

**Pablito AMOG, et al.**  
**vs.**  
**Richard J. KEATLEY, as Chief of**  
**Immigration and Naturalization**  
**Office**

**Appellate No. 85-9008**  
**District Court NMI**  
**Appellate Division**

**Decided July 10, 1986**

**4. Statutes - Invalid - Effect**

In repealing Commonwealth permanent residency statute, the Legislature intended to protect the rights of those who already had been granted permanent resident status, and had the Legislature known that the line they had drawn was unconstitutional, they would rather have a constitutional line drawn than have the legislation invalidated altogether. P.L. 2-11.

**1. Statutes - Constitutionality**

Where a statute is constitutionally defective because of underinclusion in the classifications chosen by the Legislature, a court may either declare it a nullity and order that its benefits not extend to the class that the Legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion.

**2. Statutes - Constitutionality**

Where a statute is constitutionally defective because of underinclusion in the classifications chosen by the Legislature, the court must decide whether it more nearly accords with the Legislature's wishes to eliminate its policy altogether or extend it in order to render what the Legislature plainly did intend, constitutional.

**3. Statutes - Construction -  
Legislative Intent**

In ascertaining the legislative intent where a statute is constitutionally defective because of underinclusion in the classification chosen by the Legislature, a severability clause is persuasive evidence of a legislative desire that the court extend the benefits rather than nullify the statutes to remedy the defeat. P.L. 3-90.

FILED  
Clerk  
District Court

JUL 10 1986

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands

By Reynaldo O. Yana  
(Deput. Clerk)

APPELLATE DIVISION

3  
4  
5 PABLITO AMOG, et al., )  
6 Plaintiff-Appellants. )  
7 vs. )  
8 RICHARD J. KEATLEY, as Chief )  
9 of Immigration and Natural- )  
10 ization Office, )  
11 Defendant-Appellee. )

DCA No. 85-9008

OPINION

12 Attorney for Appellants:

REYNALDO O. YANA  
P. O. Box 52  
Saipan, CM 96950

14 Attorney for Appellee:

PATRICIA G. BEATLEY  
CNMI Assistant Attorney  
General  
5th Floor, Nauru Building  
Saipan, CM 96950

17  
18 BEFORE: Judges LAURETA, DUENAS and REAL\*, District Judges

19 LAURETA, District Judge:

20 Plaintiff-appellants, Filipino nationals seeking  
21 permanent resident status, appeal from a decision of the Trial  
22 Court of the Commonwealth of the Northern Mariana Islands  
23 entering judgment on the pleadings in favor of the Government of  
24

25 \_\_\_\_\_  
26 \*Honorable Manuel L. Real, Chief Judge, United States District  
Court, Central District of California, sitting by designation.

1 the Commonwealth. We agree with the trial court's ruling and  
2 affirm.

3 The instant case involves the trial court's interpreta-  
4 tion of our decision in Sirilan v. Castro, DCA No. 83-9009  
5 (D.N.M.I.I.(App.Div.) 1984). Sirilan grew out of Public Law  
6 (P.L.) 5-11, which was passed by the Northern Mariana Islands  
7 Legislature on April 1, 1977. P.L. 5-11 established a "permanent  
8 resident" status under the immigration laws. This status was  
9 available to persons who were not Trust Territory citizens, were  
10 of good moral character, and who had resided in the Northern  
11 Mariana Islands for at least five years.

12 Subsequently, on April 23, 1981, the Legislature of the  
13 Commonwealth of the Northern Mariana Islands (CNMI) enacted P.L.  
14 2-17, thereby repealing P.L. 5-11. On that same day, the  
15 legislation was approved by the Governor and took immediate  
16 effect. P.L. 2-17 included a savings clause at Section 2, which  
17 provided:

18 (a) The provisions of this Act shall  
19 not repeal, amend, deny, abrogate or other-  
20 wise affect the rights and status of any  
21 person granted permanent residency status  
22 pursuant to Public Law No. 5-11 prior to the  
23 effective date of this Act.

24 (b) The provisions of this Act shall  
25 not repeal, amend, deny, abrogate or other-  
26 wise affect the rights and status of any  
person who has filed an application for  
permanent residency status pursuant to Public  
Law No. 5-11 prior to the effective date of  
this Act. All persons who have duly filed  
for permanent residency status prior to such  
date shall have their applications processed  
and determined in accordance with the rules,  
regulations and administrative procedures  
adopted pursuant to Public Law No. 5-11.

1           The Sirilan plaintiffs qualified for permanent  
2 residency under P.L. 5-11 but had not yet filed their applica-  
3 tions with the Immigration and Naturalization Office (INO). When  
4 they sought to do so on April 24, 1981, their applications were  
5 refused. Suit was brought in the Commonwealth Trial Court  
6 challenging the validity of P.L. 2-11 on, inter alia, grounds of  
7 equal protection. Plaintiffs' arguments were rejected and  
8 summary judgment was granted in favor of the Government.

9           On appeal to this Court, the trial court's decision  
10 rejecting the equal protection challenge was reversed. The panel  
11 found the eligibility classifications established by P.L. 2-17  
12 unconstitutional and remanded to the trial court with directions  
13 to provide non-citizens who met the substantive qualifications  
14 for permanent resident status on April 23, 1981, a fair  
15 opportunity and reasonable time to complete and file their  
16 applications with the INO. Sirilan, slip op. at 47.

17           Here, appellants allege they possess the qualifications  
18 required by P.L. 5-11 but concede that they did not meet the  
19 requirements as of April 23, 1981, the effective date of P.L.  
20 2-17, the repealer. Their claims rest on the theory that Sirila-  
21 necessarily invalidated P.L. 2-17 in its entirety, thereby  
22 restoring P.L. 5-11. The trial court rejected this argument, as  
23 do we.

24           Appellants contend the Sirilan panel had but three  
25 options: 1) to declare P.L. 2-17 valid, 2) to invalidate only  
26 Section 2 of P.L. 2-17, thereby placing into question the rights

1 of those persons possessing permanent resident status, or, 3) to  
2 strike down P.L. 2-17 altogether, effectively reviving P.L. 5-11.  
3 Appellants surmise that the first option was rejected and the  
4 second discarded as undesirable, leaving only the third option.  
5 However, appellants misunderstand the powers of an appellate  
6 tribunal.

7 The Sirilan panel concluded that the Commonwealth  
8 possessed the authority to terminate the permanent residency  
9 program and repeal P.L. 5-11. Sirilan, slip op. at 13-14. How-  
10 ever, the panel was disturbed by the cut-off line which "signifi-  
11 cantly burdened members of the [eligible] class in a very  
12 arbitrary fashion." Sirilan, slip op. at 44. The record  
13 contained evidence that the certification program in the Mayor's  
14 office, which program provided necessary certificates of good  
15 character, was operated in an arbitrary and inconsistent manner.  
16 Id. Also, there was evidence that many applications were delayed  
17 because of problems retrieving necessary documents from the  
18 native country, the Philippines. Other affidavits alleged  
19 "dissemination of misinformation" by government officials, which  
20 resulted in the failure to file applications in some cases. Id.  
21 In light of these factors, and in the absence of proof by the  
22 Government that sufficiently important government interests  
23 outweighed the arbitrariness caused by the classification chosen,  
24 the panel concluded that the line did not provide "a sufficiently  
25 close fit" to survive constitutional review. Sirilan, slip op.  
26 at 45. In other words, while the termination of the program as

of April 23, 1981, was valid, the classification chosen to effect the cut-off was not. It was underinclusive.

[1-3] The power of an appellate court in a situation such as was presented in Sirilan is well stated by Justice Harlan in his concurrence in Welsh v. United States, 398 U.S. 333, 90 S.Ct. at 1792, 26 L.Ed.2d 308 (1970):

Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion.

90 S.Ct. at 1808. See also Soto-Lopez v. New York Civil Service Commission, 755 F.2d 266 (2nd Cir. 1985); Moritz v. C.I.R., 469 F.2d 466 (10th Cir. 1972). When faced with a such decision, the Supreme Court has held that "extension, rather than nullification, is the proper course." Califano v. Westcott, 443 U.S. 76, 89, 99 S.Ct. 2655, 2663 61 L.Ed.2d 382 (1979). Ultimately determinative is the legislative intent; the court must decide "whether it more nearly accords with [the legislature's] wishes to eliminate its policy altogether or extend it in order to render what [the legislature] plainly did intend, constitutional." Welsh, 90 S.Ct. at 1804 (Harlan, J., concurring in the judgment). In ascertaining the legislative intent, a severability clause has been viewed as persuasive evidence of a legislative desire that the court extend rather than nullify. See, e.g., Welsh, supra, quoting Champlin Rfg. Co. v. Corporation

1 Commission, 286 U.S. 210, 235, 52 S.Ct. 559, 565, 76 L.Ed. 1062  
2 (1932)(clause "discloses an intention to make the act divisible,  
3 and creates a presumption that, eliminating invalid parts, the  
4 legislature would have been satisfied with what remained.");  
5 Moritz v. C.I.R., 469 F.2d 466, 470 (10th Cir. 1972)("extending  
6 the coverage seems logical and proper, in view of their purpose  
7 and the broad separability clause in the act").

8 [4] Here, there can be no serious dispute as to the  
9 intention and preference of the Commonwealth Legislature. The  
10 Legislature was firm in its desire to repeal P.L. 5-11, finding  
11 that such action would "prevent a continued drain of public  
12 services and expenses to the Government." H.Rpt. No. 2-75. The  
13 Report further found the continuance of the permanent residency  
14 program "politically . . . unwise." Id. However, the Legisla-  
15 ture intended to protect the rights of those who already had been  
16 granted permanent resident status. In an attempt to properly  
17 draw a line, the Legislature chose to allow those who had filed  
18 applications the benefit of the status. Id. The Government  
19 considered the "line so drawn [as] the natural and common sense  
20 point of demarkation." Sirilan at 43. On appeal, the panel,  
21 agreeing that the line was not irrational, nevertheless concluded  
22 that it was underinclusive and chose to enlarge the class of  
23 potential permanent residents. In light of the purpose of the  
24 Act and in view of these reasons, it is relatively beyond dispute  
25 that had the Legislature known that the line they had drawn was  
26 unconstitutional, they would rather have a constitutional line

1 drawn than have the legislation invalidated altogether.

2 This conclusion is supported by the broad severability  
3 clause later enacted as part of P.L. 3-90, the Commonwealth Code  
4 Act. Section 16 provides:

5 Section 16. Severability.

6 If any of the provisions of this Code,  
7 or the application thereof to any person or  
8 circumstance, is held invalid, that invalidi-  
9 ty shall not affect any other provision or  
10 application of this Code which can be given  
11 effect without the invalid provision or  
12 application, and to this end the provisions  
13 of this Code are severable. [Emphasis added.]

14 As the trial court notes (decision p.17), this clause was enacted  
15 subsequent to P.L. 2-17 but was clearly intended to apply to all  
16 Code sections. The clause and its specific reference to "the  
17 application" of the laws supports a conclusion that the enlarge-  
18 ment of the coverage of P.L. 2-17, as opposed to the invalidation  
19 of the law, more accurately accords with the legislative intent.

20 Of course, of perhaps determinative relevance here is  
21 the intent of the appellate court in Sirilan. The panel chose  
22 not to invalidate P.L. 2-17 due to its constitutional infirmity;  
23 rather, it chose to interpret the legislation in a manner that  
24 met with constitutional norms. This was within the court's power  
25 and authority.

26 ///

///

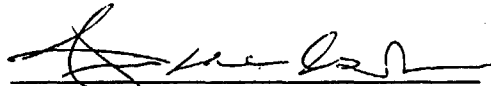
///

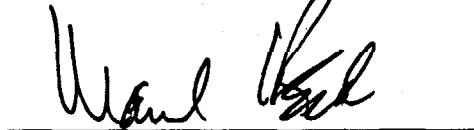
///



1 The decision of the trial court regarding judgment on  
2 the pleadings in favor of the Government is affirmed.  
3

4  
5  
6   
7 JUDGE ALFRED LAURETA

8  
9  
10   
11 JUDGE CRISTOBAL C. BUENAS

12  
13  
14   
15 JUDGE MANUEL L. REAL  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26