

will be denied. Out of an abundance of caution, [REDACTED] is filing this Petition challenging the lawfulness of the Order as applied to [REDACTED].

The Order references two provisions of Title 51 of the FSM Code which it contends are not being complied with and which it contends create the rationale for the action being taken in the Order.

The first is 51 FSMC Section 114 which requires that resident workers be given preference in employment and the other is 51 FSMC Section 152 (2) which requires the "...Employment Service through its employment service officer and district representative..." to "...conduct continuing surveys of manpower needs..".

STATEMENT OF FACTS

1. [REDACTED] under the laws of the State of Chuuk

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Among its powers is to hire, retain and terminate employees upon such terms and conditions as it may deem appropriate. [REDACTED]

[REDACTED]

[REDACTED]

2. █████ employs one or more foreign contract workers to perform critical functions for █████. Foreign contract workers were hired to perform these critical functions because of an absence of qualified FSM citizens.
3. Title 51 of the FSM Code places obligations on “employers” and section 131 requires employers desiring to hire foreign contract workers to file an application pursuant to Title 51. Section 112 (4) of Title 51 defines “employer” and excludes from the definition “...any branch or agency...” of the government. █████ is an agency █████ within the meaning of Section 112 (4) of Title 51. █████ as an agency █████ █████ is not subject to the requirements of Title 51 of the FSM Code.
4. The Constitution of the FSM, Article VIII states that a power of government not expressly delegated to the national government or prohibited to the states is a state power. Regulation of labor is not a power prohibited to the states. Article IX of the Constitution lists the powers expressly delegated to the national government. Regulation of labor is not among them therefore regulation of labor is a state power. While the continuity of laws provision of the FSM Constitution, Article XV, does provide that the Trust Territory labor law codified in Title 51 of the FSM Code devolved to the FSM, it passed to the FSM as state law and not National law. While the National Government has the express power to regulate immigration it does not have the power to regulate labor. The FSM division of Immigration and Labor was acting

without lawful authority in issuing the Order served [REDACTED] on or about September 1, 2016.

5. [REDACTED] gives employment preference to citizens of the FSM and is not now, nor has it ever been, in violation of Section 114 of Title 51 of the FSM Code assuming that provision of the Code applied to [REDACTED] which [REDACTED] contends it does not. [REDACTED] acknowledges that it is required to give employment preference to FSM citizens but contends that this obligation originates in state law, not national law.
6. Section 152 (2) of Title 51, asserted in the Order as a basis for punitive action against [REDACTED], requires the Employment Service, an instrumentality of FSM Immigration and Labor, to conduct surveys of manpower needs. The Employment Service is part of the government. What the Order is then saying is that it is imposing punitive action against [REDACTED] based on a government entity controlled by FSM Immigration and Labor having failed to do its duty required under the statute. FSM Immigration and Labor cannot rightfully take punitive action against [REDACTED] for failure of the government to carry out its responsibilities under Title 51 of the FSM Code.
7. The Order served on [REDACTED] on or about September 1, 2016 is arbitrary, capricious and an abuse of discretion, not in accordance with law, contrary to constitutional right, power and privilege, in excess of statutory jurisdiction and authority, without substantial compliance with the procedures required by law and unwarranted by the facts. [REDACTED] seeks voiding of the Order as it applies to [REDACTED].

Respectfully Submitted,

Date: _____

_____/s/_____

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