



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

LIFE GENERATIONS HEALTHCARE,)
LLC d/b/a GENERATIONS)
HEALTHCARE,)

RESPONDENT.)

OCAHO CASE NO. 11B00136

COMPLAINT

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

1. 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 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, or 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' requirement in 1986 that employers apply the employment eligibility verification process equally to all employees, the INA's anti-discrimination provision at 8 U.S.C. § 1324b(a)(1) prohibits employers from subjecting applicants or employees to citizenship status or national origin discrimination in, among other things, the hiring process. 8 U.S.C. § 1324b(a)(6) prohibits an employer from intentionally subjecting applicants or employees to different employment eligibility verification documentary policies or practices based on citizenship status or national origin.
5. This suit arises out of the discriminatory conduct of Life Generations Healthcare, LLC d/b/a Generations Healthcare ("Respondent") in violation of the anti-discrimination provisions of the INA, 8 U.S.C. §§ 1324b(a)(1) and (a)(6), with regard to its systematic pattern and practice of treating non-U.S. citizens, naturalized U.S. citizens, and other work-authorized persons differently than native-born U.S. citizens in the employment eligibility verification process. Specifically, Respondent required naturalized U.S. citizen and work-authorized non-U.S. citizen applicants to produce more or different documents than are required on the Form I-9, but did not make the same requirement of native-born U.S. citizens, resulting in the potential loss of job opportunities for naturalized U.S. citizens and non-U.S. citizens.

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 work-authorized asylum applicant and is protected from discriminatory documentary practices based on citizenship status or national origin ("document abuse") under 8 U.S.C. § 1324b(a)(6).
8. Respondent is a healthcare provider with skilled nursing facilities throughout California, with its principle place of business at 20371 Irvine Avenue, Suite 210, Newport Beach, California 92660. Respondent controls, manages, and oversees all hiring, firing, personnel, and employment verification policies and practices at St. Francis Convalescent Pavilion ("St. Francis").
9. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b(a).
10. On June 25, 2010, less than 180 days after the Respondent committed document abuse against the Charging Party, the Office of Special Counsel accepted as complete a charge of document abuse from the Charging Party (Attachment "A").
11. On November 3, 2010, the Charging Party received notice by certified mail from the Office of Special Counsel, that the Office of Special Counsel was continuing its investigation of the charge (Attachment "B"). 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 could have filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) was February 1, 2011.
12. Beginning on January 31, 2011, Respondent and the Office of Special Counsel reached a

series of agreements, the last executed on July 29, 2011 (Attachment "C"), that extended the United States' complaint-filing period until October 1, 2011.

13. Jurisdiction of OCAHO is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

14. On or about August 25, 2009, the Charging Party went to the Respondent's affiliate, the St. Francis Convalescent Pavilion ("St. Francis") seeking employment. After the Charging Party completed an employment application, Respondent's human resources officer asked the Charging Party if she would be able to present a "green card" (i.e., Department of Homeland Security Form I-551, also known as a Permanent Resident Card).
15. The Charging Party submitted her application and explained that she did not have a Permanent Resident Card but was authorized to work.
16. On or about February 23, 2010, the Charging Party again went to St. Francis seeking employment. After the Charging Party completed an employment application, Respondent's human resources officer asked for her work authorization papers. The Charging Party provided her Employment Authorization Document ("EAD"), which the Respondent's human resources officer photocopied.
17. Despite being qualified for a position as a Certified Nursing Assistant, the Respondent's human resources officer told the Charging Party she would not be employed because her EAD carried a future expiration date.
18. The EAD presented by the Charging Party to Respondent's human resources officer noted that she was authorized to work under category C09 — the designation for an asylum applicant — and that her EAD was valid from June 23, 2009 through June 22, 2010. The

EAD was therefore valid and unexpired when presented in February 2010, with a future expiration date of June 22, 2010.

19. The M-274, Handbook for Employers: Instructions for Completing Form I-9, explains that employers “should not . . . [r]efuse to accept a document, or refuse to hire an individual, because a document has a future expiration date.” *U.S. Citizenship and Immigration Services, Handbook for Employers: Instructions for Completing Form I-9* (M-274, Rev. 07/31/09), p. 20; *U.S. Citizenship and Immigration Services, Handbook for Employers: Instructions for Completing Form I-9* (M-274, Rev. 06/01/11), p. 28. It also warns that “consideration of a future employment authorization expiration date in determining whether an individual is qualified for a particular job may be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.” *U.S. Citizenship and Immigration Services, Handbook for Employers: Instructions for Completing Form I-9* (M-274, Rev. 07/31/09), p. 36; *U.S. Citizenship and Immigration Services, Handbook for Employers: Instructions for Completing Form I-9* (M-274, Rev. 06/01/11), p. 44.
20. The Charging Party was authorized to work at all relevant times between August 25, 2009 and February 23, 2010.
21. Instead of the Charging Party, the Respondent hired five individuals at St. Francis as Certified Nursing Assistants between August 25, 2009 and April 30, 2010 — one U.S. citizen and four lawful permanent residents. All four lawful permanent residents produced a permanent resident card to establish their work authorization.
22. At least since January 1, 2008, Respondent has required non-U.S. citizens to produce a Department of Homeland Security (“DHS”)-issued “List A” document to complete an

Employment Eligibility Verification Form I-9 because of their citizenship status and/or national origin, but has not required on U.S. citizens to produce a "List A" document.

23. At least since January 1, 2008, Respondent has required non-U.S. citizens to produce one or more additional documents than were required by law during the Employment Eligibility Verification Form I-9 process because of their citizenship status and/or national origin, but has not imposed the same requirement on U.S. citizens.
24. At least since January 1, 2008, Respondent required foreign-born (or perceived to be foreign-born) U.S. citizens to produce specific documents and/or more documents than were legally required to complete Respondent's employment eligibility verification process because of their actual or perceived citizenship status and/or national origin.
25. Between January 1, 2008, and April 12, 2010, Respondent required all non-U.S. citizens hired by Respondent at St. Francis to produce a "List A" document during the Form I-9 Employment Eligibility Verification process because of their citizenship status and/or national origin, while only 10.2% of native-born U.S. citizens did so.
26. Between January 1, 2008, and April 12, 2010, all non-U.S. citizens hired by Respondent at St. Francis produced more identity and work authorization documents than are required for the Form I-9 Employment Eligibility Verification process because of their citizenship status and/or national origin, while only 12.2% of native-born U.S. citizens did so.
27. Between January 1, 2008, and April 12, 2010, Respondent required all naturalized U.S. citizens hired by Respondent at St. Francis to produce additional documents because of their actual or perceived citizenship status and/or national origin.
28. On information and belief, the employment eligibility practices described above may have occurred at other of Respondent's facilities.

COUNT I

DISCRIMINATION BASED ON CITIZENSHIP STATUS AND/OR NATIONAL ORIGIN AGAINST [REDACTED] AND OTHER FOREIGN-BORN WORK-AUTHORIZED INDIVIDUALS

29. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.
30. Respondent knowingly and intentionally committed discrimination against the Charging Party and other similarly situated individuals on the basis of their citizenship status and/or national origin, when they required non-U.S. citizens and naturalized U.S. citizens to produce more or different documents required under 8 U.S.C. § 1324a to establish their identity and work authorization and/or refused to honor documents tendered that on their face reasonably appeared to be genuine.
31. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1) and (a)(6).
32. Respondent is responsible for the actions of St. Francis pursuant to the doctrine of respondeat superior.

COUNT II

PATTERN OR PRACTICE OF DOCUMENT ABUSE BASED ON CITIZENSHIP STATUS AND/OR NATIONAL ORIGIN AGAINST [REDACTED] AND OTHER FOREIGN-BORN WORK-AUTHORIZED INDIVIDUALS (REQUESTS FOR SPECIFIC DOCUMENTS)

33. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.
34. The pattern of discriminatory documentary practices described in Paragraphs 14 through 28, above, is not exhaustive but is illustrative of a pattern of discriminatory documentary practices that existed since at least January 1, 2008.

35. Respondent has relied upon, and continues to rely upon, documentary policies in connection with its determinations of employment eligibility under 8 U.S.C. § 1324a that discriminate against individuals based on citizenship status and/or national origin, and that impose additional burdens on some employees because of their status as non-U.S. citizens or naturalized U.S. citizens, in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1) and (a)(6).
36. Respondent has implemented this pattern or practice of discrimination, among other ways, by requiring that naturalized U.S. citizen applicants and non-U.S. citizen applicants specifically produce "List A" documents to establish their identity and work authorization in connection with the completion of the Form I-9 required under the INA because of their citizenship status and/or national origin, but not imposing the same requirement on native-born U.S. citizens.
37. The hiring policies and practices of Respondent described above constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(1) and (a)(6), depriving non-U.S. citizens and naturalized U.S. citizens of their right to equal employment opportunities without discrimination based on citizenship status and/or national origin. Unless restrained by order of this Court, Respondent will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.
38. Respondent is responsible for the actions of St. Francis pursuant to the doctrine of respondeat superior.

COUNT III

**PATTERN OR PRACTICE OF DOCUMENT ABUSE BASED ON CITIZENSHIP STATUS AND/OR
NATIONAL ORIGIN AGAINST [REDACTED] AND OTHER FOREIGN-BORN
WORK-AUTHORIZED INDIVIDUALS (REQUESTS FOR MORE OR DIFFERENT DOCUMENTS)**

39. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.
40. The pattern of discriminatory documentary practices described in Paragraphs 14 through 28 above, is not exhaustive but is illustrative of a pattern of discriminatory documentary practices that existed since at least January 1, 2008.
41. Respondent has relied upon, and continues to rely upon, documentary policies in connection with its determinations of employment eligibility under 8 U.S.C. § 1324a that discriminate against individuals based on citizenship status and/or national origin, and that impose additional burdens on some employees because of their status as non-U.S. citizens or naturalized U.S. citizens, in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1) and (a)(6).
42. Respondent has implemented this pattern or practice of discrimination, among other ways, by requiring that naturalized U.S. citizen applicants and non-U.S. citizen applicants produce more than the minimum number of documents required under 8 U.S.C. § 1324a to establish their identity and work authorization in connection with the completion of the Form I-9 required under the INA, but not imposing the same requirement on native-born U.S. citizens.
43. The hiring policies and practices of Respondent described above constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(1) and (a)(6), depriving

non-U.S. citizens and naturalized U.S. citizens of their right to equal employment opportunities without discrimination based on citizenship status or national origin. Unless restrained by order of this Court, Respondent will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

44. Respondent is responsible for the actions of St. Francis pursuant to the doctrine of respondeat superior.

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; and
- B. That the Administrative Law Judge 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 remedial relief to the Charging Party and foreign-born work-authorized individuals for the losses they may have suffered as a result of the discrimination alleged in this complaint.
 - 3. Take other appropriate measures to overcome the effects of the discrimination.
 - 4. Order Respondent to pay back pay and offer hire or rehire to each economic victim shown at trial to have been denied employment due to Respondent's illegal pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).
 - 5. Order Respondent to pay the maximum civil penalty authorized by statute for each violation of 8 U.S.C. § 1324b(a)(1) and (a)(6) shown at trial to have been committed by Respondent.

6. Such additional relief as justice may require.

Respectfully Submitted,

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