

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellant**

v.

LUIS T. ARCE, Defendant-Appellee

Civil Appeal No. 156

Appellate Division of the High Court

Mariana Islands District

April 9, 1976

Complaint for deportation. On appeal the Appellate Division of the High Court, Hefner, Associate Justice, dismissed appeal as being moot as to defendant but ruled as erroneous trial court's order that an administrative hearing is required before any application for deportation is sought.

1. Appeal and Error—Reviewability of Issues—Moot Questions

Where defendant had voluntarily left Trust Territory and defendant's counsel could not represent if defendant had any intention of returning, government's appeal of trial court's order dismissing deportation complaint would be dismissed as being moot.

2. Aliens and Immigration—Deportation—Hearing

In deportation proceeding, where no criminal charges were filed and no fine or other criminal sanction was sought, statute did not require an executive administrative hearing before application for deportation was made. (53 TTC § 62)

Counsel for Appellant:

CARLOS H. SALII of the *Attorney
General's Office*

Counsel for Appellee:

JOSE S. DELA CRUZ and DAVID
ALLEN of *Micronesian Legal
Services Corporation*

Before BROWN, *Associate Justice*, HEFNER, *Associate
Justice*, and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

The defendant-appellee has filed a motion to dismiss plaintiff-appellant's appeal on the ground that the matter is now moot.

On January 20, 1975, the High Commissioner informed Mr. Arce, who is a citizen of the Philippines, that the High Commissioner had found Mr. Arce's presence in the Trust Territory not in the best interests of the Trust Territory, and instructed Mr. Arce to leave by January 22, 1975.

Mr. Arce failed to leave and on January 27, 1975, a "Complaint for Deportation" was filed by the Government against Mr. Arce, pursuant to 53 TTC § 62. Subsequently, the parties were involved in various proceedings and on December 12, 1975, an Order was issued dismissing the Government's complaint on the grounds that Mr. Arce was not provided an administrative hearing and that he was denied due process pursuant to 1 TTC § 4.

The Government appealed this Order, basically on the ground that the Trial Court's interpretation of 53 TTC § 62 was erroneous in that it held a prior administrative hearing was required before the High Commissioner could apply for a Deportation Order.

Shortly thereafter, counsel for the defendant moved to dismiss the appeal since Mr. Arce had voluntarily left the Trust Territory, and therefore, the appeal is moot.

It is clear, indeed not contested by the Government, that if this matter dealt solely with the deportation of Mr. Arce, it would be moot since Mr. Arce is no longer in the Trust Territory. The complaint filed by the Government and the entire procedure was concerned with only one form of requested relief—deportation. There were no criminal charges filed and no fine or other criminal sanctions sought.

[1] We agree with the position of counsel for the defendant that the appeal is now moot as to him. The defendant is no longer in the Trust Territory and his counsel cannot even represent if he has any intention of returning, and counsel should not be required to defend the appeal on this basis.

[2] There certainly are circumstances under Title 53 and Title 49 whereby aliens are entitled to a hearing in accordance with fundamental due process. However, the Order of the Trial Court, in effect, instructs the Executive Branch to provide an administrative hearing before applying for any Deportation Order under 53 TTC § 62, and if left to stand could involve needless expense and time which we do not believe is required by that section. We specifically reject that part of the Court's Order which would require a prior administrative hearing before any application for a Deportation Order under 53 TTC § 62.

Defendant's motion to dismiss for the reason this matter is now moot is hereby Granted.