



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

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

S.W. Corporation,

Respondent.

Labor Case No. 19-002

ORDER OF DISMISSAL

An Order to Show Cause Hearing was held on July 11, 2019 at 9:00 a.m. in the Administrative Hearing Office. Complainant Zaji O. Zajradhara (“Complainant”) was present and unrepresented by counsel. Respondent S.W. Corporation (“Respondent”) was present and represented the company’s registered agent and translator Jin Koo Cho.¹ The Department’s Enforcement, Monitoring and Compliance Section (“Enforcement”) was also present and represented by Jerrick Cruz.

During the OSC Hearing, Complainant was ordered to show cause why the complaint for a violation of the CNMI employment preference statute should not be dismissed for failure to state a claim. In order to prevail on a claim for damages under the employment preference statute, a complainant has the burden to prove all four elements of the statute: (1) that he was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) *the respondent/employer then hired a foreign national worker for that positions* and; (4) the respondent/employer failed to

¹ Mr. Cho represented that the company’s president was off-island due to a medical emergency. Mr. Cho further represented that he was authorized to represent the company. Mr. Cho shall file a signed written authorization on or before July 11, 2019 at 9:00 a.m.

meet the 30% workforce objective requirement. 3 CMC § 4528(a) (emphasis added).² In this matter, Enforcement’s written determination following investigation indicated that Respondent cancelled the Job Vacancy Announcement (“JVA”) in question and did not hire anyone for the announced position. Failure to hire a foreign worker, much less anyone, is fatal to the alleged claim.³ Based upon witness testimony and written evidence admitted during the OSC Hearing, the undersigned finds that a foreign worker was not hired in connection to the JVA alleged in the complaint. Further, the business decision to cancel a JVA and forego hiring is not a violation or regulated by the Department.

In consideration of above, Complainant subsequently filed a hand-written Motion to Dismiss the complaint in Labor Case 19-002. Accordingly, this matter is hereby **DISMISSED** and the Administrative Hearing is vacated.

So ordered this **11th** day of July, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

² “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job.” 3 CMC § 4528(a); *see also* NMIAC § 80-20.1-455(f).

³ “It is well established precedent that a respondent’s failure to hire a foreign worker over a U.S. citizen, U.S. permanent resident, or CNMI permanent resident is fatal to a complainant’s claim for damages under the employment preference statute.” *Zajradhara v. Woo Jung Corporation*, LC-18-059 (Administrative Order issued May 16, 2019 at 7, ¶ 20) *citing Zajradhara v. SPN China News Corporation*, LC-17-021 (Administrative Order issued July 12, 2018 at 4) (“There are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone to fill the advertised position. The gravamen of the statutory violation of 3 CMC § 4528(a) is that Employer has hired a foreign national worker over a qualified U.S. citizen [or permanent resident]. In this case where no one was hired for the vacant job, Complainant cannot prove this important element of the offense.”); *see also Zajradhara v. Haitan Construction Group*, LC-17-052 (Administrative Order issued May 25, 2018 at 4) (“Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions with Foreign National Workers; Therefore, Complainant Cannot Prevail under 3 CMC § 4528(a)”).