IMMIGRATION

An alien must willfully fail to depart the Federated States of Micronesia upon expiration of entry authorization to be guilty of a violation of 50 F.S.M.C. 112. Knowledge of the requirement to depart coupled with failure to depart is not enough. There must be an element of voluntariness or purposefulness in the noncitizen's conduct, which will generally require showing a reasonable opportunity to depart, voluntarily rejected, without some justification for the rejection beyond mere personal preferences. FSM v. Jorg, 1 FSM R. 378, 384 (Pon. 1983).

The FSM Supreme Court and the Federated States of Micronesia must not be lured into the role of mediator between visitors and their nations of citizenship. Only in the rarest of circumstances, if ever, would the court second-guess and scrutinize the conditions which other nations place upon offers of funds to their own citizens to assist those persons to comply with FSM immigration laws. FSM v. Jorg, 1 FSM R. 378, 385-86 (Pon. 1983).

A rule that treats aliens unequally to citizens involves immigration and foreign affairs. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The government may be directed to allow a plaintiff to enter the FSM as required for the limited purpose of prosecuting her lawsuit through trial. O'Sullivan v. Panuelo, 9 FSM R. 229, 232 (Pon. 1999).

If the court were to take the plaintiff at his word that November 26, 2010 is the date of the demand for an immigration hearing, that 17 F.S.M.C. 109(4) obliges the court to view December 26, 2010 as the effective date of rejection, and that 51 F.S.M.C. 165 is now applicable, the court must deny his administrative appeal of the rejection because he filed his motion 15 days after December 26, 2010 and, under 51 F.S.M.C. 165(1), he had to make the appeal within 10 days following the date of the effective rejection. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the

worker's contract, which must contain certain information including a wage scale for regular and overtime work, before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

U.S. citizens, like all other non-citizens, must hold a valid passport at the time of entry into the FSM. A valid passport means a passport that is valid for a period of not less than 120 beyond the date of entry. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

Absent any express regulatory or statutorily established exceptions, the FSM Immigration Regulations and Title 50, F.S.M.C., as amended, control the FSM entry requirements for all non-citizens, including U.S. citizens, regardless of whether they are habitual residents and/or spouses of FSM citizens. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

No express statutory language declares that habitual residents, as provided under 50 F.S.M.C. 104(2), have an exemption from complying with Part 2.2 of the FSM Immigration Regulations since Part 2.2 does not contradict 50 F.S.M.C. 104(2). The statutory and regulatory provisions' plain meaning is that for a habitual resident there is no exception to Part 2.2's application. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The grant of an entry permit to any non-citizen spouse is specifically authorized on a showing of being an FSM citizen's lawful spouse. A non-citizen spouse can invoke this specific statutory grant when applying to the government for an entry permit, but an FSM citizen's U.S. citizen lawful spouse is not exempted from the passport validity requirements under Part 2.2 of the Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The statutory and regulatory provisions dealing with entry permits, habitual residents, and spouses of FSM citizens, are independent of Part 2.2 of the FSM Immigration Regulations and do not provide an exception to the regulations' passport validity requirements. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Unless statutory or regulatory amendments mandate otherwise, "non-citizens" include U.S. citizens and do not except habitual residents or U.S. citizen spouses of FSM citizens. Since there are no exceptions to the 120-day passport validity requirement under the regulations and Title 50 of the F.S.M.C., as amended, no non-citizen, including U.S. citizens who are habitual residents or spouses of FSM citizens are exempt from the operational reach of Part 2.2 of the FSM Immigration Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Sea vessels and aircraft arriving in the FSM must compensate the FSM Treasury for the actual costs of overtime that immigration officials accrue clearing sea vessels and aircraft into the FSM. These costs must be 1) associated with the arrival of sea vessels and aircraft into the FSM; 2) actual; 3) originate in the official duties of immigration officers carrying out Title 50's requirements; and 4) accrue outside immigration officers' normal working hours. "Actual hours worked" will always correlate with hours that have already been worked or performed and the FSM Treasurer will not be compensated for subjective or imputed work. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Reading 52 F.S.M.C. 164(3) and 50 F.S.M.C. 115, jointly in order to ensure that the FSM

Treasurer is compensated for all actual overtime expenses, the cost of overtime compensation allotted to employees under § 164(3) must equal the compensation the treasury receives under the second part of § 115, and as the treasury is compensated only for actual hours worked, it is clear that the treasury may remunerate employees only for actual hours worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

Congress has the sole authority to regulate immigration, and it exercised this power by enacting Title 50, chapter 1 of the FSM Code. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

The Immigration Act authorizes the President to issue immigration regulations that are consistent with the immigration statute. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

The court only becomes involved with an immigration matter when it has to determine if a challenged executive action or omission is consistent with immigration law, procedure, and the Constitution. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

A person aggrieved by a decision of the Division of Immigration and Labor is entitled, first to an informal hearing before the officer in charge of the local immigration office, and then, if still aggrieved by that officer's decision, to appeal to a hearing before a committee consisting of the Chief of Immigration, or, in the event of a conflict of interest on the Chief's part, his designee, the Secretary of the Department of Justice or his designee, and a representative of the Department of Foreign Affairs. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

An immigration appeal committee's decision constitutes the final agency action for the purposes of title 17 of the FSM Code, and under Title 17, a person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court, except to the extent that statutes explicitly limit judicial review, but no statute explicitly limits judicial review of a 50 F.S.M.C. 116(2) final action. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

Once a final immigration agency action is properly before the court, the court can conduct a *de novo* trial of the matter and receive in evidence any or all of the record from the administrative hearing that is stipulated to by the parties, and to the extent necessary for the decision and when presented, the court can decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny a motion for summary judgment. Macayon v. FSM, 22 FSM R. 544, 551-52 (Chk. 2020).

The FSM is not required to permit a person's entry into or continued presence in the FSM just because a state government has granted that person a foreign investment permit. Only the national government (Congress) may regulate immigration even though the state governments

retain some authority to regulate the business or employment of non-FSM citizens within their state, but, when deciding whether to permit or deny someone's entry or continued presence in the FSM, the FSM must take into consideration that that person has a state-issued foreign investment permit. Macayon v. FSM, 22 FSM R. 544, 552 (Chk. 2020).

An immigration appeal committee's decision cannot merely list the mitigating factors that were put before it, but must give some explanation of how those factors affected, or did not affect, its decision or how its reason outweighed or overcame all of the mitigating factors. Macayon v. FSM, 22 FSM R. 544, 552-53 (Chk. 2020).

The statute that authorizes the President to delegate his authority to issue entry permits and to permit entry into the FSM of persons, vessels, and aircraft under the provisions of this chapter and regulations promulgated thereto also authorizes the President to delegate his authority to deny issuance of an entry permit and his authority to deny entry of persons, vessels, and aircraft into the FSM because if an official has the delegated authority to issue an entry permit, then that official must also have the authority not to issue the entry permit – that is, to deny an entry permit application or renewal. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

Although the immigration regulations do not delegate the power to enforce the Immigration Act any further than the Secretary of Justice and the Chief of the Division of Immigration and Labor, the Chief obviously must act through subordinates who staff the ports of entry and the immigration offices in each of the four states. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

A person who is not an FSM national may be denied an entry permit based on a finding by the President that the entry of the applicant or his presence in the FSM would not be in the FSM government's best interest, and the statute does not authorize the President to delegate his statutory authority to make that finding. What constitutes the national government's best interest is a policy decision best made by a high-level official such as the President, not a lower level official. Macayon v. FSM, 22 FSM R. 544, 553-54 (Chk. 2020).

Congress can authorize the President to delegate the finding of the national government's best interest to some other (presumably high-ranking) official, but any such authorization and delegation must be more explicit than the current statutory authorization and regulatory delegation. Macayon v. FSM, 22 FSM R. 544, 554 n.8 (Chk. 2020).

When the President did not make a finding that a person's continued presence in Chuuk was not in the national government's best interest, the FSM Immigration Officer in Charge in Chuuk did not have the delegated authority to make such a finding, and therefore his denial of an entry permit renewal, and the appeal committee's affirmance of that denial, on that ground was unlawful because, under 50 F.S.M.C. 107(1)(k), a Presidential finding is necessary for the FSM to deny an entry permit on the ground it is in the national government's best interest. Macayon v. FSM, 22 FSM R. 544, 554 (Chk. 2020).

Since the court can compel agency action unlawfully withheld or unreasonably delayed, the court, in such situations, can order that a person's entry permit be renewed as of the date when his last entry permit expired. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).