

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

Carlos Alfredo Osorno, Complainant v. Cesar Geraldo, Owner, Reliable Graphics, Inc., Respondent; 8 U.S.C. 1324b Proceeding; Case No. 90200153.

**ORDER TO SHOW CAUSE WHY MOTION FOR JUDGMENT ON THE PLEADINGS SHOULD
NOT BE GRANTED**

In 1986, the Immigration and Nationality Act of 1952 was amended by the Immigration Reform and Control Act (IRCA), which made significant revisions in national policy with respect to illegal immigrants. This policy is set out in Title 8 of the United States Code at Sections 1324a and 1324b.

Accompanying other dramatic changes, the Immigration Reform and Control Act introduced the concept of controlling employment of undocumented aliens by providing an administrative mechanism for the imposition of civil liabilities upon employers who hire, recruit, refer for a fee, or continue to employ unauthorized aliens in the United States. In addition to civil liability, employers may face criminal fines and imprisonment for engaging in a pattern or practice of hiring or continuing to employ such aliens.

Congress structured into IRCA substantive and procedural protections to control ``unfair immigration-related employment practices''. It sought to prevent discrimination against persons who, although authorized to reside and work in the United States, nevertheless appear physically or linguistically ``foreign''. 8 U.S.C. section 1324b.

On August 14, 1989, Complainant Carlos Alfredo Osorno submitted a charge of citizenship status discrimination against the Respondent, Cesar Geraldo, owner, Reliable Graphics, Inc., with the Office of the Special Counsel (hereinafter referred to as ``OSC'). Complainant also filed a Declaration of Intending Citizen with OSC on August 1, 1989. The OSC forwarded Complainant's companion claim, alleging national origin discrimination, to the Equal Employment Opportunity Commission.

On October 31, 1989, Bruce Friedman, Attorney for OSC, informed Complainant that as a result of OSC's investigation, it would not be filing a complaint before an Administrative Law Judge in said matter, but that Mr. Osorno could file his own action if he so desired, by March 12, 1990. Mr. Friedman also wrote to Mr. William Harris, Attorney for Respondent, informing him of OSC's decision, but advising him of Complainant's right to file a Complaint directly with an Administrative Law Judge.

On April 27, 1990, Complainant submitted a form entitled ``Complaint Regarding Unfair Immigration-Related Employment Practices'' which was received and filed by the Office of the Chief Administrative Hearing Officer (OCAHO) on May 4, 1990. Said Complaint alleged discrimination of Mr. Osorno by Reliable Graphics based upon his Columbian citizenship.

By Notice of Hearing on Complaint Regarding Unfair Immigration-Related Employment Practices dated June 6, 1990, Respondent was advised by OCAHO of: (1) the filing of the Complaint, (2) my assignment to hear or otherwise dispose of the matter, (3) the right to Answer the Complaint within 30 days, (3) the possibility of a default judgment if the Complaint was not Answered, and (4) the hearing location of Van Nuys, California.

On July 9, 1990, Respondent submitted an Answer to Complaint in which Respondent denied the allegations of citizenship discrimination. Respondent asserted an affirmative defense, providing a factual statement supporting Respondent's termination of Complainant for cause. Respondent cited Complainant's inability to adequately perform work assigned, despite being offered additional pay as an incentive to perform to Respondent's expectations.

On July 24, 1990 my office received a letter from Complainant, apparently responding to Respondent's Answer. I provide a copy of this letter to Counsel for Respondent, as well as the OSC.

On October 4, 1990, a pre-hearing telephonic conference was conducted. Complainant indicated his difficulties in obtaining legal representation on his behalf. Respondent indicated that he intended to file a motion. No hearing date was set pending receipt of Respondent's motion.

On October 18, 1990, I received Respondent's Motion For Judgment On The Pleadings Based Upon Claimant's Failure To State A Claim, which was dated October 16, 1990. This Motion, filed pursuant to Fed. R. Civ. Proc. 12(b)(6), requests a judgment on the pleadings in favor of Respondent, due to Complainant's alleged failure to state a justifiable claim. Respondent submits that Complainant's Complaint fails to set forth a claim based upon citizenship discrimination under IRCA.

On October 19, 1990, I received from Complainant what appears to be an attempt to respond to the subject motion. I am not satisfied that Complainant has adequately considered the contents of his response, and I do not wish to consider this document in its present form. Complainant's response does not follow the procedural guidelines for submission of a response to a motion, as found in the Rules for Practice and Procedure which govern proceedings of this nature. See, 28 C.F.R. section 68.9(b).

This Order, then, invites Complainant to show cause why the Respondent's Motion should not be granted, and the matter resolved in favor of Respondent, due to Complainant's alleged failure to state a claim. This response should adhere to the above-mentioned procedural rules and should respond to the allegations raised by Respondent in its motion.

Any such filing by Complainant will be considered only if it is received by this office within 14 calendar days from the date of this Order, that is, by November 2, 1990. I am mindful of the fact that Complainant is acting without counsel, and that his knowledge of legal matters is minimal. I wish to provide Complainant every opportunity to prove his claim, if he can, yet I will not delay this matter unnecessarily to the detriment of Respondent. I feel that I have provided Complainant sufficient time in which to more satisfactorily respond to the Motion, and I will consider only the Motion and the pleadings of record if Complainant does not respond in a more acceptable fashion by this deadline.

IT IS SO ORDERED: This 19th day of October, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge
Executive Office for Immigration Review
Office of the Administrative Law Judge
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