

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



COMMONWEALTH REGISTER

**VOLUME 43
NUMBER 01
JANUARY 28, 2021**

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COMMONWEALTH REGISTER

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Office of the Secretary
Department of Finance



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**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF
THE DEPARTMENT OF FINANCE – DIVISION OF CUSTOMS SERVICE**

*Prior Publication in the Commonwealth Register as Proposed Regulations
Volume 42 Number 011 pp 044422 – 044428, November 28, 2020*

Regulations of the Department of Finance: Chapter 70-10 Customs Service Division

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. (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: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC 2553, 1 CMC 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820.

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.

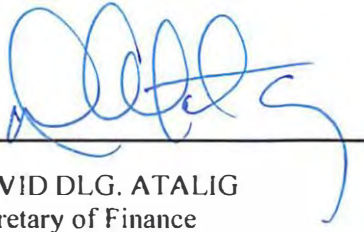
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption 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 FOR NON-MODIFIED REGULATIONS: 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.). As such, further approval is not required.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 20th day of January 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

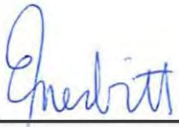


DAVID DLG. ATALIG
Secretary of Finance
Department of Finance

1/25/21

Date

Filed and
Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

01.28-2021

Date

Pursuant to I CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and I CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. I CMC § 2153(f) publication of rules and regulations).

Dated the 28th day of January, 2021.



EDWARD MANIBUSAN
Attorney General



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

In Re Matter of:) Labor Case No. 18-067
)
SM Farhad Mhamud,)
)
Complainant,) ORDER GRANTING RESPONDENT'S
) MOTION TO DISMISS FOR LACK OF
) JURISDICTION
v.)
)
Osman Gani *dba* Saipan Security Service,)
)
Respondent.)

I. INTRODUCTION

This matter came for a Motions Hearing on November 20, 2020 at 9:00 a.m. at the Administrative Hearing Office. Complainant SM Farhad Mhamud ("Complainant") was represented by Joseph Horey, Esq. Respondent Osman Gani *dba* Saipan Security Service ("Respondent") was represented by Joe McDoulet, Esq. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was also present and represented by Investigator Arlene Rafanan.

For the reasons stated below, Respondent's Motion to Dismiss is GRANTED.

II. BACKGROUND

On September 30, 2020, Respondent filed a Motion to Dismiss and Brief in Support of Motion to Dismiss ("Respondent's Motion") for Lack of Subject Matter Jurisdiction. More specifically, Respondent's Motion contends that the Complainant failed to satisfy the subject matter jurisdiction requirements and thus, the Complainant's labor action should be dismissed. On November 18, 2020, Complainant filed his Opposition to Motion to Dismiss ("Complainant's Opposition"). Generally, Complainant argues that this agency has subject matter jurisdiction over the instant matter. On November 20, 2020, both parties submitted supplemental briefs. Oral arguments on the Motion to Dismiss were heard at the Administrative Hearing Office and the matter was taken under advisement.

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III. LEGAL STANDARD

Motions to dismiss for lack of jurisdiction over the subject matter are governed by NMIAC § 80-20.2-130(c)(1)(A). Generally, the Administrative Hearing Office has jurisdiction over "*all actions* involving alleged violations of the labor and wage laws of the Commonwealth . . ." 3 CMC § 4942. (Emphasis added). Specifically, the statute provides:

The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth, including but not limited to any violation of this chapter and regulations promulgated thereunder. The Commonwealth Superior Court shall have concurrent jurisdiction to resolve all labor and wage violations that are criminal in nature.

Id.; See also NMIAC § 80-20.1-450 ("The Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth."). The Employment Rules and Regulations under the NMI Administrative Code further limits jurisdiction with respect to complaints from Citizens, CNMI permanent residents, U.S. permanent residents, foreign national workers (NMIAC § 80-20.1-080(k)), and other nonimmigrant aliens (NMIAC § 80-20.1-080(p)). NMIAC § 80-20.1-450(b) "The Administrative Hearing Office does not have jurisdiction with respect to claims of tourists." NMIAC § 80-20.1-450(e). "Whenever it appears by suggestion of the parties or otherwise that the agency lacks jurisdiction of the subject matter, the agency shall dismiss the action." NMIAC § 80-20.2-145(c).

IV. DISCUSSION

1. Subject Matter Jurisdiction

The Complainant does not contend that he qualifies as a U.S. citizen, U.S. permanent resident, CNMI permanent resident, foreign national worker, or nonimmigrant alien as defined by the applicable regulations. However, Complainant argues that the Commonwealth Employment Act of 2007 grants the Hearing Office substantially broader jurisdiction than what is provided under the applicable regulations. The undersigned disagrees.

1 As stated above, the Administrative Hearing Office has jurisdiction over "*all actions*
2 involving alleged violations of the labor and wage laws of the Commonwealth . . ." 3 CMC §
3 4942. (Emphasis added). "The claims that are covered under the Hearing Office's jurisdiction are
4 those that arise out of an 'employment relationship.'" *Bicas v. Joyce*, LC-15-1193 (Administrative
5 Order Granting Respondents' Motion to Dismiss Case; and Dismissal at 3) (Published 41 Com.
6 Reg. 042161 (June 28, 2019)). However, the Employment Rules and Regulations further limit
7 jurisdiction with respect to complaints. Specifically, the Employment Rules and Regulations state:

8 The Administrative Hearing Office shall have jurisdiction over
9 complaints filed with the Administrative Hearing Office by **U.S.**
10 **Citizens, CNMI permanent Residents or U.S. permanent**
11 **residents**, and agency complaints filed by the Department, with
12 respect to violations of the requirements of job reference and
workforce participation pursuant to the Commonwealth
Employment Act of 2007, as amended, and other violations of labor
laws application in the Commonwealth . . .

13 The Administrative Hearing Office shall have jurisdiction over
14 complaints filed with the Administrative Hearing Office by **foreign**
15 **national workers** (NMIAC § 80-20.1-080(k)), and agency
16 complaints filed by the Department, with respect to violations of
Commonwealth law and regulations regarding employment and
other labor laws applicable in the Commonwealth . . .

17 The Administrative Hearing Office shall have jurisdiction over
18 complaints filed with the Administrative Hearing Office by other
19 **nonimmigrant aliens** (NMIAC § 80-20.1-080(p)) with respect to
20 violations of Commonwealth Law and regulations regarding
employment.

21 NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

22 The Administrative Hearing Office does not have jurisdiction with respect to claims made
23 by nonimmigrant persons employed illegally. Under Public Law 15-108, the Legislature
24 specifically stated:

25 It is the intent of the Legislature that this Act shall not apply to
26 persons admitted to the Commonwealth as tourists, or to *persons*
27 *employed illegally*, i.e., without approval of the Department of
28 Labor, or to those persons employing others illegally in the
Commonwealth *unless specific provision has been made herein*. It

1 is the intent of the Legislature that persons illegally employing
2 others or illegally employed be prohibited from using the terms of
this Act to receive or avail themselves of a legal right or benefit.

3 PL 15-108, § 2 (emphasis added).

4 The undersigned finds that Complainant failed to meet his burden to establish jurisdiction
5 or a right to relief from a lawful employment relationship. Complainant failed to submit any
6 evidence demonstrating his legal status or authorization to work in the CNMI.

7 Accordingly, Complainant failed to prove his legal status in the CNMI or his authorization
8 to be employed in the CNMI. There is no evidence that Complainant was legally authorized to
9 work in the CNMI at the time of the alleged employment date claim.

10 2. Timeliness of Motion

11 It is a well-established principle that jurisdictional issues can be raised at any time during
12 the proceedings. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). In *Norita v.*
13 *Commonwealth*, the CNMI Supreme Court clarified the difference between "claim-processing"
14 rules and "jurisdictional" rules. 2020 MP 12 ¶ 9-12. As the Court put it, "[j]urisdictional time
15 limitations may not be waived or forfeited and may be raised at any time . . ." *Id.* at ¶ 11 (internal
16 quotations omitted). "In contrast, 'mandatory claim-processing rules are less stern.'" *Id.* at ¶ 12.
The undersigned finds that Respondent's Motion to Dismiss was not time-barred.

17 V. CONCLUSION

18 Based on the above-stated findings of fact and conclusions of law, the undersigned finds
19 that the Administrative Hearing Office lacks jurisdiction with respect to the complaint filed by
20 Complainant. Accordingly, Respondent's Motion to Dismiss is **GRANTED**. Labor Case No. 18-
21 067 is hereby **DISMISSED**. The Department's Enforcement Section shall provide a copy of this
22 Order and relevant findings to U.S. Immigration and Customs Enforcement.

23 All persons or party aggrieved by this Order may appeal by filing the Notice of Appeal
24 form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date
of this Order.

25 SO ORDERED this 5th day of January, 2021.

26
27 /s/: Joey P. San Nicolas
28 **JOEY P. SAN NICOLAS, ESQ.**
Administrative Hearing Officer



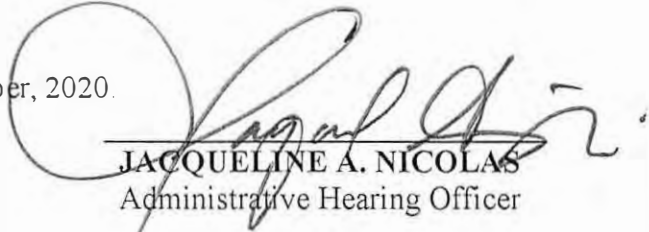
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Labor Case No. 19-054
)
Ruben B. Tagalog,)
)
Complainant,) ORDER OF DISMISSAL
)
v.)
)
Mary Ann F. Sablan dba Creative Hair and)
Body Care,)
)
Respondent.)

On December 2, 2020 at 9:00 a.m., a telephonic Administrative Hearing began for the above-captioned case when the parties requested to proceed with settlement negotiations. Complainant Ruben B. Tagalog ("Complainant") was present and self-represented. Respondent Mary Ann F. Sablan dba Creative Hair and Body Care ("Respondent") was present and represented by Owner Mary Ann F. Sablan. The Department's Enforcement, Compliance, and Monitoring Section was also present and represented by Investigator Arlene Rafanan.

I hereby certify that I have reviewed the terms of the Settlement Agreement in **Labor Case No. 19-054** and find that the terms are fair under the circumstances of this case and that the parties have knowingly and voluntarily agreed to the terms of the settlement. Therefore, the Settlement Agreement is approved and accepted for the purposes stated herein. The terms of the above-described Settlement Agreement are hereby incorporated into this Order. Upon review, this case has no other pending issues or claims. Accordingly, the case is hereby **DISMISSED** with prejudice, pursuant to NMIAC § 80-20.1-485(b).¹ Notwithstanding the above, the Administrative Hearing Officer shall retain jurisdiction for the purposes of enforcement of the Order.

So ordered this 2nd day of December, 2020.


JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ "A complaint may be dismissed upon ... settlement by the party or parties who filed it." NMIAC § 80-20.1-485(b)."



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

In Re Matter of:) PUA Case No. 20-0018
)
Elvie B. Codia)
)
Appellant,) FINAL ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 7, 2020 at 9:00 a.m. pursuant to Appellant's Request to Reopen the Decision. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Elvie B. Codia ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita and Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Certification;
2. Exhibit 2: Parolee Card;
3. Exhibit 3. Copy of Appellant's EAD Card (Valid from 6/4/2020 to 6/29/2020);
4. Exhibit 4: Copy of Appellant's previous EAD cards;
5. Exhibit 5: Copy of Appellant's previous Parolee Cards;
6. Exhibit 6: Copy of Department's SAVE Results¹;

¹ Appellant objected to the SAVE results because the search was initiated using Appellant's previous EAD card number. Appellant's objection was overruled because the remaining identifiers like Appellant's name, date of birth, and alien number were also used to identify and pull records for Appellant. Further, the Department testified that the

7. Exhibit 7: Notice for Limited Parole to Department the US and Extension of Employment Authorization (dated January 8, 2019);
8. Exhibit 8: Notice of Parole pursuant to PL 116-24 (dated September 27, 2019);
9. Exhibit 9: Appellant's Form I-797C Notice of Action (Notice Date 7/1/2020);
10. Exhibit 10: USCIS News Alert titled, "USCIS Extend Transitional Parole for CNMI Long-Term Resident Status Applicants;
11. Exhibit 11: Appellant's Form I-797C Notice of Action (Notice Date 6/4/2020).

For the reasons stated below, the Department's Determination dated September 29, 2020 is **REVERSED**. In consideration of the evidence and applicable law, Claimant is eligible for benefits for the period of June 7, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its initial determination on September 24, 2020 with a mail date of September 29, 2020. The Department's

correct information pulled the most up to date information and the typo would not have affected the results.

² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(l) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien
2 and denied benefits effective April 5, 2020 to December 26, 2020. Appellant filed the present
3 appeal on September 29, 2020. The issues on appeal is whether Appellant is a qualified alien
4 eligible for PUA. An Administrative Hearing was held on October 15, 2020. Based on the
5 evidence presented and applicable law, a decision was issued on October 19, 2020. After the
6 decision was issued, Appellant filed a request to reconsider or reopen the decision on appeal based
7 on additional evidence that could potentially alter the decision. In order to avoid the unwarranted
8 deprivation of benefits or manifest injustice, the undersigned granted Appellant's request to
9 reopen the decision.

10 IV. LEGAL STANDARD

11 The PUA and FPUC programs are federal public benefits created to support workers and
12 employment affected by the COVID-19 pandemic. Pursuant to HAR §12-5-93(h)-(i), a decision
13 may be reopened by written motion of the parties' or the Administrative Hearing Officer's own
14 motion. If a case is reopened, "the [Administrative Hearing Officer] shall schedule the matter for
15 further hearing and notify the parties to the appeal" HAR §12-5-93(i). A decision can only
16 be reopened once by a particular party. HAR §12-5-93(j). In the event that an application to
17 reopen is denied or parties have further objections to a subsequent decision, the parties may obtain
18 judicial review. *Id.*

19 V. FINDINGS OF FACT

20 In consideration of the evidence provided and credibility of witness testimony, the
21 undersigned issues the following findings of fact:

- 22 1. Prior to the pandemic, Appellant was employed as a Delivery Driver at Younis Art Studio,
23 Inc. ("Employer") located in Garapan, Saipan. Appellant regularly worked 20 hours per
24 week at a rate of \$7.65 per hour.⁵
- 25 2. For the safety of its employees, Employer temporarily locked down operations. As a result
26 of the economic impact of COVID-19, Employer issued furloughs and reduced
27 Appellant's working hours to zero, effective April 6, 2020.⁶
- 28 3. Appellant has not been recalled to work or otherwise returned to the workforce. Appellant
has had no other work or income to report since being furloughed by Employer.

⁵ Exhibit I.

⁶ *Id.*

- 1 4. Appellant applied for PUA claiming weeks after April 6, 2020 to December 26, 2020.
- 2 5. On September 24, 2020, the Department issued a determination with the mail date of
- 3 September 29, 2010. The determination disqualified Appellant from PUA benefits
- 4 because Appellant was not a U.S. Citizen, Non-citizen National, or a Qualified Alien at
- 5 the time she was claiming benefits.
- 6 6. On September 29, 2020, Appellant filed an appeal arguing that she was a qualified alien.
- 7 7. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
- 8 for the following periods:⁷
- 9 a. August 30, 2012 through December 31, 2012;
- 10 b. December 11, 2012 through December 31, 2014;
- 11 c. December 22, 2014 through December 31, 2016;
- 12 d. January 7, 2017 through December 31, 2018; and
- 13 e. October 29, 2019 through June 29, 2020.
- 14 8. To account for gaps between the fourth and fifth parolee cards above, Appellant had two
- 15 additional notices from USCIS.⁸ First, Appellant was granted an additional validity period
- 16 of parole from January 1, 2019 to June 29, 2019.⁹ Second, on June 29, 2019, USCIS
- 17 automatically extended her transitional parole through October 28, 2019.¹⁰
- 18 9. Additionally, Appellant was granted employment authorization with the Category C11.
- 19 Appellant has Employment Authorization Document ("EAD")¹¹ cards valid for the
- 20 following periods:¹²
- 21 a. March 7, 2014 to December 31, 2014;
- 22 b. March 2, 2015 to March 1, 2016;
- 23 c. December 31, 2016 to January 30, 2017;
- 24 d. January 30, 2017 to June 29, 2019; and
- 25 e. June 4, 2020 to June 29, 2020.

⁷ Exhibit 2 and Exhibit 5.

⁸ Exhibit 7-8.

⁹ Exhibit 7.

¹⁰ Exhibit 8.

¹¹ An EAD is a work permit that allows noncitizens to work in the United States.

¹² Exhibit 4.

- 1 10. Appellant did not have employment authorization when she was working in early 2020 or
2 at the time she filed her claim in April.¹³
- 3 11. Appellant applied to the last above-stated EAD Card in February 2020. On June 4, 2020,
4 USCIS issued the approval notice of Appellant's application for approval under class C11
5 valid from 6/4/2020 to 6/29/2020.
- 6 12. Additionally, Appellant applied for CNMI Long Term residency in June 2020.
7 Appellant's application was received by U.S. Citizenship and Immigration Services
8 (USCIS) in July 2020. Appellant's application is still pending and has not been granted.
9 In consideration of Appellant's pending applications, USCIS automatically extended¹⁴
10 Appellant's employment authorization was extended by 180 days and beyond the end of
11 the pandemic assistance period.¹⁵
- 12 13. On or around September 14, 2020, the Department entered Appellant's information into
13 the Systematic Alien Verification for Entitlements (SAVE) database maintained by
14 USCIS, Verification Division. This database is used to determine the alien status of PUA
15 applicants so only those entitled to benefits receive them. The SAVE results indicate that
16 Appellant has a pending application and presently granted EAD Category C11 for June 4,
17 2020 to June 29, 2020.¹⁶
- 18 14. The Department issued a Determination disqualifying Appellant for PUA because she is
19 not a US Citizen, non-citizen national, or qualified alien.
- 20 15. Appellant appealed under the assumption she is a qualified alien.
- 21 16. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into
22 the U.S. for at least one consecutive year during the pandemic assistance period, an alien
23 pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian
24 entrant, or an alien battered or subject to extreme cruelty.

25 ///

26 ///

27 ¹³ Based on the testimony and evidence provided, it appears that Appellant was working illegally.

28 ¹⁴ On August 11, 2020, USCIS issued a press release that it would automatically extend parole and employment authorization if applicable, for parolees who timely applied for the Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status.

¹⁵ See Exhibits 9-11.

¹⁶ Exhibit 6.

VI. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a “qualified alien” at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term “qualified alien” is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement.

Based on the new evidence and testimony provided, the undersigned finds that the Appellant has sufficient evidence to establish her qualified alien status. Here, the Appellant has demonstrated an uninterrupted Parolee Status dating back to 2017. Specifically, Appellant provided a Parolee Card with the validity dates of January 7, 2017 through December 31, 2018. Next, Appellant provided a notice from USCIS showing an additional validity period from January 1, 2019 to June 29, 2019.¹⁷ A second notice from USCIS shows that the additional

¹⁷ Exhibit 7.

1 validity period was extended through October 28, 2019.¹⁸ Lastly, Appellant provided her last
2 Parolee Card with the validity dates of October 29, 2019 through June 29, 2020.¹⁹ In consideration
3 of the above showing, Appellant is an alien paroled into the U.S. under § 212(d)(5) of the INA
4 for at least one year. Moreover, Appellant retained this parolee status after applying for CNMI
5 Long Term Resident status. Accordingly, Appellant was a qualified alien eligible for PUA
6 benefits.

7 **2. Appellant's employment was affected as a direct result of COVID-19.**

8 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
9 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
10 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
11 unemployment compensation (PEUC).²⁰ Second, the claimant must show that he or she is able
12 and available for work, as defined by Hawaii law, except they are unemployed, partially
13 unemployed, or unable to work or unable for work due to at least one of the following COVID-
14 19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 15 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
16 COVID-19 and is seeking a medical diagnosis;
- 17 (b) A member of the individual's household has been diagnosed with COVID-19;
- 18 (c) The individual is providing care for a family member or a member of the individual's
19 household who has been diagnosed with COVID-19;
- 20 (d) A child or other person in the household for which the individual has primary
21 caregiving responsibility is unable to attend school or another facility that is closed as
22 a direct result of the COVID-19 public health emergency and such school or facility
23 care is required for the individual to work;
- 24 (e) The individual is unable to reach the place of employment because of a quarantine
25 imposed as a direct result of the COVID-19 public health emergency;
- 26 (f) The individual is unable to reach the place of employment because the individual has
27 been advised by a health care provider to quarantine due to concerns related to
28 COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is
unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because
the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;

¹⁸ Exhibit 8.

¹⁹ Exhibits 2 and 5.

²⁰ This is not at issue in this case.

- 1 (j) The individual's place of employment is closed as a direct result of the COVID-19
public health emergency; or
2 (k) The individual is an independent contractor who is unemployed (total or partial) or is
unable or unavailable to work because of the COVID-19 public health emergency has
3 severely limited his or her ability to continue performing the customary job.

4 Based on the evidence and testimony provided, it is clear that Appellant's employment was
5 affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the
6 Governor's Executive Orders, there were closures of government offices, restrictions on private
7 businesses, and an overall reduction in revenue from the immediate halt in tourism. In April of
8 2020, Employer had to reduce operations and temporarily lockdown operations and issue
9 furloughs as a result of the economic impact of COVID-19.²¹ To date, Appellant has not returned
10 to full time work. Accordingly, Appellant's employment was directly affected by a COVID-19
11 qualifying reason.

12 **3. Appellant was not able and available to work in the CNMI outside of the relevant**
13 **employment authorization period.**

14 As stated above, a claimant must be able to work and be available for work, except for a
15 qualifying COVID-19 reason, in order to be eligible for benefits. "An individual shall be
16 deemed able and available for work...if the individual is able and available for suitable work
17 during the customary work week of the individual's customary occupation which falls *within the*
18 *week for which a claim is filed.*"²² "An individual shall be deemed *able* to work if the individual
19 has the physical and mental ability to perform the usual duties of the individual's customary
20 occupation or other work for which is the individual is reasonably fitted by training and
21 experience."²³ "An individual shall be deemed *available* for work only if the individual is ready
22 and willing to accept employment for which the individual is reasonably fitted by training and
23 experience. The individual must intend and wish to work, and there must be no undue restrictions
24 either self-imposed or created by force of circumstances which prevent the individual from
25 accepting employment."²⁴ For qualified aliens, the inquiry of whether an individual is "able and
26 available" also hinges on whether they are authorized to work during the weeks claimed.

27 ²¹ Exhibit 1.

28 ²² HAR § 12-5-35(a) (emphasis added).

²³ HAR § 12-5-35(a)(1) (emphasis added).

²⁴ HAR § 12-5-35(a)(2) and (b) (emphasis added).

1 As a preliminary matter, the undersigned recognizes Appellant's willingness to return to work
2 in the CNMI. Aside from having employment authorization, Appellant is ready and prepared to
3 return to the workforce without restrictions or other obligations preventing her from doing so.
4 However, the limitations on Appellant's employment authorization seriously restrict her ability
5 to work in the CNMI—as well as her ability to claim PUA benefits. PUA benefits cannot be
6 distributed or paid out for any time period is not legally authorized to work.

7 Here, the pandemic assistance period is February 2, 2020 to December 26, 2020. As described
8 above, Appellant's eligibility is further limited by the Appellant's ability to work during the
9 pandemic assistance period. During the hearing, inquiries and requests for documents were made
10 for Appellant to show her approved employment authorization to work in the beginning of 2020.
11 Appellant stated she did not have employment authorization and admitted that she did not have
12 any additional documents to support her claim. Based on the documents and testimony provided,
13 Appellant wrongly certified that her employment was affected by COVID-19 and she was "able
14 and available" to work since filing her application in April 2020. Simply, Appellant's
15 employment cannot logically be affected by COVID-19 and she cannot be considered "able and
16 available" to work when she does not have employment authorization. Accordingly, Appellant is
17 only "able and available" to work since June 4, 2020.

18 VII. ORDER

19 For the reasons stated above, it is ORDERED that:

- 20 1. The CNMI Department of Labor's Determination is **REVERSED**; and
- 21 2. The Appellant is **ELIGIBLE** to receive PUA benefits for the period of June 7, 2020 to
22 December 26, 2020.

23 This constitutes a **FINAL AGENCY DECISION**. In the event a party aggrieved by this
24 Order would like to dispute or contest this decision, said party may seek judicial review with the
25 CNMI Superior Court under the local Administrative Procedures Act within 30 days of this Order.
26 See 1 CMC § 9112.

27 So ordered this 11th day of January, 2021.

28 /s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re the Matter of:) Labor Case No. 20-020
)
Rolipher R. Pelegrino,)
)
Complainant,) **DEFAULT JUDGMENT**
)
v.)
)
Saipan Surfrider LLC,)
)
Respondent.)

This matter came for an online Administrative Hearing on December 16, 2020 at 1:30 p.m. at the Administrative Hearing Office. Due to the COVID-19 public health emergency, this hearing was conducted telephonically. Complainant Rolipher R. Pelegrino ("Complainant") failed to appear.¹ Saipan Surfrider LLC ("Respondent") was present and represented by Attorney James Stump, Director of Human Resources Francisco Ada and Human Resource Specialist Tina Doctor. The Department's Enforcement, Monitoring, and Compliance Section ("Enforcement") was also present and represented by investigator Arlene Rafanan.

Considering Complainant's absence, Respondent moved for Default Judgment. Pursuant to NMIAC § 80-20.1-480(I), "[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 contest the allegations in the complaint." Here, Complainant was served with the Order to Show Cause; Notice of Hearing on November 17, 2020 pursuant to NMIAC § 80-20.1-475(d)(4) and acknowledged receipt the Order. Accordingly, notice and service of process was sufficient. Accordingly, **DEFAULT JUDGMENT** is hereby entered in favor of Respondent.

So ordered this 16th day of December, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ Complainant has departed the CNMI and it is unclear when or whether he will return.



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

In Re Matter of:) PUA Case No. 20-0021
)
Rodalyn Nomura)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 21, 2020 and November 10, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Appellant Rodalyn Nomura ("Appellant") was present and represented by Attorney Christopher Heeb. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita, PUA Supervisor Sharon Palacios and PUA Coordinator Brenda Lynn Sablan. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Certification
2. Exhibit 2: Copy of Appellant's Employer Memo (dated February 6, 2020)
3. Exhibit 3: Copy of Appellant's Notice of Furlough (dated April 6, 2020)
4. Exhibit 4: Copy of Appellant's passport
5. Exhibit 5: Copy of Appellant's passport
6. Exhibit 6: Copy of Appellant's Divorce Decrees and Marriage License
7. Exhibit 7: Copy of Appellant's Receipt Notice (dated May 13, 2019)
8. Exhibit 8: Copy of Appellant's Prima Facie Determination (dated July 24, 2019)

9. Exhibit 9: Copy of Appellant's Prima Facie Determination Extension (dated July 15, 2020)
10. Exhibit 10: Copy of Appellant's Form 1-360 Petition Approval Notice
11. Exhibit 11: Copy of Department SAVE results (initiated 10/22/20);
12. Exhibit 12: Copy of Appellant's (3) EAD Cards
13. Exhibit 13: Copy Appellant's Application Snapshot
14. Exhibit 14: Notice of Overpayment (Issued September 24, 2020)
15. Exhibit 15: Notice of Appeal (Filed ON October 2, 2020)

For the reasons stated below, the Department's Notice of Overpayment dated September 24, 2020 is **REVERSED**. Claimant is eligible for benefits during February 15, 2020 to September 5, 2020. Accordingly, no overpayment occurred.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the record and filings, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued/mailed a

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 Notice of Overpayment on September 24, 2020 finding the Appellant ineligible for PUA benefits.
2 The Notice of Overpayment determined that Appellant was a Commonwealth-Only Transitional
3 Worker ("CW-1") and overpaid in the total amount of \$20,090.00 for the weeks ending February
4 15, 2020 to September 5, 2020. Appellant filed the present appeal on October 2, 2020. The issues
5 on appeal are: (1) whether Appellant is a qualified alien eligible for PUA; and (2) whether an
6 overpayment occurred and a return of PUA benefits is necessary.

7 I. FINDINGS OF FACT

8 In consideration of the evidence provided and credibility of witness testimony, the
9 undersigned issues the following findings of fact:

- 10 1. Prior to the pandemic, Appellant was employed as a Bartender at Imperial Pacific
11 International (CNMI) LLC ("Employer"), located in Garapan, Saipan. Appellant regularly
12 worked 40 hours per week at a rate of \$8.32 per hour.⁴
- 13 2. Due to the economic impact of and financial difficulties of COVID-19, Employer was
14 forced to reduce operations.⁵ As a result, Appellant hours and pay were significantly
15 reduced, effective February 6, 2020. Subsequently, Appellant was furloughed or placed
16 on a temporary, unpaid leave of absence.⁶ To date, Appellant has not returned to full time
17 work.
- 18 3. On or around the second week of June of 2020, Appellant applied for PUA and claimed
19 benefits from mid-February 2020 to mid-September 2020.
- 20 4. On September 24, 2020, the Department issued a Notice of Overpayment. The Notice
21 indicated that Appellant was overpaid in the total amount of \$20,090 for the weeks ending
22 February 15, 2020 and September 5, 2020. With regards to the total amount, \$10,200 was
23 attributed to FPUC and \$9,890 was attributed to PUA.⁷
- 24 5. On October 2, 2020, Appellant filed her appeal at the CNMI Department of Labor,
25 Administrative Hearing Office. Therein, Appellant argues her VAWA self-petition falls
26 within the definition of a qualified alien.⁸

27 ⁴ Exhibit 1.

28 ⁵ Exhibit 2.

⁶ Exhibit 3-4.

⁷ Exhibit 14.

⁸ Exhibit 15.

- 1 6. Appellant filed an I-360 Petition for Amerasian, Widower, or Special Immigrant in 2019.⁹
2 On July 24, 2019, Appellant was reviewed and found to establish a prima facie case for
3 classification under the self-petitioning provisions of the Violence Against Women Act,
4 expiring July 23, 2020.¹⁰ The prima facie determination was extended to January 11,
5 2021.¹¹ Appellant's petition was approved on September 29, 2020.¹²
6 7. In consideration of the additional documents provided after the Notice of Overpayment,
7 the Department conducted an additional investigation. On or around October 22, 2020,
8 the Department entered Appellant's information into the Systematic Alien Verification
9 for Entitlements (SAVE) database maintained by USCIS, Verification Division. This
10 database is used to determine the alien status of PUA applicants so only those entitled to
11 benefits receive them. The SAVE results confirm that Appellant has an approved I-360
12 Petition.¹³
13 8. Appellant has Employment Authorization Document ("EAD")¹⁴ cards valid for the
14 following periods:¹⁵
15 a. Category C09: July 29, 2019 to July 28, 2020;
16 b. Category C09: July 9, 2020 to July 8, 2021; and
17 c. Category C31: September 10, 2020 to September 9, 2021.¹⁶

18 II. CONCLUSIONS OF LAW

19 In consideration of the above-stated findings and applicable law, the undersigned issues the
20 following conclusions of law:

21 1. Appellant's employment was affected as a direct result of COVID-19.

22 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
23 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
24 for regular unemployment, extended benefits under state or federal law, or pandemic emergency

25 ⁹ Exhibit 7.

26 ¹⁰ Exhibit 8.

27 ¹¹ Exhibit 9.

28 ¹² Exhibit 10.

¹³ Exhibit 11.

¹⁴ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁵ Exhibit 12.

¹⁶ This matter was reopened to review the employment authorization dates because the print out of photocopied cards were not clear. After careful review and inspection, there was no gap in Appellant's employment authorization.

1 unemployment compensation (PEUC).¹⁷ Second, the claimant must show that he or she is able
2 and available for work, as defined by Hawaii law, except they are unemployed, partially
3 unemployed, or unable to work or unable for work due to at least one of the following COVID-
4 19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 5 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
COVID-19 and is seeking a medical diagnosis;
- 6 (b) A member of the individual's household has been diagnosed with COVID-19;
- 7 (c) The individual is providing care for a family member or a member of the individual's
household who has been diagnosed with COVID-19;
- 8 (d) A child or other person in the household for which the individual has primary
caregiving responsibility is unable to attend school or another facility that is closed as
9 a direct result of the COVID-19 public health emergency and such school or facility
care is required for the individual to work;
- 10 (e) The individual is unable to reach the place of employment because of a quarantine
imposed as a direct result of the COVID-19 public health emergency;
- 11 (f) The individual is unable to reach the place of employment because the individual has
12 been advised by a health care provider to quarantine due to concerns related to
COVID-19;
- 13 (g) The individual was scheduled to commence employment and does not have a job or is
unable to reach the job as a direct result of the COVID-19 public health emergency;
- 14 (h) The individual has become the breadwinner or major support for a household because
15 the health of the household has died as a direct result of COVID-19;
- 16 (i) The individual has to quit his or her job as a direct result of COVID-19;
- 17 (j) The individual's place of employment is closed as a direct result of the COVID-19
public health emergency; or
- 18 (k) The individual is an independent contractor who is unemployed (total or partial) or is
unable or unavailable to work because of the COVID-19 public health emergency has
19 severely limited his or her ability to continue performing the customary job.

20 Based on the evidence and testimony provided, it is clear that Appellant's employment was
21 affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the
22 Governor's Executive Orders, there were closures of government offices, restrictions on private
23 businesses, and an overall reduction in revenue from the immediate halt in tourism. In February
24 of 2020, Employer had to reduce hours due to the lack of customers and tourists. As a result,
Appellant's hours were significantly reduced at fluctuating rates, effective March 15, 2020. To
25 date, Appellant has not returned to full time work. Accordingly, Appellant's employment was
26 directly affected by a COVID-19 reason from March 15, 2020 to present.

27
28

¹⁷ This is not at issue in this case.

2. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a “qualified alien” at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term “qualified alien” is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant was issued a Notice of Overpayment after BPC determined that Appellant was an ineligible Commonwealth-Only Transitional Worker (“CW-1”). On October 2, 2020, Appellant filed a Request to Appeal the Notice of Overpayment arguing to satisfy the “battered alien” provision of the qualified alien definition. In support of her argument, Appellant provided copies of her divorce decrees, a prima facie determination of her VAWA petition, an extension of said determination, and an I-360 Petition Approval Notice.¹⁸ Moreover, the Department conducted a subsequent SAVE Verification with the additionally provided documents to verify Appellant’s status.¹⁹ Based on a review of the evidence, the parties no longer contest that Appellant is in fact a qualified alien. Upon review of the evidence and applicable law, Appellant satisfies the Qualified Alien definition.

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///

¹⁸ See Exhibit 6 -10.

¹⁹ Exhibit 11.

III. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Notice of Overpayment is **REVERSED**;
2. The Appellant is **ELIGIBLE** to receive PUA benefits for the weeks of February 15, 2020 to September 5, 2020.

Instructions and appeal rights with respect to second level appeals are pending clarification from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a second level appeal with a signed letter indicating why he or she disagrees with the decision. The letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level appeals will remain pending until further guidance from U.S. Department of Labor.

So ordered this **23rd** day of November, 2020.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



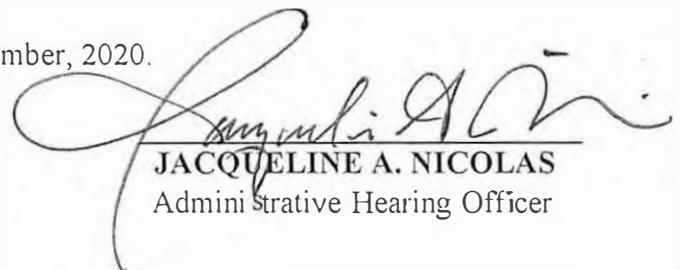
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Labor Case No. 20-021
)
Froilan Camacho.)
)
Complainant,) ORDER OF DISMISSAL
)
v.)
)
AM Group LLC,)
)
Respondent.)

On November 24, 2020 at 9:00 a.m., a telephonic Settlement Conference was held at the Administrative Hearing Office. Complainant Froilan Camacho ("Complainant") was present and self-represented. Respondent AM Group LLC ("Respondent") was present and represented by Administrative Manager Alvajan De Los Santos. The Department's Enforcement, Compliance, and Monitoring Section was also present and represented by Investigator Arlene Rafanan.

I hereby certify that I have reviewed the terms of the Settlement Agreement in Labor Case No. 20-021 and find that the terms are fair under the circumstances of this case and that the parties have knowingly and voluntarily agreed to the terms of the settlement. Therefore, the Settlement Agreement is approved and accepted for the purposes stated herein. The terms of the above-described Settlement Agreement are hereby incorporated into this Order. Upon review, this case has no other pending issues or claims. Accordingly, the case is hereby **DISMISSED** with prejudice, pursuant to NMIAC § 80-20.1-485(b).¹ Notwithstanding the above, the Administrative Hearing Officer shall retain jurisdiction for the purposes of enforcement of the Order.

So ordered this 24th day of November, 2020.


JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ "A complaint may be dismissed upon ... settlement by the party or parties who filed it." NMIAC § 80-20.1-485(b)."



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

In Re Matter of:) PUA Case No. 20-0022
Yongyu Zhen)
Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 15, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Yongyu Zhen ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera.¹ Additionally, Interpreter Brandon Doggett assisted with the proceedings.

Exhibits:

1. Exhibit 1: Copy of Appellant's Application Snapshot (filed June 27, 2020)
2. Exhibit 2: Copy of Department's Determination (issued September 29, 2020)
3. Exhibit 3: Copy of the Notice of Appeal (filed October 7, 2020)
4. Exhibit 4: Copy of Appellants (6) CBP Form I-94
5. Exhibit 5: Notice of Parole (dated October 1, 2019)
6. Exhibit 6: Copy of Appellant's (5) EAD cards.
7. Exhibit 7: I-797 Notice of Action (Approval Notice dated February 21, 2020)
8. Exhibit 8: Verification of Partial Unemployment Status

¹ Mr. Maratita was present for the October 21, 2020 hearing while Mr. Cabrera was present for the November 10, 2020 hearing.

1 9. Exhibit 9: Copy of Appellant's (4) Notice of Furloughs

2 10. Exhibit 10: USCIS Notice re: Limited Parole (dated January 7, 2019)

3 11. Exhibit 11: Department's SAVE Results (initiated September 14, 2020)

4 For the reasons stated below, the Department's Determination dated September 29, 2020 is
5 **REVERSED**. Based on the claim filed, Appellant is eligible for benefits for the period of
6 February 10, 2020 to October 3, 2020.

7 II. JURISDICTION

8 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
9 2020 was signed into law creating new temporary federal programs for unemployment benefits
10 called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment
11 Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement
12 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
13 applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in
14 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
15 Administrative Hearing Office has been designated to preside over first level appeals of the
16 aforesaid programs. Upon review of the record and filings, the appeal was timely filed.
17 Accordingly, jurisdiction is established.

18 III. PROCEDURAL HISTORY & ISSUE

19 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
20 review of Appellant's application and supporting documents, the Department issued its initial
21 determination on September 29, 2020. The Department's determination found the Appellant was
22 a CW-1 worker not eligible for benefits effective March 15, 2020. Appellant filed the present
23 appeal on October 7, 2020. The issue on appeal is whether Appellant is a qualified alien eligible
24 for PUA benefits.

25 ///

26 ///

27 ² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Guest Service Agent with Imperial Pacific International CNMI LLC ("Employer"), located in Garapan, Saipan. Appellant regularly worked at least 40 hours per week at a rate of \$9.50 per hour.⁵
2. Due to the economic impact of and financial difficulties of COVID-19, Employer was forced to reduce operations. As a result, Appellant's hours were reduced at fluctuating rates, beginning in February 10, 2020. While Appellant was able to apply his paid time off to supplement his paycheck, Appellant's pay was still affected by the reduction in hours. Additionally, given the lack of tourists and customer, Employer closed operations on March 17, 2020. Subsequently, Appellant was placed on furlough, effective April 6, 2020.
3. To date, Appellant has not returned to full time work with employer. Appellant has not worked since being furloughed. Appellant has not refused suitable work.
4. On or around June of 2020, Appellant applied for PUA and claimed benefits from March 15, 2020 to present.
5. On September 29, 2020, the Department issued a determination that disqualified Appellant from PUA benefits because it deemed that Appellant was a Commonwealth Only Transitional Worker ("CW-1").
6. On October 7, 2020, Appellant filed his appeal at the CNMI Department of Labor, Administrative Hearing Office. Appellant contests the finding he is not a qualified alien and is seeking an appeal for the entire denial period on the Determination.
7. Application has a series of CBP Form 1-94 cards showing he was paroled in the U.S. for the following validity periods:⁶
 - a. February 26, 2013 to June 30, 2013;
 - b. May 10, 2013 to December 31, 2014;
 - c. August 19, 2015 to May 3, 2016;
 - d. November 15, 2014 to December 31, 2016;

⁵ Exhibit 1.

⁶ Exhibit 3.

- e. January 4, 2016 to December 31, 2018; and
 - f. October 29, 2019 to June 29, 2020.
8. To account for gap between the fourth and fifth parolee cards above, Appellant provided a two USCIS Notices regarding parole, which indicated:
 - a. Appellant was granted an additionally validity period of parole from January 1, 2019 to June 29, 2019;⁷ and
 - b. On June 29, 2019 USCIS automatically extended transitional parole through October 28, 2019.
9. Appellant was given prior employment authorizations with the Category C11. Appellant has Employment Authorization Document (“EAD”)⁸ cards valid for the following periods:⁹
 - a. September 7, 2013 to December 31, 2014 (C11)
 - b. December 19, 2014 to December 18, 2016 (C11)
 - c. March 21, 2017 to March 20, 2018 (C11)
 - d. March 22, 2018 to December 31, 2018 (C11)
 - e. March 22, 2018 to June 29, 2019 (C11)
10. After Appellant’s parole ended and employment authorization under Category C11, Appellant worked as a Commonwealth-Only Transitional Worker (“CW-1”). Appellant was granted CW-1 permits for the following time periods:
 - a. May 22, 2019 to September 30, 2019;
 - b. February 18, 2020 to September 30, 2020.¹⁰
11. Appellant does not have proof to establish authorization to work in the CNMI after September 20, 2020.
12. On or around September 14, 2020, the Department entered Appellant’s information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the alien status of PUA applicants so only those entitled to benefits receive them. The SAVE results confirm that

⁷ Exhibit

⁸ An EAD is a work permit that allows noncitizens to work in the United States.

⁹ Exhibit 4.

¹⁰ Exhibit 7.

1 Appellant is a CW-1 worker with pending I-129, and I-765 Applications.¹¹ There is no
2 applicable employment authorization history.

3 13. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into
4 the U.S. for at least one consecutive year during the pandemic assistance period, an alien
5 pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian
6 entrant, or an alien battered or subject to extreme cruelty.

7 V. CONCLUSIONS OF LAW

8 In consideration of the above-stated findings and applicable law, the undersigned issues the
9 following conclusions of law:

10 1. Appellant's employment was affected as a direct result of COVID-19.

11 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
12 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
13 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
14 unemployment compensation (PEUC).¹² Second, the claimant must show that he or she is able
15 and available for work, as defined by Hawaii law, except they are unemployed, partially
16 unemployed, or unable to work or unable for work due to at least one of the following COVID-
17 19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 18 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
19 COVID-19 and is seeking a medical diagnosis;
- 20 (b) A member of the individual's household has been diagnosed with COVID-19;
- 21 (c) The individual is providing care for a family member or a member of the individual's
22 household who has been diagnosed with COVID-19;
- 23 (d) A child or other person in the household for which the individual has primary
24 caregiving responsibility is unable to attend school or another facility that is closed as
25 a direct result of the COVID-19 public health emergency and such school or facility
26 care is required for the individual to work;
- 27 (e) The individual is unable to reach the place of employment because of a quarantine
28 imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has
been advised by a health care provider to quarantine due to concerns related to
COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is
unable to reach the job as a direct result of the COVID-19 public health emergency;

¹¹ I-129 denotes a Petition for a Nonimmigrant worker and I-765 denotes an Application for Employment Authorization.

¹² This is not at issue in this case.

- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. In February of 2020, Employer had to reduce operations due to the lack of tourists and incoming flights. As a result, Appellant's hours were reduced at fluctuating rates since February. While Appellant was able to use paid time off or vacation hours to supplement his pay, the reduction in hours still resulted in a reduction in pay. To date, Appellant has not returned to full time work. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from February, 2020 to present.

2. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(c) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

1 Here, Appellant argues he is a qualified alien because, although he is authorized to work as a
2 CW-1, he has maintained he maintains his parole status. Upon review of the available evidence,
3 the undersigned finds that Appellant has sufficient evidence to establish he is a qualified alien, as
4 defined above.

5 Based on the evidence and testimony provided, the undersigned finds that the Appellant has
6 sufficient evidence to establish his qualified alien status. Here, the Appellant has demonstrated
7 an uninterrupted Parolee Status dating back to October 2016. Specifically, Appellant provided a
8 Parolee Card with the validity dates of January 4, 2016 to December 31, 2018.¹³ Next, Appellant
9 provided a notice from USCIS showing an additional validity period from January 1, 2019 to June
10 29, 2019.¹⁴ A second notice from USCIS shows that the additional validity period was extended
11 through October 28, 2019. Lastly, Appellant provided his last Parolee Card with the validity dates
12 of October 29, 2019 to June 29, 2020. In consideration of the above showing, Appellant is an
13 alien paroled into the U.S. under § 212(d)(5) of the INA for at least one year. Appellant has
14 retained this parolee status until June 29, 2020. Accordingly, Appellant was a qualified alien
15 eligible for PUA benefits.

16 **3. Appellant was not able and available to work in the CNMI outside of the relevant
17 employment authorization period.**

18 A claimant must be able to work and be available for work to be eligible for benefits. "An
19 individual shall be deemed able and available for work...if the individual is able and available for
20 suitable work during the customary work week of the individual's customary occupation which
21 falls *within the week for which a claim is filed*."¹⁵ "An individual shall be deemed *able* to work
22 if the individual has the physical and mental ability to perform the usual duties of the individual's
23 customary occupation or other work for which the individual is reasonably fitted by training
24 and experience."¹⁶ "An individual shall be deemed *available* for work only if the individual is
25 ready and willing to accept employment for which the individual is reasonably fitted by training
26 and experience. The individual must intend and wish to work, and there must be no undue
27 restrictions either self-imposed or created by force of circumstances which prevent the individual

28 ¹³ Exhibit 3.

¹⁴ Exhibit 11.

¹⁵ HAR § 12-5-35(a) (emphasis added).

¹⁶ HAR § 12-5-35(a)(1) (emphasis added).

1 from accepting employment.”¹⁷ For qualified aliens, the inquiry of whether an individual is “able
2 and available” also hinges on whether they are authorized to work during the weeks claimed.

3 As a preliminary matter, the undersigned recognizes Appellant’s willingness to return to work
4 in the CNMI. Aside from having employment authorization, Appellant is ready and prepared to
5 return to the workforce without restrictions or other obligations preventing him from doing so.
6 However, the limitations on Appellant’s employment authorization seriously restricts his ability
7 to work in the CNMI—as well as his ability to claim PUA benefits. PUA benefits cannot be
8 distributed or paid out for any time period is not legally authorized to work.

9 Here, Appellant stated he has authorization to work as a CW-1. Appellant’s CW-1 Petition
10 was approved for the period of February 18, 2020 to September 30, 2020. Upon inquiry, Appellant
11 has provided no other evidence to show authorization to work after September 30, 2020.
12 Accordingly, Appellant is only “able and available” to work until September 30, 2020.

13 VI. ORDER

14 For the reasons stated above, it is ORDERED that:

- 15 1. The CNMI Department of Labor’s Determination is **REVERSED**;
- 16 2. The Appellant is **ELIGIBLE** to receive PUA benefits for the period of February 10,
17 2020, to October 3, 2020; and
- 18 3. The Department shall take into account partial earnings and issue prompt payment of
19 benefits.

20 Instructions and appeal rights with respect to second level appeals are pending clarification
21 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
22 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
23 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
24 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
25 appeals will remain pending until further guidance from U.S. Department of Labor.

26 So ordered this 23rd day of December, 2020.

27 /s/

28 **JACQUELINE A. NICOLAS**
Administrative Hearing Officer

¹⁷ HAR § 12-5-35(a)(2) and (b) (emphasis added).



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

In Re Matter of:) PUA Case No. 20-0024
)
Norlita T. Ordonio)
)
Appellant,) FINAL ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 12, 2020 at 9:00 a.m. pursuant to Appellant's Request to Reopen the Decision. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Norlita T. Ordonio ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Zachary Taitano and PUA Coordinator Britney Takai, and Labor Certification Worker Dennis Cabrera.

Witness:

1. Bonifacio Sagana, Worker Advocate

Exhibits:

1. Exhibit 1: Copy of Appellant's (5) CBP Form I-94; and
2. Exhibit 2: Copy of Appellant's (7) EAD cards.
3. Exhibit 3: Copy of Appellant's USCIS Notice re: Limited Parole to Depart the United States and Extension of Employment Authorization (dated January 11, 2019)
4. Exhibit 4: Copy of Appellant's USCIS News Alert re: Northern Mariana Islands Long-Term Legal Residents Relief Act
5. Exhibit 5: Copy of Appellant's USCIS Notice of Parole Pursuant to PL 116-24 (dated October 7, 2019)

6. Exhibit 6: Copy of Appellant's USCIS Newsletter re: USCIS Extends Transitional Parole for Certain Aliens Present in the CNMI

7. Exhibit 7: Copy of Appellants Form 1-797 Receipt Notice (Notice Date of March 21, 2020)

For the reasons stated below, the Department's Determination dated October 6, 2020¹ is **MODIFIED**. Based on the claim filed, Appellant is eligible for benefits for the weeks ending March 21, 2020 to week ending April 18, 2020; week ending May 2, 2020 to week ending October 10, 2020; and week ending December 12, 2020 to December 19, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation ("FPUC")³. On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the record and filings, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its initial determination on October 2, 2020 with a mail date of October 6, 2020. The Department's determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien

¹ The most recent Qualifying Determination, with a mail date of January 7, 2021, was not admitted onto the record due to errors in qualifying dates.

² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 and denied benefits effective March 15, 2020 to December 26, 2020. Appellant filed the present
2 appeal on October 8, 2020. The issue on appeal was whether Appellant is a qualified alien eligible
3 for PUA benefits. An Administrative Hearing was held on October 27, 2020. Based on the
4 evidence presented and applicable law, a decision was issued on October 28, 2020. After the
5 decision was issued, Appellant filed a request to reconsider or reopen the decision on appeal based
6 on additional evidence that could potentially alter the decision. In order to avoid the unwarranted
7 deprivation of benefits or manifest injustice, the undersigned granted Appellant's request to
8 reopen the decision.

8 IV. LEGAL STANDARD

9 The PUA and FPUC programs are federal public benefits created to support workers and
10 employment affected by the COVID-19 pandemic. Pursuant to HAR §12-5-93(h)-(i), a decision
11 may be reopened by written motion of the parties' or the Administrative Hearing Officer's own
12 motion. If a case is reopened, "the [Administrative Hearing Officer] shall schedule the matter for
13 further hearing and notify the parties to the appeal" HAR §12-5-93(i). A decision can only
14 be reopened once by a particular party. HAR §12-5-93(j). In the event that an application to
15 reopen is denied or parties have further objections to a subsequent decision, the parties may obtain
16 judicial review. *Id.*

16 V. FINDINGS OF FACT

17 In consideration of the evidence provided and credibility of witness testimony, the
18 undersigned issues the following findings of fact:

- 19 1. Prior to the pandemic, Appellant was employed as a Food Assembler at LSG
20 ("Employer"), located in Dan Dan, Saipan. Appellant regularly worked 40 hours per week
21 at a rate of \$7.46 per hour.⁵
- 22 2. Due to the economic impact of and financial difficulties of COVID-19, Employer was
23 forced to reduce operations. As a result, Appellant's hours were significantly reduced at
24 fluctuating rates, effective March 15, 2020. To date, Appellant has not returned to full
25 time work.
- 26 3. On or around the last week of June of 2020, Appellant applied for PUA and claimed
27 benefits from week starting March 15, 2020. Appellant did not receive benefits in week
28

⁵ Exhibit 1.

1 six because her paystubs showed she received her customary hours and wages during that
2 week. Appellant did not receive benefits for weeks 31-38 because Appellant did not file a
3 weekly certification for those weeks and the deadline to file has long passed.

4 4. On October 2, 2020, the Department issued a determination with the mail date of October
5 6, 2020. The determination disqualified Appellant from PUA benefits because it deemed
6 that Appellant was not a US citizen, non-citizen national, or qualified alien.

7 5. On October 8, 2020, Appellant filed her appeal at the CNMI Department of Labor,
8 Administrative Hearing Office. Appellant contests the finding she is not a qualified alien
9 and is seeking an appeal for the entire denial period on the Determination.

10 6. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
11 for the following periods:⁶

- 12 a. April 13, 2012 to December 31, 2012;
- 13 b. November 16, 2012 to December 31, 2014;
- 14 c. November 15, 2014 to December 31, 2016;
- 15 d. January 23, 2017 to December 31, 2018;
- 16 e. October 29, 2019 to June 29, 2020.

17 7. To account for gaps between the fourth and fifth parolee cards above, Appellant had two
18 additional notices from USCIS. First, Appellant was granted an additional validity period
19 of parole from January 1, 2019 to June 29, 2019.⁷ Second, on June 29, 2019, USCIS
20 automatically extended her transitional parole through October 28, 2019.⁸

21 8. Appellant was given prior employment authorizations with the Category C11. Appellant
22 has Employment Authorization Document ("EAD")⁹ cards valid for the following
23 periods:¹⁰

- 24 a. October 25, 2012 to December 31, 2012;
- 25 b. March 6, 2014 to December 31, 2014;
- 26 c. January 16, 2015 to December 31, 2016;
- 27 d. May 17, 2017 to December 31, 2018;

28 ⁶ Exhibit 3.

⁷ Exhibit 3.

⁸ Exhibit 5.

⁹ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁰ Exhibit 4.

1 e. May 17, 2017 to June 29, 2019;

2 f. January 9, 2020 to June 29, 2020;

3 9. In March 2020, Appellant submitted an application to U.S. Citizenship and Immigration
4 Services (USCIS) for CNMI Long Term Resident status—distinct from the permanent
5 residency status. In consideration of said application, Appellant's employment
6 authorization was automatically extended 180 days from June 29, 2020. Appellant is
7 authorized to work in the CNMI until December 31, 2020.¹¹

8 10. On or around August 30, 2020, the Department entered Appellant's information into the
9 Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
10 Verification Division. This database is used to determine the alien status of PUA
11 applicants so only those entitled to benefits receive them. The SAVE results confirm that
12 Appellant has a pending application with USCIS.

13 11. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into
14 the U.S. for at least one consecutive year during the pandemic assistance period, an alien
15 pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian
16 entrant, or an alien battered or subject to extreme cruelty.

17 VI. CONCLUSIONS OF LAW

18 In consideration of the above-stated findings and applicable law, the undersigned issues the
19 following conclusions of law:

20 1. Appellant's employment was affected as a direct result of COVID-19.

21 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
22 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
23 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
24 unemployment compensation (PEUC).¹² Second, the claimant must show that he or she is able
25 and available for work, as defined by Hawaii law, except they are unemployed, partially
26 unemployed, or unable to work or unable for work due to at least one of the following COVID-
27 19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 28 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
COVID-19 and is seeking a medical diagnosis;

¹¹ Exhibit 7.

¹² This is not at issue in this case.

- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. At the end of March 2020, Employer had to reduce hours due to the lack of incoming flights that they serviced. As a result, Appellant's hours were significantly reduced at fluctuating rates, effective March 15, 2020. To date, Appellant has not returned to full time work. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from March 15, 2020 to present.

2. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;

4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement.

Based on the new evidence and testimony provided, the undersigned finds that the Appellant has sufficient evidence to establish her qualified alien status. Here, the Appellant has demonstrated an uninterrupted Parolee Status dating back to 2017. Specifically, Appellant provided a Parolee Card with the validity dates of January 23, 2017 through December 31, 2018. Next, Appellant provided a notice from USCIS showing an additional validity period from January 1, 2019 to June 29, 2019.¹³ A second notice from USCIS shows that the additional validity period was extended through October 28, 2019.¹⁴ Lastly, Appellant provided her last Parolee Card with the validity dates of October 29, 2019 through June 29, 2020.¹⁵ In consideration of the above showing, Appellant is an alien paroled into the U.S. under § 212(d)(5) of the INA for at least one year. Accordingly, Appellant was a qualified alien eligible for PUA benefits.

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///

¹³ Exhibit 3.

¹⁴ Exhibit 5.

¹⁵ Exhibits 2 and 5.

VII. ORDER

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **MODIFIED**; and
2. The Appellant is **ELIGIBLE** to receive PUA benefits for the weeks ending March 21, 2020 to week ending April 18, 2020; week ending May 2, 2020 to week ending October 10, 2020; and week ending December 12, 2020 to December 19, 2020.

This Order constitutes a **FINAL AGENCY DECISION**. In the event a party aggrieved by this Order would like to dispute or contest this decision, said party may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act within 30 days of this Order. *See* 1 CMC § 9112.

So ordered this **20th** day of January, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re the Matter of:) Labor Case No. 20-024
)
Xing Yu Chen,)
)
Complainant,) ORDER OF DISMISSAL
)
v.)
)
Imperial Pacific International (CNMI), LLC,)
)
Respondent.)

This matter came for a telephonic Order to Show Cause Hearing as to why this case should not be dismissed for Complainant's failure to appear. Complainant Xing Yu Chen ("Complainant") failed to appear because he is no longer in the CNMI. Respondent Imperial Pacific International (CNMI), LLC ("Respondent") was present and represented by Chief Executive Officer Donald R. Browne. Enforcement was not present.

Considering Complainant's absence, Respondent moved for dismissal. 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 contest the allegations in the complaint." Upon review of the record, the notice of hearing was issued and served to the parties on November 17, 2020 pursuant to alternative service under NMIAC § 80-20.1-475(d)(4). Complainant acknowledged receipt of the Notice via email and the Administrative Hearing Office has no other CNMI contact information for Complainant. Accordingly, the undersigned finds that notice and service was proper. Notably, the Administrative Hearing Office only has jurisdiction within the CNMI and cannot conduct hearings on foreign land. A continuance would not cure these deficiencies. Further, a continuance would create an undue burden and prejudice Respondent in having to defend against an absent or unavailable Complainant. Accordingly, pursuant to NMIAC § 80-20.1-480(l), this matter is hereby **DISMISSED**.

So ordered this 7th day of December, 2020

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 20-0025
)
Marilou D. Caspillo)
)
Appellant,) FINAL ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 19, 2020 at 9:00 a.m. pursuant to Appellant's Request to Reopen the Decision. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Marilou D. Caspillo ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Angelray Guerrero, PUA Coordinator Vincent Sablan, and Labor Certification Worker Dennis Cabrera. Additionally, Interpreter Rochelle Tomokane assisted with the proceedings. Appellant had one witness, Ms. Jacky Caspillo.¹

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Certification (dated March 18, 2020)
2. Exhibit 2: Copy of Appellant's (5) CBP Form I-94;
3. Exhibit 3: Copy of Appellant's (5) EAD cards;
4. Exhibit 4: Copy of Department's SAVE results;
5. Exhibit 5: Copy of Appellant's Notice of Action (dated April 9, 2020); and

¹ Ms. Jacky Caspillo was present on the line to observe the proceeding and provided testimony regarding lapsed weeks. Ms. Jacky Caspillo's testimony simply reiterated or repeated Ms. Marilou Caspillo's testimony regarding lapsed weeks.

6. Exhibit 6: USCIS Press Release for Automatic Extension (dated June 17, 2020 and August 11, 2020);
7. Exhibit 7: Copy of Appellant's USCIS Notice re: Limited Parole to Depart the United States and Extension of Employment Authorization (dated January 7, 2019); and
8. Exhibit 8: Copy of Appellant's USCIS Notice of Parole Pursuant to PL 116-24 (dated September 23, 2019).

For the reasons stated below, the Department's Determination dated October 13, 2020 is **REVERSED**. Based on the claims filed, Appellant is eligible for benefits for weeks ending March 21, 2020 to week ending July 18, 2020 and weeks ending November 7, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the record and filings, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its initial determination with a mail date of October 13, 2020. The Department's determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien and denied benefits

² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 effective March 15, 2020. Appellant filed an appeal on October 14, 2020. The issue on appeal
2 was whether Appellant is a qualified alien eligible for PUA benefits. An Administrative Hearing
3 was held on October 27, 2020. Based on the evidence presented and applicable law, a decision
4 was issued on October 28, 2020. After the decision was issued, Appellant filed a request to
5 reconsider or reopen the decision on appeal based on additional evidence that could potentially
6 alter the decision. In order to avoid the unwarranted deprivation of benefits or manifest injustice,
7 the undersigned granted Appellant's request to reopen the decision.

8 IV. FINDINGS OF FACT

9 In consideration of the evidence provided and credibility of witness testimony, the
undersigned issues the following findings of fact:

- 10 1. Prior to the pandemic, Appellant was employed as a Waitress at Mermaid Restaurant
11 ("Employer"), located in Garapan, Saipan. Appellant regularly worked 42 hours per week
12 at a rate of \$8.28 per hour.⁵
- 13 2. Due to the halt in tourism and economic impact of COVID-19, Employer was forced to
14 close the business. As a result, effective March 20, 2020, Appellant was furloughed. To
15 date, the business is still closed. Appellant has not been recalled to the work force or
16 otherwise returned to full time work.
- 17 3. On or around July of 2020, Appellant applied for PUA and claimed benefits from March
18 21, 2020 to July 18, 2020.
- 19 4. Appellant did not file a paper or electronic weekly certification for claims during weeks
20 ending July 25, 2020 to November 1, 2020. Appellant did not file because she was found
21 ineligible based on the documents she submitted.⁶ Appellant also indicated she did not file
22 because she did not want the claim to be found fraudulent. The deadline to file these
23 weekly certifications have passed.
- 24 5. On October 13, 2020, the Department issued and/or mailed a determination disqualifying
25 Appellant from PUA benefits because it deemed that Appellant was not a US citizen, non-
26 citizen national, or qualified alien.

27
28 ⁵ Exhibit 1.

⁶ The documents to substantiate Ms. Caspillo's qualified alien status were exhibits 7-8. Exhibit 7-8 were submitted after the Administrative Hearing, on or around November 5, 2020.

- 1 6. On October 14, 2020, Appellant filed her appeal at the CNMI Department of Labor,
2 Administrative Hearing Office. Appellant contests the finding she is not a qualified alien
3 and is seeking an appeal for the entire denial period on the Determination.
- 4 7. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
5 for the following periods:⁷
 - 6 a. April 2, 2012 to December 31, 2012;
 - 7 b. June 27, 2013 to December 31, 2014;
 - 8 c. April 28, 2015 to December 31, 2016;
 - 9 d. January 4, 2017 to December 31, 2018; and
 - 10 e. October 29, 2019 to June 29, 2020.
- 11 8. After the Administrative Hearing, Appellant found additional pieces of evidence to
12 substantiate her parole or qualified alien status.⁸ To account for gaps between the fourth
13 and fifth parolee cards above, Appellant had two additional notices from USCIS. First,
14 Appellant was granted an additional validity period of parole from January 1, 2019 to June
15 29, 2019.⁹ Second, on June 29, 2019, USCIS automatically extended her transitional
16 parole through October 28, 2019.¹⁰
- 17 9. Appellant was given prior employment authorizations with the Category C11. Appellant
18 has Employment Authorization Document ("EAD")¹¹ cards valid for the following
19 periods:¹²
 - 20 a. June 9, 2014 to December 31, 2014;
 - 21 b. December 19, 2015 to December 18, 2016;
 - 22 c. May 25, 2017 to December 31, 2018;
 - 23 d. May 25, 2017 to June 29, 2019; and
 - 24 e. January 10, 2020 to June 29, 2020.

25 ///

26 ⁷ Exhibit 2.

27 ⁸ Notably, several requests for the additional documents were made prior to and during the first Administrative
Hearing.

28 ⁹ Exhibit 7.

¹⁰ Exhibit 8.

¹¹ An EAD is a work permit that allows noncitizens to work in the United States.

¹² Exhibit 3.

10. Appellant's EAD and parolee status was automatically extended to December 31, 2020.¹³
11. On or around April 2020, Appellant submitted an application to U.S. Citizenship and Immigration Services (USCIS) for CNMI Long Term Resident status—distinct from the permanent residency status.¹⁴
12. On or around October 8, 2020, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the alien status of PUA applicants so only those entitled to benefits receive them. The SAVE results confirm that Appellant has a pending application with USCIS.¹⁵
13. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into the U.S. for at least one consecutive year during the pandemic assistance period, an alien pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to extreme cruelty.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).¹⁶ Second, the claimant must show that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unable for work due to at least one of the following COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

¹³ Exhibit 5-6.

¹⁴ Exhibit 5.

¹⁵ Exhibit 4.

¹⁶ This is not at issue in this case.

- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. At the end of March 2020, Employer closed the business due to lack of customers and COVID-19 health concerns. Appellant's last day of work was March 15, 2020 and Appellant was placed on furlough effective March 20, 2020. Further, since reopening this case, Appellant's employment continues to be affected by the COVID-19 pandemic. To date, the Employer has not reopened the business. Despite being able and available to work, Appellant has not returned to full time work or recalled to work. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from March 15, 2020 to present.

2. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);

2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement.

While the Department's initial disqualification was proper considering Appellant's failure to report or provide supporting documents as requested,¹⁷ Appellant has since provided additional evidence to establish the above-mentioned one-year requirement. Based on the new evidence and testimony provided, the undersigned finds that the Appellant has sufficient evidence to establish her qualified alien status. Here, the Appellant has demonstrated an uninterrupted Parolee Status dating back to January 4, 2017. Specifically, Appellant provided a Parolee Card with the validity dates of January 4, 2017 through December 31, 2018. Next, Appellant provided a notice from USCIS showing an additional validity period from January 1, 2019 to June 29, 2019.¹⁸ A second notice from USCIS shows that the additional validity period was extended through October 28, 2019.¹⁹ Lastly, Appellant provided her last Parolee Card with the validity dates of October 29, 2019 through June 29, 2020.²⁰ In consideration of the above showing, Appellant is an alien

¹⁷ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136), the terms and conditions of the law of the applicable jurisdiction in which an individual would be paid PUA benefits, applies to the processing of the PUA claims. This includes determinations related to failure to report as directed provisions. For the PUA Program in the CNMI, the applicable provisions of the State of Hawaii will apply to adjudicating a claimant's failure to report as directed. Under Haw. Code R. § 12-5-81(i-j), a claimant is required to respond or complete an action as directed by the agency or Department.

¹⁸ Exhibit 7.

¹⁹ Exhibit 8.

²⁰ Exhibits 2 and 5.

1 paroled into the U.S. under § 212(d)(5) of the INA for at least one year. Accordingly, Appellant
2 was a qualified alien eligible for PUA benefits.

3 **3. Appellant cannot be paid benefits for lapsed or missed weeks.**

4 Under the CARES Act, the deadline to file a claim under PUA was December 26, 2020. While
5 the PUA program has since been extended under the Continued Assistance Act, said law limits
6 backdating claims filed after December 27, 2020.

7 Appellant did not file weekly certifications from July 25, 2020 to November 1, 2020.
8 Appellant argued that she should be paid out for said lapsed or missed weeks because she was
9 told she was not qualified and was afraid to be considered a fraudulent claim. Moreover,
10 Appellant indicated she was waiting for her administrative hearing. While Appellant was told that
11 she did not meet the qualified alien definition based on the documents provided,²¹ she was not
12 prevented from filing an online or paper weekly certification. Moreover, Appellant filed her
13 appeal in October 4, 2020, well after she stopped filing her weekly claims.

14 The deadline to file for weeks ending July 25, 2020 to November 1, 2020 has long passed.
15 While the undersigned recognizes Appellant's frustration and misunderstanding, the Benefits
16 Rights Information Handbook provides notice to claimants that they are required to submit
17 weekly certification within seven days from the end of the claimed week.²² Further, if a claimant
18 stops filing weekly claims for two or more consecutive weeks the claimant must reactive their
19 claim to resume filing and only claims filed after reactivation are properly filed so prior weeks
20 may be denied.²³ Lastly, the Benefit Rights Information Handbook specifically advises that
21 claimants who file an appeal should continue to file their weekly certification.²⁴ The Benefit
22 Rights Information Handbook is published on the Department's website. Claimants are
23 responsible for reading the Benefits Rights Information Handbook and certify to reading it when
24 they submit an initial application. Considering the applicable law as to deadlines for filing a claim
25 and the notice provided in the Benefit Rights Handbook, the undersigned cannot award benefits
26 for the lapsed weeks which Appellant did not file.

27 ²¹ Appellant did not provide evidence to substantiate her qualified alien status until after November 2020.

28 ²² See Benefits Rights Information Handbook, page 4-5.

²³ *Id.*

²⁴ See Benefits Rights Information Handbook, page 6.

VI. ORDER

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **REVERSED**; and
2. The Appellant is **ELIGIBLE** to receive PUA benefits for weeks ending March 21, 2020 to week ending July 18, 2020 and weeks ending November 7, 2020 to December 26, 2020.

This Order constitutes a **FINAL AGENCY DECISION**. In the event a party aggrieved by this Order would like to dispute or contest this decision, said party may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act within 30 days of this Order. *See* 1 CMC § 9112.

So ordered this **20th** day of January, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 20-0032
)
Earl Eugene C. Mirano)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 3, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Earl Eugene C. Mirano ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Appellant's Application Snapshot;
2. Exhibit 2: Determination (mail date October 27, 2020);
3. Exhibit 3: Determination (mail date December 15, 2020)
4. Exhibit 4: Request to File an Appeal and Letter (filed October 30, 2020);
5. Exhibit 5: Notice of Hearing;
6. Exhibit 6: Employment Certification (dated February 10, 2020);
7. Exhibit 7: Employment Authorization Card;
8. Exhibit 8: (4) CBP Form I-94;
9. Exhibit 9: USCIS Notice of Parole (dated September 19, 2020);

1 10. Exhibit 10: USCIS Limited Parole to Depart the United States and Extension of
2 Employment Authorization if applicable (dated January 18, 2019);

3 11. Exhibit 11: USCIS Receipt Notice of Action for I-765 Application for Employment
4 Authorization (dated July 22, 2020); and

5 12. Exhibit 12: Department's SAVE Verification (initiated November 26, 2020).

6 For the reasons stated below, the Department's Determination dated December 15, 2020 is
7 **AFFIRMED**. Claimant is not eligible for benefits for the period of February 9, 2020 to December
8 26, 2020.

9 II. JURISDICTION

10 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
11 2020 was signed into law creating new temporary federal programs for unemployment benefits
12 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
13 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
14 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
15 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
16 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
17 Administrative Hearing Office has been designated to preside over first level appeals of the
18 aforesaid programs.

19 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
20 established.

21 III. PROCEDURAL HISTORY & ISSUE

22 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
23 review of Appellant's application and supporting documents, the Department issued a
24 disqualifying determination with a mail date of October 27, 2020. The Department's
25 determination found that Appellant was not eligible to receive PUA effective February 9, 2020 to

26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 October 31, 2020 because the Department found that Appellant was a Commonwealth-Only
2 Transitional Worker ("CW-1"). On October 26, 2020, Appellant filed a request to appeal the
3 disqualifying determination. As stated in Notice of Hearing, the issue on appeal is whether
4 Appellant is a qualified alien eligible for PUA.

5 IV. FINDINGS OF FACT

6 In consideration of the evidence provided and credibility of witness testimony, the
undersigned issues the following findings of fact:

- 7 1. Prior to the pandemic, Appellant was employed as an Office Messenger at JJ&K Company
8 ("Employer"). Appellant worked for Employer from January 2020 to present.⁴ Prior to
9 COVID-19, Appellant was originally supposed to work 30 hours but Appellant was never
10 given 30 hours of work. Appellant's hours were reduced to 20 hours effective February
11 10, 2020.⁵
- 12 2. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁶ In
13 the application, Appellant certified under penalty of perjury that his employment was
14 affected as a direct result of COVID-19 since February 10, 2020, when he had to quit his
15 job as a direct result of COVID-19. However, there is no showing that Appellant quit his
16 job as a direct result of COVID-19. Further, during the Administrative Hearing, Appellant
indicated he is presently working reduced hours for employer.
- 17 3. On October 27, 2020, the Department disqualified Appellant from receiving PUA
18 benefits.⁷ The Determination found that the Appellant was not a U.S. Citizen, Non-citizen
19 National, or Qualified Alien eligible for PUA. The determination did not include an
20 effective period.
- 21 4. On October 30, 2020, Appellant filed the present Appeal claiming to be a qualified alien.⁸
22 In support of the Appeal, Appellant filed a number of documents related to his
23 immigration status and employment authorization.

24
25
26 ⁴ Due to conflicting testimony, it was unclear whether the place of employment was closed for a period of time
during the pandemic assistance period.

27 ⁵ Exhibit 6.

28 ⁶ Exhibit 1.

⁷ Exhibit 2.

⁸ Exhibit 4.

- 1 5. Appellant has a series of CBP Form I-94 cards showing he was paroled into the U.S. for
2 the following periods:⁹
 - 3 a. August 22, 2012 to December 31, 2012;
 - 4 b. November 29, 2012 to December 31, 2014;
 - 5 c. January 25, 2017 to December 31, 2018; and
 - 6 d. October 29, 2019 to June 29, 2020
- 7 6. To account for gaps between the fourth and fifth parolee cards above, Appellant had two
8 additional notices from USCIS.¹⁰ First, Appellant was granted an additional validity
9 period of parole from January 1, 2019 to June 29, 2019.¹¹ Second, on June 29, 2019,
10 USCIS automatically extended his transitional parole through October 28, 2019.¹²
- 11 7. Applicant's Parolee Status expired and was not extended beyond June 29, 2020.
- 12 8. Appellant was given prior employment authorizations with the Category C11. Appellant
13 has Employment Authorization Document ("EAD")¹³ cards valid for May 3, 2016 to
14 December 31, 2016.¹⁴ Appellant stated he applied for employment authorization but did
15 not have a valid or approved employment authorization relevant to this claim.¹⁵
- 16 9. On or around November 26, 2020, the Department entered Appellant's information into
17 the Systematic Alien Verification for Entitlements (SAVE) database maintained by
18 USCIS, Verification Division. This database is used to determine the alien status of PUA
19 applicants so only those entitled to benefits receive them. At the time of the hearing, the
20 SAVE results were still pending.¹⁶
- 21 10. Prior to the Administrative Hearing, the Department issued a new determination with a
22 mail date of December 15, 2020. This Determination denied Appellant benefits because
23 Appellant does not have valid employment authorization.

24 ///

25 ///

26 ⁹ Exhibit 8.

27 ¹⁰ Exhibit 9-10.

28 ¹¹ Exhibit 10.

¹² Exhibit 9.

¹³ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁴ Exhibit 7.

¹⁵ Exhibit 11.

¹⁶ Exhibit 12.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant is a qualified alien eligible for PUA up until June 29, 2020.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a “qualified alien” at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term “qualified alien” is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues he is a qualified alien because he is a Parolee and not a CW-1. Based on the evidence and testimony provided, the undersigned finds that the Appellant has sufficient evidence to establish his qualified alien status. Here, the Appellant has demonstrated an uninterrupted Parolee Status dating back to January 2017. Specifically, Appellant provided a Parolee Card with the validity dates of January 25, 2017 to December 31, 2018.¹⁷ Next, Appellant provided a notice from USCIS showing an additional validity period from January 1, 2019 to June 29, 2019.¹⁸ A second notice from USCIS shows that the additional validity period was extended through October 28, 2019.¹⁹ Lastly, Appellant provided his last Parolee Card with the validity dates of October 29, 2019 to June 29, 2020.²⁰ In consideration of the above showing, Appellant is an alien paroled into the U.S. under § 212(d)(5) of the INA for at least one year. Appellant has

¹⁷ Exhibit 8.

¹⁸ Exhibit 10.

¹⁹ Exhibit 9.

²⁰ Exhibit 6.

1 retained this parolee status until June 29, 2020.²¹ Accordingly, Appellant was a qualified alien up
2 until June 29, 2020.

3 **2. Appellant was not able and available to work in the CNMI.**

4 A claimant must be able to work and be available for work to be eligible for benefits. “An
5 individual shall be deemed able and available for work...if the individual is able and available for
6 suitable work during the customary work week of the individual's customary occupation which
7 falls *within the week for which a claim is filed*.”²² “An individual shall be deemed *able* to work
8 if the individual has the physical and mental ability to perform the usual duties of the individual's
9 customary occupation or other work for which is the individual is reasonably fitted by training
10 and experience.”²³ “An individual shall be deemed *available* for work only if the individual is
11 ready and willing to accept employment for which the individual is reasonably fitted by training
12 and experience. The individual must intend and wish to work, and there must be no undue
13 restrictions either self-imposed or created by force of circumstances which prevent the individual
14 from accepting employment.”²⁴ For qualified aliens, the inquiry of whether an individual is “able
and available” also hinges on whether they are authorized to work during the weeks claimed.

15 Here, the limitations on Appellant's employment authorization seriously restrict his ability to
16 work in the CNMI—as well as his ability to claim PUA benefits because PUA benefits cannot be
17 distributed or paid out for any time period that Appellant is not legally authorized to work. Based
18 on the testimony and evidence provided, Appellant does not have valid employment authorization
19 during the pandemic assistance period.

20 Notably, Appellant admits he does not have an EAD card. When asked for any documentary
21 evidence, Appellants submitted: (1) an outdated EAD card from 2016; (2) an employment
22 authorization application that was not yet granted; and (3) a general notice regarding automatic
23 extensions for parole and employment authorization.²⁵ Appellant has no other documents. Based
24

25 ²¹ Appellant did not provide sufficient proof that his parole was subject to an automatic extension after June 29,
2020.

26 ²² HAR § 12-5-35(a) (emphasis added).

27 ²³ HAR § 12-5-35(a)(1) (emphasis added).

28 ²⁴ HAR § 12-5-35(a)(2) and (b) (emphasis added).

²⁵ The employment authorization extension does not apply to Applicant. Instead, it applies to applicants who have an
EAD expiring on or before June 29, 2020. Because Appellant did not have a valid EAD within the relevant time
period, it cannot be automatically extended.

1 on the evidence provided, Appellant does not have valid authorization employment authorization
2 during the pandemic assistance period. In conclusion, due to Appellant's lack of employment
3 authorization, Appellant is not "able and available" as required by this program.

4 **VI. CONCLUSION**

5 For the reasons stated above, it is ORDERED that:

- 6 1. The CNMI Department of Labor's Determination is **AFFIRMED**;
7 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits effective February 9, 2020
8 to December 26, 2020.

9 Instructions and appeal rights with respect to second level appeals are pending clarification
10 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
11 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
12 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
13 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
14 appeals will remain pending until further guidance from U.S. Department of Labor.

15 So ordered this **4th** day of December, 2020.

16 /s/
17 **JACQUELINE A. NICOLAS**
18 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 20-0040
)
Timothy Retirado)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's determination denying Pandemic Unemployment Assistance benefits, this matter was scheduled for an Administrative Hearing on December 1, 2020 at 1:30 p.m. before the undersigned. Subsequently, Appellant filed a written request for cancel or withdraw said Appeal. There are no other issues in this case.

Accordingly, this appeal is hereby **DISMISSED** and the Determination issued by the Department is final. The Administrative Hearing scheduled for December 23, 2020 at 9:00 a.m. is **VACATED**.

So ordered this **22nd** day of December, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer