

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

March 15, 2019

DELONTE EMILIANO TRAZELL ONOJA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 18B00007
)	
ARLINGTON COUNTY SHERIFF’S OFFICE,)	
Respondent.)	
_____)	

ORDER GRANTING SUMMARY DECISION

This case arises under the anti-discrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b (2012). Pending before the Court is Respondent’s Motion for Summary Decision. Complainant did not file a response. All conditions precedent to the institution of this proceeding have been satisfied.

I. BACKGROUND

Complainant Delonte Emiliano Trazell Onoja, a United States citizen, applied for a Deputy Sheriff I position with Respondent, Arlington County Sheriff’s Office. Complainant’s Prehearing Statement at 1; Mot. Summ. Dec. Ex. 3A.¹ In November 2016, as part of the hiring process, Complainant submitted his completed Background Investigation/Questionnaire (Questionnaire), a birth certificate, a social security card, and a driver’s license. Mot. Ex. 3A. The Questionnaire required Complainant to provide personal information including his social security number, military history and records, and other various information. *Id.* at 2–3. The Questionnaire specifically asked whether Complainant had ever changed his name and he marked “no.” *Id.* at 3. On the Questionnaire, Complainant stated his name is “Onoja Trazell.” *Id.*

¹ The Motion for Summary Decision and exhibits thereto will be abbreviated at “Mot. Ex #.”

After it received Complainant's application, Respondent's employee, Carolyn Serraino, reviewed the materials. Mot. Ex. 2. She found several discrepancies in Complainant's Questionnaire, including, he failed to attach his military records and the social security number listed on the Questionnaire did not match the number on the social security card he provided. *Id.* at 2. She told Respondent's investigator, Syr Gonyea, about the discrepancies. *Id.* Gonyea reviewed the materials and found the information Complainant wrote on the Questionnaire did not match on the birth certificate, social security card, and driver's license Complainant provided. Mot. Ex. 3 at 1. Thereafter, Gonyea called Complainant and conducted a preliminary interview, and when asked about the discrepancies, Complainant stated he had changed his name. *Id.* at 2. Gonyea asked Complainant to provide records of his name change. *Id.* Complainant emailed Gonyea a document titled "Affidavit of Appellation/Name Correction Pursuant to Indigenous Nationality & Aboriginal American Citizenship." Mot. Ex. 3B. Gonyea reviewed the document and determined it was not a valid name change record. Mot. Ex. 3 at 2.

On November 21, 2016, Gonyea requested that Respondent disqualify Complainant as an applicant and remove him from the selection process. Mot. Ex. C. Gonyea provided several reasons for his decision. *Id.* First, the information on the birth certificate, social security card, and driver's license Complainant provided did not match the information on his Questionnaire. *Id.* Second, Complainant received a General Discharge from the U.S. Navy for commission of a serious crime. *Id.* Third, Complainant stated that the Department of Homeland Security terminated him for repeated violence in the workplace. *Id.* Finally, Complainant's name change document was not a valid document. *Id.*

Complainant filed a charge with the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice (IER) and, on August 1, 2017, IER informed Complainant of his right to file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Compl. at 14. On November 2, 2017, Complainant filed a complaint with OCAHO alleging discrimination based on national origin, document abuse, and retaliation. On December 6, 2018, the undersigned held a prehearing conference and found the only issue in the case is whether Respondent committed document abuse based on Complainant's citizenship status. Order Summarizing Prehearing Conference (Dec. 7, 2018). On January 22, 2019, Respondent filed a motion for summary decision, Complainant did not file a response.

II. STANDARDS

A. Summary Decision

Under the OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. §

68.38(c).² “An issue of fact is genuine only if it has a real basis in the record” and “[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit.” *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).³

“Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution.” *U.S. v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). “[T]he party opposing the motion for summary decision ‘may not rest upon the mere allegations or denials’ of its pleadings, but must ‘set forth specific facts showing that there is a genuine issue of fact for the hearing.’” *U.S. v. 3679 Commerce Place, Inc. d/b/a Waterstone Grill*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). The Court views all facts and reasonable inferences “in the light most favorable to the non-moving party.” *U.S. v. Prima Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

B. Document Abuse

“Document abuse within the meaning of 8 U.S.C. § 1324b(a)(6) occurs only when an employer, for the purposes of satisfying the requirements of 8 U.S.C. § 1324a(b), requests more or different documents than necessary or rejects valid documents, and does so for the purposes of discriminating on the basis of citizenship or national origin.” *Angulo v. Securitas Security Servs. USA, Inc.*, 11 OCAHO no. 1259, 5–6 (2015). To establish a prima facie case of document abuse, “a complainant must show (1) that, in connection with the employment verification process required by 8 U.S.C. § 1324a(b), an employer has requested from the employee more or different documents than those required or has rejected otherwise acceptable valid documents and (2) that either of these actions was undertaken for the purpose or with the intent of discriminating against the employee on account of the employee’s national origin or citizenship status. These two elements, an act and an intent, are essential to a claim of document abuse.” *Johnson v.*

² See Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2016).

³ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Progressive Roofing, 12 OCAHO no. 1295, 5 (2017). In document abuse cases, the Court applies the burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1993). *Id.* First, Complainant must establish a prima facie case of document abuse. *U.S. v. Diversified Tech. & Servs. of Va., Inc.*, 9 OCAHO no. 1095, 14 (2003). If Complainant establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for the challenged employment action. *Id.* If Respondent articulates such a reason, “the inference of discrimination raised by the prima facie case disappears, and [Complainant] then must prove, by a preponderance of the evidence, that [Respondent’s] articulated reason is false and that [Respondent] intentionally discriminated against [Complainant].” *Id.* “The employer will generally be entitled to summary decision unless the complainant can demonstrate that there is a genuine issue of fact regarding pretext.” *Johnson*, 12 OCAHO no. 1295 at 5. “The employer’s burden is one of production, not persuasion, and the complainant retains the ultimate burden of persuasion throughout the analysis.” *Id.* (citing *R.O. v. Crossmark, Inc.*, 11 OCAHO no. 1236, 6 (2014)).

III. DISCUSSION

Complainant alleges Respondent rejected his valid “tribal-state” name change document in violation of § 1324b(a)(6). Respondent argues the document was not a valid document. Respondent discovered the social security number on Complainant’s Questionnaire did not match the number on the social security card he provided. Additionally, Respondent found the birth certificate, social security card, and driver’s license Complainant submitted did not match the personal information on his Questionnaire. Therefore, Gonyea conducted a preliminary interview with Complainant. Complainant’s Questionnaire stated he had not changed his name, but when Gonyea inquired about the informational discrepancies, Complainant claimed he had changed his name. Gonyea asked for the documentation of his name change.

Complainant claims he sent Gonyea a “tribal-state” name change document. Complainant’s document is not a court order. The document’s drafter attempted to format the document like a court filing, but it is replete with errors, including spelling errors in Complainant’s alleged name. Mot. Ex. 3B (listing his name as Delonte Emiliano Tazell). The document is titled, “Affidavit of Appellation/Name Correction Pursuant to Indigenous Nationality & Aboriginal American Citizenship.” *Id.* The caption references “Prince George County” in “Maryland-Republic.” *Id.* Complainant admitted that there is no Prince George County in Maryland. Mot. Ex. 1 at 92–93. Further, the caption lists the parties as “Delonte Emiliano Tazell formerly known as Delonte Ford Cest Que Trust vs. State of Maryland.” In Maryland, the caption of a name change action must read, “‘In the Matter of . . .’ [stating the name of the person whose name is sought to be changed] ‘for change of name to . . .’ [stating the change of name desired].” Md. R. 15-901(c)(1) (2011). Additionally, in Maryland, other than in connection with an adoption or a divorce, a person must bring a court action to legally change their name and a person must obtain a court order. Md. R. 15-901(a), (g). Here, a judge did not sign the document, it is simply a notarized

document. A notarized document is not a court order. Further, Complainant admitted that a court did not create the document, rather, an individual named “Ashep” created it. Mot. Ex. 1 at 93. Thus, this document is not valid documentation of a name change issued in the State of Maryland.

Additionally, the document is not a tribal document. Complainant claims Respondent does not have the expertise to determine the validity of tribal documents, and therefore, Respondent committed document abuse when it rejected the document. “To be acceptable [for verifying identity and employment authorization status], a Native American tribal document must be issued by a tribe recognized by the U.S. federal government.” U.S. CITIZENSHIP AND IMMIGRATION SERVICES, § 7.2 “EVIDENCE OF STATUS FOR CERTAIN CATEGORIES: NATIVE AMERICANS”, HANDBOOK FOR EMPLOYERS M-274 (2017), *available at* <https://www.uscis.gov/i-9-central/72-native-americans>. Complainant’s document only mentions the “International Society of Indigenous Sovereigns an Internationally organized Indigenous Society that works towards the efforts of claiming Indigenous Status and Rights of republican Natural Governments.” Mot. Ex. 3B. Complainant’s document does not reference any federally recognized tribe. *See* BUREAU OF INDIAN AFFAIRS, TRIBAL LEADERS DIRECTORY, TRIBAL DIRECTORY DATASET (Mar. 5, 2019), *available at* <https://www.bia.gov/tribal-leaders-directory>. Thus, the document is also not an acceptable valid tribal document.

Furthermore, Complainant admitted that the birth certificate and social security card that he provided Respondent “have never been associated with [him] as an individual[.]” Mot. Ex. 1 at 92. As such, Complainant failed to establish Respondent rejected a valid document because he failed to demonstrate the notarized document was a valid document. Further, Complainant did not offer any evidence that Respondent rejected the document with the intent to discriminate against him based on his citizenship status. As such, Complainant failed to establish a prima facie case of document abuse.

Even if Complainant could establish a prima facie case, Respondent presented a valid nondiscriminatory reason for rejecting the document. Respondent argues it rejected the document because it was not a valid document. Respondent discovered that Complainant’s information on his Questionnaire did not match the information on the social security card he provided. Respondent asked Complainant about the discrepancies and Complainant said he changed his name. Thus, Respondent requested proof of the name change. Respondent determined the document Complainant provided was not valid documentation of a name change. Thus, Respondent rejected the document.

Since Complainant’s social security card did not match the information on Complainant’s Questionnaire and Complainant could not provide valid documentation to remedy the discrepancies involving his name and social security number, Respondent could not verify Complainant’s identity or employment authorization status as required under § 1324a(b)(1). Respondent simply fulfilled the purpose of the employment verification requirements when it

rejected the document. *See U.S. v. New Outlook Homecare, LLC*, 10 OCAHO no. 1210, 2 (2014).

As such, Complainant failed to establish a prima facie case of document abuse, and, even if Complainant could establish a prima facie case, Respondent presented a legitimate, nondiscriminatory reason for rejecting the document.⁴ Thus, Complainant's Complaint is DISMISSED.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Delonte Emiliano Trazell Onoja is a United States citizen.
2. In November 2016, in connection with this application for a position as a Deputy Sheriff I with the Arlington County Sheriff's Office (ACSO), Onoja submitted his Background Investigation/Questionnaire (Questionnaire), a birth certificate, social security card, and driver's license.
3. On his Questionnaire, Onoja stated he had never changed his name.
4. Carolyn Serraino, an ACSO employee, discovered the social security number on Onoja's social security card did not match the social security number on Questionnaire and she notified Syr Gonyea.
5. Syr Gonyea, an ACSO investigator, discovered the personal information in his Questionnaire did not match information on the birth certificate, driver's license, and social security card he provided.
6. Gonyea conducted a preliminary phone interview with Onoja wherein Onoja stated he changed his name.

⁴ In the motion for summary decision, Respondent also cited Complainant's military discharge in its reasons for not hiring Complainant. The undersigned previously found that the only issue in this case is whether Respondent committed document abuse based on Complainant's citizenship status; therefore, Respondent's ultimate refusal to hire Complainant and its reasons for doing so are not a central issue in the case. However, the undersigned notes that Complainant's military discharge likely would constitute a legitimate, non-discriminatory reason for Respondent's refusal to hire, if that were at issue in this case.

7. Gonyea requested Onoja's name change documentation and Onoja sent Gonyea a document titled "Affidavit of Appellation/Name Correction Pursuant to Indigenous Nationality & Aboriginal American Citizenship."
8. Gonyea determined the document is not a valid document evidencing a name change.
9. On November 21, 2016, Gonyea requested the ACSO disqualify Onoja and remove him from the selection process.
10. The document caption referenced Prince George County, Maryland, and there is no Prince George County, Maryland.
11. The document referenced "Maryland-Republic" and the caption listed the parties as, "Delonte Emiliano Tazell formerly known as Delonte Ford- Cest Que Trust vs. State of Maryland."
12. The document's caption did not comport with the Maryland rules for name change court filings.
13. The document is not a court order.
14. The United States government does not recognize the International Society of Indigenous Sovereigns as a tribe.
15. The document is not a tribal document.

B. Conclusions of Law

1. All conditions precedent to the institution of this proceeding have been satisfied.
2. An Administrative Law Judge "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.38(c).
3. "An issue of fact is genuine only if it has a real basis in the record" and "[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).
4. "Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving

party must come forward with contravening evidence to avoid summary resolution.” *U.S. v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

5. To establish a prima facie case of document abuse, “a complainant must show (1) that, in connection with the employment verification process required by 8 U.S.C. § 1324a(b), an employer has requested from the employee more or different documents than those required or has rejected otherwise acceptable valid documents and (2) that either of these actions was undertaken for the purpose or with the intent of discriminating against the employee on account of the employee’s national origin or citizenship status.” *Johnson v. Progressive Roofing*, 12 OCAHO no. 1295, 5 (2017).

6. Onoja failed to establish a prima facie case of document abuse pursuant to 8 U.S.C. § 1324b(a)(6) because he failed to show his name change document was a valid document and failed to show any evidence of intent to discriminate.

7. Assuming arguendo that Onoja established a prima facie case of document abuse, Onoja did not produce or point to any evidence to create a factual issue regarding the legitimacy of Arlington County Sheriff’s Office’s explanation for the basis of its decision to reject his document.

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is do denominated as if set forth as such.

ORDER

The complaint is dismissed.

SO ORDERED.

Dated and entered on March 15, 2019.

Priscilla M. Rae
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 files a timely petition for review of that 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 such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure