

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
)	
AUTOBUSES EJECUTIVOS, LLC)	
d/b/a OMNIBUS EXPRESS,)	OCAHO CASE NO. _____
)	
RESPONDENT.)	

COMPLAINT

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

1. This action is brought on behalf of the United States by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (the “Office of Special Counsel”) to enforce the provision 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 mandated an employment eligibility verification process through 8 U.S.C. § 1324a(b), Congress also amended the INA to protect employees from employment discrimination based on citizenship status or national origin in the hiring, firing, employment

verification, or referral or recruitment for a fee processes, and from retaliation or intimidation.

This anti-discrimination provision is codified at 8 U.S.C. § 1324b.

4. This suit arises out of the discriminatory conduct of Autobuses Ejecutivos, LLC, d/b/a Omnibus Express, (hereinafter "Respondent") in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1)(B) with regard to discrimination during the hiring and recruiting processes against U.S. citizens and other protected individuals for bus driver positions in favor of temporary nonimmigrant visa holders who are not protected individuals.

JURISDICTION

5. 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.

6. Respondent, a Texas corporation headquartered in Houston, Texas, provides intra-state and interstate bus service to the public, employed and employs more than three employees, and is a person or entity within the meaning of 8 U.S.C. § 1324b(a).

7. On January 3, 2013, the Office of Special Counsel notified Respondent in writing that it had initiated an independent investigation of Respondent pursuant to 8 U.S.C. § 1324b(d)(1) to determine whether Respondent engaged in a pattern or practice of discrimination in recruitment and hiring against individuals on the basis of their citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B).

STATEMENT OF FACTS

8. Starting in September 2012, Respondent began recruiting 50 temporary bus drivers to drive roundtrip from Houston to Laredo for the period covering November 15, 2012, to

September 15, 2013, by placing job advertisements with various sources, including the Texas Workforce Commission (“TWC”) and the Houston Chronicle.

9. For every year since at least 2005, Respondent sought and obtained authority from the U.S. Department of Labor (DOL) to hire no fewer than 20 and up to 50 temporary foreign national workers as commercial bus drivers under the H-2B visa program by filing an Application for Temporary Employment Certification, ETA Form 9142.

10. An employer filing ETA Form 9142 for H-2B workers must attest that the job is a “bona fide, full-time temporary position.” 20 C.F.R. § 655.22(h).

11. An employer wishing to hire an H-2B worker is required to conduct recruitment efforts “to ensure that there are not qualified U.S. workers” available for the position, 20 C.F.R. § 655.40(a); and the employer is further required to “accept and hire any [U.S. worker] applicants who are qualified and who will be available,” 20 C.F.R. § 655.40(e).

12. The term “U.S. worker” is a DOL classification which includes U.S. citizens or nationals, lawful permanent residents, asylees, refugees, and certain other work-authorized individuals. 20 C.F.R. § 655.5. Respondent’s prior year’s H-2B workers’ visas expired on September 15, 2012, rendering them ineligible for continued employment in the United States after that date.

13. The job advertisement (commonly referred to as a “job order”) Respondent placed with the TWC stated, among other things, “Fluency in Spanish required. Must be able to obtain a Class A or B license with a passenger endorsement or foreign equivalent. 100% site work in Texas.” The job advertisement Respondent placed with the Houston Chronicle had almost identical wording.

14. Respondent’s job order with the TWC was open from on or around September 10, 2012,

to November 30, 2012.

15. Numerous individuals, including U.S. citizens and other protected individuals, applied for one of Respondent's 50 bus driver positions.

16. From September 2012, to February 2013, Respondent hired on a permanent, not temporary, basis approximately ten non-H-2B applicants, which included U.S. citizens and other protected individuals. Respondent hired nine of those applicants during the period covering September 2012 through November 2012, when none of Respondent's prior H-2B visa workers were authorized to work and no new H-2B visa workers were immediately available.

17. Respondent actively discouraged other qualified U.S. citizens and other protected individuals from pursuing their applications by not reviewing or fully evaluating the applicants' qualifications, ignoring applicants' telephone inquiries, informing applicants that there were no vacancies, and/or promising to call the applicants about their employment applications then failing to contact the applicant.

18. From September 2012, to February 2013, Respondent hired 42 H-2B workers for its bus driver positions. In doing so, Respondent represented to the DOL that the bus driver job was temporary and that Spanish fluency was a requirement for bus drivers as a term and condition of employment. It also represented to the U.S. Citizenship and Immigration Services (USCIS) that it "had extreme difficulty in locating" the 50 requested bus drivers from applicants in the United States, including U.S. citizens and other protected individuals.

19. Respondent employs bus drivers who do not speak Spanish or do not speak it fluently, notwithstanding its certification to the DOL that Spanish fluency was a requirement or condition of employment.

20. If Respondent hired a non-H-2B worker for one of the bus driver positions, the employee would be permanent, not temporary.
21. Even though the Respondent hired at least ten non-H-2B workers as bus drivers, including U.S. citizens and other protected individuals, it did not reduce the number of H-2B visa holders sought by the number of non-H-2B workers hired.
22. Respondent hired its last H-2B worker on February 4, 2013.

COUNT I

CITIZENSHIP STATUS DISCRIMINATION IN HIRING

23. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 22 as if fully set forth herein.
24. From at least September 2012, to February 2013, Respondent engaged in a pattern or practice of discrimination during the recruiting and hiring processes against U.S. citizens and other protected individuals on the basis of their citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B) when it:
 - A. Favored the employment of temporary foreign nationals under the H-2B visa program over otherwise qualified U.S. citizens and other protected individuals;
 - B. Failed to consider applications for bus driver positions filed by non-H-2B workers, including U.S. citizens and other protected individuals before hiring temporary foreign national H-2B visa workers;
 - C. Actively discouraged non-H-2B workers, including U.S. citizens and other protected individuals, from pursuing employment as a bus driver by misrepresenting the

availability of bus driver positions; and by failing to contact applicants regarding the status of their application for employment; and

D. Made material misrepresentations to DOL and USCIS in connection with its petitions and applications seeking authority to hire temporary foreign nationals under the H-2B visa program, such as the Spanish fluency requirement, the temporary nature of the job, and the unavailability of qualified non-H-2B workers in the United States, including U.S. citizens and other protected individuals.

25. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1)(B).

REQUEST FOR RELIEF

THEREFORE, Complainant respectfully requests that the Administrative Law Judge assigned to this proceeding grant the following relief:

1. Order Respondent to cease and desist from the alleged illegal practices described in the Complaint;
2. Order Respondent to provide full monetary and other remedial relief to each protected individual shown to have been injured by Respondent's illegal practices;
3. Take other appropriate measures to overcome the present and future effects of Respondent's illegal practices;
4. Order Respondent to pay the maximum civil penalties established as justified and warranted under the facts and authorized by statute for each violation of 8 U.S.C. § 1324b(a)(1)(B) shown at trial to have been committed by Respondent; and
5. Such additional relief as justice may require.

Respectfully Submitted,

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division



SEEMA NANDA
Deputy Special Counsel

C. SEBASTIAN ALOOT
Special Litigation Counsel

A. BALTAZAR BACA
Trial Attorney

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Telephone: (202) 305-4084
Facsimile: (202) 616-5509

Dated: August 5, 2013