why she had listed Antonio Sablan on the Quarterly Tax Return when his wages were listed as zero. Ms. Laquian testified that it had been her prior practice to leave persons on the Quarterly Tax Returns even if they no longer worked at the company. Ms. Laquian testified that in January 2016, she had removed all names of non-employees from the Quarterly Tax Returns of each of the six corporations owned by Ta Bun Kuy. Ms. Laquian promised that in the future, she would not keep names on the Returns that are no longer receiving wages from the company. [Testimony of Ms. Laquian.]

As stated above, Mr. Sablan testified that he had added the title of "assistant manager" when signing the Total Workforce Listing, not realizing that it had any legal significance. In reality, Sablan functions as assistant manager of all of Mr. Ta Bun Kuy's companies, but he is not employed by the Commonwealth Pacific International, Inc. as Assistant Manager. Finally, Mr. Sablan noted that he only signs these documents when Mr. Kuy is off-island and asks him to sign them.

The Total Workforce Listing documents produced by Employer with its appeal letter, reveal that 40% of Employer's workforce is comprised of U.S. citizens. [Hearing Exhibit 2.] Thus, Employer's workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [§ 80-30.2-120(c)].

The Job Placement Section took the position that it would not oppose reversing the Denial, provided that Employer is assessed a sanction for failing to submit timely Total Workforce Listing documents in 2015. The Hearing Officer agrees that a monetary sanction is appropriate as an alternative to outright denial of the Certificate of Compliance.

Sanctions: The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the

interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a $500 fine should be assessed against this Employer; however, $250 of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $250 portion of the fine and submits timely Total Workforce Listing documents to the Job Placement Section in the future.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Commonwealth Pacific International, Inc., is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance to Appellant after Appellant complies with the terms set forth below.

2. **Sanctions:** For the reasons stated above, Appellant Commonwealth Pacific International, Inc., is hereby FINED five hundred dollars ($500); however, $250 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $250 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

3. **Payment Terms:** Appellant is ORDERED to pay the $250 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** Appellant has a continuing obligation to submit Total Workforce Listing documents to the Department on a quarterly basis. If Appellant fails to comply with these obligations, it shall be subject to a possible reinstatement of the suspended sanction, plus additional monetary sanctions, after a due process hearing on this issue.

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[D.C. No. 16-007]

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 29, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Man Bao Corporation, *dba* Win Tour, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-008 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 25, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Man Bao Corporation was represented by its Manager, Jason Fitial. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on April 1, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated April 5, 2016, was entered into evidence as Hearing Exhibit 2.]

Appellant Man Bao Corporation, *dba* Win Tour ("Employer"), operates a relatively small tour business on Saipan, consisting of 5 full-time employees: a President, Manager, driver and two tour guides. Two of the employees are U.S. citizens; two employees are CW-1 status workers and the President holds an investor status. [Testimony of Mr. Fitial.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to post job vacancy announcements ("JVAs") for two CW-1 status renewals on the Department's website (www.marianaslabor.net) in

accordance with the Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2014 and 2015 in accordance with Regulations at § 80-20.1-510;

(3) Employer failed to submit any quarterly Workforce Listing documents in 2014 and 2015 in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-20.1-505.

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted JVAs on the Department of Labor ("DOL") website for its two CW-1 status employees in 2014 and 2015. Manager Jason Fitial admitted that the company had not posted JVAs on DOL's website since 2010. [Testimony of Mr. Fitial.] President Cheung Ping Yin stated in his appeal letter that he had used a local radio station for the JVAs because he had not known about the obligation to post JVAs on DOL's website. [Hearing Exhibit 2.]

Workforce Plans for 2014 and 2015: Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510. In this case, Employer failed to submit any Workforce Plan for 2014 and 2015. In March 2016, however, Employer submitted a Workforce Plan for 2016 to the Job Placement Section in support of its request for a Certification of Compliance. [A copy of the Workforce Plan for 2016, signed on 3/30/2016, was entered into evidence at Hearing Exhibit 3.]

Quarterly Total Workforce Listings: Department Regulations require employers to submit information ***on a quarterly basis*** regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit any Total Workforce Listings for any quarter in 2014 and 2015. Recently, in support of its request for a Certification of Compliance, Employer filed a Total Workforce Listing, signed on March 30, 2016. [The Total

Workforce Listing, dated 3/30/2016, was entered into evidence as Hearing Exhibit 4.]

DISCUSSION

Employer's Manager, Jason Fitial, admitted that the company had failed to post JVAs on DOL's website and had failed to submit the Workforce Plan and Total Workforce Listing documents in a timely manner. Mr. Fitial testified that President Cheung had utilized the services of an independent agent in the past, but that Mr. Fitial now intended to take personal responsibility for these matters in the future. [Testimony of Mr. Fitial.]

Employer asked that it not be denied a Certification of Compliance, as the Certification is needed for the company to hire a third tour guide. [Appeal Letter at Hearing Exhibit 2.]

The Total Workforce Listing documents produced by Employer with its appeal letter, reveal that 40% of Employer's workforce is comprised of U.S. citizens. [Hearing Exhibit 4.] Thus, Employer's workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [§ 80-30.2-120(c)].

At Hearing, the Job Placement Section continued to take the position that Employer's seriously deficient conduct - its failure to produce Total Workforce Listings and Workforce Plans and its failure to post JVAs on DOL's website - justified denying the Employer a Certification of Compliance for 2015. [Testimony of Mr. Ulloa.] The Hearing Officer agrees.

Employer's failure to post JVAs and to submit Workforce Plans and Total Workforce Listing documents for several years, is significant. While it is encouraging that Employer now seems to be correcting its deficiencies by submitting documents in March 2016, the submission of these documents is untimely for 2015.

Holding: Based on the above-noted conduct of Employer, the Hearing Officer finds that this denial is justified and should be affirmed.

Employer is advised to continue to submit quarterly Total Workforce Listing documents for each quarter of 2016 to the Job Placement Section. Employer is ordered to post job vacancy announcements for its tour guide positions on the DOL

website when Employer seeks to renew these workers later in 2016. If Employer complies with its regulatory obligations in 2016, it may qualify for a Certification of Compliance next year.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is Affirmed:** Based on the foregoing, the above-referenced Denial of the Certification of Compliance for appellant Man Bao Corporation, is hereby AFFIRMED.

2. **Warning:** Employer has a continuing obligation to post job vacancies on DOL's website and to submit Total Workforce Listing documents to the Department on a quarterly basis. If Employer intends to request a Certification of Compliance in 2017, it should comply with these obligations in the coming year.

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 26, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-009
Yaong Corporation,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on April 29, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Yaong Corporation was represented by its President, Anita Yao Siy, its HR Manager, James Santos, and its Accountant, Apolinario Salcedo, Jr. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on April 22, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's letter of appeal, dated April 25, 2016, was entered into evidence as Hearing Exhibit 2.]

Appellant Yaong Corporation ("Employer") operates a wholesale business on Saipan, importing produce and canned goods. Employer's workforce consists of 42 full-time employees, including 25 CW-1 status employees. [Hearing Ex. 3.] The Job Placement Section denied Employer's request for a Certification of Compliance, citing three grounds:

(1) Employer failed to post numerous job vacancy announcements ("JVAs") on the Department's website (www.marianaslabor.net) in 2014 and 2015, for positions filled by CW-1 status employees, in violation of the Regulations codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2014 and 2015 in accordance with Regulations at § 80-20.1-510;

(3) Employer failed to submit any quarterly Total Workforce Listing documents in 2014 and 2015 in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-20.1-505.

Job Posting on DOL's Website: Departmental Regulations require employers who are hiring or renewing CW-1 status workers to post job announcements on the Department's website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted JVAs on the Department of Labor ("DOL") website for more than 20 vacancies in 2014 and 2015. At Hearing, Employer admitted that the company had not posted numerous JVAs on DOL's website in 2014 and 2015.

As for 2015, Employer's accountant testified that Employer had prepared to renew its CW-1 status workers right around the time that DOL's website was disabled, first by Saipan's international cable being cut in July 2015, then by Typhoon Soudelor in August 2015. The Job Placement Section acknowledges that its operations were seriously disrupted from early July through October 2015, due to the above-noted events. [Testimony of Mr. Ulloa.] As a result of these events, Employer advertised jobs in August 2015 in local newspapers. [Testimony of Mr. Salcedo, Jr.] The Hearing Officer finds that given the unique circumstances, the Employer acted appropriately in using an alternative method to advertise the jobs.

Workforce Plans for 2014 and 2015: Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510. In this case, Employer failed to submit Workforce Plans for 2014 and 2015. Employer's President testified that she had not been aware that the Labor regulations require employers to update the Workforce Plan annually, even if not requested to do so. Recently, in support of its request for a Certification of Compliance, Employer filed a Workforce Plan for 2016. Mr. Ulloa confirmed that the Workforce Plan for 2016 is properly filled out. [Testimony of Mr. Ulloa.]

Quarterly Total Workforce Listings: Department Regulations require employers to submit information ***on a quarterly basis*** regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* The Department requires employers to submit

this information in a document called the Total Workforce Listing, in order to qualify for a Certification of Compliance. [*Id.*; testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for each quarter in 2014 and 2015.[1] Recently, in support of its request for a Certification of Compliance, Employer filed a Total Workforce Listing, signed on April 13, 2016. [The Total Workforce Listing, dated 4/13/2016, was entered into evidence as Hearing Exhibit 3.]

DISCUSSION

Employer's President, Anita Yao Siy, admitted that the company failed to post JVAs on DOL's website and failed to submit Workforce Plans and quarterly Total Workforce Listing documents in 2014 and 2015. Ms. Siy testified that she had recently hired a new Human Resources Manager in order to take control of the numerous reporting responsibilities that the Employer is required to comply with. President Siy promised to be more diligent in the future to ensure that all required documents are filed with DOL in a timely manner. [Testimony of Ms. Siy.]

Employer asked that it not be denied a Certification of Compliance, as the Certification is needed for the company's business to remain viable. [Appeal Letter at Hearing Exhibit 2.]

The Total Workforce Listing produced by Employer with its appeal letter, reveals that about 40% of Employer's workforce is comprised of U.S. status-qualified workers.[2] [Hearing Exhibit 3.] Thus, Employer's workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [see NMIAC § 80-30.2-120(c)].

Employer's failure to post JVAs and to submit Workforce Plans and Total Workforce Listing documents for several years, is significant. While it is encouraging that Employer now seems to be correcting its deficiencies by submitting documents in March 2016, the submission of these documents is untimely for 2015.

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[1] Employer did produce one Total Workforce Listing in 2015, in response to a written document request served on the company by a DOL investigator. [Testimony of President Siy.]

[2] Employer's workforce consists of 42 full-time employees: 17 U.S. status-qualified employees (U.S. citizens, permanent residents or FAS citizens) and 25 CW-1 status employees. [Hearing Exh. 3.]

At Hearing, Job Placement noted that although Employer's deficient conduct could justify a denial of the Certification of Compliance, Job Placement is willing to agree to reverse the denial provided that Employer pays a monetary sanction for its deficiencies and complies with DOL regulations in the future. [Testimony of Mr. Ulloa.] The amount of the sanction was left to the discretion of the Hearing Officer.

This is a close case. On one hand, the Hearing Officer is troubled by the Employer's failure to post JVA on DOL's website in 2014, as well as its failure to submit the above-noted documents in a timely manner. On the other hand, Employer has taken recent measures to ensure that these mistakes do not continue. Given that Employer is a long-standing business in the community with a good record of hiring U.S. status-based workers, the Hearing Officer is willing to give Employer the opportunity to demonstrate that it can comply with Departmental regulations in the future. For these reasons, the Hearing Officer is willing to reverse the denial, provided that sanctions are paid and that Employer takes immediate steps to correct its past deficiencies.

Sanctions:
The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given that Employer failed to post numerous job vacancies on the DOL website in 2014. The Hearing Officer shall sanction Employer the maximum amount of $2,000; however, half ($1,000) of the fine shall be suspended for one year, then extinguished, on the condition that Employer pays the remaining $1,000 portion of the fine as ordered and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Compliance for Appellant Yaong Corporation, is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance to Appellant as soon as the $1,000 portion of the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Yaong Corporation is hereby FINED two thousand dollars ($2,000); however, $1,000 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $1,000 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

3. **Payment Terms:** Appellant is ORDERED to pay the $1,000 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at NMIAC § 80–20.1-225(a). Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

5. **Warning:** Appellant has a continuing obligation to post job vacancies and renewals on DOL's website and to submit Total Workforce Listing documents to the Department on a quarterly basis. If Appellant fails to comply with these obligations, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: May 2, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-010
Big Bell, Inc.,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
Department of Labor – Citizen Job	)	
Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on August 4, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Big Bell ("Employer"), was represented by its General Manager, Kim, Gap Soo, and its accountant, Dorothy A. Gauran. The Department's Citizen Availability and Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Employer operates a construction business on Saipan that currently employs 58 employees, including 6 U.S. citizens or permanent residents and 49 CW1-status employees. [Testimony of Ms. Gauran.]

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by Job Placement on July 22, 2016, in which Job Placement denied Employer's request for a Certification of Compliance (otherwise known as a "Certificate of Good Standing"). [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Denial cited the following grounds:

1. Employer failed to post a job vacancy announcements ("JVAs") on the Department's website for 45 jobs offered by Employer in 2015 and 2016 in violation of Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

2. Employer failed to submit a Workforce Plan for 2015 to the Department in violation of Regulations at NMIAC § 80-20.1-510(c); and

3. Employer failed to file with the Department, quarterly Total Workforce Listings for four quarters in 2015, as well as for the 1st and 2nd Quarters of 2016, in violation of Regulations at NMIAC § 80-20.1-505(b).[1]

Each of these separate grounds is discussed below:

Job Posting on the Department of Labor Website: Department Regulations require employers who intend to hire or renew CW1-status employees on a full-time basis to post those job announcements on the Department of Labor ("DOL") website. [Regs. at NMIAC § 80-20.1-225(a).] Job Placement notes that the purpose of posting JVAs on the website is to notify the local workforce of job openings so that U.S. citizens and permanent residents, who have legal preference for those jobs over CW1-status workers, may apply for the jobs. [Testimony of Mr. Ulloa.]

Since 2008, Employer has been registered as an employer on DOL's website and has posted numerous JVAs on the site. Since 2013, however, Employer has utilized the website only sporadically. *Department records show that Employer posted only 11 JVAs in 2013, 7 JVAs in 2014, 3 JVAs in 2015 and no JVAs in 2016.*[2] During 2014 and 2015, while Employer posted only 3 JVAs, Employer hired and renewed more than 40 CW1-status employees.

When asked why Employer stopped posting JVAs on the website, Employer's accountant said she understood that the CW1 Petition did not require jobs to be posted on DOL's website; therefore, she placed newspaper advertisements instead of online JVAs. [Testimony of Ms. Gauran.] Nevertheless, the accountant admitted that she had become aware from reading local newspaper articles that the Department of Labor required Employers to use DOL's website when advertising jobs to be filled by CW1-status workers. In addition, early in June 2015, Employer had received a written Notice of Warning from DOL, warning Employer that is

[1] The Denial also cited a fourth ground; namely, that Employer had failed to file Employer Declarations with respect to an unspecified number of job applicants, in accordance with Regulations at NMIAC § 80-20.1-235. In light of other serious violations discussed in this Order, Job Placement chose not to pursue this particular issue at Hearing. [Testimony of Mr. Ulloa.]

[2] These figures are taken from a printout that Job Placement introduced into evidence at Hearing. The printout showed a record of each JVA posted by Employer on DOL's website since 2008. [A copy of the printout was entered into evidence as Hearing Exhibit 5.]

was not meeting the minimum threshold of employing 30% of its workforce with U.S. citizens and/or permanent residents. [Testimony of Mr. Ulloa.] At that time, Employer met with DOL and discussed its obligation to hire more citizens and permanent residents. Despite this effort, Employer proceeded to post only three JVAs on DOL's website in 2015 and 2016, even as it continued hiring and renewing more than 40 CW1-status employees.

Employer's conduct in failing to post dozens of JVAs in 2015 and 2016, amounts to either intentional or negligent disregard of its obligation to notify local residents about offered jobs, over which U.S. citizens and permanent residents have legal preference. Such conduct could lead DOL to request sanctions in an Agency case, but at a minimum, it should be considered as a negative factor in determining whether to grant an employer's request for a Certificate of Compliance.

Workforce Plan for 2015: DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510(c).] At Hearing, Employer produced proof that it had submitted a 2015 Workforce Plan in June 2015, and a 2016 Workforce Plan in June 2016. Based on the evidence presented, Job Placement withdrew its allegations regarding this issue. [Testimony of Mr. Ulloa.]

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505(b).] The Department requires employers to submit this information in a form entitled a "Total Workforce Listing" in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

At Hearing, Employer produced evidence showing that it submitted Total Workforce Listings for the 1st and 2nd quarters in 2015. However, Employer neglected to file quarterly Listings for the 3rd and 4th quarters of 2015, and the 1st quarter of 2016. The primary point here is that employers are required to submit this information *on a quarterly basis* – regardless of whether they are asked to do so by Department personnel.

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CONCLUSIONS OF LAW

I. Employer Neglected to Post More Than 40 Job Vacancy Announcements on DOL's Website In Violation of Department Regulations.

The evidence shows that Employer was well aware of DOL's website and, in fact, had a history of posting job vacancy announcements on the website prior to the creation of federal CW1-status. Employer posted some JVAs, albeit sporadically, on the DOL website during the period from 2013 to the present. Beginning in 2013, however, Employer began to disregard the website in favor of using newspaper advertisements. In 2015, Employer received a written warning from the Department that Employer needed to hire more citizens and permanent residents in order to meet DOL's required threshold of 30% citizens and/or permanent residents within the workforce. Despite this warning, Employer chose to continue to bypass the website.

DOL continues to take the position that CNMI Labor regulations requiring employers to post job announcements remain in effect, notwithstanding the fact that USCIS does not specifically require such posting in its evaluation of CW-1 permits. [Testimony of James Ulloa.]

Employer's accountant claims she simply assumed that local Labor Regulations regarding the posting of JVAs did not apply to employment of CW1 workers. This testimony is not credible, given the accountant's admission that she read about businesses in 2014 and 2015 being sanctioned for not using the website.

In any event, the accountant's claimed ignorance of the regulations does not absolve Employer from its responsibility to follow the law. Employer's failure to post more than 40 jobs on DOL's website in 2014 through 2016 prevented the website's 4,000 registered job seekers (Mr. Ulloa's estimate) from receiving online notices about these available jobs. We will never know if any U.S. citizens or permanent residents would have responded to the job openings. The period to apply for the 2014 and 2015 positions has long since passed; Employer hired and renewed more than 40 foreign national workers (CW1-status employees) for those jobs. Now another year approaches as employers gear up to file renewal petitions for their CW1-status workers.

Any employer who wants to reach the maximum pool of available U.S. citizens or permanent residents should utilize DOL's website as it conceivably reaches thousands of citizens and costs nothing to use. During the past year, both local

newspapers have published numerous articles about Agency cases similar to the present case. Yet, dozens of employers still insist they have never heard of the DOL website. The claim of ignorance rings hollow after three years of publicity about this subject.

Based on the facts, the Hearing Officer finds that Employer's gross and continued disregard of its obligation to post JVAs on DOL's website, justifies imposing a strict sanction. The sanction in this instance consists of denying the Certificate of Compliance.

II. Employer Failed to Comply With DOL Regulations By Failing To Submit Timely Total Workforce Listing Documents.

The evidence established that Employer failed to submit three quarterly updated Total Workforce Listing documents in 2015 and 2016. As noted, each employer is required to file a Total Workforce Listing *at the end of each quarter*, regardless of whether it has been requested by the Department. [Regs. at NMIAC § 80-20.1-505(b).] This Employer should submit 2016 Total Workforce Listing documents and resume filing of quarterly updates in the future.

Employer's failure to file timely Total Workforce Listing documents, taken alone, might have been "excused;" however, Employer's failure to post more than 40 job vacancy announcements on DOL's website, standing alone, justifies the Department's decision to deny this Employer's 2016 request for a Certificate of Good Standing. For this reason, the Hearing Officer hereby affirms the denial of a Certificate of Good Standing for this Employer for 2016.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is affirmed:** For the reasons stated above, the Department's Denial of a Certification of Compliance (i.e., Certificate of Good Standing) for Appellant Big Bell, Inc., is hereby AFFIRMED.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: August 9, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: ZY Corporation, *dba* Shun Fu Market, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 16-011 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on August 18, 2016, in the Administrative Hearing Office of the CNMI Department of Labor ("Department" or "DOL"), located on Capitol Hill, Saipan. Appellant ZY Corporation ("Employer") was represented by its Manager, Zhuang, Zhong Wu, and its legal counsel, Stephen J. Nutting. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Ms. Julie Mendiola served as translator for Mr. Zhuang. Mr. Lu, Guo Hua testified as a witness. Employer's recent hires, Zhuang, Zhi Bing and Ma, Shu Ping, also appeared. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on August 9, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's appeal letter, filed on August 15, 2016, was entered into evidence as Hearing Exhibit 2.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds:

(1) Employer failed to post a job vacancy announcement in 2014 and 2015 for the job of "manager," held by a CW-1 status employee, on the Department's website (www.marianaslabor.net) in accordance with the Employment Rules and

Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2014 and 2015 in accordance with Departmental Regulations at NMIAC § 80-20.1-510; and

(3) Employer failed to submit quarterly Workforce Listing documents for 10 quarters (2014, 2015 and 1st and 2nd quarters of 2016) in accordance with the Departmental Regulations at NMIAC § 80-20.1-505.

Each of these deficiencies shall be discussed separately below:

Job Posting on DOL's Website: Department Regulations require employers who are hiring or renewing CW-1 status workers for jobs to post job vacancy announcements for those jobs on the Department's website. Regs. at NMIAC § 80-20.1-225(a). In this case, Employer admits that it filed CW1 Petitions with USCIS and obtained CW1 status for its Manager, Zhuang Zhong Wu, in 2013, 2014 and 2015, without ever posting job vacancy announcements ("JVAs") for the manager's job on the Department's website.

In early 2016, Employer again filed a CW1 Petition to employ Mr. Zhuang as manager without posting a JVA for the job. Employer then received a request by USCIS to produce an approved Certificate of Compliance. [Testimony of Mr. Zhuang, Zhong Wu.] At this point, Employer hired a local document handler, Lu Guo Hua, to assist the company. Mr. Lu advised the company that JVAs need to be posted on DOL's website for all positions involving CW1 workers. [Testimony of Mr. Lu.] On July 1, 2016, Employer posted a JVA for the manager's position and received dozens of online responses. Mr. Lu contacted dozens of job applicants who were listed as responding to the JVA, but found no applicant to be qualified. *Id.* As of the date of hearing, the JVA is still pending approval by the Job Placement Section. [Testimony of Messrs. Lu and Ulloa.]

At Hearing, Manager Zhuang explained that during the past several years, he had relied on a local agent to prepare and process Employer's CW1 Petitions and other government-related documents. Manager Zhuang was given full authority by ZY Corporation's directors to manage and operate the company. Yet, Zhuang claimed he had no knowledge of any details related to the petition process. In the past two months, Zhuang asked a local document handler, Lu, Guo Hua, to assist Employer with filing CW1 Petitions. Zhang has now hired Lu to assist with Zhuang's pending CW1 Petition. [Testimony of Mr. Zhuang Zhong Wu.]

At Hearing, the Department learned for the first time that Employer recently hired two off-island, foreign nationals to work as stock clerks at Shun Fu Market. Again, Employer neglected to post JVAs for the stock clerk jobs on DOL's website. USCIS granted the Petition and the two workers – Zhuang, Zhi Bing and Ma, Shu Ping – entered the CNMI on CW I-visas in early August 2016 and began working for Employer. *Id.*

Workforce Plan for 2013: Department Regulations require employers to file an updated Workforce Plan once every 12 months. Regs. at NMIAC § 80-20.1-510. Employer never submitted a Workforce Plan to DOL in 2014 and 2015, thus violating the Regulation. Manager Zhang claimed he was unaware of this requirement and admitted that he had not filed the document. [Testimony of Mr. Zhuang.]

After it received the Denial Notice, Employer submitted an updated Workforce Plan for 2016. [A copy of the 2016 Workforce Plan, submitted on 8/15/2016, was entered into evidence as Hearing Exhibit 6]. Mr. Ulloa and this Hearing Officer noted that the 2016 Workforce Plan is improperly filled out: it does not list the two recently hired CW1-status workers (Zhuang, Zhi Bing and Ma, Shu Ping) and it does not detail any steps that Employer intends to take to bring its percentage of U.S. status-employees versus foreign national workers up to the requisite 30% of the employer's workforce. 3 CMC § 4525(a).

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer failed to submit its quarterly Total Workforce Listings for all four quarters in 2014, all four quarters in 2015, and the 1st and 2nd quarters of 2016. After it received the Notice of Denial, Employer filed these documents along with its appeal letter. [See Appeal letter at Hearing Exhibit 2.]

Certain documents prepared by Employer indicate that Employer incorrectly listed U.S. citizen employees as full-time on the Total Workforce Listing when, in fact, these employees only worked a part-time schedule. For example, Employer's Total Workforce Listing for the 2nd Quarter of 2016 (Hearing Exhibit 3) lists two

U.S. citizens as full-time stockers. However, Employer's Quarterly Withholding Tax Return for the 2nd quarter of 2016 (Hearing Exhibit 4) shows that each employee worked less than 17 hours per week – not full-time work.[1] In response, Manager Zhuang testified that he had wanted these workers to work a full-time schedule but they only showed up for work sporadically. [Testimony of Manager Zhuang.]

DISCUSSION

Employer admitted that it failed to post JVAs on DOL's website for several years; and that it had failed to submit Workforce Plans and quarterly Total Workforce Listing documents in 2014, 2015 and 2016. Manager Zhuang was given full authority by ZY Corporation's directors to manage and operate the company. Not speaking English, he turned over the processing of CW1 Petitions to an outside consultant or so-called document handler. Recently, the Manager hired a new consultant, Lu Guo Hua, who posted a JVA for the manager's position and began educating Mr. Zhuang regarding the company's obligation to file updated census documents (Workforce Plans and Total Workforce Listings) with the Department of Labor. [Testimony of Messrs. Zhuang and Lu.]

At Hearing, Manager Zhuang promised to post all future job vacancies or renewals on the Department's website and to consider all qualified U.S. status workers as having preference over CW1-status workers. Furthermore, Zhuang promised to be more diligent in updating and filing required documents, such as Workforce Plans and Total Workforce Listings, with DOL in a timely manner. [Testimony of Mr. Zhuang, Zhong Wu.]

Employer asked that it not be denied a Certification of Compliance, as the Employer believes that USCIS will deny his CW1 Petition without an approved Certification. [The Hearing Office maintains no contact with USCIS and is not in a position to know whether Employer's belief is correct.]

Employer's failure to post JVAs and to submit various census-related documents for several years, is serious. Although Employer is attempting to correct its deficiencies by submitting numerous missing documents, nevertheless, the submission of these documents from 2014 and 2015 is untimely.

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[1] The tax document shows that Ms. Litulumar was paid $453.75 in wages for the quarter, which amounts to 75 hours at $6.05 per hour. ($453.75 Divided by $ 6.05 = 75); Belza Fernandez was paid $1,300.35 in wages for the quarter, which amounts to 214.9 hours at $6.05 per hour ($1,300 divided by $6.05 = 214.9).

At Hearing, Job Placement noted that given the substantial violations detailed in this Order, Job Placement believes the denial should be affirmed. [Testimony of Mr. Ulloa.]

Holding: This is a close case. On one hand, Employer admits to numerous violations, including its failure to post JVAs on DOL's website and failure to file census-related documents. These are not one-time violations but continued over a period of several years. Employer's failure to post JVAs on the DOL website is particularly serious and ongoing. On the other hand, Employer has taken recent steps to correct its mistakes and to ensure that these mistakes do not continue. Employer has also agreed to pay a substantial sanction for its past conduct. The Hearing Officer also considers that denying a Certificate may result in the loss of the manager's job, which would effectively close this business. Given that Employer is a long-standing business in the community, the Hearing Officer is willing to give Employer one final opportunity to demonstrate that it can comply with the Department's regulations and demonstrate good faith in hiring of U.S. citizens and permanent residents in the future. For these reasons, the Hearing Officer is willing to reverse the denial, provided that Employer pays a substantial sanction and revises its 2016 Workforce Plan. Employer may show its good faith in the future by complying with DOL Regulations and not repeating this conduct.

Sanctions: In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness in accordance with the general principle that "[t]he hearing officer is authorized to...[u]se the inherent powers of a hearing officer...to further the interests of justice and fairness in proceedings." Regs. at NMIAC § 80-20.1-485(14).

In this case, Employer failed to file numerous census-related documents and neglected to post JVAs for its manager's job, over a period of three years. In mitigation, Employer filed updated documents before the appeal hearing, hired a new document handler to assist the company, and promised to post JVAs on DOL's website for all future hiring and renewal of CW1-status workers.

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Based on the above facts, the Hearing Officer concludes that Employer should be sanctioned two thousand dollars ($2,000) and required to revise its recently-filed Workforce Plan for 2016. The Denial shall be reversed, provided that the Employer complies with the terms of the Order, as set forth below.

Warning: Employer is warned that the Regulations described in this order set forth *continuing* obligations of the employer. Employer should be careful to provide accurate information in its Total Workforce Listing as to the part-time or full-time status of its employees. Census-related documents (Total Workforce Listing and Workforce Plans) should be filed on or before deadlines. Failure of the Employer to comply with its filing obligations in the future may lead to Agency requests for strict sanctions including, but not limited to, denial of future Certificates of Compliance.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Notice of Denial of the Certificate of Good Standing for Appellant ZY Corporation, *dba* Shun Fu Market, is hereby REVERSED, provided that Appellant complies with the terms of this Order. After Appellant has paid the sanction and revised its 2016 Workforce Plan, as set forth below, the Department of Labor shall proceed to process a Certificate of Good Standing for Appellant ZY Corporation.

2. **Sanctions:** For its numerous failures to submit census-related documents in accordance with Regulations, as well as its failure to post numerous JVAs over a three-year period, Appellant ZY Corporation is FINED two thousand dollars ($2,000). 3 CMC §§ 4528(f)(2) and 4947(11). Appellant is ORDERED to pay the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office by the payment deadline.

3. **Filing of Revised Workforce Plan:** Appellant ZY Corporation is ORDERED to file a revised 2016 Workforce Plan with the Citizen Job Placement Section in accordance with Regulations at NMIAC § 80-20.1-510. The revised Workforce Plan shall be filed with Job Placement no later than thirty (30) days after the date of issuance of this Order.

4. **Posting on Website:** Appellant is ORDERED to post all future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with Regulations at NMIAC § 80-20.1-225(a). Appellant shall hire

such U.S. citizen and permanent resident applicants when they are qualified and available to work.

5. **Warning:** Employer is warned that the Regulations described in this order set forth *continuing* obligations of the employer. Employer should be careful to provide accurate information in its Total Workforce Listing as to the part-time or full-time status of its employees. Census-related documents (Total Workforce Listing and Workforce Plans) should be filed on or before deadlines. Failure of the Employer to comply with its filing obligations in the future may lead to Agency requests for strict sanctions including, but not limited to, denial of future Certificates of Compliance.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: August 29, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-012
PSG Professional Corporation,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor - Citizen Job Availability	)	
and Job Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on October 11, 2016, in the Administrative Hearing Office of the CNMI Department of Labor ("Department" or "DOL"), located on Capitol Hill, Saipan. Appellant PSG Professional Corporation ("Employer") was represented by its General Manager, Jesus A. Pantaleon. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case adjudicates Employer's appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on September 20, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of Employer's appeal letter, filed on September 30, 2016, was entered into evidence as Hearing Exhibit 2.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing the following grounds:

(1) In March 2016, the Department of Labor ("DOL") denied Employer's application for a Certification of Good Standing; DOL's denial was affirmed on appeal in an Administrative Order issued by the Hearing Office on July 29, 2016 (see D.C. No. 16-005, Admin. Order issued by J.Cody on 7/29/16).

(2) Employer submitted a late-filed Total Workforce Listing for the 2nd quarter of 2016. See DOL Regulations at NMIAC § 80-20.1-505(a-c).

(3) Employer failed to submit an Employer Declaration with respect to three job applicants to a job vacancy announcement ("JVA") for a "general maintenance" position, in accordance with DOL Regulations at NMIAC § 80-20.1-235(e).

(4) Employer failed to demonstrate a "good faith effort to hire" citizens or U.S. status-qualified applicants for the "general maintenance" position announced in a JVA in June 2016. DOL Regulations at NMIAC § 80-20.1-235(d).

BASIC FACTS:

Employer's Business:
Employer operates several businesses, including: accounting services, document handling, insurance brokerage, real estate appraisal and manpower services. Employer currently employs 11 full-time employees, consisting of four U.S. status-qualified workers, five CW-1 status workers and two workers holding H1B visas. [Testimony of Mr. Pantaleon; a copy of the Total Workforce Listing, filed with DOL on 8/19/2016, was entered into evidence as Hearing Exhibit 3.]

Total Workforce Listing:
Employer's quarterly Total Workforce Listing for the 2nd Quarter of 2016 was due by July 31, 2016. Regs. at NMIAC § 80-20.1-505(a-c). Employer filed an updated Total Workforce Listing with DOL on August 18, 2016. The document was filed 18 days late.

Employer Declarations:
The JVA at issue in this case concerned a "general maintenance" job that is part of Employer's manpower business. This job is currently held by a CW1-status employee named Aristeo Sacramento. Employer intends to file a petition to renew Mr. Sacramento's CW-1 status in the near future. [Testimony of Mr. Pantaleon.]

Employer posted a JVA for the general maintenance job on DOL's website from June 20 to July 5, 2016. [A copy of the JVA was entered into evidence as Hearing Exhibit 4.] Fourteen applicants were referred online to the job by DOL. Employer reviewed the posted resumes of the applicants and concluded that 11 out of 14 of them were not qualified for the position. Employer then posted online responses to the 11 unqualified applicants by the closing date of the JVA - July 5, 2016. *Id.* Job Placement agrees that these 11 applicants were not qualified for the job and that Employer correctly responded to these applicants. [Testimony of Mr. Ulloa.]

Employer took no action regarding the remaining three qualified job applicants for the next two and a half months (from July 5 to September 21, 2016).

On July 29, 2016, this Hearing Officer issued an Administrative Order affirming the Department's denial of Employer's March 2016 application for a Certificate of Good Standing. [D.C. No. 16-005, Admin. Order issued by J.Cody on 7/29/2016, at pp. 4-5.]

On August 26, 2016, Employer filed a new application for a Certificate of Good Standing. On September 20, 2016, the Job Placement Section denied Employer's new application for a Certificate. The Denial noted that Employer had failed to post employer declarations to each job applicant, and that Employer had failed to make a "good faith" effort to hire U.S. status-qualified employees for the maintenance job. [Hearing Ex. 1, citing Regs. at NMIAC §§ 80-20.1-235(d) and (e).]

On the same day that Employer was served with the Denial (9/21/16), Employer contacted the three remaining job applicants for the maintenance job and informed them that it was holding job interviews for the position on September 26, 2016. Ultimately, none of the applicants appeared for the scheduled interviews and none contacted Employer to set up an alternate date for the interview.[1] Employer then posted online responses to each applicant, explaining why he was not hired. [Copies of these online responses were entered into evidence as Hearing Ex. 5.]

CONCLUSIONS

I. Employer Failed To File A Timely Quarterly Total Workforce Listing:

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the "Total Workforce Listing." The form for the Total Workforce Listing is available on DOL's website (www.marianaslabor.net) and the form is periodically updated. [Testimony of Mr. Ulloa.]

[1] Manager Pantaleon testified that he reviewed the resumes of these applicants and determined that they were qualified for the job. On September 21 or 22, 2016, Mr. Pantaleon's staff sent emails to all three applicants, inviting them to be interviewed on September 26, 2016, and setting the time and place of the interview. Employer followed up the emails with telephone calls. Employer was able to reach one applicant by telephone; it reached another applicant's son and left a message about the scheduled job interview; the third applicant did not answer his telephone. On the date of the interview, none of the job applicants showed up for the interviews or called to request rescheduling. [Testimony of Mr. Pantaleon.]

The Regulation states that employers shall file the required information "within the time limits for filing the business gross receipts tax return." *Id.* In other words, each quarterly Total Workforce Listing *is due by the last day of the month following the quarter.* [2]

In this case, Employer submitted a Total Workforce Listing to DOL for the 2nd Quarter of 2016, on August 18, 2016 – 18 days past the July 31st filing deadline.

In the Administrative Order issued in D.C. No. 16-005 on July 29, 2016, the Denial was affirmed, in part, because Employer had failed to submit Total Workforce Listings to DOL each quarter for the entire year of 2015. The Hearing Officer, citing the Regulation [NMIAC § 80-20.1-505], stated that employers are required to file Total Workforce Listings *on a quarterly basis.* This was stated not once, but twice, and it was printed *in italics* for emphasis. [*Id.* at pp. 2 and 4.] PERHAPS, THE HEARING OFFICER NEEDS TO WRITE LIKE THIS TO GET THE POINT ACROSS. Manager Pantaleon testified that when the Order was received, he may not have read it carefully because he was "busy" at work. Obviously, this is not a valid justification for failing to comply with the law. Indeed, even if the Order had not spelled out the precise requirements of the Regulation, Employer has constructive notice of the published DOL Regulations and is required to comply with them without being reminded to do so.

The Hearing Officer finds that Employer's failure to file a timely Total Workforce Listing for the 2nd Quarter of 2016 justifies the imposition of sanctions.

II. Employer Failed to Post Timely Employer Declarations To Three Applicants for the Maintenance Job. [NMIAC § 80-20.1-235(e).]

After the JVA for the maintenance job closed on July 5, 2016, Employer took no action *for more than two and a half months* to interview the three qualified local applicants for the position. The Job Placement Section charges that Employer's long delay in filing a response to these applicants violated the "Employer Declaration" Regulation's 14-day deadline and calls into question that the job search was done in good faith. [Regs. at NMIAC §§ 80-20.1-235(d) and (e).]

[2] For example: the 1st Quarter of 2016 (January through March) is due on **April 30, 2016**; the 2nd Quarter (April through June) is due on **July 31, 2016**; the 3rd Quarter (July through September) is due on **October 31, 2016** and the 4th Quarter (October through December) is due on **January 31, 2017**.

Manager Pantaleon's only explanation for the long delay was that his staff was busy attending to their customers and thereby, neglected to set up the interviews. Indeed, Employer did not schedule job interviews with these applicants until the same day it received the Denial – Sept. 21, 2016. [Testimony of Mr. Pantaleon.]

The Hearing Officer finds that Employer's failure to arrange job interviews with three qualified U.S. citizen applicants for *months* amounted to negligent disregard of the Regulation's 14-day deadline. Mr. Pantaleon's explanation – that he had been busy attending to his customers - does not justify the two-month delay in taking any action to evaluate qualified U.S. citizen job seekers.

Although the Hearing Officer has previously held that the 14-day deadline in the Employer Declaration regulation may be extended for valid business reasons, [3] Mr. Pantaleon's testimony does not indicate a valid business reason. Based on the facts, I find that Employer violated the Regulation's timing provisions and that Employer should be sanctioned for this conduct. [Regs. NMIAC § 80-20.1-235(e).]

III. Employer Negligently Failed To Make A Good Faith Effort To Recruit U.S. Status-Qualified Workers. [NMIAC § 80-20.1-235(d).]

Job Placement also charged that Employer's failure to interview U.S. citizen job applicants for the maintenance job for months after the JVA closed, constitutes a failure to make a "good faith effort to hire" U.S. status-qualified workers for the open job. [Regs. at NMIAC § 80-20.1-235(d).]

The Regulation does not specify whether a failure to make a good faith effort is limited to willful conduct, or can be caused by the employer's negligence (i.e., by being disorganized, inattentive, understaffed, or relying on an incompetent agent, etc.). In the absence of any limiting language, the Hearing Officer presumes that either willful or negligent conduct could support the charge.

Manager Pantaleon testified that the two-month delay in interviewing citizen applicants was not intentional; that his company is so busy with its document

[3] The Regulation states that in the event that a citizen or permanent resident was not hired, the employer shall file a declaration "within fourteen (14) days after publication." The Hearing Officer has held that reasonable extensions of this 14-day period should be allowed by DOL, provided that Employer presents a valid reason for the delay. [*See, e.g., DOL v. Asia Pacific Hotels, Inc.*, CAC No. 14-011-03, Admin. Order issued by J.Cody on 4/24/14. In that case, an employer's hiring decision and posting of declarations were delayed because DOL continued to refer applicants after the closing date. The Hearing Officer found employer in technical violation of the regulation, but did not sanction the employer based on the legitimate reasons for delay. Id. at pp. 4-5.]

handling customers that Employer sometimes misses its own deadlines. [Testimony of Mr. Pantaleon.] Based on the demeanor of the witness and a review of the circumstances, the Hearing Officer finds that the Manager's testimony is credible and that Employer's long delay in arranging for job interviews of U.S. status-qualified job applicants, was caused by Employer's inattentiveness and disorganization, rather than a willful attempt to circumvent the law.

In mitigation, it is noted that Employer's workforce exceeds the 30% minimum percentage for workplace participation that is required by statute. 3 CMC § 4525. [Four out of 11 full-time workers are U.S. status-qualified. See Hearing Exhibit 3.]

Furthermore, Employer did eventually attempt, albeit late, to interview these citizen applicants for the maintenance job. Employer's delay did not deny citizen job applicants the offered job because, in the end, the applicants failed to appear at the interview. The ironic fact is that after all of Job Placement's efforts to give the referred job applicants a chance for this job, the applicants did not seem to want the position.

In conclusion, the Hearing Officer finds that Employer failed to "make a good faith effort to hire" U.S. citizen applicants, but the failure resulted from Employer's neglect and disorganization rather than a bad faith attempt to circumvent the law. Employer should be sanctioned for its negligent failure to conduct interviews and post Employer Declarations in a timely manner; however, the Hearing Officer shall consider reducing sanctions on account of Employer's belated efforts in late September 2016, to arrange for job interviews of the qualified applicants.

IV. Employer Should Be Ordered To Pay A Monetary Sanction As An Alternative To Being Denied A Certificate of Good Standing.

Employer admitted the above failures, but asked for leniency. Again, Manager Pantaleon explained that his company was so busy with its document handling customers, that it sometimes missed its own filing deadlines. Further, Employer asked that it not be denied a Certification of Compliance, because it understands that USCIS will deny one or more of its CW-1 Petitions if it does not produce an approved Certification. [A copy of a letter from USCIS to Employer, requesting the Certificate, was entered into evidence as Hearing Exhibit 7.]

At Hearing, Employer agreed to pay monetary sanctions and promised that, in the future, it will *promptly* interview all U.S. status-qualified workers with preference

over CW1-status workers. Finally, Employer promised to file Total Workforce Listings in a timely manner. [Testimony of Mr. Pantaleon.]

Holding: Employer's conduct, as described above, violated DOL Regulations regarding (1) filing of Total Workforce Listings in a timely manner; (2) filing Employer Declarations and interviewing each qualified applicant in a timely manner; (3) Employer failed to make a good faith effort to hire U.S. status-qualified workers, but its conduct was negligent, rather than willful. In mitigation, Employer did make an effort to interview the U.S. citizen applicants after it received the Denial of its application for a Certificate of Good Standing.

Employer should be sanctioned for the above violations. Such sanctions could include being denied a Certificate of Good Standing; however, monetary sanctions may be considered as an alternative to denying the Certificate. After hearing the testimony, Job Placement indicated that it would not object to its Denial being reversed, provided that the reversal is conditioned on Employer paying a sanction for its conduct. [Testimony of Mr. Ulloa.] In view of Job Placement's position, the Hearing Officer shall consider monetary sanctions.

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness in accordance with the general principle that "[t]he hearing officer is authorized to...[u]se the inherent powers of a hearing officer...to further the interests of justice and fairness in proceedings." Regs. at NMIAC § 80-20.1-485(14).

Based on the above facts, the Hearing Officer concludes that the Denial shall be reversed, on the condition that (1) Employer pays a monetary sanction of $2,000, with half of that amount suspended for a period of one year, and (2) Employer complies with the other terms of the Order, as set forth below.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Denial of the Certificate of Good Standing for Appellant PSG Professional Corporation, is hereby REVERSED, provided that Appellant complies with the terms of this Order. After Appellant has paid the

sanction, as set forth below, the Department of Labor shall proceed to process a Certificate of Good Standing for PSG Professional Corporation.

2. **Sanctions:** For the reasons stated above, Appellant PSG Professional Corporation is hereby FINED two thousand dollars ($2,000); however, $1,000 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $1,000 portion of the sanction and complies with DOL statutes and regulations during the one-year period. 3 CMC §§ 4528(f)(2) and 4947(11).

3. Payment Terms: Appellant is ORDERED to pay the $1,000 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** Appellant has a *continuing* obligation to submit Total Workforce Listings to DOL *on a quarterly basis*, and to post employer declarations (online responses) to job applicants who respond to Employer's posted JVAs. If Appellant fails to comply with these obligations, DOL may file a request for an order reinstating the suspended sanction, and imposing additional sanctions, after a due process hearing on this issue. Employer's failure in the future to comply with DOL Regulations may support the denial of an application for a Certificate of Good Standing.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: October 25, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 16-013
Northpac Corporation,	)	
dba General Construction Contractor,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job	)	
Availability and Job Placement Section,	)	
Appellee.	)	
	)	

This denial appeal came on for hearing on November 15, 2016, in the Administrative Hearing Office of the CNMI Department of Labor ("Department" or "DOL"), located on Capitol Hill, Saipan. Appellant Northpac Corporation ("Employer") was represented by its President and General Manager, Miguel R. Cruz, Jr. The Department's Citizen Job Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on October 13, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's appeal letter, filed on October 28, 2016, was entered into evidence as Hearing Exhibit 2.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing four grounds:

(1) Employer failed to post job vacancy announcements ("JVAs") in 2015 for the jobs of commercial cleaner and project superintendent on the Department's website (www.marianaslabor.net) in accordance with the Employment Rules and Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

(2) Employer failed to post a job vacancy announcements ("JVAs") in 2016 for numerous jobs (project superintendent, houseworker, electricians, masons, carpenters, maintenance repairer and welder) on the Department's website in accordance with Departmental Regulations, NMIAC at § 80-20.1-225(a); and

(3) Employer failed to file a timely declaration with respect to each U.S. status-qualified job applicant who applied for JVAs posted by Employer in 2015. Regs. at NMIAC at § 80-20.1-235(e); and

(4) Employer failed to submit quarterly Workforce Listing documents for the 1st and 2nd quarters of 2016, in accordance with Departmental Regulations at NMIAC § 80-20.1-505.

Each of these deficiencies are discussed separately below:

Job Posting on DOL's Website: Department Regulations require employers who are hiring or renewing CW-1 status workers for full-time jobs to post job vacancy announcements for those jobs on the Department's website. Regs. at NMIAC § 80-20.1-225(a). There are no waivers of this requirement.

In its Denial, Job Placement contended that Employer failed to post JVAs for two positions in 2015 and *more than ten positions* in 2016. At Hearing, General Manager Cruz admitted that the contention is true. Employer's General Manager testified that he had relied on an outside accountant to arrange for job advertisements until July 2015, but that the accountant died in about July 2015. Thereafter, Mr. Cruz proceeded to advertise job openings in local newspapers rather than posting them on the DOL website. [Testimony of Mr. Cruz.]

Mr. Cruz admitted that he had not educated himself about the regulatory requirement to post job announcements on DOL's website. Cruz testified that now that he understands the requirement, he shall start utilizing the DOL website in the future for job applications. *Id.*

Employer's Declaration: DOL Regulations require an employer to post a so-called "declaration" (online response) to each online applicant who notes interest in a posted JVA. Regs. at NMIAC § 80-20.235(e). In each case where a foreign national worker is hired instead of a U.S. citizen or permanent resident applicant, the employer is expected to explain why a U.S. citizen or permanent resident was

not hired. This requirement is waived only if the employer hires a U.S. citizen or permanent resident for the offered position. *Id.*

At Hearing, Job Placement noted that in about July 2015, Employer had failed to file employer declarations as to seven of its JVAs that were posted in June 2015. The JVAs were listed in a computer printout from the DOL website, introduced into evidence by Job Placement at Hearing Exhibit 5.

Manager Cruz admitted that Employer had not posted "declarations" to every response; he noted that this was around the time that his accountant, who had been handling the hiring process, died. Mr. Cruz testified that believed his staff had attempted to interview some of the applicants, but some applicants had been impossible to reach, or else failed to appear for interviews. The Hearing Officer reminded Employer that although these factors may be sufficient reasons not to hire the applicant, the Employer still needs to post its reasons for not hiring the applicant on DOL's website in order to comply with the Regulations. [Regs. at NMIAC § 80-20.235(e).]

Mr. Cruz testified that he had not entirely understood employers' obligation to post a response to every applicant. Now that he understands this requirement, he stated that he would make sure that his staff complies with this requirement for each posted JVA. [Testimony of Mr. Cruz.]

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer failed to submit its quarterly Total Workforce Listings for the 1st and 2nd quarters of 2016. After it received the Denial, Employer filed these documents along with its appeal letter. [See Appeal letter at Hearing Exhibit 2; Total Workforce Listing at Hearing Exhibits 4(a) and 4(b).]

According to the latest Total Workforce Listing, Employer employs 23 full-time employees, consisting of 2 U.S. permanent residents and 21 CW-status employees. *Id.* This evidence shows that Employer is operating well below the minimum Workplace Participation Objective of 30% of its workers consisting of U.S.

citizens, CNMI permanent residents or U.S. permanent residents. [3 CMC § 4525(a) and Regs. at NMIAC § 80-20.1-210(c)(3).]

DISCUSSION

Employer admits to committing numerous violations of the Employment Rules and Regulations, including failing to post more than ten JVAs on DOL's website, failing to post Employer Declarations as to seven JVAs, and failing to file Total Workforce Listing documents. Employer's failures were caused, in part, because the General Manager had relied on an outside accountant who died in about July 2015, and thereafter, the General Manager neglected to educate himself about the employer's regulatory requirements.

At Hearing, Manager Cruz promised to post all future job vacancies or renewals on the DOL website and to consider all qualified U.S. status-qualified workers as having preference over CW1-status workers. Furthermore, Cruz promised to be more diligent in filing required documents, such as Total Workforce Listings, with DOL in a timely manner. [Testimony of Mr. Zhuang, Zhong Wu.]

At the conclusion of the Hearing, Job Placement noted that given the substantial violations detailed in this Order, Job Placement believes the denial should be affirmed. [Testimony of Mr. Ulloa.] This Hearing Officer agrees.

These violations are serious in nature. They go to the heart of preference rules that seek to reinforce the legal preference that U.S. status-qualified workers have over foreign national workers with respect to those jobs for which the citizens are qualified. The posting Regulation requires employers to use a webmail system that reaches potentially thousands of local, U.S. citizens and permanent residents, as well as foreign national workers. Unfortunately, we can never know how many citizen or permanent resident job applicants were deprived of notice of these JVAs, as the time has passed and the CW1 workers were employed for 2015 and 2016. Furthermore, these were not one-time violations but continued over a period of several years. Based on the above facts, the Hearing Officer concludes that the denial of Employer's request for a Certificate of Good Standing was properly denied. Accordingly, the Denial shall be affirmed.

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[D.C. No. 16-013]

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is Affirmed:** Based on the foregoing, the above-referenced Denial of the Certification of Good Standing for appellant Northpac Corporation, is AFFIRMED.

2. **Warning:** Employer has a continuing obligation to post job vacancies on the Department's website and to submit Total Workforce Listing documents to the Department on a quarterly basis. If Employer intends to request a Certification of Good Standing in 2017, it should comply with these obligations in the coming year.

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: November 18, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Double Lee Corporation, *dba* Green Consume Market, Appellant, **v.** Department of Labor – Citizen Job Availability and Job Placement Section, Appellee.	)	D.C. No. 16-014 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on December 7, 2016, in the Administrative Hearing Office of the CNMI Department of Labor ("Department" or "DOL"), located on Capitol Hill, Saipan. Appellant Double Lee Corporation ("Employer") was represented by its Manager, Li Dong Gui, and its legal counsel, Joe Hill. The Department's Citizen Job Availability and Job Placement Section ("Job Placement Section") was represented by Manny Iguel. Ms. Jean Shi served as translator for Ms. Li. Mr. Lin, Kai Qi appeared and testified as Employer's agent. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on November 10, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer's appeal letter, filed on November 14, 2016, was entered into evidence as Hearing Exhibit 2.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds:

(1) Employer failed to post numerous job vacancy announcements on the Department's website (www.marianaslabor.net) in 2015 and 2016 for jobs held by CW-1 status employees, in accordance with the Employment Rules

and Regulations, codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a).

(2) Employer submitted a Workforce Plan for 2016 that was deemed to be inadequate by the Department. See Regulations at NMIAC § 80-20.1-510.

(3) Employer failed to submit quarterly Workforce Listing documents for the 4th quarter of 2015 and the 1st and 2nd quarters of 2016, in accordance with the Regulations at NMIAC § 80-20.1-505(a-c).

Employer operates a grocery business, known as "Green Consume Market," in As Lito, Saipan. Employer currently employs 5 full-time employees, consisting of 2 U.S. citizens and 3 nonimmigrant aliens having EAD status (i.e., holders of a federal Employment Authorization Document or "EAD"). In addition, Employer has three pending CW-1 Petitions before USCIS, applying to hire 2 farmers and one salesperson from off-island. [Testimony of Ms. Li and Mr. Lin.]

Each of these deficiencies shall be discussed separately below:

Job Posting on DOL's Website: Department Regulations require employers who are hiring or renewing CW-1 status workers for jobs to post job vacancy announcements ("JVAs") for those jobs on the Department's website. Regs. at NMIAC § 80-20.1-225(a). There is no waiver available for this requirement. *Id.*

In this case, Employer admits that in 2015 and 2016, it filed CW-1 Petitions with USCIS and obtained CW-1 status for its Manager, Li Dong Gui, without posting JVAs for the manager's job on the Department's website. Employer followed the same procedure in hiring and renewing a "salesperson" and a "farmer" in 2015 and 2016 – in other words, Employer advertised these jobs in a local newspaper instead of posting JVAs on the Department's website. [Testimony of Ms. Li and Mr. Lin.]

In making decisions as to how it would advertise the above-noted job openings, Employer relied on advice from its processing agent, Lin Kai Qi. [Testimony of Ms. Li.] Mr. Lin, who is no stranger to the Administrative Hearing Office having dealt with DOL processing issues and appeared in hearings for *years*, testified that he believed that advertising in a newspaper was all that was required by USCIS, so he advised his clients accordingly. [Testimony of Mr. Lin.]

Recently, Employer received a request from USCIS to produce an approved Certificate of Good Standing. [Testimony of Mr. Zhuang, Zhong Wu.] Employer then applied for the Certificate, which was denied, in part, because the Employer had ignored the Regulation directing employers to post JVAs on the DOL website.

Workforce Plan for 2013: Department Regulations require employers to file an updated Workforce Plan once every 12 months. Regs. at NMIAC § 80-20.1-510. Employer submitted a Workforce Plan to DOL for 2016 on November 2, 2016. [A copy of this document was entered into evidence as Hearing Exhibit 4.] Job Placement found this Workforce Plan to be inadequate because it "does not include a realistic timetable for accomplishing the replacement of non-immigrant clients with qualified workforce participation." [Denial at Hearing Exhibit 1.]

On November 21, 2016, weeks after it received the Denial, Employer submitted an "Amended Workforce Plan" for 2016. [A copy of the Amended Workforce Plan was entered into evidence as Hearing Exhibit 4a.] This Hearing Officer examined the above-noted documents and finds: The Workforce Plan (Ex. 4) is entirely blank in the column entitled "Specific Vocational Preparation." The Amended Workforce Plan (Ex. 4a) adds one phrase ("3-month training") to the column entitled "Specific Vocational Preparation." Both documents are inadequate in that they fail to inform the Department about the specific plans that Employer intends to implement in order to bring citizens and permanent residents into its workforce. Additionally, both documents contain inadequate entries in the column entitled "Timetable for accomplishing replacement of foreign national workers."

Employer should work with the Job Placement Section to revise its Workforce Plan to meet the requirements of that Section.

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505 *et seq.* This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer admits that it failed to submit its quarterly Total Workforce Listings for the 4th quarter of 2015, and the 1st and 2nd quarters of 2016. Employer filed a Total Workforce Listing for the 3rd quarter of 2016 on November 2, 2016. At Hearing, Employer submitted an Amended Total Workforce Listing for the 3rd

Quarter of 2016, signed by Manager Li Dong Qi on November 21, 2016. [These documents were entered into evidence as Hearing Exhibits 3 and 3a, respectively.]

At Hearing, the parties and Hearing Officer spent much time reconstructing the history of hirings and departures to and from Employer's workforce. The Hearing Officer notes that such lengthy analysis would have not been necessary if Employer had updated its Total Workforce Listings *on a quarterly basis*, as required by Regulation.

DISCUSSION

Employer admitted that it failed to post JVAs on DOL's website for several years and that it had failed to submit quarterly Total Workforce Listing documents in 2015 and 2016. Manager Li Dong Qi has authority to manage and operate the company. Evidently, Ms. Li relies heavily on her agent, Lin, Kai Qi, to prepare CW-1 Petitions to be submitted by Employer to USCIS. To the extent that Ms. Li was advised by Lin that Employer did not have to post JVAs on DOL's website, this advice was incorrect. [Testimony of Ms. Li and Mr. Lin.]

At Hearing, Manager Li promised to post all future job vacancies or renewals on the Department's website and to consider all qualified U.S. status workers as having preference over CW1-status workers. Furthermore, Li was warned to be more diligent in updating and filing required documents, such as Workforce Plans and Total Workforce Listings, with DOL in a timely manner.

Employer asked that it not be denied a Certification of Good Standing, as the Employer believes that USCIS will deny its three pending CW1 Petitions if it fails to submit an approved Certification. [Employer produced 3 separate "Request For Evidence" documents, issued by USCIS, with respect to the company's three pending CW-1 petitions. These documents were entered into evidence, collectively, as Hearing Exhibit 6.] The documents establish that USCIS has, in fact, instructed Employer to submit a copy of the Certificate of Good Standing.

Employer's failure to post JVAs and to submit various census-related documents for several years, is serious. Although Employer is attempting to correct its deficiencies by submitting numerous missing documents, nevertheless, the submission of these documents from 2014 and 2015 is untimely.

At Hearing, Job Placement noted that given the substantial violations detailed in this Order, Job Placement believes the Denial should be reversed only if it is

conditioned on this Employer paying a substantial sanction for its past conduct. [Testimony of Mr. Iguel.]

Holding: This is a close case. On one hand, Employer admits to numerous violations, including its failure to post JVAs on DOL's website and its failure to file timely census-related documents. These are not one-time violations but continued over a period of several years. Employer's failure to post JVAs on the DOL website, is particularly serious. Employer asks the Department to issue it a Certificate of Good Standing so that it may hire three new nonimmigrant aliens for its business. As a condition for reversing the denial, Employer has agreed to pay a substantial sanction for its past conduct. Second, Employer has agreed to post JVAs for the three pending jobs that it intends to fill with CW1-status workers. Third, Employer has agreed to revise its Workforce Plan for 2016, and promised to take steps to comply with Department Regulations in the future.

Given that Employer is a long-standing business in the community, the Hearing Officer is willing to give Employer one final opportunity to demonstrate that it can comply with Department Regulations and demonstrate its good faith in hiring U.S. citizens and permanent residents. For these reasons, the Hearing Officer shall reverse the denial, provided that Employer pays a substantial sanction, [1] posts JVAs for three new positions it intends to fill with CW1-status workers, and revises its 2016 Workforce Plan. Employer may show its good faith in the future by complying with DOL Regulations and not repeating this conduct.

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[1] **SANCTIONS:** In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2). The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14).

In this case, the evidence established that Employer committed multiple violations of the Regulations by failing to file JVAs for several positions that were filled by nonimmigrant alien workers. Rather than focus on each JVA as a separate violation, the Hearing Officer finds it appropriate to impose a total sanction of $3,000, with half of that sanction suspended for a two-year period, then extinguished, provided that Employer complies fully with the terms of this Order.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Notice of Denial of the Certificate of Good Standing for Appellant Double Lee Corporation, *dba* Green Consume Market, is hereby REVERSED, provided that Appellant complies with the terms of this Order. After Appellant has paid the sanction as set forth below, the Department of Labor shall proceed to process a Certificate of Good Standing for Appellant.

2. **Sanctions:** Appellant Double Lee Corporation is hereby SANCTIONED in the amount of three thousand dollars ($3,000) for its conduct; however, $1,500 of the sanction shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant complies with the other terms of this Order and does not commit further violations of the labor statutes and regulations during the two-year period. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment of Sanctions:** Appellant Double Lee Corporation is ORDERED to pay the remaining $1,500 portion of the sanction within thirty (30) days of the date of issuance of this Order. Proof of payment shall be filed in the Hearing Office on or before the due date.

4. **Posting of JVA:** Appellant Double Lee Corporation is ORDERED to post JVAs for the "salesperson" and "farmer" positions on the DOL website **on or before December 30, 2016**. Appellant shall consider for hiring qualified U.S. citizens or permanent residents who apply for the job. Appellant shall file the "certified" JVAs at the Hearing Office no later than **February 28, 2017.**

5. **Filing of Revised Workforce Plan:** Appellant Double Lee Corporation is ORDERED to file a revised 2016 Workforce Plan with the Citizen Job Availability and Job Placement Section (attn: Mr. Manny Iguel) that meets with the approval of the Department. The revised Workforce Plan shall be submitted to the Citizen Job Availability and Job Placement Section **on or before December 30, 2016**.

6. **Warning:** Appellant is warned that the Regulations described in this order set forth *continuing* obligations of the employer. Appellant should post JVAs on DOL's website for positions intended to be filled by nonimmigrant aliens. In addition, Employer should file Total Workforce Listings on a quarterly basis and Workforce Plans annually. If Appellant fails to comply with the terms of this Order, the Department may move to reinstate the suspended sanction, and request additional sanctions, after a due process hearing. Such sanctions could include monetary sanctions and revocation or denial of the Certificate of Good Standing.

[D.C. No. 16-014]

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: December 9, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Big Bell, Inc., Appellant, v. Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 16-015 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on December 2, 2016, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Big Bell, Inc. was represented by its General Manager, Kim, Gap Soo, and its accountant, Dorothy A. Gauran. The Depart-ment's Citizen Job Availability and Citizen Job Placement Section ("Job Placement") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Appellant Big Bell, Inc. ("Employer") operates a construction business on Saipan that currently employs 50 employees, including 4 U.S. citizens or permanent residents, 2 workers holding an EAD, 1 E2-Investor, and 43 CW1-status employees. [Testimony of Ms. Gauran.]

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by Job Placement on November 22, 2016, in which Job Placement denied Employer's request for a Certificate of Good Standing. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Denial cited the following grounds:

(1) In August 2016, the Department of Labor ("DOL") denied Employer's application for a Certification of Good Standing; DOL's denial was affirmed on appeal in an Administrative Order issued by the Hearing Officer on August 9, 2016 (see D.C. No. 16-010, Admin. Order issued by J.Cody on 8/09/16).

2. Employer failed to post a job vacancy announcements ("JVAs") on the Department's website for 45 jobs offered by Employer in 2015 and 2016 in violation of Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a);

3. Employer failed to demonstrate a "good faith effort to hire" citizens or status-qualified citizens for open positions, in violation of Department Regulations at NMIAC § 80-20.1-235(d); and

4. Employer has not met the minimum percentage of U.S. citizens and permanent residents in its workforce, as set forth in Regulations at NMIAC § 80-20.1-310.

The above-noted grounds are discussed below:

Earlier this year, Employer's request for a Certificate of Good Standing was denied and Employer appealed. (See D.C. No. 16-010, Admin. Order issued by J.Cody on August 9, 2016.) In the Administrative Order that affirmed the denial, this Hearing Officer found that Employer had failed to post 45 job vacancy announcements on the Department's website over a two year period. The Hearing Officer noted that: "[d]uring 2014 and 2015, while Employer posted only 3 JVAs, Employer hired and renewed more than 40 CW1-status employees." *Id.* at p. 2. The Order stated further:

> When asked why Employer stopped posting JVAs on the website, Employer's accountant said she understood that the CW1 Petition did not require jobs to be posted on DOL's website; therefore, she placed newspaper advertisements instead of online JVAs. [Testimony of Ms. Gauran.] Nevertheless, the accountant admitted that she had become aware from reading local newspaper articles that the Department of Labor required Employers to use DOL's website when advertising jobs to be filled by CW1-status workers. In addition, early in June 2015, Employer had received a written Notice of Warning from DOL, warning Employer that is was not meeting the minimum threshold of employing 30% of its workforce with U.S. citizens and/or permanent residents. [Testimony of Mr. Ulloa.] At that time, Employer met with DOL and discussed its obligation to hire more citizens and permanent residents. Despite this effort, Employer proceeded to post only three JVAs on DOL's website in 2015 and 2016, even as it continued hiring and renewing more than 40 CW1-status employees.

> Employer's conduct in failing to post dozens of JVAs in 2015 and 2016, amounts to either intentional or negligent disregard of its obligation to notify local residents about offered jobs, over which U.S. citizens and permanent residents have legal preference. Such conduct could lead DOL to request sanctions in an Agency case, but at a minimum, it should be considered as a negative factor in determining whether to grant an employer's request for a Certificate of Compliance.

Employer did not appeal the Order and Employer does not now contest the findings of that Order. Rather, after receiving the Order in August, Employer set about to reform its practices to comply with CNMI Labor Regulations and to rectify its previous "mistakes." To that end, Employer took the following steps:

First, Employer posted several open positions on the DOL website in July and August 2016 for the jobs of electrician, HE mechanic, and construction worker. [Copies of Employer's posted JVAs for electrician, HE mechanic, and construction worker positions were entered into evidence as Hearing Exhibit 2.] These JVAs were subsequently certified by Job Placement. [*Id.*; testimony of Mr. Ulloa.]

Second, Employer contacted the Northern Marianas Trade Industry ("NMTI"), asking that NMTI give Employer referrals from recent graduates of the Institute who are willing to work in jobs as painter, plumber, electrician and/or construction worker. [A copy of a letter from President Kim to Acting CEO of NMTI, dated 10/10/2016, was entered into evidence as Hearing Exhibit 3.]

Third, through the JVA process at DOL, Employer made job offers to two U.S. status-qualified job seekers and is in the process of determining whether the workers are going to accept the offers. [Testimony of Ms. Gauran.]

Fourth, in addition to the posted JVAs, Employer advertised these positions in a local newspaper and on a local radio station. Employer notes that most of its JVAs received no responses from U.S. status-qualified persons interested in the jobs. [Testimony of Ms. Gauran; Employer's appeal letter to the Hearing Office was entered into evidence as Hearing Exhibit 4.]

At Hearing, Employer noted that it considers this matter of the Certificate to be crucial to its existence, given that USCIS has asked Employer to produce a Certificate of Good Standing and Employer believes that failure to do so, may result in the denial of its CW1 Petitions, which would affect dozens of its workers' CW1-status for the coming year. [Testimony of Ms. Gauran and Mr. Kim.]

CONCLUSIONS OF LAW

I. Employer's Prior Conduct in Failing to Post 45 Job Vacancy Announcements on DOL's Website In Violation of Department Regulations, Justifies A Monetary Sanction.

Given that Employer was found only three months ago, in Denial Case No. 16-010, to have intentionally failed to post more than 40 JVAs over the past two years, Employer's request in October 2016, for a Certificate of Good Standing must entail a review of its prior conduct, as discussed in the prior Administrative Order.

As stated in the prior Order and repeated above, Employer had a pattern of intentionally bypassing the DOL website when advertising more than 40 positions that were then filled with CW1-status workers. This was done despite the fact that Employer was aware that the Department viewed such conduct as violating its Labor Regulations. [See Order in D.C. No. 16-010, issued on 8/09/16.]

In the Administrative Order issued on August 9, 2016, that affirmed the denial of a Certificate of Good Standing, the Hearing Officer did not consider monetary sanctions, given that the Employer was already having its request for a Certificate denied and the matter of sanctions was not pursued by the Department. Given the present situation, which amounts to a reconsideration of the Certificate, the Hearing Officer shall consider the Department's request to impose a monetary sanction as a condition for reversing the denial.

II. Employer's Recent Efforts to Find and Hire U.S. Citizens or Permanent Residents Constitutes Remedial Conduct That Justifies Reconsidering Whether To Issue Employer A Certificate of Good Standing.

In the Hearing on December 2, 2016, Employer submitted new evidence that demonstrates that Employer is making a concerted, good faith effort to find and hire qualified U.S. citizens and/or permanent residents to work on Employer's construction projects. Employer is accomplishing this task by posting JVAs on the Department's website, advertising in local newspaper and radio venues, and working with NMTI to find newly trained local workers. These efforts justify reconsidering the issue of granting a Certificate of Good Standing.

At the recent Hearing, Job Placement took the position that given the prior record of this Employer, as well as this Employer's recent measures to hire citizens and permanent residents, Job Placement would not oppose a decision to reverse the

denial and issue a Certificate of Good Standing, provided that Employer pays a substantial monetary sanction for its past conduct. [Testimony of Mr. Ulloa.] The Employer did not object on the record to Job Placement's request for sanctions.

HOLDING: Having considered all of the present and prior evidence, and mindful of the fact that denying this Certificate might result in devastating results for Employer's existing workforce, the Hearing Officer shall reverse the decision to deny this Certificate, on the condition that Employer pays a substantial sanction of $3,000.[1] A portion of the sanction will be suspended for a period of two years. During that time, any failure by Employer to file JVAs or census-related documents may result in the reinstatement of the suspended sanction, plus additional sanctions, after a due process hearing on the issue.

Finally, the Hearing Officer notes that Employer still has not come close to meeting the minimum requisite percentage of 30% of U.S. status-qualified workers in its total workforce. [3 CMC § 4525 and Regs at NMIAC § 80-20.210(c)(3).] Therefore, even after receiving its Certificate of Good Standing, Employer should continue its efforts to hire and employ U.S. citizen and/or permanent resident employees as part of its workforce.

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[1] **SANCTIONS:** In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2). The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14).

In this case, the evidence established that Employer committed multiple violations of the Regulations by failing to file JVAs for 45 positions that were later filled by foreign national workers. Rather than focus on each JVA as a separate violation, Job Placement requested a total sanction of $3,000 for all 45 JVAs, with a portion of the sanction to be suspended for a period of time.

Based on the above facts and circumstances, the Hearing Officer agrees that Employer should be sanctioned three thousand dollars ($3,000) for its conduct; however, $1,000 of the sanction shall be suspended for two years, then extinguished, provided that Employer complies fully with the terms of this Order.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Denial of the Certificate of Good Standing for Appellant Big Bell, Inc., is hereby REVERSED, provided that Appellant complies with the terms of this Order. After Appellant has paid the sanction, as set forth below, the Department of Labor shall proceed to process a Certificate of Good Standing for Big Bell, Inc.

2. **Sanctions:** For the reasons stated above, Appellant Big Bell, Inc., is hereby FINED three thousand dollars ($3,000); however, $1,000 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining $2,000 portion of the sanction and complies with DOL statutes and regulations during the two-year period. 3 CMC §§ 4528(f)(2) and 4947(l 1).

3. Payment Terms: Appellant is ORDERED to pay the $2,000 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Warning:** Appellant has a *continuing* obligation to post job vacancy announcements on the DOL website and to post employer declarations to online job applicants who respond to Employer's posted JVAs. Appellant also has a continuing obligation to file timely census-related documents (Total Workforce Listings and Workforce Plans). If Appellant fails to comply with these obligations, the Department may request an order reinstating the suspended sanction, and imposing additional sanctions, after a due process hearing. Furthermore, Employer's failure in the future to comply with DOL Regulations may support the denial of an application for a Certificate of Good Standing.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: December 5, 2016

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: TRI Enterprises, Inc., *dba* Marianas Visiting Nurses, Appellant, **v.** Department of Labor – Citizen Job Availability and Citizen Job Placement Section, Appellee.	)	D.C. No. 16-016 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on January 24, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant TRI Enterprises, Inc., *dba* Marianas Visiting Nurses ("Employer") appeared through its President, Gia Ramos. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on December 13, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Job Placement Section denied Employer's request for a Certificate of Good Standing (i.e., Certificate of Compliance), citing three grounds:

1. Employer failed to submit to the Department of Labor ("DOL") quarterly Total Workforce Listings for four quarters in 2015 and two quarters for 2016 in accordance with the Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") § 80-20.1-505(b).

2. Employer failed to submit to the Department Workforce Plans in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510(c).

The Employer operates a business that supplies home nurses and nurse aides for home care in the CNMI. Currently, the business employs about 20 full-time employees.

The two separate grounds for the Denial are discussed below:

Quarterly Total Workforce Listings: DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

In this case, Employer failed to submit Total Workforce Listings for four quarters in 2015 and two quarters in 2016. After Employer received the Denial, it promptly prepared and filed all of the missing Total Workforce Listings from 2015 and 2016. These were collectively entered into evidence as Hearing Exhibit 2. At Hearing, Employer's President explained that she had been unaware of the Department's Regulations. As soon as she realized her mistake, she took immediate steps to correct the record. [Testimony of Ms. Ramos.]

Workforce Plan for 2015: Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer failed to submit Workforce Plans in 2015 or 2016 to the Job Placement Section. Employer's President testified that she had been unaware of the obligation to do so. As soon as she received the Denial, President Ramos prepared Workforce Plans and submitted them to the Hearing Office. [Copies of Workforce Plans for 2015 and 2016 were entered into evidence as Hearing Exhibits 3 and 4, respectively.]

Mr. Ulloa of the Job Placement Section noted that the "Timetable" section of each Workforce Plan was not correctly filled out. President Ramos offered to correct this deficiency in the near future.

CONCLUSIONS OF LAW

The Job Placement Section denied Employer's request for a Certificate of Good Standing based on two deficiencies; failure to submit quarterly Total Workforce Listings and failure to submit two annual Workforce Plans.

As to the first ground, Employer submitted all missing Total Workforce Listings along with her appeal letter. At Hearing, Employer also submitted the most recent (3rd Quarter) Total Workforce Listing. The document shows that Employer currently employs a total of 20 full-time employees, and 6 of these workers are U.S. status-qualified workers (4 U.S. citizens, one permanent resident and one Palauan citizen). Accordingly, Employer meets the minimum Workforce Participation percentage of 30% of its workforce being U.S. status-qualified.

As to the second ground, as stated above, Employer submitted Workforce Plan for 2015 and 2016, but the Timetable section was incomplete. This deficiency needs to be corrected on a new Workforce Plan for 2017.

At Hearing, the Job Placement Section took the position that given the Employer's prompt response to the Denial, the Department would not press for substantial monetary sanctions, but would agree with a suspended sanction. [Testimony of Mr. Ulloa.]

Based on the facts presented, the Hearing Officer finds that the Denial should be reversed and the Employer sanctioned one thousand dollars; however, the entire fine shall be suspended for one year, then extinguished, provided that Employer commits no further violations of labor statutes and regulations during that one-year period. In addition, Employer shall be ordered to submit to Mr. Ulloa a corrected Workforce Plan for 2017 within thirty days of the issuance of this Order. The Denial shall be reversed provided that Employer submits the above-noted documents in accordance with this Order in a timely manner.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Department's Denial of a Certificate of Good Standing for TRI Enterprises, Inc., is REVERSED, provided that Appellant TRI Enterprises, Inc., complies with the terms of this Order, as set forth. The Department is instructed to issue the Certification of Good Standing to Appellant after Appellant has submitted the document specified in paragraph 3, below.

2. **Suspended Sanctions:** For the reasons stated above, Appellant TRI Enterprises, Inc., is hereby FINED one thousand dollars ($1,000); however, the fine shall be SUSPENDED for one year, then extinguished, provided that Appellant commits no further violation of labor statutes and regulations in that period, and complies with the other terms set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Revised 2017 Workforce Plan:** Appellant TRI Enterprises, Inc. is ORDERED to submit to Mr. James Ulloa of the Citizen Job Placement Section a revised 2017 Workforce Plan that correctly fills out the Timetable section as noted during the Hearing. The Plan shall be submitted within thirty (30) days after the date of issuance of this Order.

4. **Warning:** If Appellant fails to comply with the terms of this Order, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: January 26, 2017

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 16-017
Pandiyan K. Sevugan,	)	
Complainant,	)	
	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
ABO International Corporation,	)	
dba ABO Rent-a-Car,	)	
Respondent.	)	
	)	

This case was heard on November 22, 28, 29 and 30, 2016, in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Pandiyan Sevugan appeared without counsel.[1] Respondent ABO International Corporation, *dba* ABO Rent-a-Car, appeared through its President, Bo Zhong, and its legal counsel, George Hasselback. The Department of Labor appeared through investigator Ben Castro and Asst. Attorneys General Michael Witry and Martin De Los Angeles. Ms. Yu, Xue Mei and Ms. Elvira Atalig testified in support of the Respondent. Ms. Teresita Reyes testified in support of Complainant. Lin Kai Qi served as translator for Ms. Yu, Xue Mei. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Complainant Pandiyan K. Sevugan ("Employee") filed this labor complaint against ABO International Corporation, *dba* ABO Rent-a-Car ("Employer" or "ABO"), on August 29, 2016, alleging that Employer had failed to pay thousands of dollars in wages owed to Employee for work he performed for Employer. [A copy of the complaint was entered into evidence as Hearing Exhibit 1 – Sevugan.] [2]

[1] On November 28, 29 and 30, 2016, the hearing of this Labor Case (L.C. No. 16-017) was consolidated with the hearing of L.C. No. 16-018, *Teresita Reyes v. ABO International Corporation, dba ABO Rent-a-Car*. On November 28, 2016, Mr. Hasselback was hired to represent Respondent in L.C. No. 16-018.

[2] Exhibits were entered and separately numbered in each labor case. By stipulation of the parties, all exhibits entered in one case were deemed usable and entered into evidence in the other case. In this Order, exhibits from the Sevugan Exhibit List will contain the designation "Sevugan;" whereas exhibits without a named designation are from the Reyes Exhibit List (L.C. No. 16-018).

FINDINGS OF FACT

Employee was hired by ABO's President, Mr. Bo Zhong, to work for ABO in the summer of 2015, as a driver and a "supervisor." This was an oral agreement of employment: Employee agreed to work as a driver on an open-ended, "on call" schedule in exchange for ABO's promise to pay Employee a salary of $1,500 per month. The oral agreement was not put in writing and no term or period of employment was specified. [Testimony of Mr. Sevugan and Mr. Zhong.]

Prior to working for Employer, Employee worked as a driver for American CM Real Estate Development Co., Ltd. ("American CM"). Mr. Bo Zhong, who is President of both companies, hired Employee for both jobs. As the one job ended, the new job began.[3] As Employee moved from American CM to ABO, his job assignments, which he received exclusively from Mr. Zhong, remained the same. [Testimony of Mr. Sevugan and Mr. Zhong.]

Employer operated a car rental business and a tourist business; it also maintained several apartments which were used by its tourist clients. In addition, Employer leased or rented two houses in Saipan. [Testimony of Mr. Zhong.]

Employee's duties consisted of driving clients in support of ABO's rental car business, picking up tourists and driving them to various locations in support of ABO's tourist business, supervising construction workers who were renovating several apartments owned or operated by Employer and running personal errands for President Zhong and his girlfriend. [Testimony of Mr. Sevugan.]

Employee's work hours changed every day and his driving tasks were varied. Sometimes, Mr. Zhong would ask Employee to pick up tourists at the airport during both day and night. At other times, Employee was told to check on renovations at several of Employer's apartments that were being renovated. On other occasions, he was told to take Mr. Zhong's girlfriend shopping, or to run errands for other friends of Mr. Zhong. *Id.*

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[3] Sometime between June and August 2015, Employee was moved from working for American CM to working for ABO; however, his paychecks continued to come from American CM because of a lack of funds at ABO. [Testimony of Mr. Zhong.] Employee produced a copy of a salary check for $3,000, issued to him by American CM in December 2015; the American CM check (Hearing Exhibit 8 – Sevugan) to Employee states that it is for two months' salary (Oct. 1-Nov. 30).

Neither Employer nor Employee ever kept track of Employee's actual work hours or work schedule. In essence, there was no schedule, except that Employee was expected to be "on call" at all hours of the day and night for various driving assignments. Employee often spent time at the ABO Rent-a-Car office; yet, he noted that there was no set time in which he was expected to show up at the office. Employee arrived at the car rental office at different times, stayed for several hours, then left the office to check on the renovations, run errands for Mr. Zhong or do some other task. [Testimony of Mr. Sevugan.]

Even though Employer listed Employee as a "manager" or "supervisor" in official documents (See Total Workforce Listing at Hearing Exhibit 17), Employee testified that he did not supervise the people who worked at ABO's car rental office; the only supervision he did was to oversee the renovations being done by workers at Employer's apartments. *Id.*

Employee received a salary of $1,500 per month from February through December 2015. As stated earlier, when Mr. Zhong hired Employee to work for ABO, he hired Employee at the same monthly salary - $1,500 per month – that Employee had made at American CM. [Testimony of Mr. Sevugan and Mr. Zhong.][4]

Beginning in January 2016, Employer failed to pay the full amount of Employee's agreed-upon salary of $1,500. Instead, Employer gave him a check for $1,000. [See copy of check at Hearing Exhibit 8 – Sevugan.] In the months that followed (February through June 2016), Employee received only $500 per month, paid in cash, from Employer. When Employee complained to Mr. Zhong, Zhong promised that when he received money from a certain transaction in Greece, he would pay Employee for amounts that he owed. In July 2016, Employee received no wages whatsoever, despite the fact that he was working. Finally, Employee quit his job on July 24, 2016, due to the non-payment of his wages. On August 29, 2016, Employee came to the Hearing Office and filed this case. [Testimony of Mr. Sevugan.]

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[4] Mr. Zhong has changed his story over time as to when ABO was formed. He told investigator Ben Castro during investigation that ABO was formed in January 2016, but at hearing he testified that ABO started in the summer of 2015. In any event, Zhong admitted that when Employee was first hired to work for ABO, he was offered and accepted a monthly salary of $1,500 per month. [Testimony of Mr. Zhong.]

The Complaint:
In his labor complaint (Ex. 1 – Sevugan), filed *pro se*, Employee complained that he worked more than 8 hours per day and additional hours at night, but he was not paid even the minimum wage for his work. Later, in investigation, Employee amended his claim, asserting that he was owed $1,500 for each month he worked from January through July 2016. He bases the claim on his contention that his salary remained $1,500 per month throughout his employment with ABO. In his investigation, the Department's investigator agreed and found that Employee was owed $6,500 in unpaid salary for the period from January to July 2016. [See Determination, entered into evidence as Hearing Exhibit 2- Sevugan.]

Employer's Defense:
Employer presented three lines of defense at Hearing. First, ABO noted that Employee's actual hours worked could never be ascertained because neither Employer nor Employee kept track of his hours. Second, as to any claim based on unpaid monthly salary, Employer argued, as a legal matter that the Hearing Office lacks jurisdiction over such a contractual claim. [See Conclusions of Law, *infra*, at Section I.] Third, as a factual matter, Employer contended that in January and March 2016, Mr. Zhong had indicated that he was reducing Employee's monthly wages from $1,500 down to $800, then down to $600. Employer's defense centers on two staff meetings that President Zhong claims he held in January 2016 and March 2016.

January 2016 Meeting: Mr. Zhong claims he held a staff meeting on January 15, 2016, in which he told the staff that ABO was having severe financial difficulties; therefore, he would need to cut employee salaries. Zhong testified that he distributed a letter to staff (Hearing Exhibit 9) which reads, in part:

> "After the typhoon basically useless in the business, we do not need a full-time job, please be sure to follow these part-time and **organize job by yourself** or wait for boss call beyond this time, the company does not pay any wages, please remember this." [Emphasis added.]

The letter was written by Zhong in Mandarin, then translated into English using a computer program, which resulted in some curious language. [5] The letter ends, somewhat cryptically, by listing "Pan: $800, Lv: $600, Tere: $600." Mr. Zhong

[5] That would explain some of the disjointed, almost surreal language such as this example from Exhibit 9: "The company complaint is without warning, time is not uniform, dilatory; (of course this may be native common problem, but I hope we can re-engage change over time, we have no idea if we'll do time calling, you; we want to come come and want to stay away, undisciplined me frustrated...."

testified that he was referring to reduced salary for Pandiyan Sevugan, Elvira Atalig and Teresita Reyes, respectively. [Testimony of Mr. Zhong.; Ex. 9.] Two weeks after the meeting, Employee received a paycheck for $1,000 (not $800), stating that it was a salary payment for "Jan. 1–Jan. 31." [Hearing Exhibit 8 – Sevugan.]

March 2016 Meeting. Mr. Zhong claims he held another staff meeting on March 4, 2016. He testified that the meeting was attended by Employee, Teresita Reyes, Ms. Atalig, and John Castro. [Testimony of Mr. Zhong and Ms. Atalig.] Evidently, other ABO employees (?) were also present, who were told to "go home and rest for the summer season." Zhong claims that he discussed having certain workers, including Employee, work part-time rather than full-time.

Mr. Zhong claims he distributed a letter to those who attended the meeting, but evidently, the Employer did not maintain a sign-in sheet to document attendees or employees who received the letter. [A copy of the letter was entered into evidence as Hearing Exhibit 18.] In the letter's somewhat "broken" English, Mr. Zhong appeared to be releasing certain foreign staff members for an extended vacation, while other employees were going to be kept employed. The letter ended by stating, "Some employees are part-time treatment....Pan: $600...Lv: $300...Tere: $300." [Testimony of Mr. Zhong; Hearing Exhibit 18.]

At Hearing, the meetings of January 15 and March 4, 2016, were the subject of much conflicting testimony. Mr. Zhong and Ms. Atalig testified that Employee and Ms. Reyes were present at the meetings; Employee and Ms. Reyes denied attending either meeting and both denied ever receiving the January letter (Ex. 9) or the March letter (Ex. 18). [Testimony of Zhong, Atalig, Sevugan and Reyes.]

Time Period from April to July 2016:

At Hearing, there was sparse testimony regarding Employee's work in the months of April, May, June and July 2016. Employee testified that his driving duties did not diminish during this period. He testified credibly that he was never informed by Mr. Zhong to reduce his hours and never told that he was now working on a part-time schedule. He remained available "on call" both day and night. Mr. Zhong continued to give him assignments as he always had done. [For his part, Mr. Zhong never testified that he ever spoke, one on one, with Employee during this period (January through July 2016) about reducing his work hours.] During the period from March through July 2016, Employee was still spending time each day at ABO's car rental office, still picking up and driving ABO's clients in its car

rental and tourist-related businesses, and still running various errands for President Zhong and serving, at times, as his personal driver. Indeed, on Employee's last day of work at ABO (7/24/2016), Employee's last assignment before he quit was to drive Mr. Zhong to lunch. [Testimony of Mr. Sevugan.]

DISCUSSION

The Complaint

Employee's complaint for unpaid salary is based on an oral agreement that he and President Zhong entered into at the time he was hired as an employee of ABO. The terms of the agreement were as follows: Employee would work for Employer, performing services as a driver for Employer's car rental and tourist businesses, and also supervising renovations of several apartments owned by Employer. Employee would work under an open-ended schedule that meant he was "on-call" and available to work seven days per week, available both daytime and at night. In exchange, Employer would pay Employee a monthly salary of $1,500 per month.

The agreement was an oral agreement – not reduced to writing – and it was of indefinite duration. Furthermore, this was at-will employment that could be terminated by either party, with or without cause.

Any attempt to prove that Employer failed to pay Employee lawful minimum wages fails for lack of specificity for the simple reason that Employer failed to keep track of Employee's actual work hours, even in a general sense. Therefore, it is impossible to calculate, using the minimum wage as a standard, the minimum amount of wages that Employee earned as a result of his labor.

Likewise, any attempt by Employee to enforce the oral agreement for a $1,500 per month salary, may fail as well unless an equitable remedy is adopted to prevent injustice. [See discussion regarding Promissory Estoppel, *infra*, at p. 7.]

The Defense

Employer stated at closing argument that the central question of both cases amounted to: Were complainants (Sevugan and Reyes) paid enough to satisfy CNMI minimum wage laws? That involved two determinations: (1) How much did they work; and (2) how much were they paid? Employer's counsel noted that Mr. Sevugan had not given testimony establishing how many hours he had worked and therefore, there was no basis for awarding him wages. [Hearing on 11/30/16.]

In response, the Hearing Officer noted to counsel that he was inclined to view the case differently; more as an oral agreement to pay wages that Employee Sevugan may have relied upon to his detriment. The Hearing Officer put counsel on notice that he would consider the issue of "detrimental reliance" on the part of Employee.

Employer's counsel noted that he believed the Hearing Office lacked jurisdiction to consider contractual violations, whether the dispute concerned an oral or written employment contract. Counsel noted his objection for the record but declined an offer to allow him to submit a legal brief on the issue. [For discussion of the jurisdiction issue, see Conclusions of Law at Section I. For the recording of closing argument, see digital record on 11/30/2016 at 3:22:00 – 3:29:00.]

Promissory Estoppel and Detrimental Reliance

As to the oral agreement to pay $1,500 in monthly salary, Employer could argue that Mr. Zhong's promise to pay a certain monthly salary to Employee was not an enforceable contractual term, i.e., not a binding promise; therefore, the promise could be cancelled or amended in the future. The counter-argument to be made by Employee is an equitable argument based on promissory estoppel and/or detrimental reliance.

Under the promissory estoppel doctrine, under certain circumstances, if one party reasonably relies on another's promise to his detriment, a court in equity might enforce the promise, particularly if enforcement would be necessary to avoid an unjust result. The doctrine of promissory estoppel, is set forth in Section 90 of the Restatement (Second) of Contracts, as follows:

> A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

Where the equitable principle is applied, promissory estoppel is adopted to enforce a promise which otherwise would be unenforceable. (Henderson, Promissory Estoppel and Traditional Contract Doctrine, 78 Yale L.J. 343, 379-380 (1969).

This equitable doctrine has been judicially adopted in most, if not all, jurisdictions in the United States, including the courts of the Northern Mariana Islands and in federal courts of the Ninth Circuit. *See, e.g., O'Connor v. Dev. Of Pub. Lands*,

1999 MP 5 ¶ 9; *Aguilar v. International Longshoremen's Union Local #10*, 966 F. 2d 443 (9th Cir. 1992).

The elements of promissory estoppel are: (1) a clear and definite agreement; (2) proof that the party urging the doctrine acted to its detriment in reasonable reliance on the agreement; and (3) a finding that the equities support enforcement of the agreement. Restatement (Second) of Contracts at § 90; *Aguilar v. International Longshoremen's Union Local #10*, 966 F. 2d 443 (9th Cir. 1992).[6]

(1) A clear and definite agreement.

Employee and ABO, through ABO's President, had an oral agreement that was made at the time Employee was hired to work for ABO. Employee would perform certain services (driving, etc.) and agree to be "on call" both day and night, seven days per week, and in exchange, Employer would pay him a salary of $1,500 per month.

It is undisputed that Employer initially agreed to pay, and paid Employee a salary of $1,500 per month for about the first six months of his employment with ABO. Employee received the promised salary, even though Mr. Zhong often paid him from the bank account of American CM because of a cash-flow problem. [Testimony of Mr. Zhong and Mr. Sevugan; Hearing Ex. 8 - Sevugan.]

(2) Employee continued working to his detriment, while reasonably relying on assurances from Mr. Zhong that the unpaid salary would be repaid.

Beginning in January 2016, and continuing through July 2016, Employee was paid less than the agreed-upon amount; first - $1,000, then only $500 per month according to his own credible testimony. Employee testified that during the months from January through July 2016, he continued working for Employer under the belief that Employer would abide by that initial promise to pay him a monthly salary of $1,500. [Testimony of Mr. Sevugan.]

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[6] The doctrines of promissory estoppel and detrimental reliance are closely related. The essential elements of a detrimental reliance theory of recovery are: (1) a representation by conduct or word; (2) justifiable reliance thereon; and (3) a change of position to one's detriment because of the reliance (*citing Martin v. Schluntz*, 589 So. 2d 1208, 1211 (La. Ct. App. 1991)." *Commonwealth Dev. Auth. v. Tenorio*, Civ. Action No. 97-0341 (Order Granting Plaintiff's Motion For Summary Judgment On Plaintiff's Complaint and Defendants' Counterclaim), aff'd in part and remanded for other reasons by CNMI Supreme Court at *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22.

Employer never established a set work schedule for Employee or his co-workers. Employee was expected to be on call whenever he was needed; he was never given paystubs that tied his wage to any set number of hours. Employer made no effort to keep track of his hours. In this environment, Employee relied on assurances from Mr. Zhong that he was expecting more money to arrive from his business transactions in Greece and then, Employee would be repaid the salary that was being withheld. Employee made his dissatisfaction with the situation known, yet Mr. Zhong assured him that the financial situation would improve. *Id.*

Into the vacuum created by Employer's inconsistent and unsettled management, Employee kept working his usual disjointed schedule of random assignments called in by President Zhong. (There is no evidence that ABO management ever told Employee to curtail his office time, stop or reduce doing any specific task, or stop coming to the office on weekends.) While continuing to work, Employee continued pressing President Zhong for more compensation. In May 2016, when Employee told Mr. Zhong that he needed more money, Zhong responded with words to the effect that money was coming – just wait. [Testimony of Mr. Sevugan.] Based on the credible testimony of Employee as well as the other evidence presented, the Hearing Officer finds that Employee's reliance on such promises was reasonable under the circumstances.

(3) Relying on equity to avoid an unjust result.

Employer's failure to keep track of Employee's work hours and to provide him with a paystub with hours, rates and deductions, clearly violated the CNMI Minimum Wage and Hour Act, as cited below (see Conclusions). Moreover, Employer's erratic, random management, in which Employee was expected to work without an actual work schedule, coupled with the employer's continued promises that wages would improve in the future, created an environment that kept Employee guessing as to the nature of his employment and the status of his salary.

For many months, Employee continued to service the needs of Mr. Zhong while relying on his positive assurances that more money was coming. When Employee could wait no longer, he quit his employment and filed this labor complaint at the Department of Labor to obtain a legal remedy to reimburse what he had lost. ***Now, the same Employer who failed its legal obligation to keep track of Employee's hours, argues that the lack of specificity makes any award of unpaid wages (i.e., a legal remedy using Wage and Hour laws), speculative.***

The Hearing Officer believes it would be unjust to allow Employer to benefit, in effect, from its own wrongdoing. This case justifies an equitable remedy where the legal remedy would result in injustice.

(4) The Elements of Promissory Estoppel Have Been Met.

In conclusion, the Hearing Officer finds that the elements of promissory estoppel have been met. First, there was a clear initial promise to pay Employee a monthly salary of $1,500 per month, as well as conduct for six months in conformity with that promise. Second, faced with a chaotic and confusing work environment, Employee reasonably relied on his Employer's assurances that finances would be improving and that he would be repaid his salary that he had been missing. (The fact that Employee's work schedule remained the same also misled him into believing he was entitled to the former salary.) Third, if no equitable relief were invoked, Employee would be unable to obtain any legal redress for most likely being grossly underpaid for many months, and an injustice would result whereby Employer would benefit, in effect, from its own wrongful failure to keep track of Employee's time, in accordance with the law. In short, the equities weigh in favor of enforcing the oral agreement and reimbursing Employee at the rate of $1,500 per month for the applicable period.

CONCLUSIONS OF LAW

I. The Hearing Office has original jurisdiction to adjudicate the labor complaint filed by Employee, pursuant to 3 CMC § 4942(a).

The Commonwealth Employment Act of 2007 ("Act") vests broad jurisdiction in the Administrative Hearing Office to resolve labor and wage disputes brought by U.S. citizens as well as by foreign workers. The Act states, in part, that: "The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth..." [3 CMC § 4942(a).]

The Hearing Officer finds that this employment dispute is based on an oral promise by Employer to pay a certain monthly salary to Employee. The dispute has been analyzed and adjudicated according to common law contract principles, including equitable principles of equitable estoppel and detrimental reliance.

The Hearing Officer finds the Commonwealth Legislature's grant of jurisdiction to be broad enough to encompass common law claims arising out of, and related to,

the employment relationship. This would include jurisdiction to adjudicate disputes regarding employment contracts, both oral and written, that pertain to an employee's rights to be paid by an employer for work performed. The present case is well within the above-cited jurisdiction of the Administrative Hearing Office.

II. Employer Failed to Follow CNMI Law Requiring Employers To Issue Detailed Time and Payroll Information To Employees.

The CNMI Minimum Wage and Hour Act at 4 CMC § 9232(c), requires employers to provide detailed information to employees when wages are being paid. The statute states:

> Every employer **shall furnish** each employee **at every pay period** a written statement showing the employee's total hours worked; overtime hours; straight-time compensation; overtime compensation; other compensation; total gross compensation; amount and purpose of each deduction; total net compensation; date of payment; and pay period covered. (Emphases added.)

For many months in 2016, Employer paid Employee in cash and provided no detail whatsoever to him regarding the number of hours being compensated, hourly rate of pay, deductions taken, etc. In addition, Employer utterly failed to make *any* effort whatsoever to keep track of the actual hours being worked by Employee. Such conduct violated the CNMI Minimum Wage and Hour Act, as cited above.[7]

Employer's failure to keep time records regarding Employee also made it impossible for Employee to prevail on a legal claim based on the number of hours he had worked. Employer's conduct in this regard should be considered a factor in providing an equitable remedy for Employee's claim.

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[7] Procedural Note: The Determination did not include a charge against Employer alleging a violation of this statute. At Hearing, Employer objected that its due process rights would be violated if the Hearing Officer imposed a sanction for a charge that had not been filed against it prior to the Hearing. On the final day of testimony (11/30/2016), the Department counsel and Employer's counsel agreed to meet and confer on this issue as to whether the Department would seek to amend its Determination to add the charge. The Department never filed any motion to address this matter after the hearing ended. Based on these facts, the Hearing Officer will not assess any sanction against Employer in this case for its violation of the CNMI Minimum Wage and Hour Act.

III. The Statute of Limitations For Administrative Labor Claims Limits the Period In Which Unpaid Wages May Be Recovered by Employee.

The applicable statute of limitations for labor claims filed in the Administrative Hearing Office is six months. 3 CMC § 4962(b). This means that a claimant must file his labor claim within 180 days of the "last occurring event" that gave rise to the claim. The Hearing Officer holds that Employer's legal obligation to pay wages for work performed constitutes a "continuing" obligation that arises every day the employee works. Thus, even though Employer's non-payment of Employee's salary began in January 2016, months beyond the statutory period, there is coverage for that part of the claim that took place within 180 days (six months) of the date of filing of the Complaint. As Employee filed his complaint on August 29, 2016, the applicable period runs from **March 3, 2016 until August 29, 2016** (filing date).

IV. The Equitable Doctrine of Promissory Estoppel Shall Be Applied to Award Unpaid Salary To Employee Based On The Oral Agreement To Pay A Salary of $1,500 Per Month.

For the reasons set forth in the above section on Promissory Estoppel, the Hearing Officer finds that the elements of the doctrine of promissory estoppel have been met and the equities favor an award to Employee. Employer's promise to pay a $1,500 monthly salary to Employee in exchange for his services, shall be enforced. The amount of the award is determined below. 3 CMC § 4947(d)(11).

V. Employee Shall Be Awarded, In Equity, His Unpaid Salary That Amounts to $5,200.00 For The Applicable Period.

Having concluded, in equity, that Employee is entitled to the promised monthly wages of $1,500 per month for his services, the Hearing Officer finds that Employee is owed $5,200 for the period from March 3. through July 24, 2016.

Month	Paid	Valued	Unpaid
March	$500	$1,500	$1,000
April	$500	$1,500	$1,000
May	$500	$1,500	$1,000
June	$500	$1,500	$1,000
July	0	$1,200	$1,200
TOTAL:	$2,000	$7,200	**$5,200**

The wages owed to Employee for the applicable period, minus the amounts that were paid to Employee by Employer, total **$5,200.00**. [The monthly payment for July 2016 has been prorated to 4/5ths of the monthly salary.]

VI. Liquidated Damages Shall Be Awarded in This Case.

The Commonwealth Employment Act of 2007 at 3 CMC § 4947(d)(2) authorizes an award of liquidated damages, amounting to twice the amount of unpaid wages, unless the Hearing Officer finds extenuating circumstances. Having fashioned an equitable remedy that awards unpaid salary to Complainant in the interests of justice, the Hearing Officer does not believe that justice would be served by assessing an additional $5,200.00 in liquidated damages against Respondent. Nevertheless, I believe that some added amount is warranted to compensate Employee for having to file this lawsuit to recover his unpaid wages. Accordingly, the Hearing Officer award liquidated damages in the amount of one thousand dollars (**$1,000.00**), which amounts to nearly twenty percent of the underlying equitable award in this case. [3 CMC §§ 4947(d)(2) and 4947(d)(11).]

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the findings above, judgment is hereby entered against Respondent ABO International Corporation and in favor of Complainant Pandiyan K. Sevugan on his labor claim. Complainant is hereby awarded **$5,200.00** in unpaid wages, as well as the liquidated damages described below. [3 CMC §§ 4947(d)(1) and 4947(d)(11).]

2. **Liquidated Damages:** For the reasons set forth above, Complainant Pandiyan K. Sevugan is hereby awarded one thousand dollars (**$1,000.00**) in liquidated damages. [3 CMC §§ 4947(d)(2) and 4947(d)(11).]

3. **Payment Schedule:** Respondent ABO International Corporation is ORDERED to pay the above-noted amounts (totaling **$6,200.00**) by cashier's check or postal money order, payable to Pandiyan K. Sevugan, and delivered to the Administrative Hearing Office no later than **thirty (30) days** after the date of issuance of this Order. 3 CMC § 4947(d)(11).

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[L.C. No. 16-017]

4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: February 2, 2018.

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	Labor Case No. 16-018
Teresita Reyes,	)	
Complainant,	)	**ADMINISTRATIVE ORDER**
v.	)	
	)	
ABO International Corporation,	)	
dba ABO Rent-a-Car,	)	
Respondent.	)	
	)	

This case was heard on November 22, 28, 29 and 30, 2016, in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Teresita Reyes appeared without counsel. Respondent ABO International Corporation, *dba* ABO Rent-a-Car, appeared through its President, Bo Zhang, and its legal counsel, George Hasselback.[1] The Department of Labor appeared through investigator Ben Castro and Asst. Attorneys General Michael Witry and Martin De Los Angeles. Ms. Yu, Xue Mei and Ms. Elvira Atalig testified in support of the Respondent. Mr. Pandiyan Sevugan testified in support of Complainant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Complainant Teresita Reyes ("Employee") filed this labor complaint against her former employer, ABO International Corporation, *dba* ABO Rent-a-Car ("Employer") on August 29, 2016, alleging that Employer had failed to pay her thousands of dollars in wages for hours she claimed to have worked for Employer. [A copy of the Complaint was entered into evidence as Hearing Exhibit 1.]

Employer operated a car rental business and a tourist business; it also maintained several apartments which were used by its tourist clients. In addition, Employer leased or rented two houses in Saipan. [Testimony of Mr. Zhong.]

[1] On November 28, 29 and 30, 2016, the hearing of L.C. No. 16-018 was consolidated with the hearing of L. C. No. 16-017, *Pandiyan Sevugan v. ABO International Corporation, dba ABO Rent-a-Car.* Mr. George Hasselback already represented ABO in L.C. No. 16-017. On November 28, 2016, ABO hired Mr. Hasselback to represent ABO in L.C. No. 16-018, as well.

FINDINGS OF FACT

Employee was hired by Employer in September 2015, to work as a cleaner, but later, she also worked as a driver and office worker. Her assigned tasks included: cleaning the ABO car rental office, cleaning rental cars, cleaning various apartments in San Vicente, Koblerville and Susupe, cleaning a house in Chinatown and a house in Kagman, and driving certain persons to various locations as directed by Employer's President, Mr. Zhong. In addition, Employee sometimes was asked to sit at the car rental office and answer the telephone. [Testimony of Ms. Reyes; Determination at p. 2, ¶ 4 (Hearing Exhibit 5).]

When Employee was hired, she thought her only job would be to clean the office. She was told by Mr. Zhong to come to the office from 8 a.m to 5 p.m., five days per week. Soon after the job started, however, Employee began to be called into the car rental office every weekend. On Saturday and Sunday, she would sit in the office and answer the phone. Someone else, Ms. Yu (not Yu, Xue Mei), worked alongside her in the office. [Employee believes that person went back to China and is no longer in the CNMI.] [Testimony of Ms. Reyes.]

Initially, the parties agreed that Employer would pay Employee $300 per month for the services she performed. This was an oral agreement entered into between Ms. Reyes and Mr. Zhong – there was no written contract. [Testimony of Ms. Reyes and Mr. Zhong.] Employee testified that she was paid the $300 per month in cash for many months. But sometime in 2015, when she realized how many hours she was working, Employee began complaining about her low salary. In response, President Bo Zhong told her several times that he would pay her more once business improved. [Testimony of Ms. Reyes.]

Employer paid Employee $300 in cash each month from September 2015 through August 2016, except that in March 2016, Employee was paid $150 and in two other months, she was paid $400. (These amounts are noted in the Determination, prepared by investigator Ben Castro - see Hearing Exhibit 5). When Employee was paid, she was paid in cash and she was never provided a list of her work hours, hourly rate of pay, deductions taken, etc. *Id.*

Employee testified that she was expected to work every day, including weekends, so she went to work at the car rental office every weekend and answered phones. As a result of working every weekend, Employee incurred hundreds of hours of overtime.

Total Workforce Listing: Employer's Total Workforce Listing, signed under penalty of perjury by President Zhong on February 17, 2016, lists Employee as a full-time employee (rental agent) paid monthly in an unspecified amount. [A copy of the Total Workforce Listing, signed on 2/17/2016, was entered into evidence as Hearing Exhibit 17.]

Employee's Time Records (Hearing Exhibit 2): Employee kept her own personal record of the number of hours she worked on a daily basis. She made time record entries every day in a special notebook that she kept for that purpose. In the notebook, Employee did not break down the various times that she spent on different tasks (ex.: cleaning office vs. cleaning houses in Kagman); she just recorded the date and time that she worked. During investigation and at Hearing, Employee produced the original and a copy of the notebook. [Employee's original notebook of time records was entered into evidence as Hearing Exhibit 2; a correct copy of Employee's notebook was entered into evidence as Hearing Exhibit 4.]

Investigator's Summary of Wages Earned and Owed (Hearing Exhibit 3): The investigator relied on Employee's time records (Exhs. 2 or 4) because he found her records to be reliable. (For discussion of Employer's time records, see pp. 5-6.) The investigator used Employee's notebook entries and prepared a weekly summary of Employee's work hours, calculating regular and overtime wages based on the then-applicable statutory minimum wage of $6.05 per hour. [Testimony of Mr. Castro.] [A copy of the investigator's wage summary was entered into evidence as Hearing Ex. 3.] In his Determination (Hearing Ex. 5), the investigator calculated the following amounts of earned and unpaid wages:

Months	Amount	Less Cash Rec'd	Amounts Due
September 2015:	$1,321.93	$300.00	$1,021.93
October 2015:	$1,434.00	$300.00	$1,134.00
November 2015:	$1,410.22	$300.00	$1,110.22
December 2015:	$1,956.42	$400.00	$1,556.42
January 2016:	$1,506.42	$400.00	$1,106.42
February 2016:	$1,066.52	$300.00	$766.52
March 2016:	$943.26	$150.00	$793.26
April 2016:	$1,426.29	$300.00	$1,126.29
May 2016:	$1,256.89	$300.00	$956.89
June 2016:	$964.98	$300.00	$664.98
July 2016:	$544.50	$300.00	$244.50
August 2016:	$590.80	$300.00	$290.80
		Total Due	$10,772.23

Corroborating Testimony From Employee's Co-worker: Employee's co-worker, Pandiyan Sevugan, worked as a driver/supervisor for Employer from January 2015 to July 24, 2016.[2] It should be noted that Mr. Sevugan also filed a labor complaint against Employer for non-payment of wages (see Labor Case no. 16-017), which was heard in a consolidated hearing with this case. Mr. Sevugan's testimony, taken on November 22, 2016 (afternoon session), corroborated portions of Employee's testimony. Sevugan had introduced Employee to the company and considers her a personal friend.

First, Sevugan testified that Employee was paid $300 per month in cash by Employer (President Bo Zhong); Sevugan knows this because he was present on numerous occasions when Employee was paid by Mr. Zhong. Sevugan testified that many times, he asked President Zhong to raise Employee's salary. In response, Mr. Zhong would say: "Yes, later on I give" or words to that effect. Mr. Sevugan was paid his salary in cash on a monthly basis, just like Employee was paid. He asked Mr. Zhong for a receipt by never received a receipt. [Testimony of Mr. Sevugan.]

Second, Sevugan confirmed that Employee worked weekends because he also worked weekends at the ABO Rent-a-Car office and he regularly saw Employee working at that time. *Id.*

Third, Sevugan confirmed that Employee performed multiple tasks, including: cleaning the rental car offices, cleaning apartments in various villages on Saipan, and cleaning the personal home of President Zhong. Several times each month, at the direction of Mr. Zhong, Sevugan would call Employee and give her an assignment to clean apartments in San Vicente, Susupe and Koblerville, and sometimes Sevugan would drive Employee to those assignments. *Id.*

Fourth, Sevugan testified that in the time he worked for Employer, the company never kept track of his work hours or Employee's hours. He advised Employee to keep track of her own work hours. *Id.*

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[2] The Total Workforce Listing (Hearing Exhibit 17) lists Mr. Sevugan as a Manager/Supervisor. Mr. Sevugan testified that part of his job was to drive tourists at the direction of Mr. Zhong. He also supervised the renovation of certain apartments.

Employer's Time and Payroll Records Are Deemed Unreliable; Therefore, They Shall Not Be Used To Calculate Employee's Earned or Owed Wages.

Two of the central questions in this case are: (1) How many hours did Employee work for Employer in a given month; and (2) how much was Employee paid?

Employer offered an answer to both questions by producing its own set of time and payroll records concerning Employee. The most relevant documents for consideration are: Hearing Exhibit 11 (records that allegedly show Employee's actual hours worked in ABO's car rental office in 2016); Hearing Exhibit 15 (payroll summaries for each month of 2016); and Hearing Exhibit 19(b) (records that allegedly show out-of-office assignments worked by Employee in 2016). All of these exhibits consist of computer records compiled by Employer's unofficial bookkeeper, Ms. Yue, Xue Mei, in 2016.

Employer argues that its own records should be relied upon by the Hearing Officer instead of the time records produced by Employee (Hearing Exhibits 2 or 4). But Employer has its own credibility problems:

1. Employer (President Zhong) failed to produce Employer's computer printed records to investigator during his scheduled interview with investigator Ben Castro. [Testimony of Mr. Castro; Hearing Exhibit 5.] Later, at Hearing, Employer introduced the documents into evidence. As a result, the investigator never considered these documents in his calculations of Employee's time.

2. All of Employer's records were compiled by the company's "unofficial" bookkeeper, Ms. Yu Xue Mei, who was also known by complainants to be President Zhong's girlfriend. Ms. Yu was Treasurer and a Director of ABO. [See ABO's Annual Corporate Report at Hearing Ex. 20.] She was also someone who entered the CNMI as a "tourist," then overstayed her immigration visa by about 18 months while she "worked" or provided assistance, to ABO. Evidently, Ms. Yu had no legal authority to work, or even reside, in the CNMI during the relevant time periods of January to August 2016. [Testimony of Ms. Yu.]

3. Employer's records (Ex. 11) are neat and orderly and tend to impress until one notices troubling details, such as a time entry that states that Employee worked one hour (11 a.m. to noon) on "6/31/2016" meaning June 31, 2016; except that ***there is no valid date of June 31 because June ALWAYS only has 30 days – never 31 days.***

4. Employer's various time and payroll records contain different totals for the same time periods. Admittedly, the totals are "close," but the discrepancies raise questions as to the accuracy of the records. For example: For April 2016, Exhibit 19(b) lists Employee's total earnings as $513, but Exhibit 15 lists the payment to Employee for that period as $500. Such discrepancies are found between Exhibits 19(b) and 15 for the months of May, June, July and August 2016. Furthermore, although Exhibit 11 shows Employee working a certain number of office hours, the hourly rate used to calculate her payment for those hours remains a mystery. No rate is ever stated and if one multiplies the number of hours listed in Exhibit 11 by the minimum wage of $6.05 per hour, that figure is not recorded in the totals listed in either Exhibit 19(b) or Exhibit 15. Such discrepancies raise serious questions about the accuracy of the documents.

5. Employer's time entries for March 2016 demonstrate the most blatant example of fake entries. The evidence is as follows. Employee testified that she spent several weeks in Guam in March 2016. Employee's own records (Ex. 2) show that she was absent from work from February 25 through March 20, 2016. In a post-hearing submission, Employee produced a copy of her World Tour and Travel itinerary which shows that Employee used her tickets to fly to Guam on 3/06/2016 and returned on a flight on 3/17/2016. [See Travel itinerary document submitted by Complainant, per instructions of the Hearing Officer, on 12/02/2016.] This is sufficient proof that Employee was off-island from March 6 through 17, 2016, Yet, Employer's time records for March 2016 (Ex. 11) show Employee working at ABO's car rental office in Saipan on March 8 (5 hrs.), March 9 (5 hrs.), March 10 (5 hrs.), March 11 (4 hrs.), March 15 (6 hrs.) and March 16 (4 hrs.). ***The Hearing Officer finds, based on the corroborating Travel Itinerary, that Employer's time entries in Exhibit 11 for March 2016 are incorrect, and most likely fraudulent.***

In conclusion, having reviewed Employer's time and payroll records in detail, the Hearing Officer finds that they are unreliable and, in some cases, fraudulent. Accordingly, these documents should not be relied upon to give an accurate picture of the actual hours worked by Employee, or the amounts paid to her, in 2016.[3]

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[3] **Staff Meetings:** Employer raised another line of defense at the Hearing regarding staff meetings. President Zhong claimed that in staff meetings held in January and March 2016, he notified Employee and Mr. Sevugan that their employment had been changed from full to part-time employment and their salaries had been reduced.

Both Employee and Mr. Sevugan denied that they attended these meetings or received any company notices or letters about changing their status from full to part-time employees. In any event, the salary of $300 that President Zhong claimed was specified as a base salary for Employee in the March meeting, is the amount she claims to have been paid nearly every month from April through August 2016. (She

The Hearing Officer notes that the confusion surrounding Employee's work status and the hours she worked would have been resolved if Employer had followed the law and issued details paystubs with the payroll, identifying hours worked, rate of pay, deductions taken, etc. 4 CMC § 9232(c). [See discussion in Conclusions of Law, below.] Employer's failure to follow this law and issue detailed paystubs created the confusion that has led to this case.

CONCLUSIONS OF LAW

I. The Hearing Office has original jurisdiction to adjudicate the labor complaint filed by Employee, pursuant to 3 CMC § 4942(a).

The Commonwealth Employment Act of 2007 ("Act") vests broad jurisdiction in the Administrative Hearing Office to resolve labor and wage disputes brought by U.S. citizens as well as by foreign workers. The Act states, in part, that: "The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth..." [3 CMC § 4942(a).]

II. Employer Failed to Follow CNMI Law Requiring Employers To Issue Detailed Payroll Information To Employees.

The CNMI Minimum Wage and Hour Act at 4 CMC § 9232(c), requires employers to provide detailed information to employees when wages are being paid. The statute states:

> Every employer **shall furnish** each employee **at every pay period** a written statement showing the employee's total hours worked; overtime hours; straight-time compensation; overtime compensation; other compensation; total gross compensation; amount and purpose of each deduction; total net compensation; date of payment; and pay period covered. (Emphases added.)

For many months, Employer paid Employee in cash and provided no detail whatsoever to her regarding the number of hours being compensated, hourly rate of

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claims that she was only paid $150 in March 2016.) However, Employee alleges that her job responsibilities and assignments were never reduced; thus, she was simply required to work the same amount for less money. She complained about this to President Zhong through Mr. Sevugan and was reassured by Mr. Zhong, who told Mr. Sevugan that more money would be paid to her as soon as Zhong's financial matters in Greece were resolved. [Testimony of Ms. Reyes and Mr. Sevugan.]

pay, deductions taken, etc. Such conduct violated the CNMI Minimum Wage and Hour Act, as cited above.[4]

Furthermore, Employer's slipshod, erratic management created a chaotic environment in which employees were left to work without set schedules and with no idea what their hourly pay rate was turning out to be after their monthly cash payment was received. This, coupled with the employer's continued promises that wages would improve in the future, created an unsettled work environment that kept Employee guessing as to wages owed to her.

III. Employee's Time Records (Hearing Exhibits 2 or 4) Are Credible and Should Be Used To Compute Unpaid Wages.

Into the vacuum created by Employer's inconsistent and unsettled management, Employee kept track of her own work hours and continued pressing for more compensation. When Mr. Sevugan asked President Zhong to raise Employee's pay, Zhong responded: "Yes! Just wait!" [Testimony of Mr. Sevugan.]

Employer never established a set work schedule for Employee or her co-workers. Workers were told to "organize job by yourself" (Hearing Ex. 9), and were never given paystubs that tied their hours to wages. In this disorganized environment, Respondent's own witness, Ms. Atalig, testified that she kept track of her own work hours to "reassure" herself. Given the confused management, it is uncertain whether Employee's work on the weekend's at Employer's car rental business was complying with, or going against, Employer's directives. In any event, there is no evidence that management ever told Employee to leave the office, stop working, or stop coming to the office on weekends.

The Hearing Officer finds Employee's testimony as to how she kept daily records of her work hours, and the records themselves, are credible. Given Employer's failure to issue paystubs to Employee in violation of the CNMI Minimum Wage

[4] Procedural Note: The Determination did not include a charge against Employer alleging a violation of this statute. At Hearing, Employer objected that its due process rights would be violated if the Hearing Officer imposed a sanction for a charge that had not been filed against it prior to the Hearing. On the final day of testimony (11/30/2016), the Department counsel and Employer's counsel agreed to meet and confer on this issue as to whether the Department would seek to amend its Determination to add the charge. The Department never filed any motion to address this matter after the hearing ended. Based on these facts, the Hearing Officer will not assess any sanction against Employer in this case for its violation of the CNMI Minimum Wage and Hour Act.

and Hour Act, as well as Employer's own discredited time records (see Order at pp. 5-6), the Hearing Officer concludes it is reasonable to rely on Employee's handwritten records to compute the number of hours worked by Employee.

IV. The Investigator's Calculations Correctly Summarize The Wages That Employee Earned and Is Owed.

Investigator Ben Castro testified as to how he used the time entries in Employee's notebook to extrapolate weekly totals of regular and overtime wages earned. The investigator then entered these weekly totals into the summary of wages (Hearing Exhibit 3) that were then included in his Determination (Hearing Exhibit 5). The Hearing Officer has reviewed the investigator's calculations at Hearing Exhibit 3 and finds them to be accurate. Accordingly, these calculated totals are hereby adopted as the correct summary of wages earned and incorporated into this Order. The Hearing Officer notes that there was a minor error made when the investigator transferred totals from Exhibit 3 to Exhibit 5.[5] The correct figure was contained in Exhibit 3 and the Hearing Officer has used that figure to calculate the final award. Furthermore, the Hearing Officer agrees with the investigator's assessment that it is proper to apply the applicable wage rate of $6.05 per hour, which was in effect in the CNMI from October 1, 2015 through September 30, 2016.

V. The Statute of Limitations For Administrative Labor Claims Limits the Period In Which Unpaid Wages May Be Recovered by Employee.

The applicable statute of limitations for labor claims filed in the Administrative Hearing Office is six months. 3 CMC § 4962(b). This means that a claimant must file her labor claim within 180 days of the "last occurring event" that gave rise to the claim. The Hearing Officer holds that Employer's legal obligation to pay minimum wages for work performed constitutes a "continuing" obligation that arises every day the employee works. Thus, even though Employer's non-payment of Employee's wages began in 2015, beyond the statutory period, there is coverage for that part of the claim that took place within 180 days (six months) of the date of filing of the Complaint. As Employee filed her complaint on August 29, 2016, the applicable period runs from **March 3, 2016 until August 29, 2016** (filing date).

[5] The total wages earned in March 2016 read $580.26 in Exhibit 3, but read $943.26 in Exhibit 5. Somehow, the wrong figure was transposed into Exhibit 5. This has been corrected in the next Section.

VI. Employer Owes Unpaid Regular and Overtime Wages To Employee Amounting to a Total of $3,613.72.

Complainant may recover unpaid wages, as limited by the applicable statute of limitations, for the period from March 3, 2016, until Employee stopped work on August 26, 2016. That period is comprised of 25 weeks and 5 days of work; in essence, 26 weeks of wages. The applicable minimum wage for that period was $6.05 per hour; overtime was compensated at 1.5 times the regular rate.

As stated above, the investigator calculated each week of wages earned by the Employee, assessing overtime wages for weeks with more than 40 hours of work. (See Determination at Hearing Exhibit 3.) The Hearing Officer finds these calculations to be accurate (except for the minor error noted in fn. 4). The applicable months within the statute of limitations, are as follows:

Months	Amount	Less Cash Rec'd	Amounts Due
March 2016:	$580.26	$150.00	$430.26
April 2016:	$1,426.29	$300.00	$1,126.29
May 2016:	$1,256.89	$300.00	$956.89
June 2016:	$964.98	$300.00	$664.98
July 2016:	$544.50	$300.00	$244.50
August 2016:	$590.80	$300.00	$290.80
		Total Due	$3,613.72

The wages owed to Employee for the applicable period, minus the amounts that were paid by Employer, total **$3,613.72** in regular and overtime wages,

VII. Employee Shall Be Awarded Liquidated Damages in an Amount Equal To the Unpaid Regular and Overtime Wages: $3,613.72.

The Commonwealth Employment Act of 2007 at 3 CMC § 4947(d)(2) authorizes an award of liquidated damages, amounting to twice the amount of unpaid wages, unless the Hearing Officer finds extenuating circumstances. Based on the evidence presented, the Hearing Officer finds that Employee should be awarded liquidated damages equal to the amount of unpaid wages owed to her, as set forth above. Liquidated damages amount to **$3,613.72**.

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The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the findings above, judgment is hereby entered against Respondent ABO International Corporation and in favor of Complainant Teresita Reyes on her labor claim. Complainant is hereby awarded $3,613.72 in unpaid wages. [3 CMC §§ 4942(a), 4947(d)(1), 4947(d)(11).]

2. **Liquidated Damages:** In addition to the above wage award, Complainant Teresita Reyes shall be awarded liquidated damages in an amount equal to the total wage award ($3,613.72). [3 CMC §§ 4942(a), 4947(d)(2), 4947(d)(11).]

3. **Payment Schedule:** Respondent ABO International Corporation is ORDERED to pay the above-noted amounts (totalling **$7, 227.44**) by cashier's check or postal money order, payable to Teresita Reyes, and delivered to the Administrative Hearing Office no later than **thirty (30) days** after the date of issuance of this Order. 3 CMC § 4947(d)(11).

4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: January 30, 2018

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Patrick C. Togawa, Complainant, v. Imperial Pacific International (CNMI) LLC., *dba* Best Sunshine International Ltd., Respondent.	)	Labor Case No. 16-025 **ADMINISTRATIVE ORDER**

This case was heard on February 28, March 22 and April 24, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Complainant Patrick C. Togawa appeared without counsel. Respondent Imperial Pacific International (CNMI) LLC, *dba* Best Sunshine International Ltd., appeared through its Vice President of Human Resources, Bertha Leon Guerrero, and its legal counsel, Kelley Butcher. Witnesses included Nicolas Blas and Derrick Teregeyo, who testified in support of Complainant; and Eugenio R. Souza and Robert Sutherland, who testified in support of Respondent. The Department of Labor appeared at the Hearing through investigator Ben Castro. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

Background: Complainant Patrick C. Togawa ("Employee") worked for Respondent Imperial Pacific International (CNMI) LLC, *dba* Best Sunshine International Ltd. ("Employer"), in its Security division from June 22, 2015, until August 23, 2016. Employee was hired as a Security Supervisor, then promoted to Security Manager in August 2015. He worked as Security Manager from August 2015, until August 2016. On August 23, 2016, when pressured by the Employer's Vice President of Security to either resign or be terminated, Employee resigned his employment.

Complaint: On October 17, 2016, Employee filed a labor complaint for wrongful termination with the Administrative Hearing Office. In his complaint, Employee alleged that he had been forced to resign from the company by Employer's Vice

President of Security, Eugenio Souza, on August 23, 2016. Employee also complained that he had never been given any type of training for his job. (Employee stated: "Because of lack of training they made me feel like I was not doing my job and the right decisions.") Employee also alleged that supervisor Sutherland constantly used profanity in speaking with him. Employee complained that on his last day of employment Employer had not given him any reason for its decision to force him to either resign or be terminated, other than to say that he continued to "make the same mistake." [A copy of the Complaint was entered into evidence as Hearing Exhibit 2.]

Offer letter: Employee was hired based on an initial offer letter from Employer, dated June 12, 2015, in which Employer wrote that his employment would be "at-will" and could be ended at any time by him or Employer. [A copy of Employer's offer letter was entered into evidence as Hearing Exhibit 2.] Employee accepted the offer by signing the offer letter on June 15, 2015; he began his employment as a Security Supervisor on June 22, 2015. [*Id.* and Testimony of Mr. Togawa.]

Promotion: On August 3, 2015, after about two months of employment, Employee was promoted to the position of Security Manager with an increase in salary from $10 to $15 per hour. He held that position for the remainder of his employment with Employer.

Training re Security Duties: Employee never received any "formal" training (i.e., courses, seminars, group lectures) regarding his positions as Security Supervisor and Security Manager. Employer conducted few, if any, formal meetings with its security staff. On the other hand, Employee's immediate supervisor, Robert Sutherland, provided day-to-day training and commentary in security matters that Employee received during his employment. Mr, Sutherland's training approach was to send to Employee certain memoranda on his duties and responsibilities (see Hearing Exhibits 11, 12, 17, 18) or "Employee Counseling Forms" (see Hearing Exhibits 9, 13, 15) which often noted deficiencies in Employee's job performance. [Testimony of Mr. Sutherland.] The Employee Counseling Forms contained an acknowledgement to be signed by Employee,[1] together with a statement that read: "I understand that corrective action is required on my part and understand that failure to correct my situation may lead to further disciplinary action." [See, e.g., Hearing Exhibit 15.]

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[1] Each form contained the following statement: "I acknowledge that the above information was discussed with me by Security Manager Robert L. Sutherland." (See, e.g., Hearing Exhibit 9.)

Employer's Policy Manual: Employer maintained a written manual, entitled "Employment Policies and Procedures." [A copy of the 58-page manual, entitled Employment Policies and Procedures, IPI-2016-001 (04/14/16), was entered into evidence as Hearing Exhibit 22 (hereinafter, "Manual").[2] The Manual states that "[t]hese policies and procedures are intended to serve as a reference for department heads and employees in defining standards of administration and operations...." [*Id.* at section 1.2 (General Purpose).] According to Employer's Vice President of Human Resources, Ms. Bertha Leon Guerrero, these policies and procedures applied to all employees, including Mr. Togawa and his supervisors. [Testimony of Ms. Guerrero.]

The Manual begins with the statement: "The Company is an 'at-will' employer. Separation from employment can be initiated by either the employer or employee." Types of separation include: resignation, reduction of workforce, elimination of position, termination, disability or death. [*Id.* at section 9.1 (Separation of Employment).]

The Manual lists 27 types of employee conduct (a-z to aa) that may result in disciplinary action, including termination. The only references arguably relevant to his case are: (a) gross misconduct; (r) unsatisfactory work performance or conduct; (u) Loitering or sleeping while on duty; or (y) violation of any gaming rule or regulation, internal rule, or any regulation pertaining to gaming matters. [*Id.* at Section 10.3 (Grounds for Disciplinary Action).]

The Manual supports the use of progressive discipline and states that disciplinary action may call for any of five steps: counseling, verbal warning, written warning, suspension (with or without pay) and termination. The Manual states that "[e]ach incident, depending on its severity and frequency of reoccurrences, will dictate which steps are taken." This Section speaks of a first offense, subsequent offense, repeated offenses – resulting in suspension with or without pay, and "continuing conduct: termination."[3] [*Id.* at Section 10.7 (Progressive Discipline).]

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[2] The Hearing Officer is not using the more common term of "handbook" to describe this publication because the Manual, itself, states that excerpts of these policies and procedures will be placed in an Employee Handbook and that each employee will receive a copy of the Handbook. Obviously, this Manual is not the "handbook" version but a full text of Employer's policies and procedures.

[3] Section 10.7 (Progressive Discipline) also states that "[c]ertain types of employee problems are serious enough to require immediate suspension or termination of the employee (e.g, theft, violence or gross misconduct), without utilizing the progressive disciplinary process. The employee has the option of appealing the decision through the grievance procedure."

The Manual's section on Termination is not a model of clarity. It states: "A *new* employee may be terminated at any time from the company during the *initial probationary period* or the *extended probationary period* when the quality and performance of his or her work does not merit continuation as a Company employee." [Emphasis added.] This section implies that long-term employees – namely, employees that have made it through their probationary period - are entitled to more rights than probationary employees with respect to termination. (Why draw the distinction between new or probationary employees and other employees, if there is no effect to the distinction?) Nevertheless, this distinction is not explained in the Manual. [*Id.* at Section 9.5 (Termination).]

The Manual also establishes an employee grievance process. It states that any regular status employee is eligible to pursue a grievance. although "[w]age disputes [and] performance evaluations…are not eligible for consideration through the grievance process." All grievances must be filed with the Human Resources Department within 7 calendar days of the date of the incident giving rise to the dispute. [*Id.* at section 11.4 (Employee Grievance Process).]

Ms. Bertha Leon Guerrero, V.P. of Employer's Human Resources Department, testified that the heads of all departments are given a copy of the Manual or a company Handbook. Ms. Guerrero was not aware of whether individual employees receive a copy of it. Mr. Souza, head of the Security Department as of about July 2016, testified that he does not distribute copies of the Manual or any Handbook to employees.

Employee testified credibly that he was never shown a copy of the company Manual or any employee handbook. [4] [Whether Employee ever received the Manual does not alter the fact that these policies and procedures applied to him, especially given V.P. Deleon Guerero's testimony that the policies were meant to apply to all supervisors as well as all employees. [Testimony of Ms. Deleon Guerrero.]

Supervisor: For most of his employment, Employee's direct supervisor was Director of Security Robert L. Sutherland. [5] Employee never had a good working

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[4] Employee testified that at the only management meeting he ever attended, he asked his supervisor for a copy of the company Handbook and was told, "just use your common sense." [Testimony of Mr. Togawa.] Mr. Togawa and two co-workers all testified that they never saw a company Handbook.

[5] Mr. Sutherland usually referred to himself as "Security Director" or "Director of Security." [Hearing Exhibits 12, 15, 17 and 18.] At other times, he called himself "Security Manager." [Hearing Exhibit 9.]

relationship with Mr. Sutherland. Employee characterized Mr. Sutherland as a short-tempered man, who made a habit of lacing his speech with profanity. Employee testified that Sutherland kept changing his mind about many company policies and procedures. [Testimony of Mr. Togawa.] As noted above, Mr. Sutherland issued numerous write-ups to Employee complaining about aspects of his job performance (see examples listed in the next section).

Warnings: At Hearing, Employee testified that he could not recall being written up for violations. However, Employer produced numerous documents from its business records that establish that Employee had received many notifications and warnings from Director Sutherland regarding security-related issues. [See memoranda and Employee Counseling Forms at Hearing Exhibits 11, 12, 13, 15, 17 and 18.] For example:

- Hearing Exhibit 9 (issued 12/28/15) documents an incident in which Employee and another worker were cited by management for minimizing a security screen to watch a sporting event;
- Hearing Exhibit 10 (1/10/16) documents a 3-day suspension that Employee received for an unauthorized absence from the company premises;
- Hearing Ex. 11 shows an email from Sutherland to Togawa about his failure to log in a misplaced cellular phone to Lost & Found;
- Hearing Ex. 12 (2/02/16) shows an email from Sutherland to Togawa with a Memo re duties and responsibilities. (signed by Togawa on 2/02/16);
- Hearing Ex. 13 (2/12/2016) shows an Employee Counseling Form which details that while Employee was on shift as Security Shift Manager, two minors gained access to the casino area – a breach of Gaming Commission policies and procedures.
- Hearing Ex. 15 (3/08/16) is an Employee Counseling Form that cites Mr. Togawa for failing to lodge a security badge and notes the necessity of properly documenting company items.
- Hearing Ex. 16 is an undated Employee Counseling Form in which Employee was reprimanded by Bruce Luprete for mishandling an intoxicated security guard.
- Hearing Ex. 17 (5/05/16) is a request for information by Mr. Sutherland, complaining about misplaced time sheets for security personnel.
- Hearing Ex. 18 (6/02/16) is an email from Sutherland in which Sutherland alleges that Togawa incorrectly entered an employee's name in the security system.

Performance Action Plan: In about January 2016, Mr. Sutherland told Employee that he was "failing," and therefore, he needed to be placed into a 3-month "Performance Action Plan" or "PAP." During the next several months, Mr. Sutherland monitored Employee's job performance" while Employee continued to work a regular shift as he completed the requirements of the PAP. In early March 2016, Employee and Sutherland met to discuss areas of performance that Mr. Sutherland believed needed improvement. [Hearing Ex. 14 - memorandum signed by Employee and Sutherland, dated 3/01/2016.] On about April 14, 2016, Employee successfully completed the Performance Action Plan. [Hearing Ex. 15 - copy of summary of a 4-week review ending on 4/04/2016, which notes that Employee successfully completed the PAP on that date. An unnumbered document, signed by Mr. Sutherland and Mr. Togawa on 4/14/2016, states that Mr. Togawa passed the PAP.] Employee testified that in April 2016, Mr. Sutherland came and congratulated him, stating that he had "passed" the PAP. [Testimony of Mr. Togawa and unnumbered document signed by Mr. Sutherland.[6]]

April to August 2016: After successfully completing the PAP in April 2016, Employee continued working as a Security Manager until August 2016. In about July 2016, Employer promoted Eugenio P. Souza to be Vice President of Security, replacing Bruce LaPonte. With this promotion, Mr. Souza became the overall manager over Director of Security Robert Sutherland and the entire Security Department, including Employee. In the weeks leading up to his departure from the company, Employee testified that he does not recall having any negative experiences working with Mr. Souza. [Testimony of Mr. Togawa.] Mr. Souza noted two incidents (see fn. 18), but stated that neither of them led to his decision to give Employee a choice of resignation or termination on August 23, 2016. [Testimony of Mr. Souza.]

Management's Decision to Offer Employee A "Choice:" Mr. Souza testified that he decided in August 2016 that he no longer wanted Employee to work in security for Employer. At hearing, Mr. Souza gave non-specific, somewhat rambling testimony explaining why he decided to force Employee to resign or be

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[6] This document, signed by Employee and Supervisor Robert Sutherland on April 14, 2016, states: "Performance Action Plan satisfactorily completed on: 4/04/2016." The document also stated: "Failure to meet and sustain improved performance may lead to further disciplinary action, up to and including termination. Corrective action may be taken in conjunction with, during, or after the performance plan." The document was received into evidence, but was not numbered as a separate exhibit by the Hearing Officer.

terminated.[7] [See Conclusions of Law at Section IV for further discussion of Mr. Souza's testimony in this regard.]

Resignation/Discharge: On August 23, 2016, while Employee was working a regular shift, he was instructed to meet with V.P. Souza and Mr. Sutherland. Soon after the meeting began, Mr. Souza told Employee that "management" had decided to terminate him, but the company was offering Employee a choice: he could either resign or be terminated. [Testimony of Mr. Souza.] When Employee asked why this was being done, Mr. Souza told him that he was repeatedly making the "same mistake." [Testimony of Mr. Togawa.] Employee did not understand what "mistake" he was being accused of doing; he testified at hearing that he still did not know what mistake had been referred to. [*Id.*] At the end of this meeting, which lasted about 20 to 30 minutes, Employee decided to resign. [See discussion at pp. 9-10 regarding "constructive discharge."]

Resignation papers were then presented to Employee and he signed them. [Testimony of Mr. Souza and Mr. Togawa; Hearing Ex. 19 – a copy of the Personal Action Form reflecting Employee's resignation from the company on August 23, 2016.]

Employee testified that he later considered going to Employer's Human Resources Department and reporting what had happened; but ultimately, he decided instead to file a complaint with the CNMI Department of Labor ("DOL"). Soon thereafter, Employee came to DOL and filed a labor complaint against Employer, alleging wrongful termination. [Letter complaint at Hearing Exhibit 2.]

Money Laundering Allegations Made by Employee: Employee orally amended his complaint at Hearing to add an allegation regarding money laundering. In brief, Employee alleged that in about July 2016, he reported that there was unusual activity occurring at certain gaming tables which, he believed, might constitute illegal "money laundering." Employee reported this to Mr. Souza, who later told him that the Surveillance Department had reviewed videotapes and found no basis for the charge. [Testimony of Mr. Souza.] In his amended allegation, Employee alleges that his act of complaining about money laundering to Employer was the real reason that Employer decided to constructively discharge him on October 23, 2016. [Testimony of Mr. Togawa.]

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[7] Souza testified that sometime in August 2016, he reviewed Employee's file and noted numerous warnings, violations, a suspension, a Performance Action Plan, etc. Souza became convinced that Employee "wasn't taking care of his shift." [Testimony of Mr. Souza.]

Mr. Souza testified credibly that he had passed on Mr. Togawa's allegation to the appropriate authorities, Employer's Surveillance Department, and that Surveillance did not find a basis for the charge. Souza testified credibly that this allegation had nothing to do with his decision to "offer" Employee the choice between resignation and termination. [Testimony of Mr. Souza.]

CONCLUSIONS OF LAW

I. Introduction

The present case involves an at-will employee who was constructively discharged by his Employer for failing to meet some unspecified standard of conduct for security-related employees. Employer asserted various defenses. First, Employer argued that it did not terminate Employee; rather, he resigned voluntarily when given the opportunity to do so. Second, Employer maintained that it had cause to terminate Employee because numerous deficiencies in Employee's performance had been identified over the course of many months. Third, Employer argued that, in any event, Employee was an at-will employee who, as a matter of law, could be terminated with or without cause. Thus, whether or not its decision was correct, was immaterial because Employer could legally terminate Employee without a valid reason.

The Hearing Officer notes that under the law applicable to at-will employment, an employer can terminate an at-will employee, with or without cause, provided that none of the three recognized exceptions applies. *Shiprit, supra.* In this case, however, the Hearing Officer finds that one of the recognized exceptions is applicable. The Hearing Officer holds that Employer's treatment of Employee amounted to a constructive discharge and that this discharge breached the implied covenant of good faith and fair dealing. This decision is based on a finding that in affecting the discharge, Employer's Vice President of Security acted contrary to Employer's policies and procedures as set forth in the company's Manual, as well as the established course of dealing between Employee and the company's management. The Hearing Officer further finds that Complainant is entitled to an award of damages based on Employer's breach of the implied covenant of good faith and fair dealing. Damage calculations are set forth below in Section V. [8]

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[8] Certain issues, which are irrelevant to the main ruling, are not discussed in great detail in this Order. First, Complainant's amended charge regarding money laundering has been dismissed based on the Hearing Officer's acceptance of Mr. Souza's testimony. Second, the allegation that Mr. Sutherland used profane language at the workplace is deemed only marginally relevant as it has no legal effect on the disposition of this case. For the record, the Hearing Officer accepts the truth of Employee's testimony

II. Complainant Was Constructively Discharged by Respondent on August 23, 2016.

One issue in this case is whether, given the facts of this case, Employee's departure from the company constitutes a voluntary resignation or a constructive discharge. In order to prevail on his claim, Employee must first prove that his departure from the company was a constructive discharge and not a voluntary resignation. The facts of Employee's last day at the company are straightforward. While working his shift as Security Manager, Employee was summoned to a room where he was confronted by his two supervisors, Mr. Sutherland and Mr. Souza. The Vice President of Security, Eugenio de Souza, promptly informed Employee that management had decided to give him a choice: either resign immediately or be terminated. According to Employee's credible testimony, Souza did not go into detail about the reasons for this action, except to say "you keep making the same mistake" or words to that effect. (Souza disputes this, stating that he spent about a half hour reviewing Employee's history of warnings and mistakes. Upon viewing the demeanor of the witnesses, the Hearing Officer finds Employee's version of this meeting to be more credible than V.P. Souza's account.)

V.P. Souza admits that on August 23, 2016, he did not give Employee any information regarding any employee rights Mr. Togawa had to contest Employer's decision. The testimonial description of the meeting demonstrates that Employee was pressured to make this important decision with his supervisors watching and he was given the impression by Souza that the decision needed to be made immediately. [Testimony of Messrs. Togawa, Sutherland and Souza.] Under these pressured circumstances, Employee chose to resign and signed a resignation form that was placed in front of him.

Commonwealth law does not specifically address the doctrine of "constructive discharge." Rather, the doctrine has developed largely through the federal courts in cases involving unfair labor practices.[9] These courts hold that a constructive discharge results when "job conditions are so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign."

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regarding Sutherland's use of profane language in the workplace. The Hearing Officer notes that Employee's testimony as to Sutherland's profanity was corroborated by the testimony of Employee's two co-workers. Furthermore, the Hearing Officer rejects Mr. Sutherland's testimony in which he denied using such language, as unreliable. In any case, there was no showing that Sutherland's profanity affected Employee's job performance or led to his discharge; thus, the issue is irrelevant to the wrongful termination charge.

[9] Under 7 CMC § 3401, Commonwealth courts look to the rules of the common law in the absence of written law or local customary law to the contrary.

(Citations omitted.) *Junior v. Texaco. Inc.*, 688 F.2d 377, 379 (5th Cir. 1982); *see also Alicea Rosadou v. Garcia Santiago,* 562 F/2d 114 (1st Cir. 1977); *Irving v. Dubuque Packing Co.*, 689 F.2d 170, 172 (10th Cir. 1982); *Tonry v. Security Experts, Inc.,* 20 F.3d 967 (9th Cir. 1994). The employer's conduct is judged under a "reasonable person" standard as opposed to the subjective view of the complainant. Thus, whether the employer's actions amount to constructive discharge depends upon whether a reasonable person under similar circumstances would have viewed working conditions as so intolerable that the person would have felt compelled to resign. *Id.*

The evidence in this case supports a finding that Employee was constructively discharged. Employee was placed under immediate pressure by his department head, Mr. Souza, to decide whether to leave his employment immediately or await formal termination papers. With two supervisors looking on in these tension filled minutes, with a company Vice President telling Employee that he would be terminated formally if he didn't immediately sign resignation papers, a reasonable person would have felt compelled to sign the papers and leave his employment. Employee did what any reasonable person would have felt *compelled* to do.

Mr. Souza may have believed he was giving Employee a concession in "allowing" him to resign, but the manner in which Employee was confronted, and Souza's ad hoc comments about Employee making the "same mistake," were coercive. The fact that Employee was given no notice that he could contest this decision contributed to the coercive effect of Souza's conduct. In his words and conduct, V.P. Souza was communicating management's decision that Employee needed to leave his employment. Under these circumstances, Employee's "decision" to resign cannot be viewed as truly voluntary.

Based on the evidence presented in this case, the Hearing Officer concludes that Employer's action constituted a constructive discharge of Employee.

III. Complainant Was An At-Will Employee Who Could Be Terminated With Or Without Cause, Unless A Recognized Exception Applied.

Complainant's employment in this case is properly termed "at-will" employment. Under American common law that developed in the late 19th century, employment of unspecified duration that is begun without a written contract is considered "at-will" employment.[10]

[10] "The concept of employment-at-will emerged in the United States as a complement to laissez-faire

The general rule is that an at-will employee may be terminated at any time, with or without cause. However, this rule is subject to certain exceptions. The American common law doctrine of "at-will" employment appears to have been addressed in only one reported decision in the CNMI: *Shiprit v. STS Enterprises, Inc.*, CV99-0490, issued by Judge Lizama on 12/13/99. In that case, the Court analyzed the "at will" doctrine in the context of granting Defendant's Motion to Dismiss the case on procedural grounds. In its analysis, the Court noted that there are three general exceptions to the rule that at-will employees may be terminated at any time, with or without cause:

> First, the **public policy exception** to the at-will doctrine permits an at-will employee to recover for wrongful discharge upon a finding that the employer's conduct undermined an important public policy. Second, an exception based on contract law allows an at-will employee to recover for wrongful discharge upon proof of an **implied-in-fact promise of employment for a specific duration**. Such an implied-in-fact promise can be found in the circumstances surrounding the employment relationship, including assurances of job security in company personnel manuals or memoranda. Third, courts have found an **implied-in-law covenant of good faith and fair dealing** in employment contracts and have held employers liable in both contract and tort for breach of this covenant.

Shiprit [*citing Huey v. Honeywell, Inc.*, 82 F.3d 327. 330-331 (9th Cir. 1996)].

IV. Respondent's Constructive Discharge of Employee Breached The Implied Covenant Of Good Faith And Fair Dealing Between the Parties.

Given that this was at-will employment, Employee's wrongful termination claim must fail unless he proves that he fits one of the exceptions to at-will employment. As noted in *Shiprit, supra,* the only CNMI decision to address the matter, courts have found that there are three exceptions to the general rule that the employer may terminate an at-will employee for any reason, with or without cause. These potential exceptions are: (1) termination in violation of a fundamental public policy, (2) termination as a breach of an implied-in-fact promise of continued employment, or (3) termination as a breach of the implied covenant of good faith and fair dealing.

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capitalism. By the late 1880's, at-will had replaced the traditional presumption…with the individualist conception that indefinite hirings are terminable at the discretion of either party [citations omitted]." James J. Brudney, *Reluctance and Remorse: The Covenant of Good Faith and Fair Dealing In American Employment Law*, 32 Comp. Lab. L. and Policy J. 774-775 2010-2011 [hereinafter Brudney, *Reluctance*.]

As to the first exception, the evidence did not establish that any public policy issue was involved in this discharge. The case does not present any important public policy concerns.[11] Employee was discharged based on a Vice President's conclusion that Employee's job performance was below standard. That issue does not involve important public policy concerns; therefore, the first exception is inapplicable.

The second exception – an implied-in-fact promise of continued employment – tends to arise in terminations of long-term employees with reasonable expectations of lifetime or continuing jobs.[12] In this case, the duration of employment – 14 months - was relatively short. The issue of an implied promise of continued employment was never fully addressed, let alone proven, and no special relationship of trust or promise of continued employment was ever alleged, let alone proven. Accordingly, the second exception does not apply in this case.

The Hearing Officer finds that the third exception – violation of the implied covenant of good faith and fair dealing – is applicable to the current case.

It appears that a majority of states have declined to find that a covenant of good faith and fair dealing applies to at-will employment.[13] Nevertheless, a minority of state courts have applied the covenant to at-will employment. Those cases have involved two or three specific scenarios. First, the covenant has been applied where the termination of an at-will employee was done in bad faith to deprive the employee of some added or collateral benefit of the employment such as accrued leave[14] or earned sales commissions,[15] or to prevent the vesting of retirement benefits.[16] In other cases, the covenant has been applied where the termination of

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[11] Although Employee did add a contention that he had been terminated for reporting suspected money laundering at the casino tables, which might raise a public policy issue, the Hearing Officer concluded that the allegation had not been proven.

[12] See *Schoen v. Amerco, Inc.*, 896 P.2d 469,475-6 (Nev. 1995); see also *Wilder v. Cody Co. Chamber of Commerce*, 868 P.2d 211, 220-21 (Wyo. 1995) (recognizing a tort claim for breach of the covenant).

[13] See Brudney, *Reluctance, supra* note 8, at 774-775: "A mere handful of jurisdictions, about 10 states, have accepted the covenant of good faith and fair dealing in at-will situations. See Clyde W. Summers, Kenneth G. Dau-Schmidt and Alan Hyde, *Legal Rights and Interests in the Workplace: Statutory Supplement and Materials* 193-200 (reporting that 9 or 10 states accept covenant in employment-at-will settings and 29 of 50 states have declined to adopt the covenant in the employment context)."

[14] *See Metcalf v. Intermountain Gas Co.*, 778 P.2d 744 (Idaho 1989).

[15] *See Fortune v. National Cash Register Co.*, 364 N.E.2d 1251 (Mass 1976).

[16] *See* Brudney, *Reluctance and Remorse, supra* note 8, at 773:

an at-will employee involves misrepresentations made by the employer to induce the employee to enter into the employment in the first place.[17]

Commonwealth courts have not addressed whether they would adopt the above-cited majority view, or the minority view and hold that the implied covenant of good faith and fair dealing applies to the at-will employment in this case.

This Hearing Officer hereby adopts the view that the implied covenant of good faith and fair dealing applies to this at-will employment. Furthermore, the Hearing Officer finds that the present facts state a cause of action for breach of the implied covenant.

Unlike many "at will" employment situations, this employment was subject to a printed list of company policies and procedures that established standards to be followed by supervisors as well as employees. [See Employer's "Manual" of Employment Policies and Procedures, entered into evidence at Hearing Exhibit 22.] Employer's Manual, which applied to all employees, sets forth procedures to ensure that discipline is meted out fairly. Although specific steps are not mandated, the Manual affirms the principle of progressive discipline. As set forth in the Manual, only the most grievous employee offenses (theft, violent behavior, etc.) are said to justify immediate dismissal. Yet, in this case, Employee was subjected to immediate discharge for vague and unspecified reasons that do not constitute grievous offenses. It is noteworthy that the company Vice President who made the decision to terminate Employee, Mr. Souza, could not identify even one specific event or activity that led to his decision to pressure Employee to leave his employment. [Testimony of Mr. Souza.]

In addition, the discharge violated the established course of dealing between Employee and his former supervisors over the course of 14 months. During his employment, Employee received one promotion, then one short suspension; then he was required to pass management's Performance Action Plan, which contained certain benchmarks for acceptable job performance set by the Employer. When Employee passed the PAP in April 2016, this appeared to establish Employee as a non-probationary employee. [The Manual seems to make a distinction between a probationary and non-probationary employee, but never explains the effect of

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[17] *See Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 98-99 (Del. 1992). In that case, the Deleware Supreme Court applied the covenant to an employee's claim that his employer had induced him to accept an indefinite-term job offer while secretly intending to keep him on only temporarily until a suitable permanent candidate was hired.

working beyond probation. See, e.g., Hearing Exhibit 22 at section 9.5 (Termination).] Employee never received any formal performance review, but he had sensed tension with his immediate supervisor, Robert Sutherland. However, after he passed the PAP, which Mr. Sutherland had insisted upon, and was congratulated by Sutherland, Employee had reason to think that his job was not in jeopardy. But Employee's situation changed suddenly with the arrival of a new supervisor, V.P. Souza.

Employer's Decision To Discharge Employee Was Made In An Arbitrary And Capricious Manner.

Employer's decision to separate Employee from the company was made and carried out by one person – Employer's Vice President of Security, Eugenio de Souza. Mr. Souza moved to Saipan to supervise Employer's casino operations in July 2016. Souza had only been in his position in Saipan for only about eight weeks when he decided he wanted Employee to leave his employment, either voluntarily or via termination. [Testimony of Mr. Souza.]

Instead of initiating formal termination procedures against Employee via the Human Resources Department, Mr. Souza "discussed" his plan with an official of the HR Department and one senior Vice President. [*Id.*] He then called Employee into a room during a regular day shift and confronted him with a stark decision – resign or be terminated - that Souza expected to be made promptly by Employee.

Mr. Souza's testimony at Hearing demonstrated the vague, *ad hoc* nature of his decision to pressure Employee to leave his employment. When asked to explain what led to his decision regarding Employee, Souza could not give one specific reason for his decision, other than his overall sense that Employee had had numerous past write-ups for deficient performance. Souza's own interaction with Employee during his 8-week tenure as Vice President of Security was routine, except for two instances;[18] but Souza noted that neither of these instances had entered into his decision to require Employee to resign (i.e., resign or be terminated). In his final meeting with Employee, Souza had simply stated that you're making the "same mistake", or words to that effect. He did not explain which "mistake" was being referenced. [Testimony of Mr. Togawa.]

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[18] First, Employee had asked to replace the earpiece of a portable radio; yet, when Souza checked it out, the earpiece was not defective. Second, Employee called the police when two employees were arguing on company property. Souza thought this was an overreaction and told Employee so. In his testimony, however, Souza noted that neither incident had been placed in Employee's personnel file and neither incident formed the basis of his decision to effectively discharge Employee on August 23, 2016.

Director Sutherland, Employee's direct supervisor for many months, had little or no input into the decision to require Employee to leave his employment. Evidently, Sutherland had no advance knowledge of the decision. Mr. Sutherland testified that it was not his decision to terminate Employee, though he opined that it would have been justified. [Testimony of Mr. Sutherland.]

Based on the terms of the Employer's Manual, as well as the established course of dealing between management and Employee over the course of 14 months, Employee should have been given notice of what conduct was deficient and an opportunity to improve. In fact, it appears that nothing changed in Employee's job performance between April 2016, when he passed the PAP, and August 2016, when he was discharged. As stated, Souza testified that he could only recall two incidences involving Employee that he observed, and with respect to both, Souza admitted that these matters did not form the basis of his decision to ask for Employee's resignation. Nothing in the hearing record suggests that Mr. Souza considered Employee's positive result on the PAP in April 2016, or considered issuing to him a discipline less drastic than discharge.

Based on the prior course of conduct and the Employer's stated Policies and Procedures, Employee had the right to expect more equitable treatment than being suddenly and summarily "separated" from his job. Yet, that is what occurred.

Management's conduct in this case was random, secretive, disjointed and unfair. Such conduct supports the conclusion that the Employer breached the implied covenant of good faith and fair dealing that is held to attach to employment agreements. It is undisputed that this employment, although at-will, was subject to the policies and procedures as set forth in the Employer's Manual. [Testimony of Ms. Deleon Guerrero.] Those procedures call for measured action, progressive discipline and procedural due process within the company. This decision, concocted by Vice President Souza without any formal review by Employer's HR Department, was the opposite of measured action. On the contrary, it was an arbitrary act, coercive in nature and not grounded in any grievous employee misconduct. Although Employee is not entitled to indefinite employment, the Employer shall be ordered to pay damages for its unfair treatment of this employee in coercively and summarily discharging him without reason from the company.

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V. Employer Should Pay Damages to Employee For Its Breach Of The Implied Covenant Of Good Faith And Fair Dealing.

Given that this was at-will employment, Employee had no guaranteed right to continued employment; thus, Employee cannot be awarded full expectation damages such as would be available for breach of a written employment contract of a definite term. On the other hand, the manner in which Employee was constructively discharged on August 23, 2016, was wrongful in terms of the Employer's established policies of progressive discipline, as set forth in its Manual as well as the course of dealing between the parties. Employee should be awarded an equitable amount to compensate for Employer's violation of its own policies.

In assessing an equitable measure of damages for breach of the implied covenant of good faith and fair dealing, we can look to the course of dealings between the parties. When management questioned Employee's fitness for his position in early 2016, it imposed a 3-month Performance Action Plan from January until April. The Hearing Officer finds that this 3-month period of assessment is a fair measure of damages for breach of the implied covenant in this case. Employee should be compensated the salary that he would have earned had he been placed on another 3-month review by Employer. Damages shall be awarded equal to Employee's salary for a full 3-months (13 weeks) of employment at his last rate of pay for a total of $7,800.00 ($15 per hour x 40 hours = $600/week x 13 = $7,800.00).

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered in favor of Complainant Patrick C. Togawa on his claim against Respondent Imperial Pacific International (CNMI) LLC, based on a finding that Respondent breached the implied covenant of good faith and fair dealing in connection with its constructive discharge of Complainant on August 23, 2016. In order to compensate Complainant for the breach, Complainant shall be awarded damages as set forth below. 3 CMC § 4947(d)(11).

2. **Damages:** In order to compensate Complainant for Respondent's breach of the implied covenant of good faith and fair dealing, Complainant is hereby awarded the equivalent of three months' wages, in the amount of seven thousand, eight hundred dollars ($7,800). Respondent Imperial Pacific International (CNMI) LLC is ORDERED to pay the full amount of damages to Complainant no later than thirty (30) days after the date of issuance of this Order. Payment shall be made by delivering a company check, made payable to Complainant, to the Hearing Office

no later than the due date. 3 CMC § 4947(d)(11).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC § 4948(a).

ISSUED: December 28, 2018

/s/

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
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February 6, 2019

Kelley M. Butcher
Vice-President – Legal / HR Adviser
Imperial Pacific International (CNMI), LLC
PMB 918, Box 10000
Saipan, MP 96950

Re: Motion to Extend Time for Appeal

Dear Ms. Butcher,

On January 16, 2019, the Department of Labor (hereinafter "DOL") received a Motion to Extend Time For Appeal with respect to *Togawa v. Imperial Pacific International (CNMI) LLC dba Best Sunshine International*, Labor Case No. 16-025.

In this matter, a final Administrative Order was issued December 28, 2018. The order was served onto Respondent via email on December 31, 2018. After the deadline to file an appeal passed, Respondent seeks additional time. In considering Respondent's Motion, DOL has considered two issues. First, whether Respondent was properly served with the Administrative Order. Second, whether Respondent's Motion demonstrates good cause for an extension.

With regards to the first issue, DOL finds that Respondent was properly served. The administrative code outlines methods of service under NMIAC § 80-20.1-475. Thereunder, "[n]otice may be given by telephone or electronic mail as the Administrative Office determines appropriate." NMIAC § 80.20.1-475(d)(4). In this matter, the Administrative Hearing Office ("AHO") staff served Respondent via email to Attorney Kelley Butcher and IPI employee Debra Camacho on December 31, 2018. Ms. Camacho acknowledged receipt of the order the same day. DOL finds this means of service appropriate as previous emails and correspondence between AHO and Respondent indicates that Ms. Camacho has been involved in the administrative action and has received service in the past, without objection by counsel. Further, there is no question that Respondent was on notice of the Final Administrative Order, which plainly and clearly stated the deadline for filing an appeal.

With regards to the second issue, DOL finds that Respondent failed to establish good cause for an extension. Pursuant to the regulations, "[a]ppeals of an administrative denial must be filed with the Administrative Hearing Office within fifteen days of the date of the denial unless good

cause is shown . . . . A notice of appeal to the Secretary must be filed within fifteen days of issuance of the order by a hearing officer." NMIAC § 80-20.1-620. In computing the period of time, "the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or non-work day observed by the Commonwealth government, in which case the time period includes the next business day. When a prescribed period of time is seven days or less, Saturdays, Sundays, and non-work days shall be excluded from the computation." NMIAC § 80-20.1-605. Further, "[t]he date on which the order was signed is the date the order was issued or entered." NMIAC § 80-20.1-485(h).

With regards to this matter, the Administrative Order was dated and issued December 28, 2018. The 15-day deadline for filing an appeal was Saturday, January 12, 2019—which extended to Monday, January 14, 2019. The Administrative Hearing Office was open and operating on said date. Respondent's request for an extension was made two days after the deadline, on January 16, 2019. As of this date, an appeal in this matter has not been filed with DOL.

Instead of filing the appeal, IPI moved to extend the time for filing an appeal. In support of the request, counsel stated she was off-island from December 17, 2018 through January 7, 2019 and did not have email access to the email provided to the Hearing Office. Counsel received a copy of the Order January 8, 2019—despite the Order being previously served via email on December 31, 2018, pursuant to NMIAC § 80.20.1-475(d)(4). Counsel further states that she emailed and visited the Hearing Office for information on the timeline process but the response was non-responsive. Lastly, the motion states that additional time is needed for transcription and certification of the record.

Respondent's Motion is denied for lack of good cause. First, counsel's off-island trip does not excuse deadlines and obligations on-island. Second, counsel had the opportunity to file a request for an extension prior to the deadline when she returned on island and received the order on Tuesday, January 8, 2019. Third, the statement that the Hearing Office was non-responsive is meritless because, as shown above, the regulations clearly define date of issuance as the date the order was signed. Further, it is important to note that the Hearing Officer and staff must maintain impartiality and is prohibited from engaging in ex-parte communications or providing legal advice. It is also important to note that the rules and regulations were available to counsel online at cnmilaw.org and marianaslabor.net. And fourth, the time to transcribe and certify is irrelevant to the request to extend the time for filing an appeal because the time for appeal and time to prepare for the hearing are wholly separate matters.

Accordingly, pursuant to my authority as the Secretary for the Department of Labor, it is hereby **ORDERED** that Respondent's Motion to Extend Time for Appeal is hereby denied.

Sincerely,

VICKY BENAVENTE
Secretary of Labor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

In the Matter of:	)	**Labor Case No. 16-025**
Patrick C. Togawa,	)	
Complainant,	)	**ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION**
v.	)	
Imperial Pacific International (CNMI) LLC dba Best Sunshine International Ltd.,	)	
Respondent.	)	

I. INTRODUCTION

On March 5, 2019, Respondent, by and through its counsel, Attorney Kelley Butcher, filed a Motion for Reconsideration of the Secretary of Labor's Order Denying Respondent's Motion to Extend Time for Appeal. For the reasons discussed below, Respondent's Motion for Reconsideration is hereby **DENIED**.

II. BACKGROUND

This matter concerns a claim for wrongful termination by Complainant Patrick C. Togawa (hereinafter, "Complainant") against Respondent Imperial Pacific International (CNMI) LLC *dba* Best Sunshine International Ltd. (hereinafter, "Respondent"). Complainant was hired by Respondent as a Security Supervisor on June 22, 2015, promoted to Security Manager in August of 2015, then ultimately resigned from his position on August 23, 2016. On October 17, 2016, Complainant filed a labor complaint

alleging, in part, he was never given any training, subjected to offensive profanity by his supervisor, and forced to resign from his position when threatened with termination.

The matter was scheduled for an Administrative Hearing over a span of three dates, February 28, 2017, March 22, 2017, and April 24, 2017. On December 28, 2018, the Hearing Officer issued an Administrative Order entering judgement in favor of Complainant and awarding damages in the amount of $7,800. The last page of the Administrative Order stated: "Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC § 4948(a)." Complainant was personally served on December 31, 2018. Respondent was served through Alternative Service pursuant to NMIAC § 80-20.1-475(d)(4).[1] Specifically, on December 31, 2018, the Administrative Hearing Office emailed a copy of the Administrative Order to Respondent through its Attorney Kelley Butcher and Investigator Debra Camacho.[2] Approximately one hour late, Investigator Camacho, on behalf of Respondent, responded to the email and acknowledged receipt of the Administrative Order. As of the date of this Order, an appeal was never filed.

On January 16, 2019, Respondent, by and through its attorney, filed a Motion to Extend Time for Appeal at the Office of the Secretary. The motion was not supported by any legal authority. Respondent's Motion set forth the following:

1. Counsel was off-island from December 17, 2018 through January 7, 2019 and did not have access to her work email address because the password expired.
2. Counsel received the Administrative Order only after she returned on island on January 8, 2019.

[1] "Notice may be given by telephone or electronic mail as the Administrative Hearing Office determines appropriate." NMIAC § 80-20.1-475(d)(4).

[2] The Administrative Hearing Office found that alternative service was appropriate due to previous practices with Respondent. Further, the Administrative Hearing Office found that service onto Investigator Debra Camacho was appropriate due to verbal instruction from Respondent to include Ms. Camacho in communications.

3. In an email sent on January 8, 2019, Counsel stated that Respondent intended to file an appeal but needed advice on the timeline for filing;
4. A response to her email inquiry was not provided;
5. On January 15, 2019, counsel went to the Hearing Office to with questions regarding Appeal process, the timelines for submission and to request a transcript of the hearings;
6. The response from the administrative staff did not indicate whether an extension would be given or not;
7. No information was given on the form or filing fee for Appeal;
8. No information was given as to the Petitioner's information for service of process;
9. Respondent needs until February 8, 2019 for filing the Appeal so that the transcript of three separate hearing dates may be transcribed and certified.

On February 6, 2019, the Secretary of Labor issued an Order Denying Respondent's Motion to Extend Time for Appeal. Therein, the Secretary of Labor found that: (1) Respondent was properly served under the applicable regulations; (2) the fifteen day deadline for filing an appeal under 3 CMC § 4948 and NMIAC § 80-20.1-620(b) had passed; and (3) good cause or any other basis for extension did not warrant an extension. The undersigned Secretary also noted that administrative staff cannot provide legal advice and the Hearing Officer cannot engage in ex parte communications. The proper course of action would have been to refer to the applicable law and file a notice of appeal form within the necessary time frame. The notice appeal form is a simple one page form available on the Department's website, as stated in the regulations, and does not require transcription.

On March 5, 2019, Respondent filed the present Motion for Reconsideration. Respondent filed a Declaration of Service on March 12, 2019. Complainant did not file a response in opposition. A hearing for oral arguments for the present motion was not requested.

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III. LEGAL STANDARD

Generally, motions and requests are governed by NMIAC § 80-20.1-470 (e). Thereunder,

> [a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e).[3] Moreover, a motion for reconsideration is governed by NMIAC § 80-20.1-485(i). Thereunder,

> [a] motion for reconsideration may be granted for mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence which, by due diligence, could not have been discovered in time to move in evidence at the hearing; fraud, misrepresentation, or misconduct of an adverse party; the judgment is void, has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed; or other reason justifying relief. A party may file a motion for reconsideration within fifteen days after service of an order. A response may be filed no later than five days after the filing of the motion. After a decision on a motion for reconsideration is signed, no further motions or filings may be made with the Administrative Hearing Office other than a notice of appeal.

NMIAC § 80-20.1-485(i).

IV. ANALYSIS

[3] When exercising jurisdiction over appeals, the Secretary shall have all the powers and responsibilities of a hearing officer. 3 CMC § 4528(g); *see also* NMIAC § 80-20.1-490(d).

As stated above, a motion of reconsideration is appropriate in cases of "mistake, inadvertence, surprise, or excusable neglect . . . newly discovered evidence . . . fraud, misrepresentation, or misconduct of an adverse party . . . the judgment is void . . . or other reason justifying relief." NMIAC § 80-20.1-485(i). While Respondent's Motion for Reconsideration does not clearly delineate the basis for reconsideration, Respondent's motion argues: (1) the Administrative Order is not effective for failure to publish in the Commonwealth Register, in compliance with the Administrative Procedures Act; (2) the Secretary may hear an appeal for up to 6 months from the date of denial; (3) timeliness shall not be grounds for refusal to accept the papers for a complaint or appeal; and (4) Respondent set forth sufficient good cause for filing and equitable tolling doctrines should apply. For the reasons set forth below, the undersigned Secretary of Labor finds that Respondent has failed to meet its burden in moving to reconsider the Order Denying Respondent's Motion to Extend Time for Appeal.

1. The Motion for Reconsideration is untimely.

As stated above, "[a] party may file a motion for reconsideration within fifteen days after service of an order." NMIAC § 80-20.1-485(i). Here, Respondent is filing for reconsideration of the Order Denying Respondent's Motion to Extend Time for Appeal, issued on February 6, 2019. Respondent was served with the Order Denying Respondent's Motion to Extend Time for Appeal on the same day. Respondent's Motion for Reconsideration, however, was filed approximately one month later, March 5, 2019. Having exceeded the fifteen day deadline under NMIAC § 80-20.1-485(i), Respondent's Motion for Reconsideration is untimely.

2. Respondent was duly served thus had actual knowledge of the Order.

Respondent argues that the agency's regulations as to appeal deadlines cannot supersede the Administrative Procedures Act ("the APA") requiring publication in the Commonwealth Register. Respondent's argument is not persuasive as Respondent had

actual knowledge of the Order and the cited statute and regulations can be read harmoniously.[4]

Generally, with respect to publication, the APA provides, in part, that no agency rule, order, or decision is valid or effective against any person or party unless it has been published in the Commonwealth Register. 1 CMC § 9102(d). The APA further states that the above-mentioned provision "is not applicable in favor of any person or party who has ***actual knowledge*** thereof." *Id* (emphasis added).

First, the Administrative Order is effective onto Respondent as Respondent was duly served and had actual knowledge of the Administrative Order. As discussed above, the Administrative Hearing Office served Respondent via alternative service pursuant to NMIAC § 80-20.1-475(d)(4). Thereunder, "[n]otice may be given by telephone or electronic mail as the Administrative Hearing Office determines appropriate." NMIAC § 80-20.1-475(d)(4). On December 31, 2018, the Administrative Hearing Office served Respondent, by and through its Attorney Kelley Butcher and Investigator Debra Camacho. The fact that Respondent's attorney was not able to access her email address due to password issues does not equate to ineffective service on behalf of the Department.[5] Further, it is clear that service was effective because Investigator Debra Camacho acknowledged receipt of the email approximately one hour after service. Accordingly, Respondent had actual knowledge of the Order.

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[4] It is a basic canon of statutory interpretation that all parts of an enactment should be harmonized with each other as well as with the general intent of the whole enactment, with meaning and effect given to all provisions. *Deleon Guerrero v. Dep't Publ. Lands*. 2011 MP 3 ¶ 11. When construing statutes, rules or regulations, the court will use the plain meaning of words. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 22. Courts generally do not disregard words or phrases when construing statutes or administrative regulations. *Id.* at ¶ 23. When one interpretation of a statute or regulation obviously could have been conveyed more clearly with different phrasing, the fact that the authors avoided that phrasing suggests, all other things being equal, that they in fact intended a different interpretation. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 24.

[5] "Employers and employees are responsible for keeping contact information in the Department's records up to date and accurate." NMIAC § 80-20.1-475(c).

Second, the undersigned Secretary finds that Respondent confuses publication of orders with the issuance and service of orders. Here, the Administrative Order was issued on December 28, 2018 pursuant to 1 CMC § 9110[6] The Administrative Order was subsequently served on December 31, 2018 pursuant to NMIAC § 80-20.1-475(d)(4). Seemingly, Respondent contests the Department's regulatory definition of the term "issuance," allowable methods of service, and deadlines to appeal. While 3 CMC § 4945 uses discretionary language regarding service of process for a notice of a proceeding, there is no provision in the Administrative Procedures Act that prohibits, preempts, or restricts the Department's ability to promulgate regulations regarding the definition of "issuance," allowable methods of service, or deadlines to appeal. Further, the deadline to file an appeal to the Secretary is governed by statute and mirrored in the regulations. *See* 3 CMC § 4948; *see also* NMIAC § 80-20.1-620(b). In consideration of above, the Department's regulations do not supersede the APA.

3. The fifteen day deadline to file an appeal has passed.

The deadline to appeal is established by statute and mirrored in the Department's regulations. *Compare* 3 CMC § 4948 and NMIAC § 80-20.1-620(b). Certainly, the statute is controlling. The statute provides,

> ***[w]ithin fifteen days of issuance***, any person or party affected by findings decisions, or orders made pursuant to 3 CMC § 4947 of this chapter may appeal to the Secretary by filing a written notice of appeal, in a form prescribed by regulations, stating the ground for the appeal. ***If no appeal is made to the Secretary within fifteen days, the findings, decisions, or orders shall be unreviewable administratively or judicially.***

[6] Any ambiguity in the term "issued" may be resolved in the regulations. *See Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992) (Ambiguity in statute permitting appeal of coastal resources management regulatory agency decision to Coastal Resources Management Office Appeals Board concerning commencement of thirty-day filing period was resolved by agency regulation interpreting period to run from date of issuance of decision); *see also* NMIAC § 80-20.1-485(h) ("The hearing officer shall sign and enter the date on which an order was signed. The date on which the order was signed is the date the order was issued or entered."). As defined by the Department's regulations, the Administrative Order was issued on December 28, 2018.

3 CMC § 4948(a) (emphasis added).[7] As shown above, the fifteen day deadline in the statute is firm. Further, the good cause exception in the regulations related to denial cases, not labor cases, such as the present matter. *Compare* NMIAC § 80-20.1-620(a) and NMIAC § 80-20.1-620(b).

Contrary to the arguments made in Respondent's Motion to Extend Time for Appeal, it is not the Administrative Hearing Office's responsibility to advise attorneys or parties of appeal deadlines and processes. Notwithstanding above, Respondent had notice and knowledge of the deadline because: (1) the applicable statute and regulations were published and available on cnmilaw.org and marianaslabor.net; (2) the Administrative Order specifically stated the deadline and cited the applicable statute;[8] and (3) in response to Respondent's inquiry, the notice of appeal form, filing fee and filing location were itemized in an email communication between Administrative Hearing Office staff and Respondent. Given above, failure to file a notice of appeal within the applicable time frame was inexcusable.

While Respondent argues that timeliness shall not be grounds for refusal to accept papers for a complaint or appeal, the undersigned Secretary reminds Respondent that an appeal was never actually filed nor an appeal fee ever paid. Instead, Respondent filed a Motion to Extend Time for Appeal, which was denied, and now the present Motion for Reconsideration. Further, while the undersigned Secretary recognizes that timeliness is not sufficient basis to reject the filing of papers, timeliness of the filing will always present an issue in deciding an appeal. To be clear, as of the date of this Order, Respondent has not

[7] The time limit for filing an intra-agency appeal is mandatory and jurisdictional. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court lacks jurisdiction to review administrative decisions not timely appealed during the administrative process. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14.

[8] The last page of the Administrative Order states: "3. **Appeal**: Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within fifteen (15) days of the date of issuance of this Order. 3 CMC § 4948(a). ISSUED: December 28, 2018."

filed a notice to appeal, appeal brief, or filing fee for an appeal. Further, any subsequent appeal would be deemed untimely.

4. The equitable tolling doctrine does not apply.

The undersigned Secretary wholly rejects Respondent's argument as to equitable tolling because Respondent fails to show that equitable tolling is available or applicable in this circumstance. Significantly, Respondent cites to *Marianas Insurance Co., Ltd. v. CPA*, 2007 MP 24, to argue that the equitable tolling doctrine should be applied to the appeal deadline. That argument, however, is unpersuasive as the case discusses tolling of the statute of limitations in filing a complaint. This matter is distinguishable as Respondent is seeking an extension in the deadline in filing an appeal, and the subsequent reconsideration thereof. Respondent cites no other legal authority to support the argument that the equitable tolling doctrine, as applied to statutes of limitations for filing a complaint, should be extended or enlarged to apply to the deadline in filing an appeal.

Moreover, the undersigned Secretary finds that *Marianas Insurance Co. v. CPA* cuts against Respondent's argument to reconsider and extension of a firm appeal deadline. Thereunder, when exhausting administrative remedies, claimants must comply with an agency's deadlines and other critical procedural rules. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 14. It is emphatically clear that Respondent's Motion to Extend Time for an Appeal and subsequent Motion for Reconsideration is an attempt to circumvent the agency's deadlines and other critical procedural rules. Further, the Commonwealth Supreme Court has already determined that deadlines to file an appeal are not matters which should be taken lightly.[9] The undersigned Secretary concurs with the importance and significance of such deadlines.

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[9] If an attorney fails to comply with appellate filing deadlines, such conduct is prejudicial to the administration of justice. *In the Matter of Roy*, 2007 MP 28 ¶ 11.

V. CONCLUSION

For the reasons set forth above, Respondent's Motion for Reconsideration is hereby **DENIED**.

So ordered this 23 day of April, 2019.

VICKY BENAVENTE
Secretary of Labor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: 3K Corporation, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	**D.C. No. 15-001** **ADMINISTRATIVE ORDER**

This appeal came on for hearing on May 1 and 6, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant 3K Corporation ("Employer"), was represented by its President, Paul S. Khang,, and its accounting clerk, Charmaine Joy Roquelara. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa and Yvonne Taisacan. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on January 5, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1. A copy of Employer's appeal letter was entered into evidence as Hearing Exhibit 2.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, listing five grounds:

1. Employer did not meet the requisite 30% Workforce Participation level mandated by the Department's Employment Rules and Regulations ("Regs.") at § 80-30.2-120(c);
2. Employer failed to post job vacancy announcements on the Department's website (Regs. at § 80-30.3-205);

3. Employer failed to submit timely, business gross receipts tax returns for the 1st, 2nd and 3rd quarters of 2014 (Regs. at § 80-60.2-105);
4. Employer failed to submit timely, quarterly Total Workforce Listing documents for the 1st, 2nd and 3rd quarters of 2014 (*id.*);
5. Employer failed to submit a Workforce Plan for 2013 and 2014 (Regs. at § 80-60.2-210).

Failure to Meet 30% Workforce Participation Threshhold: Employers' Total Workforce Listings for 2014 (Hearing Exhibit 4) show that for part of 2014, Employer had a workforce of 7 full-time employees: two U.S. and five CW-1 employees. As of April 2015, Employer employed six people: one U.S. citizen and 5 CW-1 status employees. This amounts to a Workforce Participation percentage much lower than the 30% threshold mandated by statute and regulation. [3 CMC § 4525 and Regs. at § 80-30.2-120(c).]

During 2014, Employer hired several local employees who had been referred by the Job Placement Section, but in each case, the individual stopped working within days of his start date. [Testimony of Ms. Roquelara and Mr. Khang; Appeal letter (Hearing Exhibit 2) at ¶ 1; testimony of Ms. Taisacan.] The Job Placement Section acknowledged in the Hearing that Employer has been making good faith efforts to hire those local workers referred by the Placement Section. *Id.*

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at § 80-30.3-205. This employer was named in an Agency Case (CAC No. 14-001-01) heard by this Hearing Officer in April 2014. In the Administrative Order issued in that case, this Hearing Officer stated:

> Respondent 3 K Corporation is WARNED that it has a continuing obligation to employ U.S. citizen workers and permanent residents when they are qualified and available to perform jobs offered by Respondent. **Respondent's efforts should include posting all job vacancies and job renewals on the Department's website** (www.marianaslabor.net) in accordance with Regulations at s 80-30.3-205.

[Admin. Order issued by J.Cody on 4/15/2014, at p. 4, ¶ 2 (emphasis added).]

At Hearing, Employer's accountant testified that when Employer prepared the CW-1 Petition to renew two of its employees (Mr. Coper and Ms. Li) in about September 2014, Employer did not post JVAs on DOL's website, as it had been

ordered to do. Instead, it ran an advertisement on the radio. At Hearing, President Khang explained his failure to follow the prior Order by stating that when he received Order, *he did not read it*. The Hearing Officer finds this excuse to be entirely unacceptable. Employers are held to have constructive notice of the content of the Administrative Orders served on them. Needless to say, employers who are issued Administrative Orders need to read the orders. Period.

Failure to Submit Business Gross Receipts Tax Returns: Employer did not submit Business Gross Receipts Tax ("BGRT") Returns every quarter for the 1st, 2nd and 3rd quarters of 2014. After it received the Denial, Employer filed nine monthly BGRT returns Total Workforce Listing documents for these quarters along with its appeal letter. [Employer's Appeal Letter at Hearing Exhibit 2; BGRT documents were entered into evidence at Hearing Exhibit 3.]

Employer's accounting clerk, Ms. Roquelara, testified that she had been under the mistaken impression that these documents were only required to be submitted once each year when the Employer is applying for the Certification of Good Standing. In fact, the Regulation requires each Employer to submit these documents on a quarterly basis. [Regs. at § 80-60.2-105.]

Failure to Submit Quarterly Total Workforce Listings: DOL Regulations require all employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at § 80-60.2-105. This information is submitted in a documents called the Quarterly Compliance Report and Total Workforce Listing, both signed under the penalty of perjury. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer did not submit its quarterly Total Workforce Listings for the 1st, 2nd and 3rd quarters of 2014 on a quarterly basis. Employer submitted the documents along with its appeal letter (Hearing Ex. 2). [Employer's Total Workforce Listings for three quarters of 2014 were entered into evidence as Hearing Exhibit 4.] Again, Employer had been under the mistaken impression that these documents were only due once a year, rather than quarterly. [Testimony of Ms. Roquelara.]

Workforce Plans for 2013 and 2014: Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at § 80-60.2-210. Employer never submitted a Workforce Plan for 2013 or 2014 to the Job Placement Section. [Testimony of Mr. Khang.]

After receiving the Denial, Employer submitted a Workforce Plan for 2015 along with its appeal letter (Hearing Exhibit 2). In April 2015, Employer supplemented the record with a revised Workforce Plan. [Hearing Exhibit 7 - letter from Paul S. Khang to Secretary of Labor, dated 4/14/2015 with attached documents.]

DISCUSSION

The Job Placement Section took the position that Employer's many failures to produce required documentation, plus its failure to post JVAs on DOL's website, justify the decision to deny this employer a Certification for Good Standing.

Employer's President admitted that the Employer had failed to submit required documents and failed to post job announcements on DOL's website. President Zhang admitted these failures, agreed to comply with the DOL's regulations in the future, and agreed to pay a substantial fine for past conduct.

President Khang testified that if the company could not obtain a Certification of Good Standing, it would be hindered in its efforts to secure construction projects in order to put its employees to work. [Testimony of Mr. Khang.]

The Employer's deficient conduct - its failure to produce numerous reporting documents on a quarterly basis and, particularly, its failure to post JVAs on DOL's website - justify denying this Certification. However, Employer asked to be relieved from the harsh consequences of such a denial, based on its promise to correct its deficient conduct in the future and its payment of a monetary sanction.

As mitigating factors, the Hearing Officer notes that in 2014, the Employer did try in good faith to hire a U.S. citizen. [Testimony of Ms. Taisacan.] Furthermore, Employer submitted all required census documents after it realized that they were late. The most serious violation was Employer's failure to post JVAs on the Department's website even after it was warned to do so in the prior Administrative Order. [CAC No. 14-001-01, Admin Order issued on 4/15/2014.]

Based on the evidence presented, the Hearing Officer finds sufficient grounds to reverse the Denial, provided that Employer pays a sanction and continues to comply with its obligation to submit quarterly reporting documents to the Department.

Sanctions:
The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

Based on the facts of this case, the Hearing Officer finds it appropriate to sanction Employer $1,000 for its conduct; however, half of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $500 portion of the fine and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant 3 K Corporation is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as practicable.

2. **Sanctions:** For the reasons stated above, Appellant 3 K Corporation is hereby FINED one thousand dollars ($1,000); however, $500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $500 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). **Payment Terms:** Appellant is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

3. **Updated Census-Related Documents:** Appellant is ORDERED to file quarterly Total Workforce Listing documents and the tax withholding documents with the Job Placement Section on a quarterly basis in accordance with Department Regulations at § 80–60.2-105.

4. **Posting on Website:** Appellant is ORDERED to post future job vacancies and renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80–30.3-205. Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

5. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15)** days of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: May 7, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: ASC Arch Structure Corp., ASC Construction, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	**D.C. No. 15-002** **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on April 22 and June 4, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant ASC Arch Structure Corp. ("Employer"), was represented by its Vice President, Xu, Hao, and its legal counsel, Steven Nutting. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on January 5, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds: (1) Employer did not meet the requisite 30% Workforce Participation level mandated by the Department's Employment Rules and Regulations ("Regs."). Regs. at § 80 – 30.2-120(c); (2) Employer failed to submit quarterly Workforce Listing documents for the 1st and 2nd quarters of 2014, in accordance with the Regulations at § 80-60.2-105; and (3) Employer failed to submit its Workforce Plan for 2013 or 2014 in accordance with Regulations at § 80-60.2-205. At Hearing, the Job Placement Section also noted that Employer had failed to post job vacancy announcements ("JVAs") for CW-1 status renewals on the Department's website in accordance with the Regulations at § 80-30.3-205. *Id.*

Employer Has Satisfied the 30% Workforce Participation Requirement: The most recent Total Workforce Listing (Hearing Exhibit 2) shows that Employer employs three permanent residents out of a total workforce of 8 full-time workers. This evidence establishes that Employer currently meets the 30% workforce participation percentage (U.S. citizens or permanent residents in its workforce), as required by 3 CMC § 4525 and Regulations at § 80-30.2-120(c).

Quarterly Total Workforce Listings: Department Regulations require all employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at § 80-60.2-105. This information is submitted in a document called a Total Workforce Listing which is signed under the penalty of perjury by a company representative. [See the Department's website for a copy of the Total Workforce Listing form.] The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

In this case, Employer failed to submit its quarterly Total Workforce Listings for several quarters of 2014. After it received the Denial, Employer submitted the Total Workforce Listing of the 1st and 4th quarters of 2014, along with its appeal letter. At the second hearing on June 4, 2015, Employer submitted a Total Workforce Listing, signed by Vice President Xu on May 11, 2015. [A copy of this document was entered into evidence as Hearing Exhibit 2.]

Workforce Plan for 2013 and 2014: Department Regulations require employers to file an updated Workforce Plans once every 12 months. Regs. at §§ 80-60.2-200, 210. In this case, Employer never submitted a Workforce Plan for 2013 or 2014 to the Job Placement Section. [Testimony of Mr. Xu.] After receiving the Denial, Employer submitted Workforce Plans for 2013 and 2014; however, the documents left important portions of the documents blank. At the second hearing on June 4, 2015, Employer submitted a revised Workforce Plan for 2015, signed by Vice President Xu on May 11, 2015. [A copy of this document was entered into evidence as Hearing Exhibit 3.] Enforcement (Mr. Ulloa) indicated that the revised Workforce Plan is acceptable to Enforcement and the Job Placement Section.

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at § 80-30.3-205. In this case, the Employer admitted that it had not posted any job announcements on the Department of Labor ("DOL") website for its numerous CW-1 status employees since 2010. [Testimony of Mr. Xu.] This

evidence demonstrates that Employer violated the posting regulation on numerous occasions during the last several years.

At Hearing, the Job Placement Section argued that Employer's failure to produce quarterly Total Workforce Listings and annual Workforce Plans, as well as Employer's failure to post job announcements on DOL's website, support its decision to deny this employer a Certification for Good Standing.

At the first Hearing in April 2015, Employer's Vice President stated that the company intended to hire one or two U.S.-status qualified employees in the next month. At the second Hearing in June 2015, Employer testified that it had not yet hired new workers, but it intended to hire 2-3 U.S. citizen employees to assist with the Employer's construction project at the Tinian International Airport in the near future. [Testimony of Mr. Xu.]

DISCUSSION

Employer admitted he had failed to produce required documents and failed to post job announcements on DOL's website. Vice President Xu admitted these failures, agreed to comply with the DOL's regulations in the future, and agreed to pay a fine for past conduct.

Employer urged that it be allowed to obtain a Certification of Good Standing so that it could work on a federally-funded construction project on Tinian. [Testmony of Mr. Xu.] Ordinarily, Employer's deficient conduct - its failure to produce many reporting documents and its failure to post JVAs on DOL's website - would cause Job Placement to deny Employer's request for a Certificate. However, in view of the importance of this Certificate to this Employer's business, no useful purpose would be served by preventing the Employer from obtaining the Certificate. This is true especially where, as here, Employer has promised to correct its conduct in the future and agreed to pay a fine for past deficiencies. Based on these facts, the Job Placement Section changed its position at Hearing and agreed to be satisfied with a fine.

The Hearing Officer hereby finds sufficient grounds to reverse the Denial, provided that Employer pays a sanction and continues to cooperate with its obligations to submit quarterly reporting documents to the Department.

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and

fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

Based on the facts of this case, the Hearing Officer finds that this Denial should be reversed, provided that Employer pays a fine of $1,000; however, half of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $500 portion of the fine and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant ASC Arch Structure Corporation, is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as Appellant has paid the $500 portion of the sanction, as set forth in paragraph 3, below.

2. **Sanctions:** For the reasons stated above, Appellant ASC Arch Structure Corp. is hereby FINED one thousand dollars ($1,000); however, $500 of the fine shall be SUSPENDED for one year, then extinguished, provided that Appellant pays the unsuspended portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80–30.3-205. Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

5. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

[D.C. No. 15-002]

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: June 22, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: H.N.R., Incorporation, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 15-003 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 10, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant H.N.R., Incorporation ("Employer"), was represented by its President, Jun Kitaoka, and its executive agent, David C. Sablan. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on January 28, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, citing three grounds: (1) Employer failed to submit several quarterly Workforce Listing documents in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-60.2-105;[1] (2) Employer failed to submit a Workforce Plan for 2013 in accordance with Regulations at § 80-60.2-205; and (3) Employer failed to post job vacancy announcements ("JVAs") for CW-1 status renewals on the Department's website (www.marianaslabor.net) in accordance with the Regulations at § 80-30.3-205. *Id.*

[1] Specifically, the Department stated that Employer failed to submit its quarterly Workforce Listing for the 1st, 2nd and 3rd quarters of 2014. (Hearing Exhibit 1.)

Quarterly Total Workforce Listings: Department Regulations require employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at § 80-60.2-100 *et seq*. This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer failed to submit its quarterly Total Workforce Listings for the 1st, 2nd, and 3rd quarters of 2014. After it received the Denial in 2015, Employer filed these documents along with its appeal letter. [Appeal letter from Mr. Kitaoka, dated 12/19/14, was entered into evidence as Hearing Exhibit 2; the three Total Workforce Listing documents, cited above, were entered into evidence as Hearing Exhibits 3, 4, and 5, respectively.]

Workforce Plan for 2013: Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at §§ 80-60.2-200, 210. In this case, Employer never submitted a Workforce Plan for 2013 or 2014 to the Job Placement Section. [Testimony of Mr. Kitaoka.]

Job Posting on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department's website. Regs. at § 80-30.3-205. In this case, the Job Placement Section produced evidence to show that Employer had not posted any job announcements on the Department of Labor ("DOL") website for its four CW-1 status employees since 2011. [Printout of Employer's posting history, entered into evidence at Hearing Exhibit 6; Testimony of Mr. Ulloa.] Employer admitted that it had used a local radio station instead of posting the job on DOL's website. [Testimony of Mr. Kitaoka.]

The Job Placement Section took the position that Employer's failure to produce quarterly Total Workforce Listings and annual Workforce Plans, as well as Employer's failure to post job announcements on DOL's website, justify the decision to deny this employer a Certification for Good Standing.

DISCUSSION

Employer's President gave credible testimony in which he admitted he had failed to produce required documents and failed to post job announcements on DOL's website. President Kitaoka admitted these failures, agreed to comply with the

DOL's regulations in the future, and agreed to pay a substantial fine for past conduct.

Employer urged that it be allowed to obtain a Certification of Good Standing so that it could develop a new business plan. Employer's agent, David C. Sablan, testified that Employer is currently planning to develop a new business together with a company from South Carolina. Employer and its business partner plan to create a manufacturing facility on Saipan to make prefabricated construction panels for domestic and commercial buildings. Employer is engaged in the planning stage, but it hopes this new business will generate dozens of local jobs and bring substantial revenue to the company as well as business opportunities to the CNMI. [Testimony of Mr. Sablan.]

Employer urged that it not be denied a Certification of Good Standing as this would make it impossible for Employer to proceed with its new business plan to manufacture construction panels. According to Employer, the Certification is needed for the company to qualify to be placed on the Northern Mariana Housing Corporation's Contractors List. *Id.*

The three Total Workforce Listing documents produced by Employer with its appeal letter, reveal that about 50% of Employer's workforce is comprised of U.S. citizens or permanent residents. [Hearing Exhibits 3, 4, and 5.] This exceeds the minimum 30% ratio that is required in the Regulations [§ 80-30.2-120(c)].

At Hearing, Job Placement noted that ordinarily, the Employer's deficient conduct - its failure to produce numerous reporting documents and its failure to post JVAs on DOL's website - would cause Job Placement to take the position that Employer should be denied a Certification. However, in light of the new business venture that Employer appears to be entering, and the fact that this opportunity may be lost if Employer does not receive its Certification of Good Standing, the Job Placement Section was willing withdraw its objection to a Certification, provided that Employer pays a substantial monetary sanction. [Testimony of Mr. Ulloa.]

Sanctions:
The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

Based on the unique facts of this case, the Hearing Officer accepts the position of the Job Placement Section and finds that this Denial should be reversed, provided that Employer pays a fine, as specified below. The Hearing Officer shall sanction Employer in the amount of $1,500; however, half of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $750 portion of the fine and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant H.N.R., Incorporation, is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as Appellant has paid the $750 portion of the sanction, as set forth in paragraph 3, below.

2. **Sanctions:** For the reasons stated above, Appellant H.N.R., Incorporation is hereby FINED one thousand five hundred dollars ($1,500); however, $750 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $750 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

3. **Payment Terms:** Appellant is ORDERED to pay the $750 portion of the fine no later than forty-five (45) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Updated Total Workforce Listing:** Appellant is ORDERED to file updated, quarterly Total Workforce Listing documents with the Citizen Job Placement Section in a timely manner in accordance with Regulations at § 80–60.2-105.

5. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80–30.3-205. Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

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6. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 18, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Kalayaan, Inc., Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 15-004 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on March 17, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Kalayaan, Inc. ("Employer"), was represented by its President, Eleanor Loste, its HR Manager, Maricel Cascasan, and its counsel, Steve Nutting. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by Acting Director Yvonne Taisacan and James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on February 9, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Job Placement Section denied Employer's request for a Certification of Good Standing, citing that Employer had failed to meet the 30% Workforce Participation threshold based on "the most recent submission of quarterly Workforce Listing" [citing Department of Labor Rules and Regulations ("Regulations") at section 80-30.2-120(c)].

As noted in the Denial, Department Regulations require that an Employer employ a minimum of 30% of its workforce from U.S. citizens, CNMI permanent residents or CNMI permanent residents. *Id.* Employer produced several quarterly Workforce Listing documents to the Job Placement Section which showed that

during 2014, Employer's percentages were well above the 30% threshold for status-qualified employees. For example, Employer's quarterly Total Workforce Listing for the 3rd quarter of 2014 (Hearing Exhibit 2) lists a total of 36 full-time employees, including 17 employees who are U.S. citizens or permanent residents. This amounts to a percentage of status-qualified employees of nearly 50%, well above the 30% target set by regulation.

At Hearing, Acting Director Yvonne Taisacan explained that the Job Placement Section had denied Employer's request for a Certification of Good Standing after it examined Employer's Quarterly Withholding Tax Return for the 3rd quarter of 2014. [A copy of this document was entered into evidence as Hearing Exhibit 3.] That Tax Return reflected wages that fell below the minimum wage for many of the listed "full-time" workers. *Id.* Upon examining the Tax Return, Job Placement questioned the veracity of Employer's records and suspected that Employer was listing employees as "full-time" who were actually working part-time schedules. [Testimony of Ms. Taisacan.]

President Eleanor Loste testified that Employer is in the business of providing food service to the CNMI's public school system. The company's Employees' work schedules are full-time during the academic school year; however, the work load is greatly reduced during the summer months when school is not in session full-time. In examining the 3rd quarter of 2014, Job Placement was viewing wage records that reflected the annual downturn in employee hours during the summer months.

Acting Director Taisacan accepted the explanation offered by President Loste. Furthermore, Employer's Quarterly Withholding Tax Return for the 4th quarter of 2014 corroborated Ms. Loste's testimony and showed that those workers listed as full-time employees received wages reflecting full-time work schedules.

Based on the above analysis, Acting Director Taisacan stated that the Job Placement Section would withdraw its earlier objection to issuing a Certification of Good Standing for this Employer.

The Hearing Officer finds that the Employer's full-time workforce consists of more than the minimum percentage of status-qualified workers specified in the Regulations. [Regs. at § 80-30.2-120(c).] The evidence establishes that Employer, pays full-time wages to those workers listed in its Total Workforce Listings with the exception of the summer period, as noted by Employer's President. Therefore, the Hearing Officer agrees with Job Placement that this denial should be reversed.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Denial of the Certificate of Good Standing for Appellant Kalayaan, Inc., is hereby REVERSED. The Department of Labor is ORDERED to issue the Certification of Good Standing for Appellant as soon as possible.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 19, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Success International Corporation, *dba* M&R Construction/Contractor and Success Auto Repair Shop, Appellant,	)	**D.C. No. 15-005**
v.	)	**ADMINISTRATIVE ORDER**
Department of Labor – Citizen Job Placement Section, Appellee.	)	

This appeal came on for hearing on May 4, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Success International Corporation ("Employer"), was represented by its President, Guojun Miao. The Department's Citizen Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on April 10, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Job Placement Section denied Employer's request for a Certification of Good Standing, listing five grounds:

1. Employer failed to post job vacancy announcements on the Department's website as mandated by the Department's Employment Rules and Regulations ("Regs.") at § 80-30.3-205;
2. Employer failed to demonstrate a good faith effort to hire a citizen, CNMI permanent resident or U.S. permanent resident (Regs. at § 80-30.2-440);

3. Employer failed to submit quarterly Total Workforce Listing documents for the 1st, 2nd 3rd and 4th quarters of 2014 (Regs. at § 80-60.2-120);
4. Employer failed to submit a Workforce Plan for 2014 and 2015 (Regs. at § 80-60.2-210); and
5. Employer failed to submit Employer's Withholding Tax documents for the 2nd, 3rd and 4th quarters of 2014 (Regs. at § 80-60.2-105).

1. Posting JVAs on DOL's Website: Department Regulations require employers who are renewing CW-1 status workers to post job vacancy and renewal announcements ("JVAs") on the Department's website. [Regs. at § 80-30.3-205.] This Employer had posted its job announcements on the Department of Labor ("DOL") website in 2008 and 2009, but then stopped. [A copy of Employer's history of job postings at the DOL website was submitted by the Job Placement Section and entered into evidence as Hearing Exhibit 5.]

Since 2009, Employer has not posted a single job announcement on DOL's website, despite the fact that Employer has employed more than five CW-1 status workers for the last several years. Instead, Employer used radio advertisements and newspaper ads for the CW-1 status renewals. [Testimony of Mr. Miao.] President Miao testified that he had assigned the task of advertising for CW-1 Petitions to one of his employees. Miao claimed he had not realized that the employee never posted the job announcements on DOL's website. But this testimony was contradicted by Miao's testimony that he had once tried to log on to the DOL website but it would not accept his password. **Holding:** The evidence establishes that Employer violated the posting Regulations by failing to post numerous jobs on DOL's website over a three-year period, which positions then were filled with new or renewed CW-1 status workers.

2. Failure to Demonstrate Good Faith in Hiring: The Job Placement Section made this allegation based on Employer's failure to post job announcements on DOL's website, but Employers' Total Workforce Listings for 2014 (see below) show that for much of 2014, Employer had a workforce of 10 full-time employees: 3 U.S. citizens and 7 CW-1 employees. This meets the requisite workforce participation percentage (30%). **Holding:** The Department presented insufficient evidence to support a charge of lack of good faith in hiring.

3. Failure to Submit Quarterly Total Workforce Listings: Department Regulations require all employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at § 80-60.2-105. This information is submitted in a

documents called the Quarterly Compliance Report and Total Workforce Listing, both signed under the penalty of perjury. The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.]

Employer established that it had submitted its quarterly Total Workforce Listings for the 1st and 3rd quarters of 2014. However, the Total Workforce Listings for the 2nd and 4th quarters evidently were not submitted in a timely manner.

Furthermore, in attempting a recent update, Employer submitted two different Total Workforce Listings, both signed on April 23, 2015, each of which was supposed to represent the latest and most accurate listing of its workforce.[1] Each Listing was signed by President Miao under the penalty of perjury, attesting that the information is correct. However, one Listing (attached to Hearing Exhibit 3) is inaccurate in several respects: it lists the wrong wage rates and lists two carpenters who, in fact, no longer work for Employer. Mr. Miao testified that the document marked as Hearing Exhibit 6 was accurate; but he admitted that the Listing found in Hearing Exhibit 3, was incorrect. **Holding:** Employer has failed to submit Total Workforce Listings in a timely manner and certain documents, as noted, were inaccurate.

4. Workforce Plans for 2013 and 2014: After examining its records, the Job Placement Section withdrew its contention that Workforce Plans had not been produced. **Holding:** No charge against Employer.

5. Failure to Submit Quarterly Employer's Withholding Tax Returns: Employer did not submit Quarterly Employer's Withholding Tax Returns for all four quarters of 2014 during that calendar year. After it received the Denial in 2015, Employer submitted the tax return documents for these quarters along with its appeal letter. [See Employer's Appeal Letter at Hearing Exhibit 2 and the tax return documents at Hearing Exhibit 4.]

The Department cites Regulations at sections 80-60.2-100 and 105 in support of its contention that Employer's Withholding Tax Returns must be produced on a quarterly basis. However, the plain language of these sections does not state that tax returns must be produced. Section 100 states in general terms that "the

[1] Employer submitted one Total Workforce Listing, dated April 23, 2015, along with his appeal letter. [See all of Employer's Total Workforce Listings for 2014 at Hearing Exhibit 3.] Employer submitted a different Total Workforce Listing, also dated April 23, 2015 and that document was entered into evidence Hearing Exhibit 6.

Commonwealth requires accurate and up-to-date information about employment in the Commonwealth" but does not specify tax returns. Section 105 states that employers are required to report "the number and classification of employees for whom wages were paid during the quarter," but does not state that the tax returns, themselves, must be produced.[2] Evidently, the Department takes the position that quarterly withholding tax returns should be produced as well, but the Regulations do not put Employer on notice that the tax returns are required to be submitted.

Holding: Tax returns were not submitted; however, the plain language of the cited Regulation (Regs. at § 80-60.2-105) does not require submission of tax returns. Therefore, Employer's "failure" to submit tax returns does not violate the cited Regulation. There is no violation by Employer on this issue.

DISCUSSION

The Job Placement Section took the position that Employer's deficient production of required documentation, plus its failure to post JVAs on DOL's website, justify its decision to deny Employer's request for a Certification of Good Standing.

Employer admitted that it had (1) failed to submit required documents (e.g., Total Workforce Listing documents) in a timely manner and (2) failed to post job announcements on DOL's website. At the Hearing, Employer asked for several extra days to enable President Miao to submit corrected documents and register his company with the Job Placement Section. Within 48 hours of the Hearing, the Employer submitted the corrected documents as well as proof that it had registered with the Job Placement Section. Such conduct may signal Employer's intention to comply with Departmental regulations in the future.

As a preliminary matter, the Hearing Officer makes two points. First, President Miao's explanation that he had not realized that his company was not posting job announcements for years, is untenable. The President testified that he delegated the task of advertising job openings to his employee who is listed in company documents as a "purchaser." [Testimony of Mr. Miao.] The President should have been engaged enough in his own business in the 2012-2015 period to know whether job announcements were being posted on DOL's website. Furthermore, other testimony by Mr. Miao suggests that he was fully aware that the Employer

[2] Regulations at § 80-60.2-105 states: "Each business employer shall report quarterly, as of the last day of the calendar quarter *and within the time limits for filing the business gross receipts tax return*, the number and classification of employees for whom wages were paid during the quarter." (Emphasis added.)

was not posing JVAs on its website. Employer's President should pay special attention to this matter in the future.

Second, Mr. Miao needs to be more careful before signing documents *under the penalty of perjury*. He carelessly submitted two Total Workforce Listings on the same day that conflicted with one another, listing different salaries for the same employees and different employees for the same job. [See Hearing Exhibits 3 and 6.] More care must be taken with these submissions.

Based on the evidence, there appear to be sufficient grounds to affirm the Denial. However, this Employer urged that the company be given a "second chance" to prove that it can meet the requirements in the future and the Employer requested leniency with respect to this ruling. [Testimony of Mr. Miao.]

On one hand, Employer's failure to produce timely documents (Total Workforce Listings), Employer's failure to post JVAs on DOL's website and its President's submission of incorrect documents signed under the penalty of perjury – constitute sufficient grounds to deny the requested Certification of Good Standing.

On the other hand, this Employer did meet the Workforce Participation Percentage (30%), and it promptly re-submitted corrective documents after the last hearing. President Miao also promptly met with the Job Placement Section after the Hearing to register Employer for future JVA submissions. Hopefully, this conduct signals Employer's good faith attempt to correct past conduct.

Sanctions: One alternative to denying the Certification may be for the Employer to pay a sanction for its past violation and agree to fully comply in the future.The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be based on reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers...to further the interests of justice and fairness in proceedings." Regs. at § 80-50.4-820(h) and (o).

Holding: Having considered the evidence and arguments carefully, the Hearing Officer finds that this Denial should be reversed, provided that Employer pays the fine specified below. The Employer shall be sanctioned in the amount of $1,000; however, half of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $500 portion of the fine and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Success International Corporation is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Success International Corporation is hereby FINED one thousand dollars ($1,000); however, $500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining $500 portion of the sanction and complies with the other Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). **Payment Terms:** Appellant is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

3. **Updated Census-Related Documents:** Appellant is ORDERED to file quarterly Total Workforce Listing documents with the Job Placement Section on a quarterly basis in accordance with Department Regulations at § 80–60.2-105.

4. **Posting on Website:** Appellant is ORDERED to post future job vacancies and renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80–30.3-205. Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

5. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: May 11, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Md. Kamrul Islam, *dba* Md. Islam Lawn Care Repair and Maintenance Services, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	**D.C. No. 15-006** **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on July 16, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Md. Kamrul Islam ("Employer"), appeared without legal representation. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on Employer's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on June 9, 2015. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

In its Denial, the Job Placement Section denied Employer's request for a Certification of Good Standing, citing five grounds:

(1) Employer failed to post job vacancy announcements in accordance with the Department's Employment Rules and Regulations ("Regulations") at § 80–30.3-205;

(2) Employer failed to demonstrate it was making a good faith effort to hire U.S. status-qualified workers in accordance with Regulations at § 80-30.3-440;

(3) Employer failed to submit his Workforce Plan for 2013 or 2014 in accordance with Regulations at § 80-60.2-205;

(4) Employer failed to submit quarterly Workforce Listing documents for the 1st and 2nd quarters of 2014, in accordance with the Regulations at § 80-60.2-105; and

(5) Employer failed to submit quarterly Employer's Withholding Tax Quarterly Reports for 2014.

The separate grounds for the Department's denial are discussed in detail below.

* * * * * *

(1) Job Posting on DOL's Website: Departmental Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department of Labor ("DOL") website. Regs. at § 80-30.3-205. In this case, the Employer testified that he had hired an agent to assist in submitting CW-1 Petitions to USCIS and that the agent did not post on the DOL website the job announcements that were processed in November 2014 and January 2015. [Testimony of Mr. Islam.] Employer testified that he no longer uses the agent and he intends to prepare his own Petitions in the future. Employer's failure to post the job announcements constitutes a violation of the "posting" regulation. *Id.*

(2) Employer's Alleged Failure to Demonstrate Good Faith Hiring Practices: Departmental Regulations require employers to make a good faith effort to hire U.S. citizens or permanent residents for each job vacancy. Regs. at § 80-30.3-440. Mr. Ulloa testified that this charge was meant to supplement the charge of violating the posting regulation, discussed above. [Testimony of Mr. Ulloa.]

(3) Workforce Plan for 2014: Departmental Regulations require employers to file an updated Workforce Plan once every 12 months. Regs. at §§ 80-60.2-200, 210. In this case, Employer never submitted a Workforce Plan for 2014 to the Job Placement Section. [Testimony of Mr. Xu.] Along with his appeal, Employer submitted a Workforce Plan for 2015; however, the Plan left important portions of the document blank. At hearing, Employer agreed to revise his Workforce Plan for 2015 to meet Department standards. [Testimony of Mr. Islam.]

(4) Quarterly Total Workforce Listings: Departmental Regulations require all employers to submit documents on a quarterly basis detailing "the number and classification of employees for whom wages were paid during the quarter." Regs.

at § 80-60.2-105. The required document is called a Total Workforce Listing, which must be signed under the penalty of perjury by a company representative. [See the Department's website for a copy of the Total Workforce Listing form.] The Department requires employers to submit this information in order to qualify for a Certification of Good Standing. [Testimony of Mr. Ulloa.] In this case, Employer failed to submit Quarterly Total Workforce Listings in 2014. Along with his appeal, Employer submitted a 2015 Total Workforce Listing. At Hearing, Job Placement asked that Employer be ordered to submit a Quarterly Workforce Listing form for the 4th Quarter of 2014. Employer agreed to submit the document.

(5) Quarterly Employer Withholding Tax Documents: Departmental Regulations speak generally of the need to provide "accurate and up-to-date information about employment in the Commonwealth." Regs. at § 80-60.2-100. The Department requires all employers to submit detailed withholding tax information on a quarterly basis to supplement the information in the Total Workforce Listing. Although there is no regulation specifying this exact information, the Department distributes a form that contains a request for this information.

In this case, Employer failed to submit its quarterly Tax Withholding documents for several quarters of 2014. Along with his appeal, Employer submitted a complete set of Withholding Tax documents for 2014 and 2015. [Testimony of Mr. Islam and Mr. Ulloa.] Job Placement (Mr. Ulloa) testified that Employer has now satisfied this deficiency. [Testimony of Mr. Ulloa.]

DISCUSSION

Employer admitted he had failed to produce required documents and failed to post job announcements on DOL's website. These deficiencies occurred primarily because Employer had been unfamiliar with the legal requirements for a Certificate of Good Standing. Employer promised to correct his conduct in the future to comply with DOL Regulations and he agreed to pay a fine for past conduct. Job Placement indicated that it would not object to the reversal of its Denial provided that Employer pays a sanction and updates certain documents.

The Hearing Officer hereby finds sufficient grounds to reverse the Denial, provided that Employer pays a sanction, submits the requested, updated documents and continues to cooperate by submitting quarterly reporting documents to the Department.

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

Based on the facts of this case, the Hearing Officer finds that this Denial should be reversed, provided that Employer pays a fine of $1,000; however, half of the fine shall be suspended for a year, then extinguished, on the condition that Employer pays the remaining $500 portion of the fine and submits timely reporting documents to the Job Placement Section during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Md. Kamrul Islam, is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as Appellant has paid the $500 portion of the sanction and submitted the documents specified in paragraph 4, below.

2. **Sanctions:** For the reasons stated above, Appellant Md. Kamrul Islam is hereby FINED one thousand dollars ($1,000); however, $500 of the fine shall be SUSPENDED for one year, then extinguished, provided that Appellant pays the unsuspended portion of the sanction and complies with the other terms set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Payment Terms:** Appellant is ORDERED to pay the $500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Updated Documents:** Appellant is ORDERED to submit (1) a revised Workforce Plan for 2015 and (2) a Total Workforce Listing for the 4th Quarter of 2014 to the Job Placement Section no later than thirty (30) days after the date of issuance of this Order.

5. **Posting on Website:** Appellant is ORDERED to post future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with DOL Regulations at § 80–30.3-205. Appellant shall hire U.S. citizen/ permanent resident job applicants when they are qualified and available to work.

6. **Warning:** If Appellant fails to comply with the terms of this Order, he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 17, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: M.D.A. Enterprises, Inc., Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	**D.C. No. 15-007** **ADMINISTRATIVE ORDER**

This appeal came on for hearing on November 25, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant M.D.A. Enterprises, Inc. ("Employer") was represented by its President, Md. Abul Bashar, its Vice President, Inocencio T. Tudela, and attorney Janet King. James Ulloa appeared on behalf of the Department of Labor Citizen Job Placement Section ("Job Placement"). Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

On October 27, 2015, Job Placement issued a Notice of Denial ("Denial"), denying Employer's request for a Certificate of Good Standing. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] Subsequently, Employer filed a timely appeal of the Denial.

Job Placement's Denial of Employer's request for a Certification of Good Standing, is based on the following grounds:

1. Employer failed to file Employer Declarations as required by Department of Labor Employment Rules and Regulations ("Regs.") at § 80-30.3-450;
2. Employer did not meet the requisite 30% Workforce Participation level mandated by the Department Regulations at § 80-30.2-120(c));
3. Employer failed to submit copies of Employer's Withholding Tax records for the 2nd and 3rd quarters of 2015 (Regs. at § 80-60.2-105);

4. Employer failed to submit Total Workforce Listing documents for the 2nd and 3rd quarters of 2015 (*id.*).[1]

Failure to Post Employer Declaration on DOL's Website: Department Regulations require employers who reject U.S.-status qualified job applicants to post the reasons for not hiring those workers in a "declaration" filed on DOL's website. Regs. at § 80-30.3-450. Employer posted two Job Vacancy Announcements ("JVAs") in July 2015 for the positions of charcoal maker job and mason; Employer received more than ten online responses to the JVAs. Employer interviewed those applicants who showed up for interviews but all applicants lacked the requisite job experience for the positions. After the applicants were rejected, Employer failed to post a response on DOL's website as to each applicant.

At Hearing, President Bashar explained that he uses one of his attorney's staff for assistance with some labor matters because he needs help to write in English. President Bashar did not post an online response to each job applicant because he did not realize that a response was required.

Failure to Meet 30% Workforce Participation Threshhold: Employer's President testified that the company currently employs 14 full-time workers, all of whom are CW-status workers. Obviously, this percentage is much lower than the 30% threshold mandated by statute and regulation. [3 CMC § 4525 and Regs. at § 80-30.2-120(c).]

President Bashar testified that he has hired several U.S. citizen workers in recent months but they all quit after several days, or even hours, on the job. Admittedly, the job of a charcoal maker is not an attractive one to many job applicants; thus, it has proven difficult for Employer to hire U.S. citizen workers for its workforce

Job Placement indicated that it is willing to work with the Employer to improve its percentage of U.S. citizen workers over time. However, Employer needs to file a revised Workforce Plan that is in the correct form. [Testimony of Mr. Ulloa.] Department Regulations require employers to file updated Workforce Plans once every 12 months. Regs. at § 80-60.2-210.

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[1] The Denial also contended that Employer had failed to comply with a former Administrative Order; however, this contention was stricken at the request of Mr. Ulloa at the start of the Hearing.

Failure to Submit Employer's Withholding Tax Quarterly Returns: DOL Regulations require an employer to submit an Employer's Quarterly Withholding Tax Return on a quarterly basis. [Regs. at § 80-60.2-105.] This Employer did not submit its quarterly tax returns for the 2nd or 3rd quarter of 2015. At Hearing, Employer asked to be allowed to submit the documents within ten days of the hearing.

Failure to Submit Quarterly Total Workforce Listings: DOL Regulations require all employers to submit information on a quarterly basis regarding "the number and classification of employees for whom wages were paid during the quarter." Regs. at § 80-60.2-105. This information is submitted in documents called the Quarterly Compliance Report and Total Workforce Listing.

Job Placement alleged that Employer failed to submit its quarterly Total Workforce Listings for the 2nd and 3rd quarters of 2015. [Technically, the 3rd Total Workforce Listing was not due until October 31. 2015 – two weeks after the Employer submitted its letter requesting a Certificate of Good Standing. (See letter at Hearing Exhibit 7.] At Hearing, Employer asked to be allowed to submit the documents in the week following the hearing.

At the Hearing, Employer was ordered to produce the missing documents to James Ulloa at the Job Placement Section on or before December 4, 2015.[2] On December 4, the Hearing Officer was notified by Mr. Ulloa that Employer had submitted all of the requested documents on that date. (Letter from Mr. Ulloa to Mr. Cody, dated 12/04/2015.)

DISCUSSION

Employer's failure to produce several quarters of required reporting documents, plus its failure to post Employer Declarations on DOL's website, support the denial of Employer's request for a Certificate for Good Standing. However, Employer asked that the denial be reconsidered, based on its good faith offer to produce the missing documents and its promise to file Employer Declarations in the future.

President Bashar testified that if the company could not obtain a Certification of Good Standing, it would be hindered in its efforts to secure a two-year project with

[2] These included the Employer's Quarterly Withholding Tax Returns to the 2nd and 3rd Quarters of 2015, the Total Workforce Listings for the 2nd and 3rd quarters of 2015, and a revised Workforce Plan for 2015.

the Northern Marianas Housing Corporation. [Testimony of Mr. Bashar; Letters from NMHC, dated 11/12/2015 and 11/17/2015, at Hearing Exhibit 4.] President Bashar admitted that he had failed to submit required documents and failed to post Employer Declarations on DOL's website. The President agreed to produce the missing documents on or before December 4, 2015, and agreed to comply with DOL's regulations in the future. He requested leniency as to any imposed sanction. [Testimony of Mr. Bashar.] Job Placement changed its position at Hearing and agreed to the reversal

After the Employer's testimony concluded, Mr. Ulloa stated that Job Placement would withdraw its objection to reversing the denial if the Employer would produce the missing documents by December 4, 2015. [Subsequently, the Employer produced all documents by the due date. (Letter from Mr. Ulloa to Mr. Cody, dated 12/04/15.)

Although the above-noted deficiencies support a denial of the request for a Certificate of Good Standing, the Hearing Officer finds that the Employer demonstrated good faith by producing all missing documents by December 4, 2015. Given that Employer would lose a substantial business opportunity if the Certificate were denied, and that Job Placement changed its position at Hearing and agreed to the reversal, the Hearing Officer has concluded that the denial should be reversed. Nevertheless, a sanction should be considered based on Employer's conduct in failing to file Employer Declarations and failing to produce timely documents.

Sanctions: The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80-50.4-820(h) and (o).

Based on the facts of this case, the Hearing Officer finds it appropriate to sanction Employer $1,000 for its conduct; however, the entire fine shall be suspended for a year, then extinguished, on the condition that Employer submits timely reporting documents to the Job Placement Section during the one-year period.

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Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant M.D.A. Enterprises Inc., is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as practicable.

2. **Sanctions:** For the reasons stated above, Appellant M.D.A. Enterprises, Inc., is FINED one thousand dollars ($1,000); however, the entire fine shall be SUSPENDED for one year, then extinguished, provided that Appellant complies with the Departmental Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Revised Workforce Plan:** Appellant needs to file a revised Workforce Plan that is in the correct form ***within 30 days*** from the date of issuance of this Order. The revised plan shall be delivered to Mr. Ulloa at the Job Placement Section of the Department of Labor on or before the due date. Regulations at § 80-60.2-210.

4. **Updated Census-Related Documents:** Appellant is ORDERED to file quarterly Total Workforce Listing documents and the tax withholding documents with the Job Placement Section on a quarterly basis in accordance with Department Regulations at § 80-60.2-105.

5. **Posting Employer Declarations on Website:** Appellant is ORDERED to post future employer declarations on the Department's website in accordance with Department Regulations at § 80-30.3-450. Appellant shall hire U.S. citizen and permanent resident job applicants when they are qualified and available to work.

6. **Warning:** Many of the obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

7. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: December 7, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Triple J Saipan, Inc., *dba* Tony Roma's and Capricciosa, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-003 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on October 1, 2014, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Triple J Saipan, Inc., was represented by its Vice President, Michael Sablan, and its corporate counsel, James Stump. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by its Acting Director, Yvonne S Taisacan. Hearing Staff, Renita C. Camacho, also testified. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Notice of Denial issued by the Citizen Job Placement Section on July 28, 2014. Appellant Triple J Saipan, Inc. ("Employer") attempted to file an appeal of the Denial on the last (15th) day of the appeal period, but was prevented because the Treasury Office had already closed at 4 p.m. [Testimony of Renita C. Camacho.] Employer paid the fee the following day. Given the extenuating circumstances, the Hearing Officer accepts the appeal as timely.

The grounds for the denial were twofold: (1) employer's failure to pay the required $100 filing fee for the Certificate of Compliance; and (2) employer's failure to submit a Workforce Plan in accordance with the Alien Labor Rules and Regulations at Section 80-60.2-200.

As to the first issue, Mr. Sablan testified that his company handles two certificates of compliance: one for Triple J Saipan, Inc. and one for Sandy Beach Homes. Evidently, Employer paid one fee for the Sandy Beach Homes but inadvertently neglected to pay the second fee for the certification for Triple J Saipan Inc. After receiving the Denial Notice, the company promptly offered to make payment but was told to wait for the hearing. Based on these facts and non-objection from the Citizen Job Placement Section, the Hearing Officer shall excuse Employer's failure to pay the fee in a timely manner, provided that Employer shall now pay the fee.

As to the second issue, Employer again maintains that it simply forgot to submit Workforce Plans for Tony Roma's and Capricciosa. After receiving the Notice of Denial, the Employer submitted Workforce Plans for both businesses. [Copies of those plans were entered into evidence as Hearing Exhibits 2 and 3.] Yvonne Taisacan confirmed that the Citizen Job Placement Section has reviewed the submitted Workforce Plans and finds them to be acceptable.

Based on the foregoing, the Citizen Job Placement Section recommended that the denial be reversed and that the certificate be allowed to be issued. The Hearing Officer finds that the Employer has now complied with the Workforce Plan requirement and is ready to pay the required fee for the Certification. Although Employer missed the deadlines and was thus, deficient, the mistakes were not intentional and the Employer promptly attempted to cure the deficiencies in good faith. Accordingly, the Denial shall be reversed subject to Employer's payment of the $100 fee. No sanction was requested by the Department and none is warranted.

Good cause having been shown, IT IS HEREBY ORDERED:

1. The above-referenced Notice of Denial of the Certification for Triple J Saipan, Inc. for Tony Roma's and Capricciosa , is hereby REVERSED, provided that appellant pays the $100 regulatory fee for the certificate, and submits proof of payment to the Hearing Office, within ten (10) days of the date of this Order.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a).

DATED: October 1, 2014

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 14-004
Kimco Enterprises Corporation,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job	)	
Placement Section,	)	
Appellee.	)	
	)	

This appeal came on for hearing on November 6, 2014, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Kimco Enterprises Corporation was represented by its General Manager, Seo, Jin Seok, and its accountant, Sylvia Alarzar. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Notice of Denial ("Denial") issued by the Job Placement Section on October 17, 2014. The Job Placement Section denied the request of appellant Kimco Enterprises Corporation ("Employer") for a letter of certification. [See copy of the Denial at Hearing Exhibit 1.] Employer filed a timely appeal of the Denial and this hearing followed.

In its Denial, the Job Placement Section alleged that Employer did not employ a sufficient number of U.S. citizens and/or permanent residents in its full-time work force to meet the requisite 30% level mandated by the Department's Employment Rules and Regulations ("Regs."). Regs. at § 80 – 30.2-120(c); also NMIAC § 80-20.1-210(c)(3).

Employer produced a Total Workforce Listing, signed on 9/23/2014, which showed that Employer employed two U.S. citizens and two permanent residents out of a total workforce of 16 full-time employees. The percentage of U.S. citizens

and permanent residents in the total workforce – 4 out of 16 or 25% - was below the requisite 30% cited in the Regulation. [A copy of this Total Workforce Listing was entered into evidence at Hearing Exhibit 2.]

At Hearing, Employer indicated that the Listing that had been submitted was not entirely accurate. Testimony revealed that Employer's accountant, Ms. Alarzar, is actually a part-time rather than a full-time employee. Also, Employer has hired another U.S. citizen bringing its combined total of U.S. citizens and permanent residents to 5 out of a total workforce of 16 full-time employees. This percentage is nearly 30%; therefore, Mr. Ulloa indicated on behalf of the Job Placement Section that he is satisfied that Employer is in substantial compliance with the percentage required by the Regulations. [Testimony of Mr. Ulloa.] The revised Total Workforce Listing, signed on 11/06/2014, was produced and entered into evidence as Hearing Exhibit 4.

Based on the foregoing, the Citizen Job Placement Section (per Mr. Ulloa) recommended that the denial be reversed and that the certificate be allowed to be issued. The Hearing Officer finds that the Employer has now complied with the Workforce Plan requirement and should be issued the Certification. Although Employer mistakenly listed its accountant as "full-time" in error (see Hearing Exhibit 2), this error was not intentional and the Employer promptly cured the deficiency when it was brought to its attention. Accordingly, the Denial shall be reversed. No sanction was requested by the Department and none is warranted.

Good cause having been shown, IT IS HEREBY ORDERED:

1. The above-referenced Notice of Denial of the Certification for appellant Kimco Enterprises Corporation, is hereby REVERSED. The Job Placement Section is instructed to issue the requested Certificate of Compliance to appellant as soon as possible.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a).

DATED: November 7, 2014

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	D.C. No. 14-005
Hong Ye Trading Company,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
	)	
v.	)	
	)	
Department of Labor – Citizen Job	)	
Placement Section,	)	
Appellee.	)	
	)	

This appeal came on for hearing on December 9, 2014, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Hong Ye Trading Company was represented by its President, Zheng, Shao Wei, and its agent, Thomas T. Chong. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by its acting Director, Yvonne S. Taisacan, and by James Ulloa. Fred Severino Wakit and Greg M. Camacho testified in support of respondent. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Notice of Denial ("Denial") issued by the Job Placement Section on November 26, 2014. The Job Placement Section denied the request of appellant Hong Ye Trading Company ("Employer") for a certification, known as a Certificate of Compliance. [See copy of the Denial at Hearing Exhibit 1.] Employer filed a timely appeal of the Denial and this hearing followed.

In its Denial, the Job Placement Section alleged that Employer did not employ a sufficient number of U.S. citizens and/or permanent residents in its full-time work force to meet the requisite 30% level mandated by the Department's Employment Rules and Regulations ("Regs."). Regs. at § 80 – 30.2-120(c); also NMIAC § 80-20.1-210(c)(3).

At Hearing, the Job Placement Section also accused Employer of submitting false information on its Total Workforce Listing, which was signed under the penalty of perjury by President Zheng on November 19, 2014. [A copy of the document was entered into evidence as Hearing Exhibit 2.] At Hearing, the Job Placement Section identified two problems with the Total Workforce Listing ("Listing").

First, Employer had listed Joaquin E. Deleon Guerrero as a full-time employee on its Listing and stated that Mr. Guerrero was "on vacation." (Hearing Exhibit 2 at p. 1, line 13.) However, Employer's testimony revealed that this employee stopped coming to work two months ago, then left for the mainland U.S. without informing the Employer. The Employer had no idea of the where-abouts of the "employee," or whether he ever intended to work again with Employer. [Testimony of Mr. Chong.]

The above facts make it clear that Mr. Guerrero abandoned his job and no longer works for this Employer. The statement in the Listing that Mr. Guerrero is "on vacation" is false and misleading. Clearly, he abandoned his job without informing his employer and should no longer be listed on any official labor documents as being employed by the company.

Second, the Employer listed a new employee on its Listing as "Fred Severino," stating that the employee began working with the company on November 18, 2014, the day before the Total Workforce Listing was signed by President Zheng. [Hearing Exhibit 2 at p. 1, line 14 – handwritten notation.]

At Hearing, the Job Placement Section alleged that Mr. Severino was not actually an employee of the Employer. However, the entire matter turned out to be a misunderstanding, caused by the Employer and his agent, Thomas Chong. Agent Chong mistakenly listed the new employee's name as "Fred Severino" when, in fact, his full name is "Fred Severino Wakit." The misunderstanding only became worse when President Zheng mistakenly connected the Job Placement Section with the wrong person, thus increasing the Department's suspicions that the listing was fraudulent.[1]

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[1] Acting Director Taisacan testified that in early November, she had telephoned Mr. Zheng who had given her the number of a Fred Severino. When she called Severino, he told her that he did not work for Employer but was just a personal friend of Mr. Zheng. Zheng testified that he had mistakenly referred Ms. Taisacan to the wrong person. Zheng explained that he misunderstood when Ms. Taisacan called and mentioned "Fred," so Zheng referred her to his friend, Fred Severino. Although that friend's name is very similar to that of the new employee, he is not Fred Severino Wakit, the new employee.

Employer's new employee, Fred Severino Wakit, appeared at the Hearing, presented his driver's license and testified credibly that he was "Fred Severino Wakit." Mr. Wakit testified that he had been recently hired by this Employer and had been working for the Employer since November 18, 2014.

The ultimate source of all the confusion in this case was Employer's processing agent, Thomas T. Chong. Mr. Chong prepared the Total Workforce Listing (Hearing Exhibit 2) for President Zheng's signature. Mr. Chong mistakenly listed Mr. Deleon Guerrero as a current employee who was "on vacation." Mr. Chong also mistakenly listed the wrong name of the new employee, omitting that employee's family name ("Wakit"). Mr. Chong has years of experience working as a document handler/agent for employers in labor matters and should know to be more careful. The Hearing Officer notes that these mistakes were serious, given that the incorrect information was placed in a document that was signed by a company official, President Zheng, *under the penalty of perjury.*

President Zheng relied heavily on Mr. Chong to prepare the Total Workforce Listing document for his signature. Evidently, Mr. Zheng did not understand the deficiencies in the document that he was signing. [Testimony of Mr. Zheng.]

At Hearing, Employer was ordered to submit a revised Total Workforce Listing that corrected the above-noted mistakes. This revised document, filed on December 10, 2014, was entered into evidence as Hearing Exhibit 3.

The revised Total Workforce Listing (Hearing Exhibit 3) shows that Employer currently employs 13 workers, consisting of two U.S. citizens, three permanent residents, and 8 foreign national workers (7 workers with CW-1 status and one worker with E-2C status). These statistics establish that Employer is now above the minimum workforce participation requirement of 30% that the Department requires of employers.

HOLDING: Based on the foregoing, the Hearing Officer finds that the Employer is currently in compliance with the Regulations setting a minimum percentage (30%) of status-qualified workers in an employer's full-time workforce. Regs. at § 80 – 30.2-120(c); also NMIAC § 80-20.1-210(c)(3). Accordingly, the denial should be reversed and the Certificate of Compliance should be issued.

Notwithstanding the reversal of the denial, the Employer is faulted for listing several facts in error on its prior Total Workforce Listing (Hearing Exhibit 2). These inaccuracies have wasted the Department's time and resources and turned a

relatively simple matter into a web of confusion. Any future submission of false or inaccurate Total Workforce Listing documents by this Employer may result in substantial sanctions. As no sanction was requested by the Job Placement Section in the current case, the Hearing Officer shall issue a warning to this Employer.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Reversal of Denial:** For the reasons stated above, the above-referenced Notice of Denial of the Certification for appellant Hong Ye Trading Company, is hereby REVERSED. The Job Placement Section is instructed to issue the Certificate of Compliance to appellant as soon as practicable.

2, **Warning:** Given the numerous inaccuracies in the Total Workforce Listing (Hearing Exhibit 2) at issue in this case, Employer is WARNED that any future submission of false or inaccurate Total Workforce Listing documents by this Employer may result in substantial sanctions.

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a).

DATED: December 12, 2014

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: No Ka Oi Termite and Pest Control (Saipan), Inc., Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-006 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on February 26, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant No Ka Oi Termite and Pest Control (Saipan), Inc. ("Employer"), was represented by its Office Manager, Marilyn B. Pames. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Job Placement Section on December 17, 2014. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Job Placement Section denied the Employer's request for a Certification of Good Standing, citing two grounds: (1) Employer had failed to submit several quarterly Workforce Listing documents in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-60.2-105 *et seq.*;[1] and (2) Employer had failed to submit a Workforce Plan for the year 2013. *Id.*

[1] Specifically, the Department stated that Employer failed to submit its quarterly Workforce Listing for the 4th quarter of 2013, and the 1st and 2nd quarters of 2014. (Hearing Exhibit 1.)

Quarterly Total Workforce Listings: In order to qualify for a Certificate of Compliance, Department Regulations require employers to submit certain business-related documents to the Department, such as business gross revenue documents, withholding tax documents, Total Workforce Listing documents and a Workforce Plan. Regs. at §§ 80-60.2-105, 200. [Testimony of Mr. Ulloa.]

During most of 2014, Employer failed to submit its Total Workforce Listing for the 4th quarter of 2013, the 1st quarter of 2014 and the 2nd quarter of 2014. After it received the Denial in December 2014, Employer filed these documents along with its appeal letter. [Appeal letter from Mr. Romias, Jr., dated 12/19.2014, was entered into evidence as Hearing Exhibit 2; the three Total Workforce Listing documents cited above were entered collectively into evidence as Hearing Exhibit 3.] Employer also produced its Quarterly Withholding Tax Return for the 4th quarter of 2013 and the 1st quarter of 2014.

Workforce Plan for 2013: Employer submitted a copy of its Workforce Plan for 2014, with a file stamp that indicated it had been filed at DOL on September 16, 2014. [A copy of this document was entered into evidence as Hearing Exhibit 4.] However, Employer admitted that it had never submitted a Workforce Plan for 2013 to the Job Placement Section. [Testimony of Ms. Parnes.]

At the conclusion of evidence, the Job Placement Section took the position that Employer's failure through much of the year of 2014 to submit Total Workforce Listing documents, as well as its failure to ever produce a Total Workforce Plan for 2013, justify the decision to deny this employer a Certification for Good Standing.

DISCUSSION

Employer's Office Manager testified that she had forgotten to submit the above-noted documents to the Job Placement Section for much of 2014. As stated above, DOL Regulations require employers to file updated Total Workforce Listing documents each quarter with the Job Placement Section. [Regs. at § 80-60.2-105.] Failure to submit these documents led to the Department's Denial.

The Hearing Officer notes that Employer's Total Workforce Listing lists its President and Vice President as if these officers were employed in the CNMI. [Hearing Exhibit 3.] In fact, the President (Mr. Romias, Sr.) and Vice President (Mr. Romias, Jr.) reside in Hawaii and Guam, respectively – not in the CNMI. [Testimony of Ms. Parnes.] Department Regulations are designed to secure full employment for citizens and permanent residents *of the Commonwealth* and to

"acquire up-to-date information about employment *in the Commonwealth.*" *Id.* at § 80-60.2-10 (Census of Employment) (Emphasis added). In order to avoid conveying inaccurate information to the Job Placement Section, Employer should state on its Total Workforce Listing form that its President and Vice President reside outside the Commonwealth. At Hearing, Employer (Ms. Parnes) promised to include this information on the form in the future.

The Job Placement Section (James Ulloa) stood firm in its objection to issuing the Certificate of Good Standing as a result of Employer's failure to provide numerous reporting documents during 2013. Furthermore, Mr. Ulloa argued that Employer should be assessed, at least, with a suspended sanction for failing to provide the reporting documents in a timely manner. [Testimony of Mr. Ulloa.]

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, Employer missed deadlines for filing its updated, quarterly Total Workforce Listing; however, Employer did attempt to cure the matter in good faith after he received the Denial. The Total Workforce Listing documents (Hearing Exhibit 3) show that Employer met the minimum workforce participation percentage (30%) regarding U.S. citizens and permanent residents in his workforce throughout 2013. Employer has agreed to submit timely Total Workforce Listings to Job Placement in the future. Furthermore, Employer agreed to post job announcements on DOL's website and hire qualified U.S. citizens and/or permanent residents for open or renewed positions in the future.

The Hearing Officer accepts the argument of the Job Placement Section and finds that (a) the Denial of a Certificate of Good Standing for Employer should be affirmed; and (b) Employer should be given a suspended fine for its failure to provide reporting documents in 2013 and 2014. The Hearing Officer shall issue Employer a $500 fine, but the fine shall be suspended, then extinguished, on the condition that Employer submits timely reporting documents to the Job Placement Section in the coming year.

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Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is affirmed:** For the reasons stated above, the Department's Denial of the Certificate of Good Standing for Appellant No Ka Oi Termite and Pest Control (Saipan), Inc., is hereby AFFIRMED.

2. **Sanctions:** For its failure to submit timely documentation in accordance with Regulations, as described above, Appellant No Ka Oi Termite and Pest Control (Saipan), Inc. is FINED five hundred dollars ($500); however, the entire fine shall be SUSPENDED for a period of one year, then extinguished, provided that Appellant complies with the terms set forth below. 3 CMC § 4947(11).

3. **Filing of Total Workforce Listing:** Appellant No Ka Oi Termite and Pest Control (Saipan), Inc. is ORDERED to file updated, quarterly Total Workforce Listing documents and an annual Workforce Plan with the Citizen Job Placement Section in a timely manner in accordance with Regulations at sections 80–60.2-105, 200.

4. **Posting on Website:** Appellant is ORDERED to post all future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with Regulations at section 80–30.3-205. Appellant shall consider all responses posted on the website and post employer declarations in accordance with Regulations at section 80–30.3-450. Appellant shall hire U.S. citizen and/or permanent resident applicants when they are qualified and available to work.

5. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 2, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Joven A. Mallari, *dba* J.A.M. Construction Company, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-007 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on January 13 and February 12, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Joven A. Mallari, *dba* J.A.M. Construction Company ("Employer"), was represented by his accountant, Concepcion M. Hizon. Mr. Malari appeared at the Hearing on February 5, 2015. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Citizen Job Placement Section on December 17, 2014. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Job Placement Section denied the Employer's request for a Certification of Good Standing, citing three grounds: (1) Employer failed to meet the 30% Workforce Participation based on submitted Total Workforce Listing documents; (2) Employer failed to submit quarterly Workforce Listing documents in accordance with the Department of Labor Rules and Regulations ("Regulations") at section 80-60.2-105 *et seq.*; and (3) Employer failed to submit the Workforce Plan for the year 2013. *Id.*

Workforce Participation: Department Regulations require that an Employer employ a minimum of 30% of its workforce from U.S. citizens or permanent residents. Documents produced by Employer showed that his percentage was just below the 30% for much of 2014, but it finally rose above 33% in the final quarter of 2014 [See Hearing Exhibits 3, 4, 5 and 6.] Hearing Exhibit 6 showed that in the 4th quarter of 2014, Employer employed 3 U.S. citizen employees out of a total workforce of 9 employees. This percentage satisfies the regulatory requirement.

Quarterly Total Workforce Listings: In order to qualify for a Certificate of Compliance, the Regulations require Employer to submit certain business-related documents to the Department of Labor, such as business gross revenue documents, withholding tax documents, Total Workforce Listing documents and a Workforce Plan. In this case, Employer failed to file quarterly updated Total Workforce Listing documents in a timely manner. Regulations at § 80-60.2-105. After receiving the Denial, Employer gathered and produced the documents at the Hearing. [The Total Workforce Listing documents for all four quarters of 2014 were entered into evidence as Hearing Exhibits 3, 4, 5 and 6, respectively.]

Workforce Plan for 2013: Employer took issue with the Denial, noting that it had produced its Workforce Plan for 2013, as evidenced by the fact that it had been issued a Certification of Compliance by the Department on April 3, 2014. [A copy of this document was entered into evidence as Hearing Exhibit 7.] After reviewing the document, the Job Placement Section (James Ulloa) stated that he was satisfied that Employer had complied with this particular reporting requirement.

DISCUSSION

Employer admitted that he had not realized that Regulations required him to file updated Total Workforce Listing documents each quarter with the Department's Citizen Job Placement Section. Employer promised to do so in the future. [Testimony of Mr. Malari and Ms. Hizon; Regs. at § 80-60.2-105.]

Employer listed himself as his own *employee* on the Total Workforce Listing documents. [See Hearing Exhibits 2-6.] The Hearing Officer noted that because this business is a sole proprietorship, the owner/sole proprietor is not allowed to list himself as an "employee" of his sole proprietorship. Employer promised to stop listing himself as "employee" in the future.

The Job Placement Section indicated that it would withdraw its objection to issuing the Certificate of Good Standing provided that Employer would first pay a sanction

and agree to correct its conduct in the future. [Testimony of Mr. Ulloa.] The Hearing Officer accepts the position of the Job Placement Section and agrees that a Certificate of Good Standing should only be issued after Appellant Mallari has paid the monetary sanction noted below.

Sanctions: In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, Employer missed deadlines for filing its updated, quarterly Total Workforce Listing; however, Employer did attempt to cure the matter in good faith after he received the Denial. Additionally, during certain quarters Employer was just short of meeting the minimum workforce participation percentage (30%) regarding U.S. citizens and permanent residents in his workforce. Nevertheless, Employer finally met the minimum 30% in the 4th quarter of 2014. Furthermore, Employer agreed to post job announcements on DOL's website in the future and he agreed to pay a penalty for his tardy filings.

Based on the above facts, the Hearing Officer concludes that Employer should be sanctioned $1,000 dollars; however, $700 of the fine shall be suspended for one year, then extinguished, provided that Employer commits no further violations of CNMI labor laws or regulations during that period. The Denial shall be reversed, provided that the Employer pays the $300 portion of the sanction, as set forth below. After the Employer has paid the $300, the Department shall issue the Certificate of Good Standing.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** The Notice of Denial of the Certificate of Good Standing for Appellant Joven A. Mallari, *dba* J.A.M. Construction Company, is hereby REVERSED, provided that Appellant complies with the payment terms of this Order. After Appellant has paid the $300 portion of the sanction, as set forth below, the Department of Labor shall proceed to process a Certificate of Good Standing for Appellant Joven A. Mallari.

2. **Sanctions:** For its failure to submit timely documentation in accordance with Regulations, as described above, Appellant Joven A. Mallari is FINED one thousand dollars ($1,000); however, $700 of the fine shall be SUSPENDED for a period of one year, then extinguished, provided that Appellant complies with the Department Regulations set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Appellant is ORDERED to pay the $300 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office by the payment deadline.

3. **Filing of Total Workforce Listing:** Appellant Joven A. Mallari is ORDERED to file updated, quarterly Total Workforce Listing documents with the Citizen Job Placement Section in a timely manner in accordance with Regulations at § 80–60.2-105.

4. **Posting on Website:** Appellant is ORDERED to post all future job vacancies and job renewals on the Department's website (www.marianaslabor.net) in accordance with Regulations at § 80–30.3-205. Appellant shall consider all responses posted on the website and to file its "declaration" describing its action taken, for review by the Job Placement Section. *Id.* at § 80–30.3-450. Appellant shall hire such online U.S. citizen and permanent resident applicants when they are qualified and available to work.

5. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: February 17, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Elena M. Yumul, *dba* Yuman Construction, Appellant, v. Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-008 **ADMINISTRATIVE ORDER**

This appeal came on for hearing on January 13, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Elena M. Yumul was represented by her son and employee, Mario M. Yumul. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by Acting Director Yvonne S. Taisacan. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Notice of Denial ("Denial") issued by the Job Placement Section on December 17, 2014. The Job Placement Section denied the request of appellant Elena M. Yumul ("Employer") for a letter of certification. [See copy of the Denial at Hearing Exhibit 2.] Employer filed a timely appeal of the Denial and this hearing followed.

In its Denial, the Job Placement Section alleged that Employer had failed to submit three Total Workforce Listing documents, covering the following periods: 4th quarter of 2013, 1st quarter of 2014, and 2nd quarter of 2014. Also, Employer had not submitted a Workforce Plan in 2013. *Id.*

At Hearing, Employer produced the Total Workforce Listing documents noted above. In each document, Employer listed a total workforce of 5 employees: 2 permanent residents and 3 foreign national (CW status) workers. Each document

was signed under penalty of perjury by Elena M. Yumul who listed herself as "Proprietor." [Each of the above-cited Total Workforce Listing documents were entered into evidence as Hearing Exhibits 3, 4 and 5, respectively.]

First, a review of the Total Workforce Listing documents reveals that one employee is listed as part-time, therefore the number of full-time employees should be reduced by one. Secondly, Elena M. Yumul lists herself as an employee of her own sole proprietorship business. This is incorrect because, as a matter of law, the sole proprietor of a business cannot be both employer and employee (one cannot work for oneself). Although this arrangement may be allowed in the case of corporations, which are recognized as separate legal entities from their shareholders, a sole proprietorship has no independent legal status apart from its owner. Ms. Elena M. Yumul cannot be an employee of herself; therefore, she should not be listed as such in the Total Workforce Listing.

The corrected figures show that Employer employs three full-time workers consisting of one permanent resident and two CW-status workers. This means that Employer is in compliance with the minimum workforce participation percentage (30%) required by the Regulations. [Regs. at § 80-30.2-120(c); NMIAC § 80-20.1-210(c)(3).] Given this statistic, the Job Placement Section stated that it would excuse the lack of a Workforce Plan that should have been filed by Employer in 2013.

Based on the evidence presented at Hearing, the Job Placement Section (per Ms. Taisacan) recommended that the denial be reversed and Employer's request for a letter of certification be granted.

As stated, the Hearing Officer finds that Employer is in compliance with the minimum workforce participation percentage (30%) required by the Regulations. Further, Job Placement is willing to excuse Employer's failure to file a Workforce Plan for 2013. Based on the facts presented and the position of the parties, the Hearing Officer finds that the letter of Certification for this Employer should be issued. No sanction was requested by the Job Placement Section and none shall be issued.

Finally, the hearing did not address whether Employer has filed a Workforce plan for 2014. [Regs. at § 80-60.2-200.] Such discussion would appear to go beyond the scope of this matter. In the future, however, Employer should file corrected Total Workforce Listing documents with respect to the last half of 2014.

Good cause having been shown, IT IS HEREBY ORDERED:

1. The above-referenced Notice of Denial of the Certification for appellant Elena M. Yumul, *dba* Yumul Construction, is hereby REVERSED. The Job Placement Section is instructed to proceed with its processing of the requested Certificate of Compliance to appellant as soon as possible.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: January 30, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Elena M. Yumul, *dba* Yuman Construction, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-008 **AMENDED ADMINISTRATIVE ORDER**

NOTE: This Amended Administrative Order replaces and supersedes the Administrative Order issued in this case on January 30, 2015. [Employment Rules and Regulations at § 80-50.4-855.]

This appeal came on for hearing on January 13, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Elena M. Yumul was represented by her son and employee, Mario M. Yumul. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by Acting Director Yvonne S. Taisacan. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Notice of Denial ("Denial") issued by the Job Placement Section on December 17, 2014. The Job Placement Section denied the request of appellant Elena M. Yumul ("Employer") for a letter of certification. [See copy of the Denial at Hearing Exhibit 2.] Employer filed a timely appeal of the Denial and this hearing followed.

In its Denial, the Job Placement Section alleged that Employer had failed to submit three Total Workforce Listing documents, covering the following periods: 4th quarter of 2013, 1st quarter of 2014, and 2nd quarter of 2014, and failed to submit a Workforce Plan in 2013. *Id.*

At Hearing, Employer produced the Total Workforce Listing documents noted above. In each document, Employer listed a total workforce of 5 employees: 2 permanent residents and 3 foreign national (CW status) workers. Each document was signed under penalty of perjury by Elena M. Yumul who listed herself as "Proprietor." [Each of the above-cited Total Workforce Listing documents were entered into evidence as Hearing Exhibits 3, 4 and 5, respectively.]

First, a review of the Total Workforce Listing documents reveals that one employee is listed as part-time, therefore the number of full-time employees should be reduced by one. Second, Elena M. Yumul lists herself as an employee of her own sole proprietorship business. This is incorrect because, as a matter of law, the sole proprietor of a business cannot be both employer and employee (one cannot work for oneself). Although this arrangement may be allowed in the case of corporations, which are recognized as separate legal entities from their share-holders, a sole proprietorship has no independent legal status apart from its owner. Ms. Elena M. Yumul cannot be an employee of herself; therefore, she should not be listed as such in the Total Workforce Listing.

The corrected figures show that Employer employs three full-time workers consisting of one permanent resident and two CW-status workers. This means that Employer is in compliance with the minimum workforce participation percentage (30%) required by the Regulations. [Regs. at § 80-30.2-120(c).]

As to the second deficiency, the Employer submitted its 2013 Workforce Plan during the Hearing. [See Regs. at § 80-60.2-200 *et seq.* discussing this requirement.]

Based on the evidence presented at Hearing, the Job Placement Section (per Ms. Taisacan) recommended that the denial be reversed and Employer's request for a letter of certification be granted.

As stated, the Hearing Officer finds that Employer is in compliance with the minimum workforce participation percentage (30%) required by the Regulations. Further, Employer has now complied with the requirement to submit a Workforce Plan for 2013. Based on the facts presented and the position of the parties, the Hearing Officer finds that the letter of Certification for this Employer should be issued. No sanction was requested by the Job Placement Section for Employer's late submission of documents.

Good cause having been shown, IT IS HEREBY ORDERED:

1. The above-referenced Notice of Denial of the Certification for appellant Elena M. Yumul, *dba* Yumul Construction, is hereby REVERSED. The Job Placement Section is instructed to proceed with its processing of the requested Certificate of Compliance to appellant as soon as possible.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC § 4948(a).

DATED: February 2, 2015

Jerry Cody
Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: R.O.G.L. Corporation, *dba* GMP Construction, Appellant, **v.** Department of Labor – Citizen Job Placement Section, Appellee.	)	D.C. No. 14-009 **ADMINISTRATIVE ORDER**

This denial appeal came on for hearing on February 5, 2015, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant R.O.G.L. Corporation ("Employer") was represented by its President, Gina D. Iglesias. The Department's Citizen Availability and Job Placement Section ("Job Placement Section") was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant's timely appeal of a Notice of Denial ("Denial") issued by the Citizen Job Placement Section on December 16, 2014. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.] The Job Placement Section denied the Employer's request for a Certificate of Good Standing citing two grounds: (1) Employer failed to comply with certain reporting requirements set forth in the Department of Labor Rules and Regulations ("Regulations") at section 80-60.2-100 *et seq.*; and (2) Employer failed to comply with the posting requirement set forth in the Regulations at section 80-30.3-205.

Reporting Requirements: In order to qualify for a Certificate of Compliance, the Regulations require Employer to submit certain business-related documents to the Department of Labor, such as business gross revenue documents, withholding tax

documents, Total Workforce Listing documents and a Workforce Plan. In this case, Employer failed to file these documents in a timely manner. After receiving the Denial, Employer gathered documents and produced them to the Department. At Hearing, Employer brought its Quarterly Compliance Report and Total Workforce Listing documents for all four quarters of 2014. [These documents were entered into evidence as Hearing Exhibits 2, 3, 4 and 5, respectively.] After reviewing the documents, the Job Placement Section (James Ulloa) testified that Employer had now satisfied the reporting requirements to qualify for a Certificate of Compliance.

Posting Requirement: Employer admitted that it had never posted any job announcements on the Department of Labor ("DOL") website. President Iglesias testified that she had once tried to log onto the DOL website but she encountered difficulties and gave up. Ms. Iglesias did not seek assistance from the Job Placement Section; instead, she advertised the offered positions on the radio. [Testimony of Ms. Iglesias.]

Department Regulations state that "[a]n employer who intends to employ a foreign national worker...on a full-time basis...must post a job vacancy announcement on the Department's website, www.marianaslabor.net." Regs. at § 80-30.3-205.

Employer failed to post its job announcements for five jobs offered to foreign national workers at the time of their renewals in late 2014. [Testimony of Ms. Iglesias; see Total Workforce Listing at Hearing Exhibit 2.] This conduct cannot now be corrected given that the five CW-1 status workers at Employer's business have already received renewed CW-1 status by USCIS.

The Job Placement Section indicated that it would withdraw its objection to issuing the Certificate of Compliance provided that Employer pays a sanction and agrees to correct its conduct in the future. [Testimony of Mr. Ulloa.] The Hearing Officer accepts the position of the Job Placement Section and agrees that the denial should only be reversed on the condition that Employer pays a monetary sanction and agrees to comply with regulatory requirements in the future.

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed $2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and

fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4-820(h) and (o).

In this case, Employer missed reporting deadlines; however, it did attempt to cure the deficiencies in good faith after it received the Denial. Employer failed to post job announcement on DOL's website in accordance with Department Regulations; however, it agreed to pay a penalty and to utilize the website for announcements in the future.

Based on the above facts, the Hearing Officer concludes that Employer should be sanctioned $1,200 dollars; however, half of that sanction ($600) shall be suspended for two years, then extinguished, provided that Employer commits no further violations of CNMI labor laws or regulations during that period. The Denial shall be reversed and a Certificate of Compliance issued, as soon as Employer pays the sanction, as set forth below.

Good cause having been shown, IT IS HEREBY ORDERED:

1. The above-referenced Notice of Denial of the Certificate of Good Standing for Appellant R.O.G.L. Corporation is hereby REVERSED, provided that Appellant pays the sanction issued below. The Department of Labor is instructed to proceed to process a Certificate of Good Standing for Appellant R.O.G.L. Corporation, as soon as the company makes timely payment of the $600 sanction, as specified below.

2. **Sanctions:** For its numerous violations of Regulations as described above, Appellant R.O.G.L. Corporation is FINED one thousand, two hundred dollars ($1,200); however, half of the fine ($600) shall be SUSPENDED for a period of two years from the date of issuance of this Order, then extinguished, provided that Appellant complies with the Department Regulations, as set forth below. 3 CMC §§ 4528(f)(2) and 4947(11). Appellant is ORDERED to pay the remaining portion of the fine ($600) no later than forty-five (45) days after the date of issuance of this Order. Payments shall be made to the CNMI Treasury; and a copy of the payment receipt shall be delivered to the Hearing Office by the payment deadline.

3. **Posting on Website:** Appellant R.O.G.L. Corporation is ORDERED to post all future job vacancies and job renewals on the Department of Labor website (www.marianaslabor.net), in accordance with Regulations at § 80–30.3-205. Appellant is ORDERED to consider all responses posted on the website and to file

its "declaration" describing its action taken, for review by the Job Placement Section. *Id.* at § 80–30.3-450. Furthermore, Appellant shall hire such online U.S. citizen and permanent resident applicants when they are qualified and available to work.

4. **Warning:** The obligations described above are continuing obligations. If Appellant fails to comply with the terms of this Order (for example: fails to post job openings or to consider and evaluate all online applicants, or fails to notify the Department regarding the referrals, etc.), it shall be subject to a further monetary sanctions, after a due process hearing on this issue.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: February 9, 2015

Jerry Cody
Hearing Officer