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

September 3, 1997

JAMES R. COOK, Complainant, v. PRO SOURCE, INC., Respondent	)))) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 97B00090)))

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On December 9, 1996, James Cook (Cook/complainant), a U.S. citizen, filed a charge with the Office of Special Counsel (OSC), U.S. Department of Justice, alleging that on July 15, 1996, Pro Source, Inc. (Pro Source/respondent), committed unfair immigration-related employment practices namely, national origin and citizenship status discrimination, as well as document abuse, in violation of the pertinent provisions of the Immigration Reform and Control Act (IRCA), 8 U.S.C. §1324b(a)(1) and the Immigration Act of 1990 (IMMACT), 8 U.S.C. §1324b(a)(6).

Ordinarily, an individual alleging an unlawful immigration-related employment practice must complete and file a standard OSC charge form (Form OSC–1). In this case, however, OSC accepted for filing a nine (9)-page letter, dated December 9, 1996 (December 9, 1996 OSC letter/charge), signed by John B. Kotmair, Jr., Cook's designated representative in this proceeding.

In that correspondence, Kotmair alleged that on July 15, 1996, Cook had submitted a Statement of Citizenship Status to relieve Pro Source from the "duty of withholding income tax" from his wages. He also stated that "by service of an Affidavit of Constructive Notice, Mr. Cook does not have, nor does he recognize a social security number in relationship to himself . . . [and] [t]herefore, he is not qualified

by any personal act or Act of Congress to be subject to the Social Security Act, the taxes imposed in the Act, and the collection of the taxes as found in Subtitle C of the Internal Revenue Code."

That correspondence also discloses that Cook had filed a Title VII national origin discrimination charge with the Equal Employment Opportunity Commission (EEOC) before having filed his OSC charges, and that the EEOC dismissed the charge for lack of jurisdiction.

On January 30, 1997, after completing its investigation, OSC sent a determination letter to complainant advising him that "there is insufficient evidence of reasonable cause to believe that any of these charges state a cause of action under 8 U.S.C. §1324b".

For that reason, OSC informed complainant that it was declining to file an action on his behalf before an Administrative Law Judge assigned to this Office and that he was entitled to file a private action directly with this Office if he did so within 90 days of his receipt of that correspondence.

On April 4, 1997, complainant timely commenced this private action by having filed this Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging citizenship status discrimination and document abuse in violation of IRCA. A copy of the December 9, 1996 OSC letter/charge is attached to the Complaint.

The Complaint, at ¶¶11, 12, alleges that "On 07/96 I applied for or worked at the business/employer. The job was Mech. Designer." Cook seeks back pay from July to December, 1996.

On April 14, 1997, a Notice of Hearing on Complaint Regarding Unfair Immigration-Related Employment Practices, together with a copy of the Complaint, were served on respondent by certified mail, return receipt requested.

On April 28, 1997, John B. Kotmair, Jr. filed a Notice of Appearance on behalf of the complainant.

On April 28, 1997, respondent, through its attorney, James M. Hughes, Esquire, filed its answer, in which it averred that "Pro Source neither discriminated against Mr. Cook nor refused to accept

any papers he submitted. Pro Source simply insisted upon withholding federal income taxes in accordance with federal law. . . [t]here is clearly no substance to this Complaint nor any jurisdiction by this Agency to review these matters."

On May 29, 1997, a prehearing telephonic conference was conducted, during the course of which respondent's attorney advised that he would be filing a motion to dismiss within seven (7) days. The issue of Kotmair's ability to commence this action on behalf of Cook was also discussed.

On June 4, 1997, Pro Source filed a pleading captioned Motion to Dismiss of Respondent Pro Source, Inc., seeking dismissal of the Complaint for failure to state a claim.

On June 16, 1997, complainant filed a pleading captioned Motion to Strike Respondent's Answer and Motion to Dismiss requesting that Pro Source's answer and dispositive motion be stricken for failing to properly effect service of its answer and motion on all parties of record, 28 C.F.R. §68.6(a)[1]. In addition, complainant notes that respondent's counsel has not filed a notice of appearance nor provided his qualifications to represent Pro Source in this matter, 28 C.F.R. §68.33(b)(4), (5).

Respondent has not filed a reply to complainant's Motion to Strike.

On June 16, 1997, complainant also filed a pleading captioned Motion for Default Judgment, seeking the entry of a default judgment in his favor because of similar procedural infractions namely, 1) the failure of respondent's counsel to file a notice of appearance and to provide qualifications, 28 C.F.R. §68.33(b)(4), (5), 2) the failure of respondent's answer to comport with the requirements set forth at 28 C.F.R. §68.9(c), and 3) the failure of respondent to serve all parties of record with its answer and motion to dismiss, 28 C.F.R. §68.6(a).

Respondent has not filed a response to complainant's Motion for Default Judgment.

[1] Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Part 68 (1996) [hereinafter cited as 28 C.F.R. §68.__].

Before assessing respondent's dispositive Motion to Dismiss, consideration of complainant's Motion to Strike and Motion for Default Judgment, filed on June 16, 1997, is in order.

Because OCAHO Rules of Practice and Procedure do not provide for motions to strike, OCAHO rulings have relied upon the Federal Rules of Civil Procedure for guidance. *United States v. Irani*, 6 OCAHO 860, at 3 (1996); *United States v. De Leon-Valenzuela*, 6 OCAHO 899, at 4 (1996); *United States v. Makilan*, 4 OCAHO 610, at 3 (1994). The OCAHO rules specifically provide that "[t]he Rules of Civil Procedure for the District Courts of the United States may be used as a general guideline in any situation not provided for or controlled by these rules." 28 C.F.R. §68.1.

It is therefore appropriate to look to Rule 12(f) of the Federal Rules of Civil Procedure, which provides:

> Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Under OCAHO and federal decisional law, motions to strike are highly disfavored because of the tendency for such motions to be asserted for dilatory purposes, and are not granted unless the language in the pleading at issue has no possible relation to the controversy and prejudice would clearly result from the denial of the motion. *United States v. Alvarez-Suarez*, 4 OCAHO 655, at 6 (1994) (a motion to strike is a drastic remedy and therefore is not favored); *United States v. Watson*, 1 OCAHO 253 (1990); *Morrow v. South*, 540 F. Supp. 1104, 1111 (S.D. Ohio 1982); *Lirtzman v. Spiegel, Inc.*, 493 F. Supp. 1029, 1031 (N.D. Ill. 1980); *Mitchell v. Bendix Corp.*, 603 F. Supp. 920, 921 (N.D. Ind. 1985).

In OCAHO proceedings, motions to strike have been routinely granted to sift the proceeding of insufficient affirmative defenses "which cannot succeed under any set of circumstances." *United States v. Alvarez-Suarez*, *supra* at 7; *United States v. Chavez-Ramirez*, 5 OCAHO 774 (1995); *United States v. Chi Ling, Inc.*, 5 OCAHO 723 (1995).

With the foregoing legal parameters in mind, we now assess complainant's Motion to Strike.

First, complainant has moved to strike respondent's June 4, 1997 Motion to Dismiss. It is noted, however, that Rule 12(f) applies only to pleadings. *See* Fed. R. Civ. P. 7(a)(defining pleadings as complaints, answers and replies to counterclaims); *Pilgrim v. Trustees of Tufts College*, __ F.3d __, 1997 WL 370286, at *3 (1st Cir. July 10, 1997)(Rule 12(f) applies only to pleadings and has no applicability to summary judgment motions); *Int'l Longshoremen's Ass'n v. Virginia Int'l Terminals, Inc.*, 904 F. Supp. 500, 504 (E.D. Va. 1995) (Rule 12(f) motion to strike not appropriate to challenge briefs and affidavits).

Accordingly, since motions are not equivalent to pleadings, a motion to strike is not a proper way to challenge respondent's motion to dismiss. For that reason, the portion of complainant's motion which seeks to strike respondent's June 4, 1997 Motion to Dismiss is denied.

Second, complainant has moved to strike respondent's April 28, 1997 answer. Rule 12(f) imposes a time limit upon parties seeking to strike a pleading namely, 20 days from the date of service of the pleading in question. Respondent was served with the Complaint on April 18, 1997. Respondent's answer was served by regular mail on April 24, 1997.

OCAHO Rules of Practice provide that service of all pleadings other than complaints is deemed effective at the time of mailing, 28 C.F.R. §68.8(c)(1), and that whenever a party has the right to take some action within a prescribed period after service of a pleading by regular mail, five (5) days shall be added to that period of time, 28 C.F.R. §68.8(c)(2).

Therefore, complainant had 25 days after April 24, 1997, or until May 19, 1997, to serve a motion to strike. Complainant did not serve his motion until June 13, 1997. Therefore, pursuant to Rule 12(f) and 28 C.F.R. §§68.8(c)(1) and (2), complainant's motion to strike respondent's answer was not timely filed and is therefore being denied.

Complainant's motion to strike respondent's answer must also be denied for not having applied the appropriate legal standard, that is a showing that Pro Source's answer contains insufficient defenses,

irrelevant or scandalous matter, and that the denial of the motion would be prejudicial.

Complainant urges that the answer be stricken because of respondent's failure to comply with certain OCAHO procedural rules.

First, complainant notes that respondent has not complied with the rule that requires an attorney of record to file a notice of appearance, 28 C.F.R. §68.33(b)(5), and to provide qualifications, 28 C.F.R. §68.33(b)(4).

Although a formal notice of appearance has not been filed, an answer to the Complaint has been filed on behalf of Pro Source by James M. Hughes, Esquire, Devin & Drohan, P.C.

Mr. Hughes has also represented the interests of Pro Source during the course of a prehearing telephonic conference conducted in this matter on May 29, 1997. This Office and the complainant, as well, have thus been afforded sufficient notice of the representation.

The other procedural rule cited by complainant, 28 C.F.R. §68.33(b)(4), provides that an "attorney's own representation that he/she is in good standing before any [federal or state court] shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge."

By having filed an answer and having appeared on behalf of Pro Source, Mr. Hughes has implicitly represented that he is in good standing. Absent some evidence to the contrary, Mr. Hughes has satisfactorily represented his good standing and need not furnish any additional evidence concerning his qualifications.

Complainant also notes that the respondent has failed to properly effect service of its answer and motion upon all parties of record, in violation of 28 C.F.R. §68.6 (Service and filing of documents), which provides in pertinent part:

> . . . all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney.

It is noted for the record that neither respondent's answer nor its motion to dismiss are accompanied by the requisite certification, and are therefore in violation of the rule. Complainant has not provided any statutory or decisional bases that would allow an Administrative Law Judge to strike an answer based upon a party's failure to effect proper service. Obviously, complainant has received a copy of the respondent's answer and has been afforded the opportunity to challenge any insufficient defenses it may contain.

Given those circumstances, and because complainant neither timely filed his motion to strike nor in having met the legal standard for granting a motion to strike, complainant's June 16, 1997 Motion to Strike respondent's answer is also hereby being denied.

Complainant has also filed a pleading captioned Motion for Default Judgment, and in support of that motion has essentially cited the same procedural infractions namely,

1) the failure of respondent's counsel to file a notice of appearance and to provide his qualifications, 28 C.F.R. §68.33(b)(4), (5);

2) the failure of respondent to serve all parties of record with its answer and motion to dismiss, 28 C.F.R. §68.6; and

3) the failure of respondent's answer to comport with the requirements for filing answers, 28 C.F.R. §68.9(c).

The pertinent procedural rule governing defaults in OCAHO proceedings, 28 C.F.R. §68.9(b), provides that "[f]ailure of the respondent to file an answer within the time provided [30 days after service of a complaint] shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default."

Because the cited rule contains precatory language, an Administrative Law Judge *may* enter a judgment by default where the respondent has failed to file a timely answer. In some cases, failure to respond to an Administrative Law Judge's pretrial orders may support the entry of a judgment by default. 28 C.F.R. §68.37(c); *United States v. Nu Line Fashions, Inc.*, 1 OCAHO 147 (1990).

Federal and OCAHO decisions consistently hold that default judgments are not favored and any doubts are resolved in favor of a trial on the merits. *United States v. Alvarez-Suarez*, 4 OCAHO 655, at 5 (1994). The U.S. Court of Appeals for the First Circuit has noted that "[a] default judgment is itself a drastic sanction that should be employed only in an extreme situation." *Luis C. Forteza e Hijos, Inc. v. Mills*, 534 F.2d 415, 419 (1st Cir. 1976); *Coyante v. Puerto Rico Ports Authority*, 105 F.3d 17, 23 (1st Cir. 1997); *cf. Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 396 (1st Cir.) (discovery abuse, while sanctionable, does not require as a matter of law imposition of most severe sanctions available), *cert. denied*, 498 U.S. 891 (1990).

On April 14, 1994, the Complaint was mailed to Pro Source by certified mail, return receipt requested. On April 25, 1997, the U.S. Postal Service Domestic Return Receipt, PS Form 3811, December 1994, which had been attached to the Complaint, was returned to this Office showing that it had been received by Pro Source on April 18, 1997. Thus, the 30 day period within which to have filed an answer was calculated from that date.

On April 29, 1997, Pro Source filed its answer. That filing was well within the 30 day period, and thus Pro Source is not in default.

Mindful that default judgments are not favored in the law, and absent any statutory, procedural or decisional bases upon which to do so, a judgment by default will not be entered based on the procedural infractions cited by the complainant. *United States v. A & A Maintenance Enter.*, 6 OCAHO 852 (1996).

Although respondent's answer does not comport with the particularized procedural requirements set forth at 28 C.F.R. §68.9(c), it is found to be sufficiently competent to constitute a general denial of all of complainant's allegations. The other cited procedural infractions have been discussed previously.

In view of the foregoing, complainant's June 16, 1997 Motion for Default Judgment is also being denied.

We now turn our attention to respondent's dispositive Motion to Dismiss, which was filed on June 4, 1997. Respondent states in the first sentence of that motion that "Defendant Pro Source, Inc. moves to dismiss this claim for failure to state a claim upon which relief can be granted under Regulation 68.11."

The appropriate procedural rule authorizing an Administrative Law Judge to dispose of cases upon motions to dismiss for failure to state a claim is contained in section 68.10 of the OCAHO rules. Although respondent has moved pursuant section 68.11, which governs motions and requests in general, its motion shall be treated as if made pursuant to section 68.10.

This procedural regulation is similar to and based upon Rule 12(b)(6) of the Federal Rules of Civil Procedure, which has accordingly been used as a guidepost by the Administrative Law Judges in this Office in issuing orders pursuant to motions to dismiss under section 68.10.

In considering a motion to dismiss, our analysis is limited to the four corners of the Complaint, together with any documents incorporated into the Complaint by reference and materials subject to judicial notice. *Udala v. NYS Dept. of Education*, 4 OCAHO 633, at 4 (1994).

We also accept the Complaint's allegations as true and therefore extend to Cook all reasonable inferences. Dismissal is proper only if it is clear that no relief could be granted, under any theory, "under any set of facts that could be proved consistent with the allegations." *Kiely v. Raytheon Co.*, 105 F.3d 734, 735 (1st Cir. 1997) (citing *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); *Vartanian v. Monsanto Co.*, 14 F.3d 697, 700 (1st Cir. 1994).

This case is another in a series of tax protester cases which have been filed in this Office involving individuals who purport to be exempted from the payment of federal taxes. *Lee v. Airtouch Communications*, 6 OCAHO 901 (1996); *Horne v. Town of Hampstead*, 6 OCAHO 906 (1997); *Wilson v. Harrisburg School District*, 6 OCAHO 919 (1997); *Winkler v. Timlin Corporation*, 6 OCAHO 912 (1997); *Costigan v. NYNEX*, 6 OCAHO 918 (1997); *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997); *Mathews v. Goodyear Tire & Rubber Co.*, 7 OCAHO 929 (1997); *D'Amico v. Erie Community College*, 7 OCAHO 948 (1997); *Hogenmiller v. Lincare, Inc.*, 7 OCAHO 953 (1997); *Jarvis v. AK Steel*, 7 OCAHO 930 (1997); *Hollingsworth v. Applied Research Assocs.*, 7 OCAHO 942 (1997).

Most of these complaints, advancing the same theories as here, were filed by individuals represented by Kotmair, director of the

National Worker's Rights Committee, and were dismissed at an early stage for want of jurisdiction and for failure to state a claim upon which relief can be granted.

Furthermore, the factual scenarios giving rise to these tax protester cases are very similar. The individual has informed the employer that he or she is lawfully exempted from participation in the federal social security system, and has urged the employer to discontinue withholding federal taxes from paid wages. To demonstrate authority for such exemption, the individual provides the employer with two (2) self-created documents, a "Statement of Citizenship Status" and "Affidavit of Constructive Notice".

After the employer has refused to discontinue withholding, the individual files discrimination charges with OSC against the employer, on the basis of citizenship status, document abuse, and sometimes national origin, usually doing so only after having unsuccessfully filed a Title VII national origin discrimination charge with the Equal Employment Opportunity Commission.

In this case, Cook has alleged in his standard form OCAHO Complaint that he applied for or worked at Pro Source in July, 1996 and that he was "discriminated against because of [his] citizenship status", Complaint at ¶¶9, 11.

IRCA provides that "[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual . . . with respect to the **hiring**, or recruitment or referral for a fee, of the individual for employment or the **discharging** of the individual from employment . . . in the case of a protected individual, because of such individual's citizenship status." 8 U.S.C. §1324b(a) (emphasis added).

By its very terms, IRCA limits the assessment of citizenship status discrimination claims to those cases involving the hiring, recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment.

The burden of stating a prima facie case of citizenship status discrimination under IRCA is quite simple. Cook must allege 1) he is a protected individual; 2) Pro Source had an open position for which he applied or was discharged; 3) he was qualified for the position;

and 4) he was rejected or discharged under circumstances giving rise to an inference of unlawful citizenship status discrimination.

Although Cook is a U.S. citizen and therefore within the class which IRCA seeks to protect from unlawful citizenship status discrimination, the second and fourth elements are wholly unsatisfied under the facts alleged in either Cook's Complaint or in his December 9, 1996 OSC letter/charge. And nothing in Cook's subsequent filings contain allegations meeting those minimal factual pleading requirements.

Cook has affirmatively denied that he was knowingly and intentionally not hired on the basis of his citizenship status, Complaint at ¶13 .

Similarly, he has denied that he was knowingly and intentionally fired on the basis of his citizenship status, Complaint at ¶14.

Cook's claim of having been subject to citizenship status discrimination is clearly frivolous absent some pleaded facts showing that he was treated less favorably than others similarly situated. *See Lee v. Airtouch Communications*, 6 OCAHO 901, at 10 (1996) ("disparate or differential treatment is the essence of a discrimination claim").

To the extent Cook is alleging differential treatment on the basis of respondent's refusal to comply with his request to discontinue withholding taxes from his wages, prior OCAHO rulings have held that an employer's act of withholding federal taxes is a term or condition of employment which IRCA does not reach. *Horne v. Hampstead*, 6 OCAHO 906, at 5–6 (1997); *Smiley v. City of Philadelphia*, 7 OCAHO 925, at 6 (1997); *Lareau v. USAir, Inc.*, 7 OCAHO 932, at 11 (1997) (section 1324b does not reach tax and social security issues nor exempt employees from compliance with duties conferred by other statutes).

Hence, respondent's June 4, 1997 Motion to Dismiss Cook's citizenship status discrimination claim is hereby granted, and that portion of complainant's April 4, 1997 Complaint alleging citizenship status discrimination is hereby ordered to be and is dismissed with prejudice to refiling.

Having disposed of complainant's first cause of action, a consideration of Cook's final cause of action, that of document abuse, is now in order.

The document abuse provisions of IRCA, 8 U.S.C. §1324b(a)(6), provide that it is an unfair immigration-related employment practice for an employer to request more or different documents, or to refuse to honor documents tendered that on their face reasonably appear to be genuine, for purposes of satisfying the requirements of the employment verification system, 8 U.S.C. §1324a(b).

The employment verification system, among other things, requires an employer to verify at the time of hire that its employees are eligible to work in the United States by inspecting identity and employment eligibility documents provided by the employee. That task is accomplished by the completion of a Form I–9, officially known as the Employment Eligibility Verification Form. The documents which an employee may tender for purposes of establishing identity and work authorization are those specified in IRCA's implementing regulations, 8 C.F.R. §274a.2(b)(1)(v) (1996).

At the risk of engaging in document abuse, the employer may not request a particular document or demand more or different documents than are necessary to verify identity and employment eligibility, or refuse to accept facially valid documents.

To state a prima facie case of document abuse, the complainant must allege at a minimum that the employer requested documents for purposes of satisfying IRCA's employment verification system.

A review of the Cook's Complaint and his December 9, 1996 OSC letter/charge quite clearly show that he has failed to make those elemental allegations. For example, Cook contends at ¶16 of his April 14, 1997 Complaint:

> The Business/Employer refused to accept the documents that I presented [to show I can work in the United States].
>
> a) The Business/Employer refused to accept the following documents: Statement of Citizenship/Affidavit of Constructive Notice

Cook has crossed out the language "to show I can work in the United States," thus clearly negating facts which are essential to prove that Pro Source engaged in proscribed document abuse practices.

Cook has alleged that he tendered two (2) documents, a Statement of Citizenship and an Affidavit of Constructive Notice, not for purposes of completing the Form I–9, but rather to demonstrate his purported exemption from participation in the federal social security system and from federal tax withholding.

It is well settled that IRCA does not render unlawful an employer's refusal to accept documents that are not related to the employment eligibility verification (Form I–9) procedures. *Costigan v. NYNEX*, 6 OCAHO 918, at 9–10 (1997).

Therefore, Pro Source's act of refusing to accept Cook's Statement of Citizenship and Affidavit of Constructive Notice, which are not among the documents specified by IRCA to verify identity and employment eligibility, 8 C.F.R. §274a.2(b)(1)(v), was plainly not proscribed by IRCA, and is not a claim upon which relief can be granted.

Accordingly, respondent's June 4, 1997 Motion to Dismiss Cook's document abuse claim is hereby granted, and that portion of complainant's April 4, 1997 Complaint alleging document abuse is hereby ordered to be and is dismissed with prejudice to refiling.

Before a complaint is dismissed for failing to state a claim, a complainant is usually afforded the opportunity to amend the complaint to remedy the defect. In this case, however, it appears to a certainty that an amendment would be futile, and thus there is no reason to permit such amendment. *Glassman v. Computervision Corp.*, 90 F.3d 617, 622 (1st Cir. 1996).

Finally, because it is quite clear that Cook's allegations involve an ideological dispute with the Internal Revenue Service over the method of withholding for taxes and over the constitutionality of the system of taxation in the United States, the Complaint must be dismissed for lack of subject matter jurisdiction as well.

That OCAHO lacks subject matter jurisdiction over these types of tax-related claims is well established in OCAHO jurisprudence. *Horne v. Town of Hampstead*, 6 OCAHO 906, at 4 (1997); *Wilson v. Harrisburg School District*, 6 OCAHO 919, at 16 (1997); *Winkler v. Timlin Corporation*, 6 OCAHO 912 (1997); *Costigan v. NYNEX*, 6 OCAHO 918, at 4 (1997); *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997); *Mathews v. Goodyear Tire & Rubber Co.*, 7

OCAHO 929, at 18 (1997); *Hogenmiller v. Lincare*, 7 OCAHO 953, at 7 (1997); *Smiley v. City of Philadelphia*, 7 OCAHO 925, at 21 (1997).

This Office provides access only to those complainants seeking to resolve, among other things, disputes involving unfair immigration-related employment practices. Additionally, there is nothing in the statute nor implementing regulations to conclude that this forum has jurisdiction over disputes which involve the withholding of federal taxes from wages.

Accordingly, complainant's April 4, 1997 Complaint is hereby ordered to be and is dismissed with prejudice for lack of subject matter jurisdiction.

Order

In view of the foregoing, respondent's June 4, 1997 Motion to Dismiss complainant's April 4, 1997 Complaint is hereby granted.

Complainant's April 4, 1997 Complaint, alleging citizenship status discrimination and document abuse, in violation of IRCA, 8 U.S.C. §1324b, is hereby ordered to be and is dismissed with prejudice to refiling.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. §1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. §1324b(i), any person aggrieved by such Order seeks a timely review of this Order in the United States Court of Appeals for the Circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of this Order.