

**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
)	
WHIZ INTERNATIONAL LLC)	
d/b/a WHIZ-INTERNATIONAL)	
)	
RESPONDENT.)	OCAHO CASE NO. _____
)	
)	

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 pursuant to 8 U.S.C. § 1324b.
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 specified documents establishing an employee’s identity and work authority. 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 employees from employment discrimination based on citizenship status or national origin in the hiring, firing, 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 at 8 U.S.C. § 1324b(a)(1)(B) prohibits a person or entity from subjecting applicants or employees to citizenship or immigration status discrimination in, among other things, the hiring process. The anti-discrimination provision also makes it unlawful for an employer to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege under 8 U.S.C. § 1324b. 8 U.S.C. § 1324b(a)(5).
5. This suit arises out of the retaliatory conduct of Whiz International LLC, d/b/a Whiz-International ("Respondent" or "Whiz") against its former employee, [REDACTED], when she was terminated because she expressed opposition to Respondent's discriminatory recruitment practices, which she believed violated 8 U.S.C. § 1324b.

JURISDICTION

6. Pursuant to 8 U.S.C. § 1324b(c)(2) and (d)(1), the Office of Special Counsel is charged with investigating charges, initiating investigations, and prosecuting complaints alleging immigration-related unfair employment practices.
7. [REDACTED] ("Charging Party") is a United States citizen and is protected under 8 U.S.C. § 1324b(a)(5) from intimidation, threats, and coercion resulting from an expression

of opposition to a practice made unlawful under 8 U.S.C. § 1324b.

8. Respondent is an information technology (IT) staffing agency, and provides IT staffing services, IT consulting services, software development, and web services to various client companies. It employs more than four individuals, and its principal place of business is 2983 Kennedy Blvd., Suite 401, Jersey City, NJ 07306.
9. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b.
10. On October 20, 2011, approximately 50 days after Respondent terminated the Charging Party, the Office of Special Counsel accepted as complete a charge of retaliation (Attachment "A") from the Charging Party.
11. On February 22, 2012, the Charging Party received notice (Attachment "B") by certified mail from the Office of Special Counsel, that the Office of Special Counsel was continuing its investigation of the charge. In this letter, the Charging Party was advised that she had the right to file her own complaint before an Administrative Law Judge. Accordingly, the date by which the Charging Party can file a complaint with OCAHO is May 22, 2012.
12. On February 22, 2012, Respondent received notice (Attachment "C") by certified mail from the Office of Special Counsel, that the Office of Special Counsel was continuing investigation of its charge and that the Charging Party had the right to file her own complaint before an Administrative Law Judge.
13. All conditions precedent to the filing of the suit have been performed or have occurred, and jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

14. On or about April 26, 2011, Respondent hired the Charging Party to perform receptionist

duties at its Jersey City, New Jersey office. Respondent's Director and owner, [REDACTED] gave the Charging Party a formal offer letter.

15. Soon after the Charging Party was hired, Ms. [REDACTED] husband, [REDACTED], instructed the Charging Party to perform recruitment duties and to maintain a list of individuals that Respondent could place for its recruitment activities.
16. Mr. [REDACTED] instructed the Charging Party to maintain one or more Microsoft Excel spreadsheets with the name, skill set, and citizenship status information of the individuals whom she contacted for possible recruitment.
17. Less than a month after the Charging Party began working, Mr. [REDACTED] sent her an e-mail detailing his preference for individuals eligible for Optional Practical Training (OPT) status. Through subsequent oral communications, Mr. [REDACTED] clarified his preference for any individual on a temporary work visa. Mr. [REDACTED] told the Charging Party that Respondent preferred OPT candidates because they would be tied to Respondent and it would be difficult for them to obtain other employment.
18. On or around mid to early August 2011, after several months of screening individuals based on citizenship status in order to prioritize potential recruits with temporary work status, the Charging Party expressed discomfort to Mr. [REDACTED] regarding the legality of Respondent's screening practices because they excluded U.S. citizens and lawful permanent residents.
19. During this conversation, Mr. [REDACTED] became uncomfortable and angry. He indicated that Respondent's practices were lawful and that the Charging Party should continue to follow his instructions and screen individuals based on their citizenship status.
20. Although the Charging Party continued screening individuals for recruitment based on

citizenship status as instructed, Mr. [REDACTED] began acting aloof and unwelcoming after the Charging Party expressed her opposition to Respondent's recruitment practices.

21. On or about August 24, 2011, approximately three weeks after the Charging Party's conversation with Mr. [REDACTED] regarding her opposition to Respondent's preference for temporary visa holders, Mr. [REDACTED] informed the Charging Party that she was being terminated.
22. Upon the Charging Party's termination, Respondent sent the Charging Party two letters, one dated August 24, 2011 and the other dated August 26, 2011, stating that the Charging Party's position with the company would be terminated effective August 31, 2011, and September 1, 2011, respectively.
23. Neither of Respondent's letters indicated that the Charging Party was terminated for cause, and both were signed by [REDACTED], Director of Whiz International.

COUNT I
RETALIATION

24. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 23 as if fully set forth herein.
25. The Charging Party's actions described in Paragraph 19, above, constituted "protected activity" within the meaning of 8 U.S.C. § 1324b(a)(5).
26. Respondent's termination of the Charging Party's employment described in Paragraphs 21- 23, above, solely because the Charging Party engaged in "protected activity" constituted illegal retaliation in violation of 8 U.S.C. §1324b(a)(5).

THEREFORE, Complainant respectfully requests:

- A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law

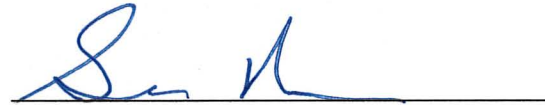
Judge to preside at a hearing on this matter as soon as practicable; and

B. That the Administrative Law Judge grant the following relief:

1. Order Respondents to cease and desist from the alleged illegal practices described in the complaint;
2. Order Respondents to provide full remedial relief to the Charging Party.
3. Take other appropriate measures to overcome the effects of the discrimination.
4. Order Respondents to pay a civil penalty of \$3,200 for each violation of 8 U.S.C. §1324b.

The complainant prays for such additional relief as justice may require.

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Dated: May 22, 2012