

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,)	
)	
COMPLAINANT,)	
)	
v.)	8 U.S.C. § 1324b PROCEEDING
)	
TUSCANY HOTEL AND CASINO, LLC,)	OCAHO CASE NO. _____
)	
RESPONDENT.)	

COMPLAINT

Complainant, the United States of America, alleges as follows:

1. Pursuant to 8 U.S.C. § 1324b, this action is brought on behalf of the Office of Special Counsel for Immigration Related Unfair Employment Practices (the "Office of Special Counsel") to enforce the provisions of the Immigration and Nationality Act ("INA") relating to immigration-related unfair employment practices.
2. In 1986, as part of an effort to advance new immigration policy, Congress amended the INA to require every employer to ensure that each employee is eligible to work in the United States through the review of one or more designated documents establishing an employee's identity and employment authorization. This employment eligibility verification process is codified at 8 U.S.C. § 1324a(b).
3. Having created an employment eligibility verification requirement through 8 U.S.C. § 1324a(b), Congress also amended the INA to protect all work-authorized employees from employment discrimination based on citizenship status or national origin in the hiring,

firing, and referral or recruitment for a fee of employees, and in connection with the employment eligibility verification process. This anti-discrimination provision is codified at 8 U.S.C. § 1324b.

4. Consistent with Congress' purpose in 1986 that employers should apply the employment eligibility verification process equally to all employees, the INA's anti-discrimination provision prohibits a person or entity from subjecting individuals to citizenship or national origin status discrimination in, among other things, the hiring process or from subjecting individuals to different employment eligibility verification documentary policies or practices based on citizenship status or national origin. 8 U.S.C. § 1324b(a)(1), (a)(6).
5. During the initial employment eligibility verification process, employees have a choice with respect to which documents to present in order to establish their employment eligibility: "The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity." 8 C.F.R. § 274a.2(b)(1)(v). Thus, employees may present any document that establishes identity and employment authorization (List A document) or a combination of an identity document (List B document) and an employment authorization document (List C document). *U.S. Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification (Form I-9, Rev. 08/07/09), p. 1.*
6. Respondent engaged in a pattern or practice of discriminatory employment eligibility verification practices against lawful permanent resident employees when, during the initial employment eligibility verification process, it required lawful permanent residents,

and not U.S. citizens, to provide expiration dates of their List A documents (Permanent Resident Cards), even when lawful permanent resident employees provided Lists B and C documents that were sufficient under federal law to establish their work authorization.

7. Respondent further extended its pattern or practice of discrimination to the employment eligibility reverification process when it reverified certain lawful permanent residents who should not have been reverified and required all non-U.S. citizen employees to present specific documents during reverification as a condition of continued employment.

JURISDICTION

8. Respondent is a hotel and casino based in Las Vegas, Nevada.
9. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b(a)(1) and employed more than three employees on the date of the alleged immigration-related unfair employment practices described below.
10. On June 7, 2011, approximately 158 days after Respondent committed an alleged discriminatory act against the Charging Party, the Charging Party filed a charge (“Attachment A”) alleging document abuse and citizenship status discrimination against Respondent.
11. Pursuant to 28 C.F.R. § 44.301(d), the charge was deemed complete on June 29, 2011.
12. On October 5, 2011, the Office of Special Counsel notified Respondent that it was expanding the investigation to include a possible pattern or practice of document abuse against non-U.S. citizens under 8 U.S.C. § 1324b(a)(6).
13. On November 1, 2011, the Charging Party received notice (“Attachment B”) by certified mail from the Office of Special Counsel that it was continuing its investigation of the

charge and that the Charging Party had the right to file her own complaint before an Administrative Law Judge.

14. On January 18, 2012, the parties reached an agreement (“Attachment C”) that extended the United States’ complaint filing period from January 30, 2012, to March 30, 2012.
15. On March 16, 2012, the parties reached an agreement (“Attachment D”) that extended the United States’ complaint filing period to April 30, 2012.
16. On April 30, 2012, the parties reached an agreement (“Attachment E”) that extended the United States’ complaint filing period to May 11, 2012.
17. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

18. Since at least January 2006 to at least October 2011, Respondent adopted and implemented a practice of recording the expiration dates of all non-U.S. citizen employees’ work authorization documents in its payroll system.
19. All non-U.S. citizen employees who presented a List B and a List C document during the initial employment eligibility verification process were required by Respondent to provide the expiration date of their List A document as a condition of employment, so that the expiration date of the List A document could be recorded.
20. Respondent recorded the expiration dates of work authorization documents only of non-U.S. citizen employees in its payroll system, and did not record such expiration dates for documents of U.S. citizens.
21. These expiration dates were tracked for the purpose of reverifying these employees’ employment eligibility.

22. A Form I-551 or Permanent Resident Card with “either an expiration date or no expiration date is a List A document that should not be reverified.” *U.S. Citizenship and Immigration Services*, Handbook for Employers, Instructions for Completing Form I-9, (Form M-274, Rev. 06/01/11), p. 9.
23. Respondent’s employment eligibility reverification process extended to lawful permanent resident employees who should not have been reverified, including those who presented either Permanent Resident Cards or drivers’ licenses and unrestricted social security cards. *U.S. Citizenship and Immigration Services*, Handbook for Employers, Instructions for Completing Form I-9, (Form M-274, Rev. 06/01/11), p. 9.
24. Respondent subjected all List A documents issued by the Department of Homeland Security (“DHS”) or its predecessor agency that were presented by non-U.S. citizen employees to heightened review for genuineness by a senior human resources representative, but did not do the same for List A documents presented by U.S. citizen employees.
25. During the employment eligibility reverification process, Respondent further engaged in a practice of specifically requiring all non-U.S. citizen employees to produce DHS-issued documents establishing their continued employment eligibility.
26. During this relevant period of time, Respondent did not ask U.S. citizen employees to provide any expiration dates of their work authorization documents and did not reverify them.
27. From at least January 2006 to at least October 2011, Respondent knowingly treated individuals differently in the employment eligibility verification and reverification process on account of their citizenship status.

COUNT I

PATTERN OR PRACTICE OF DOCUMENT ABUSE IN THE EMPLOYMENT ELIGIBILITY VERIFICATION AND REVERIFICATION PROCESSES

28. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 27 as if fully set forth herein.
29. Respondent's standard policy and practice, from at least January 2006 to at least October 2011, was to reverify the employment eligibility of lawful permanent resident employees, including those who should not have been reverified, but not of U.S. citizen employees.
30. Respondent's standard policy and practice, from at least January 2006 to at least October 2011, was to require all non-U.S. citizen employees to provide more or different documents or information than are required to establish employment authorization in connection with the Form I-9 employment eligibility verification and reverification processes.
31. Respondent's standard policy and practice, from at least January 2006 to at least October 2011, was to apply a heightened level of scrutiny to work authorization documents presented by non-U.S. citizens as compared to U.S. citizens during the employment eligibility verification and reverification processes.
32. U.S. citizen employees were not subjected to the same requirements imposed on all non-U.S. citizen employees to provide more or different documents or information than are required during the Form I-9 employment eligibility verification and reverification processes.
33. Respondent's differential treatment of non-U.S. citizen employees in the Form I-9 employment eligibility verification and reverification processes was knowing and intentional and adopted because of such employees' status as non-U.S. citizens.

34. Respondent's actions were committed with the intent of discriminating against non-U.S. citizen employees on the basis of their citizenship status and constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

REQUEST FOR RELIEF

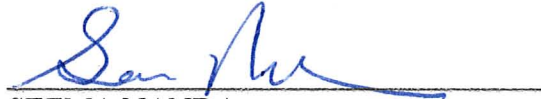
THEREFORE, Complainant respectfully requests:

- A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law Judge to preside at a hearing on this matter as soon as practicable; and
- B. That the Administrative Law Judge grant the following relief:
 - 1. Order Respondent to provide full remedial relief to work-authorized non-U.S. citizen employees for the losses they have suffered as a result of the discrimination alleged in this complaint, including back pay and reinstatement;
 - 2. Take other appropriate injunctive measures to overcome the effects and prevent the recurrence of the discriminatory practices; and
 - 3. Order Respondent to pay an appropriate civil penalty as determined by the Administrative Law Judge for each work-authorized non-U.S. citizen who is found to have been subjected to the discriminatory practices alleged in this complaint.
 - 4. The Complainant prays for such additional relief as justice may require.

Respectfully Submitted,

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By:



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