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

JAMES D. WESTENDORF, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	CASE NO. 91200179
BROWN & ROOT, INC., Respondent.	)	

APPEARANCES:

James D. Westendorf
Pro Se Complainant

Stephanie G. Brooks, Esquire
For the Respondent

Before: ROBERT B. SCHNEIDER
Administrative Law Judge

FINAL DECISION AND ORDER GRANTING
RESPONDENT'S MOTION FOR SUMMARY DECISION

I. *Introduction*

This case is before me on Respondent's motion for summary decision filed pursuant to 28 C.F.R. § 68.38, as amended by the Interim Act of October 3, 1991, 56 Fed. Reg. 50049 ("28 C.F.R.§ 68"). Pro se Complainant has filed a response in opposition. For the reasons stated herein, Respondent's motion for summary decision is granted.

Complainant, a citizen of the United States and an experienced instrument fitter, alleges that Respondent, Brown and Root, Inc., a maintenance contractor, violated § 102 of the Immigration Reform and Control Act of 1986 ("IRCA"), as amended, 8 U.S.C. § 1324b. More

specifically, Complainant alleges that Respondent unlawfully refused to hire him as an instrument fitter because of his United States citizenship and American national origin.

Complainant, a tax protester,[1] also alleges that Respondent violated 8 U.S.C. § 1324b(a)(6) by asking Complainant for more or different documents than were required to satisfy the employment verification provisions of 8 U.S.C. § 1324a(b).[2] Furthermore, Complainant alleges that he had a valid contract for employment which was improperly or unlawfully rescinded by Respondent. Finally, Complainant contends that his constitutional right to due process of law and his civil right to work in the United States have been violated.

II. *Factual Background*

The pleadings and affidavits filed in this case show that the following material facts are undisputed.

1. Complainant is a U.S. citizen.

2. Respondent, an employer of approximately 33,000 employees in the United States, is in the engineering, construction and maintenance business. Respondent is a maintenance contractor at its Chevron facility, located in Port Arthur, Texas.

3. On April 29, 1992, Complainant telephonically contacted the Chevron facility's on-site construction office to inquire whether Respondent had any job openings for instrument fitters. Complainant spoke with Respondent's instrument general foreman, George Nicholson, who told him that the company needed instrument fitters and that if Complainant was qualified, he would be hired. Complainant made arrangements to meet with Mr. Nicholson to apply for the position.

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[1] Complainant claims to have a "superior status" which immunizes him from U.S. tax laws. As the Fifth Circuit Court of Appeals has stated: "In common parlance, of which he disapproves, he is a tax protestor asserting that he cannot be made liable for payment of federal income taxes." United States v. Montgomery, 778 F.2d 222, 223 (5th Cir. 1985).

[2] The fact that Complainant is a tax protestor is important in understanding his allegations against Respondent because Complainant argues that an employer cannot legally require a social security number as a precondition of employment, even when the employer requires it in order to comply with federal income tax withholding statutes.

4. On May 1, 1991, Complainant arrived at the Chevron facility to apply for the position of instrument fitter. Complainant met with Mr. Nicholson to whom he gave his resume. Complainant stated that he was an instrument fitter with numerous years of experience and he discussed his prior employment, including a long-term position as an instrument/electrical field superintendent.

5. After reviewing Complainant's background and work experience, Mr. Nicholson concluded that Complainant was prequalified with respect to his craft credentials and that Respondent could benefit by employing someone with Complainant's skills and expertise. Mr. Nicholson escorted Complainant inside the gate to Respondent's field office so that the preemployment physical examination, drug test and the paperwork necessary for employment could be completed.

6. After the physical examination and the drug test were performed, Complainant was asked by an employee of Respondent to produce his social security number so that his paperwork could be processed and so that Respondent could comply with federal income tax withholding statutes. Complainant refused to do so, however, stating that social security and taxes are illegal. Complainant also claimed that he had revoked his social security number and that "no citizen of any state of this union, while working in any of the several states is required to have such a number as a precondition of employment."

7. Complainant presented his birth certificate and other documents to an employee of Respondent in order to establish that he was a U.S. citizen and that he had the right to work in the United States. Com-plainant was told that his social security number was needed in order for the processing of the paperwork to proceed, but Complainant refused to comply with this request. The project manager, Charles Steede, then informed Complainant that it was corporate policy to require the social security number of all employees, so that Respondent could comply with federal withholding statutes. Complainant continued to refuse to provide his social security number. Mr. Steede told Complainant that if he did not provide his social security number, he could not work for Respondent. Mr. Steede then asked Randy Brown, project supervisor, to escort Complainant to the gate, which he did.

9. After Respondent refused to hire Complainant for the position of instrument fitter, Respondent did not hire anyone else for the position. Approximately two weeks later, however, Respondent hired two

employees as instrument fitter helpers to assist in completing the winding-down phase of a project. Both of these employees were U.S. citizens.

III. *Legal Analysis*

Respondent has moved for summary decision pursuant to 28 C.F.R. § 68.38(c) which states that "the Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." Federal Rule of Civil Procedure 56(c), regarding summary judgment, parallels this rule. It is therefore instructive to look at the federal courts' interpretation and application of their comparable rule.

Under the federal rules, the party moving for summary judgment must demonstrate an absence of genuine issues of material fact by informing the court of the basis for its motion, and by identifying portions of the record which highlight the absence of genuine factual issues. See generally Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Once the movant produces such evidence, the non-movant must then direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial, meaning that the non-movant must come forward with evidence establishing each of the challenged elements of its case for which the non-movant will bear the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

The non-movant can satisfy its burden by tendering depositions, affidavits, and other competent evidence to buttress its claim. Inter-national Shortstop, Inc. v. Rally's, 939 F.2d 1257, 1263 (5th Cir. 1991). Mere conclusory allegations are not competent summary judgment evidence, and they are therefore insufficient to defeat or support a motion for summary judgment. Galindo v. Precision American Corp., 754 F.2d 1212, 1216 (5th Cir. 1985). Nor may non-movants rest upon mere allegations made in their pleadings without setting forth specific facts establishing a genuine issue worthy of trial. See Liberty Lobby, 477 U.S. 248-49. The moving party therefore need not submit evidence negating a claim on which its opponent bears the burden of proof; furthermore, the moving party may rely upon the adverse party's failure to substantiate such essential claim with admissible evidence. Celotex, 477 U.S. 317 (1986).

In reviewing a summary judgment motion, the evidence is viewed in a light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. Matsushita Electrical Industries Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). A fact is "material" only if its resolution will affect the outcome of the lawsuit. Liberty Lobby, Inc., 477 U.S. at 248. Determination of whether a factual issue is "genuine" requires consideration of the applicable evidentiary standards. Id. Thus, in most civil trials, the court must decide "whether [a] reasonable finder of fact by a preponderance of the evidence that the [non-moving party] is entitled to a verdict. Id. at 252. Although "the mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient" to defeat a summary judgment motion in federal court, the court is not precluded from denying a summary judgment where it concludes that proceeding to trial is a better course. Id.

There are a number of issues in this case that will need to be addressed in order to determine the merits of Respondent's motion. These include: (1) whether Complainant complied with the procedural requirements necessary for my consideration of his allegations; (2) whether I have jurisdiction to hear the national origin portion of Complainant's § 1324b(a)(1) claim; (3) whether it is a violation of 8 U.S.C. § 1324b(a)(6) for an employer, with the purpose of complying with federal tax law, to require a social security number as a precondition of employment; (4) whether I have jurisdiction to decide whether Complainant had a valid contract for employment with Respondent which was breached by Respondent's failure to hire him; and (5) whether I have jurisdiction to decide whether Complainant's due pro-cess and civil rights, including his right to work, were violated by Respondent's failure to employ him because he refused to provide Respondent with his social security number.

A. Preliminary Issues

1. Procedural Requirements for An ALJ to Consider an Allegation Brought Under § 1324b

(a) Allegation in Complaint Which Was Not Alleged in Charge

The complaint in this case alleges that Respondent unlawfully discri-minated against Complainant by refusing to hire him because of his national origin and citizenship status, in violation of 8 U.S.C. §§ 1324b(a)(l)(A) and (B). Respon-dent argues that Complainant cannot

maintain a cause of action for national origin discrimination because he failed to specifically allege national origin discrimination in his charge filed with the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). Respondent argues that Complainant therefore has not successfully invoked my jurisdiction with respect to his allegation of national origin discrimination in his complaint. Respondent's Brief in Support of Motion for Summary Decision, 8.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., provides for an analogous administrative charge filed with the Equal Employment Opportunity Commission ("EEOC"). I will therefore examine federal case law on this issue under Title VII. Incidents of discrimination under Title VII which are not included in an administrative charge filed with the EEOC may not be considered in a subsequent proceeding unless the new claims are "like or reasonably related to the allegations contained in the . . . charge." Green v. Los Angeles County Superintendent of Schools, 883 F.2d 1472, 1475-76 (9th Cir.1989) (quoting Oublichon v. Northern American Rockwell Corporation, 482 F.2d 569, 571 (9th Cir. 1973). Whether an allegation is "like or reasonably related" to allegations contained in the charge depends on whether the original investigation would have encompassed the additional claim. Green, 883 F.2d at 1476. The Fifth Circuit has stated that "[I]t is only logical to limit the permissible scope of the civil action to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970).

This issue has arisen previously in OCAHO. In Ekunsumi v. Hyatt Regency Hotel of Cincinnati, 1 OCAHO 128 (Feb. 1, 1990) a pro se complainant alleged in his complaint that he had been discriminated against because of his national origin and citizenship status, but he had failed to allege citizenship status discrimination in his charge filed with OSC (as he had failed to check off the box that appears next to the words "citizenship status" in item 4 of the charge form).

The respondent in Ekunsumi argued that the complainant's failure to check the box indicating that he had been injured because of his citizenship status was grounds for dismissal of the subsequent complaint. The Administrative Law Judge ("ALJ") disagreed, holding that the complainant's allegation of discharge because of citizenship status discrimination fell within the scope of the OSC's investigation

reasonably expected to grow out of a charge of discriminatory discharge because of national origin. Ekunsumi at 6-7. Moreover, the ALJ, advocating a liberal interpretation of charges filed under IRCA by pro se complainants, noted that the federal courts were not inclined to deny a pro se complainant's allegations of discrimination in a complaint "based on procedural technicalities or the failure of the charges to contain the exact wording which might be required in a judicial pleading." Id. at 6 quoting Equal Employment Opportunity Comm'n v. McCall Printing Corp., 633 F.2d 1232, 1235 (6th Cir. 1980).

Following the reasoning of the Fifth Circuit in Sanchez and the ALJ in Ekunsumi, I find that Complainant's allegation that Respondent refused to hire him because of his national origin falls within the scope of OSC's investigation reasonably expected to grow out of Respondent's alleged refusal to hire Complainant because of his citizenship status. Therefore, the motion to dismiss the national origin discrimination allegation in the complaint because of Complainant's failure to allege this allegation in the charge filed with OSC is denied.

b. Allegation Described in Charge, But Not Alleged in Complaint

Another issue to be resolved is whether I can consider an allegation that was not specifically alleged in the complaint, but was described in the charge filed with OSC. Complainant's charge sets forth facts alleging that Respondent had unlawfully requested his social security number as a precondition of employment. Complainant did not speci-fically allege in his complaint, however, that Respondent discriminated against him in violation of 8 U.S.C. § 1324b(a)(6) by requesting more or different documents than are necessary to comply with IRCA's employment verification provisions.[3]

Complainant filed a standard form complaint, provided to pro se complainants by OCAHO to enable them to allege the essential elements for national origin and/or citizenship status discrimination, in violation of 8 U.S.C.§ 1324b, by filling in blanks and underlining

[3] Section 102 of IRCA was amended by the Immigration Act of 1990 ("the Act"), Pub. L. No. 101-649, 104 Stat. 4978. Section 535 of the Act, codified at 8 U.S.C. § 1324b(a)(6), prohibits an employer from asking an individual for more or different documents than are required to satisfy the employment verification provisions of 8 U.S.C. § 1324a(b) or from refusing to honor documents tendered that on their face reasonably appear genuine. This is a separate and distinct violation from discrimination based on national origin, § 1324b(a)(l)(A), or citizenship status, § 1324b(a)(1)(B). Pub. L. No. 101-649, § 535(a). The amendment applies to actions occurring on or after November 29, 1990.

applicable terms. The form complaint is problematic, however, because it does not contain blank spaces or terms to underline in order to allege a violation of 8 U.S.C. § 1324b (a)(6).[4]

Therefore, although Complainant did not specifically allege a § 1324b(a)(6) violation in his complaint, based on the inadequacy of the OCAHO form complaint in providing Complainant with the essential elements of a § 1324(a)(6) allegation, Complainant's primary contention throughout the pleadings and documents he filed, that Respondent's requirement of a social security number as a precondition of employment violates IRCA, 8 U.S.C. § 1324b, Respondent's ample opportunity to respond to this allegation, and the fact that Respondent addressed this allegation in its motion for summary decision, I will consider the complaint to include the allegation that Respondent demanded more or different documents than are required to comply with the employment verification system of § 1324a(b), in violation of § 1324b(a)(6) for purposes of ruling on the motion for summary decision.

2. Jurisdiction Over National Origin Discrimination Allegation

In its motion for summary decision, Respondent argues that I lack jurisdiction over Complainant's national origin discrimination allega-tion because Respondent employed more than fourteen employees on the date of the alleged discriminatory act.[5] My jurisdiction over allegations of national origin discrimination extends only to employers employing between four and fourteen employees. 8 U.S.C. § 1324b(a)(2)(B); see, e.g., Huang v. Executive Office of Immigration Review, No. 91-4070 (2nd Cir. Feb. 6, 1992), aff'g U.S. v. Huang, 1 OCAHO 288 (Jan. 11, 1991); Palancz v. Cedars Medical Center, 3 OCAHO 443 (Aug. 3, 1992); Bethishou v Ohmite Mfg. Co., 1 OCAHO 77 (Aug. 2, 1989).

As the undisputed evidence in this case shows that Respondent employed approximately 33,000 employees on the date of the two

[4] This form complaint, developed prior to the 1990 amendments to the Act, was amended subsequent to Complainant's filing of his complaint, to provide for § 1324b(a)(6) allegations.

[5] There are actually two alleged discriminatory acts, refusal to hire based on national origin and citizenship status and the demand for more or different documents than are required for compliance with § 1324a(b).

alleged discriminatory acts, Complainant's national origin claim is dismissed.

3. Allegation of Document Abuse in Violation of § 1324b(a)(6)

Complainant argues that Respondent's demand for his social security number as a precondition of employment is a violation of IRCA. In order for such a demand to be in violation of IRCA, Respondent would have to be demanding Complainant's social security card for purposes of satisfying the employment verification requirements of § 1324a(b) under circumstances in which such demand would be for "more or different documents than are required under [§ 1324a(b)]." 8 U.S.C. § 1324b(a)(6). Under such facts, Respondent would be in violation of § 1324b(a)(6).[6]

Section 1324b(a)(6) prohibits a potential employer from demanding any particular document to satisfy the employment eligibility

[6] The Interim Rule With Request For Comments of August 14, 1991, 56 Fed. Reg. 40,247, amended 28 C.F.R., Part 44, which implemented the prohibition against certain unfair immigration- related employment practices enacted by § 102 of IRCA, 8 U.S.C. § 1324b. The Department of Justice found that amendments to the regulations were necessary because of the modifications to § 102 of IRCA, enacted by the Act of 1990. An explanation of the document abuse section of the Act was explained in the preamble to the Interim regulations as follows:

> Prior to the enactment of the Act, existing [ALJ] decisions had already made it clear that, at a minimum, subjecting aliens or citizens to more or different document requirements than those imposed on their citizen or alien counterparts violated section 102 of IRCA. (Citations omitted.)Thus, for example, it was unlawful for an employer to demand an [INS] document from individuals perceived to be aliens to satisfy INS employment verification requirements, while at the same time accepting all legally permissible documents from individuals perceived to be citizens. In addition, it violated section 102 of IRCA for employers to demand specific employment eligibility verification documents from U.S. citizens, while refusing to accept other legally sufficient documents which were tendered.
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> With enactment of the Act, Congress provided that employers were subject to fines regardless of whether the employers was disparately treating individuals on the basis of their citizenship status in the hiring process. Thus, an employer who demands that all individuals produce a driver's license and a social security card, to the exclusion of any other acceptable documents, for employment verification purposes, has committed an unfair immigration-related employment practice in the form of document abuse, and is subject to a civil penalty for each and every individual so discriminated against.

Interim Rule With Request For Comments, 56 Fed. Reg. 40,247, 40,248 (1991) (emphasis added) (to be codified at 28 C.F.R. § 44.

requirements of 8 U.S.C. § 1324a(b). Lewis v. McDonald's Corp., 3 OCAHO 383, at 5 (Oct. 4, 1991); United States v. Marcel Watch Corp., 1 OCAHO 143, at 15 (Mar. 22, 1990), amended (for clerical error), 1 OCAHO 169 (May 10, 1990). Thus, if an applicant for a job produced one of the documents listed in "List A" of section 2 of the Form I-9 or produced one of the documents listed in "List B" and one of the documents listed in "List C" of section 2 of the Form I-9, but did not produce his original social security card, and the employer demanded that in addition to the documents produced that the applicant produce his social security card as a precondition of employment, this would violate § 1324b(a)(6).

The affidavits of three of Respondent's employees, Mr. Steede, Mr. Nicholson, and Sandra Cochran, expediter and coordinator, state that Ms. Cochran asked Complainant for his social security number so that she could process him for employment. Ms. Cochran states the follow-ing in her affidavit: (1) she "never asked Mr. Westendorf for his social security number in connection with proving his citizenship or filling out his Form I-9;" (2) she "had not even started filling out the [Form] I-9 on Mr. Westendorf," and "was merely attempting to start the procedure of processing him by filling out his assignment authority form," which she "could not do without a social security number;" (3) "[i]f she had completed filling in [Complainant's] assignment authority form," she "would have then asked him for the necessary information to fill out his I-9 form, and the paperwork relating to his benefits;" (4) she "never asked Mr. Westendorf to provide [her] with a social security card for any reason;" and (5) Respondent's purpose in obtaining Complainant's social security number was to have the necessary information to comply with federal withholding tax law and not to prepare Complainant's Form I-9.

Complainant does not contend that he was asked to produce his so-cial security card in preference to, in lieu of, or in addition to any other verification document during the IRCA verification process. Furthermore, there is no indication that the IRCA verification process had even begun. Complainant does not dispute that none of Respondent's employees involved in processing him for employment requested that he produce his social security card in connection with preparation of the Form I-9. Nor does he dispute that during the application process, he was not asked to produce his social security card for any reason.

While it is undisputed that Respondent requested Complainant's social security number, the request was not made in connection with

IRCA's verification process. Furthermore, there is no suggestion in IRCA's text or legislative history that an employer may not require a social security number as a pre-condition of employment. Lewis v. McDonald's Corp., 2 OCAHO 383, at 5 (Oct. 4, 1991). Since the undisputed record in this case clearly shows that Respondent did not request that Complainant produce his social security card in connection with the preparation of section 2 of his Form I-9, Respondent did not violate 8 U.S.C. § 1324b(a)(6).

4. Allegation that Respondent Breached Employment Contract

Complainant argues that he had an employment contract with Respondent which Respondent breached by refusing to hire him as an instrument fitter. In support of his argument, Complainant filed notarized copies of Respondent's medical examination record of Com-plainant, showing his payroll job number, and Respondent's Drug and Abuse Policy form and consent for Drug/Alcohol signed by Complainant. Complainant argues that it is by "these documents and by the offer of, and acceptance of qualified employment, and other acts of the 'employer,' that a valid contract for employment had been executed, for, and to the mutual benefit of both parties." Complainant's Responses to ALJ's Interrogatories, filed September 21, 1992.

I do not have jurisdiction to determine whether the parties had an employment contract and whether it was breached by Respondent. Furthermore, even if I had jurisdiction and I determined that there was a contract, IRCA does not cover discrimination in conditions of employment. See, e.g., Ortiz v. Moll-Tex Broadcasting Co., OCAHO Case No. 92B00106 (July 15, 1992); Ipina v. Michigan Dept. of Labor, 2 OCAHO 386 (Nov. 7, 1991); Huang v. Queens Motel, 2 OCAHO 364 (Aug. 9, 1991). If Complainant wants to bring a breach of contract action, he will have to file a private civil action in the appropriate state court.

5. Complainant's Due Process and Civil Rights

Complainant contends that his due process rights and civil rights as a U.S. citizen to work[7] in the United States were violated by Respond-

[7] While U.S. citizens have the right to work in the United States, that right is not absolute. Congress's enactment of IRCA's employment verification system, 8 U.S.C. § 1324a(b), mandates such verification as a precondition of employment. In addition to IRCA's requirement that employers comply with its employment verification provisions,

(continued...)

ent's failure to hire Complainant because Complainant refused to produce his social security number. Complainant suggests that such rights are protected by IRCA, 8 U.S.C. § 1324b.

I have no jurisdiction to determine whether Complainant's constitutional due process rights or civil right to work have been violated. If Complainant wants to file a breach of contract action, he will have to file a private civil action in the appropriate state court.

B. Citizenship Status Allegation Decided on the Merits

Complainant alleges Respondent's refusal to hire him was based on citizenship status discrimination. Complainant, as a U.S. citizen, is a "protected individual" under IRCA, who may therefore bring such a claim. 8 U.S.C. § 1324b(a)(3)(A); see Roginsky v. Dept. of Defense, 2 OCAHO 432 (June 4, 1992); Lundy v. OOCL (USA), 1 OCAHO 215 (Aug. 8, 1990). Because Respondent employed more than three employees, I have jurisdiction to hear his allegation of citizenship status discrimination. 8 U.S.C.§ 1324b(a).

The principles for the order and allocation of proof which have been applied to Title VII claims of disparate treatment because of race, color, religion, sex or national origin are also applicable to disparate treatment claims of national origin or citizenship status discrimination brought pursuant to 8 U.S.C. § 1324b. See, e.g., Alvarez v. Interstate Highway Construction, 2 OCAHO 430 (June 1, 1991); Ipina v. Michigan Dept. of Labor, 2 OCAHO 386 (Nov. 7, 1991); Huang v. Queens Motel, 2 OCAHO 364 (Aug. 9, 1991).

In a Title VII case, the plaintiff must establish discriminatory treat-ment by proof that the plaintiff was treated "less favorably than others because of his race, color, religion, sex, or national origin." Interna-

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[7](...continued)
employers are also required by law to withhold taxes for social security purposes from every wage earner employed by the employer. 26 U.S.C. §§ 3402, 6051 (a), 6051(d), and 6109. Failure to do so is a violation of the law, subjecting the violator to substantial fines. 26 U.S.C.§ 6721(a)(2)(B). Moreover, an individual taxpayer's failure to disclose his social security number to his employer may be an indicia of fraud. See Lord v. Commissioner of Internal Revenue, 525 F.2d 741, 745-48 (1975). Furthermore, a taxpayer's request that his employer remove the taxpayer's social security number from reports sent to the Internal Revenue Service that detail withholding on all compensation paid to employees has been held to be an indicia of tax evasion. United States v. Jungles, 903 F.2d 468, (7th Cir. 1990).

tional Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n. 15 (1977). In the case at bar, Complainant must establish discri-minatory treatment by proof that he was treated less favorably than others because of his U.S. citizenship.

Although the complaint alleges that Respondent discriminated against Complainant because of his United States citizenship, the record is devoid of any evidence indicating that Respondent treated U.S. citizens differently than noncitizens during the hiring process. All applicants for employment with Respondent, regardless of citizenship status, were required to provide their social security number. Therefore, I find that Respondent did not discriminate against Complainant based on his citizenship status.

IV. *Conclusion*

I find that (1) Respondent refused to hire Complainant because Com-plainant failed to provide Respondent with his social security number which Respondent requested for the purpose of complying with federal tax law; (2) Respondent did not request Complainant's social security card or number as an additional document which was not required to verify his employment eligibility on his INS Form I-9; and (3) Respon-dent's refusal to hire Complainant was not based on national origin or citizenship status discrimination. Based on these undisputed material facts, Respondent's motion for summary decision is granted.

This Decision and Order is the final administrative order in this case, pursuant to 8 U.S.C. § 1324b(g)(i). Not later than 60 days after entry, Complainant may appeal this Decision and 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. 8 U.S.C. § 1324b(i)(1).

SO ORDERED this 2nd day of December, 1992.

ROBERT B. SCHNEIDER
Administrative Law Judge