

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

UNITED STATES OF AMERICA,	)	
	)	8 U.S.C. § 1324b PROCEEDING
COMPLAINANT,	)	
	)	
v.	)	
	)	OCAHO CASE NO. _____
FACEBOOK, INC.,	)	
	)	
RESPONDENT.	)	

**COMPLAINT**

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

1. Generally, when Facebook, Inc. (“Facebook”) wants to fill a position, it uses a rigorous and competitive hiring process. Facebook advertises the positions on its website, accepts applications online, and often receives hundreds of applications for a position. Facebook reviews those applications, identifies qualified candidates, and interviews promising candidates. Facebook does not pre-determine the ultimate candidate to be hired based on their citizenship or immigration status.
  
2. In contrast, when certain employees holding temporary immigration status (“temporary visa holders”) at Facebook ask the company for permanent positions through the permanent labor certification process (“PERM”), Facebook creates a permanent position that is open only to that temporary visa holder. Facebook then implements a recruitment process intentionally designed to deter U.S. workers from applying. For these positions reserved for temporary visa holders, Facebook does not advertise the positions on its website, does not accept applications online, and requires candidates to mail in their applications. Not surprisingly,

Facebook often gets zero applications for these advertised positions. And even when U.S. workers do apply, Facebook will not consider them for the advertised positions. Instead, Facebook fills these positions exclusively with temporary visa holders. Simply put, Facebook reserves these positions for temporary visa holders.

3. When filling these positions, Facebook intentionally discriminates against U.S. workers because of their citizenship or immigration status by:
  - (a) Designing a recruitment process that deters U.S. workers from applying for the advertised positions;
  - (b) Not considering U.S. workers for the advertised positions; and
  - (c) Hiring only temporary visa holders for the advertised positions.
4. Facebook's discriminatory recruitment and hiring practice is routine, ongoing, and widespread. It discriminates against U.S. workers because of their immigration or citizenship status, and it harms them by limiting their ability to apply, to be considered, and to be hired for all PERM-related jobs at Facebook.
5. Complainant, through the Immigrant and Employee Rights Section ("IER"), an office within the Civil Rights Division of the U.S. Department of Justice, brings this action to enforce the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b, and to stop Facebook's discriminatory practices.

### **JURISDICTION**

6. Pursuant to 8 U.S.C. §§ 1324b(c)(2) and (d)(1), IER investigates charges and has authority to initiate independent investigations where it has reason to believe an employer has violated or is violating 8 U.S.C. § 1324b. IER also has the authority to bring an action to ensure compliance with the statute. 8 U.S.C. § 1324b(c)(2).

7. Facebook, a Delaware corporation, maintains its corporate headquarters at 1601 Willow Road, Menlo Park, California 94025.
8. Facebook employed more than three employees in the United States during the period of the discrimination described below and therefore is a person or other entity subject to the anti-discrimination requirements of 8 U.S.C. § 1324b(a).
9. On December 17, 2018, IER notified Facebook that IER had initiated an independent investigation into whether Facebook was engaging in unfair recruitment and hiring practices based on citizenship or immigration status in violation of 8 U.S.C. § 1324b(a)(1).
10. On October 9, 2020, IER notified Facebook that IER had concluded its investigation and found reasonable cause to believe that Facebook had engaged in a pattern or practice of unfair immigration-related employment practices violating 8 U.S.C. § 1324b(a)(1).
11. The United States files this Complaint with the Office of the Chief Administrative Hearing Officer pursuant to 8 U.S.C. § 1324b(e)(1).
12. The Office of the Chief Administrative Hearing Officer has jurisdiction to hear this matter alleging violations of 8 U.S.C. § 1324b. *See* 8 U.S.C. § 1324b(e)(1); 28 C.F.R. §§ 44.101(d) and 68.1.

### **BACKGROUND**

13. In 1986, Congress amended the INA to prohibit employment discrimination because of citizenship status or national origin in hiring, firing, or referral or recruitment for a fee. 8 U.S.C. § 1324b.
14. Under 8 U.S.C. §§ 1324b(a)(1) and (3), United States citizens and nationals, asylees, refugees, and certain lawful permanent residents are protected from discrimination in hiring, firing or recruiting based on their citizenship status, unless the discrimination is required in

order to comply with a law, regulation, executive order, government contract, or determination by the Attorney General. *See* 8 U.S.C. § 1324b(a)(2)(C). These individuals are referred to under the statute and herein as “protected individuals.”

15. There are several temporary visa programs that allow foreign nationals to reside and work in the United States on a temporary basis. Under one such program, temporary visa holders in H-1B status are admitted to the United States for the purpose of working for a particular employer in a specialty occupation (requiring a bachelor’s degree or higher in a specialty field) for a three-year period, renewable for a second three-year period. 8 U.S.C.

§§ 1184(g)(4), (i).

16. In Fiscal Years 2018-2019, U.S. Citizenship and Immigration Services approved at least 6,134 petitions that Facebook filed to hire employees in H-1B status, in addition to Facebook’s employment of many other temporary visa holders.

17. Temporary visa holders in H-1B status may qualify for extensions of stay beyond the above-referenced six-year cap after the individual’s employer successfully completes the PERM process and subsequently files a Form I-140 Immigrant Petition for an Alien Worker on their behalf. American Competitiveness in the Twenty-First Century Act § 106(a), 8 U.S.C.

§ 1184 note.

**SPONSORING A TEMPORARY VISA HOLDER THROUGH  
THE PERMANENT LABOR CERTIFICATION PROCESS**

18. The PERM process, which the U.S. Department of Labor administers, allows employers to offer permanent jobs to temporary visa holders, who may then seek to become lawful permanent residents with permission to live and work in the United States permanently.

19. The Department of Labor will approve an employer’s ETA Form 9089 application for permanent employment certification (“PERM application”) only if, based on the employer’s

attestations in the PERM application, it determines that there are no minimally qualified and available U.S. workers for the job that the employer plans to offer to the temporary visa holder (“PERM beneficiary”). *See* 8 U.S.C. § 1182(a)(5)(A); 20 C.F.R. § 656.24(b).

20. Neither the INA nor the Department of Labor rules permits an employer to sponsor a temporary visa holder for a permanent job through the PERM process if there is a qualified and available U.S. worker for the position. *See id.*
21. U.S. workers, under Department of Labor rules, are work-authorized individuals who have indefinite work authorization not tied to a specific employer, including U.S. citizens and nationals, lawful permanent residents, refugees, and asylees. 20 C.F.R. § 656.3.
22. The Department of Labor rules do not require employers to consider applicants who are not U.S. workers when recruiting for permanent positions through the PERM process. *See* 20 C.F.R. § 656.24(b).
23. To determine whether there are qualified and available U.S. workers for the position, Department of Labor rules require the employer to recruit U.S. workers for the position using three mandatory recruitment methods: (a) posting the position to a State Workforce Agency’s (“SWA”) job board; (b) posting a notice internally at the place of employment; and (c) advertising the position in a major newspaper two times. 20 C.F.R. § 656.17(e)(1).  
  
Additionally, employers must utilize at least three additional recruitment steps from a list that includes: (A) job fairs; (B) the employer’s website; (C) a job search website other than the employer’s; (D) on-campus recruiting; (E) trade or professional organizations; (F) private employment firms; (G) an employee referral program with incentives; (H) campus placement offices; (I) local and ethnic newspapers; and (J) radio and television advertisements. *Id.*
24. The Department of Labor has made clear that, in conducting this recruitment, employers

must also engage in a good faith search that closely resembles the employer's normal recruiting process. *Matter of Am. Specialty Pharmacy*, 2016-PER-00016, 2019 WL 2910815, \*2 (BALCA 2019).

25. Department of Labor rules explicitly allow such employers to advertise the PERM-related positions on their websites, and do not prohibit them from accepting applications in connection with PERM-related positions electronically. 20 C.F.R. § 656.17(e)(1) (listing minimum requirements for PERM recruitment process, including option of advertising position on employer's website).
26. Department of Labor rules also require such employers to prepare a recruitment report describing, among other things, the number of U.S. workers who applied and were rejected, if applicable, for the position the employer was seeking to fill with the PERM beneficiary. 20 C.F.R. § 656.17(g)(1).
27. The Department of Labor reviews PERM applications and certifies those that meet the Department of Labor requirements, which allows the employer to proceed with the process of offering permanent positions to temporary visa holders. Once U.S. Citizenship and Immigration Services approves other filings in connection with the approved PERM application, the temporary visa holder is granted lawful permanent resident status, allowing them to live and work in the United States permanently. *See* 8 U.S.C. § 1182(a)(5)(A).
28. As noted above, however, the Department of Labor will not allow an employer to offer a permanent position to the PERM beneficiary through the PERM process if the Department of Labor has information that there are qualified and available U.S. workers for the position that the employer plans to offer to the PERM beneficiary.

## **STATEMENT OF FACTS**

### **FACEBOOK'S STANDARD RECRUITING AND HIRING PRACTICES**

29. From at least January 1, 2018 to at least September 18, 2019, Facebook's standard operating procedure when recruiting for non-PERM-related vacancies was to advertise the positions on its external website, Facebook.com/careers.
30. From at least January 1, 2018 to at least September 18, 2019, Facebook allowed external applicants to apply to non-PERM-related positions by completing an applicant profile and uploading their resume through Facebook's website.
31. From at least January 1, 2018 to at least September 18, 2019, Facebook's existing employees could also view its non-PERM-related job postings on Facebook's intranet site, and Facebook allowed its existing employees to apply for an opening by filling out a template expressing their interest and uploading documents.
32. From at least January 1, 2018 to at least September 18, 2019, Facebook did not require applicants to its non-PERM-related job vacancies to apply by mail.
33. From at least January 1, 2018 to at least September 18, 2019, when hiring for non-PERM-related positions, Facebook did not pre-determine which candidates it would consider based on citizenship or immigration status.
34. From at least January 1, 2018 to at least September 18, 2019, when an existing employee at Facebook wanted another position within the company, they had to go through the same hiring process described above. For those positions, Facebook followed its usual hiring protocols, including advertising the position on its external website and internal intranet, allowing applicants to apply online, and considering applicants to the position.

## FACEBOOK'S PERM RECRUITING AND HIRING PRACTICES

35. Beginning no later than January 1, 2018, and continuing until at least September 18, 2019, Facebook's standard operating procedure was to automatically initiate a PERM process when a temporary visa holder who was a Facebook employee in a "level 3" role<sup>1</sup> or above asked Facebook for a permanent position, if the PERM process was needed to offer the PERM beneficiary such a position.
36. Facebook's standard operating procedure was not to consider the temporary visa holder's job performance or seniority or consult with the employee's manager about the temporary visa holder's job performance before initiating the PERM process on his or her behalf.
37. As noted above, to file a PERM application, Department of Labor rules first required Facebook to ensure that there were no minimally qualified and available U.S. workers for the position that Facebook wanted to offer to the PERM beneficiary.
38. From at least January 1, 2018 to at least September 18, 2019, when a Facebook employee who was a temporary visa holder expressed interest in receiving a permanent position through the PERM process, Facebook diverged from its normal recruiting protocols by not advertising the position on its external website, Facebook.com/careers, by not accepting online applications, and by requiring interested applicants to apply to the position by mail.
39. Between January 1, 2018 and September 18, 2019, Facebook advertised all PERM-related jobs on a SWA Job Board, advertised them in a newspaper of general circulation (often the San Francisco Chronicle), and posted a hard-copy notice of the positions at its work location. Facebook typically satisfied the Department of Labor requirement to use three additional recruitment methods by advertising the job in a professional journal, on a job search website

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<sup>1</sup> Level 3 roles and above with Facebook require at least a college degree.



other than its own, and in a local newspaper.

40. When employers purchase job advertisements to appear in the print edition of the San Francisco Chronicle, the publication also publishes the advertisement on the newspaper's online portal free of charge to the employer.
41. Between at least January 1, 2018 and at least September 18, 2019, Facebook's PERM-related advertisements that appeared in the San Francisco Chronicle's print edition did not appear on the publication's online portal.
42. Between January 1, 2018 and September 18, 2019, Facebook filed at least 2,651 PERM applications as part of a process to convert the status of PERM beneficiaries (Facebook employees who were temporary visa holders) to lawful permanent residents so that they could fill permanent positions with Facebook.
43. Between January 1, 2018 and September 18, 2019, at least 2,606 of the PERM applications that Facebook filed were ultimately certified by the Department of Labor. The average salary for the positions in these PERM applications was \$156,865.50.
44. In each of the recruitment reports that Facebook prepared in connection with PERM applications filed between at least July 1, 2018 and at least April 28, 2019, reflecting PERM-related recruiting that occurred in the six-month period preceding the filing of the PERM application, Facebook included a cover letter in which it certified that it had made a bona fide job offer to the PERM beneficiary and had conducted good faith recruitment but did not find an able, willing, qualified and available U.S. worker for the position.
45. In each of the PERM applications that Facebook filed between at least January 1, 2018 and at least September 18, 2019 that the Department of Labor ultimately certified, Facebook attested that it was offering the PERM beneficiary a job opportunity for full-time, permanent

employment that had been and was clearly open to any U.S. worker.

46. In each of the PERM applications that Facebook filed between at least January 1, 2018 and at least September 18, 2019 that the Department of Labor ultimately certified, the PERM beneficiary declared under penalty of perjury that he or she intended to accept the position offered.
47. Between at least January 1, 2018 and at least September 18, 2019, if a U.S. worker applied to a PERM-related position and Facebook determined that the U.S. worker was qualified, Facebook's standard operating procedure was to seek an open non-PERM-related vacancy for the U.S. worker, reserving the PERM-related vacancy for the PERM beneficiary.
48. Between at least January 1, 2018 and September 18, 2019, Facebook hiring managers did not hire anyone for the 2,606 PERM-related vacancies except for the PERM beneficiaries.
49. Between at least January 1, 2018 and at least September 18, 2019, if a U.S. worker applied to a PERM-related position and Facebook determined that the U.S. worker was qualified, but there was no non-PERM-related vacancy available for the U.S. worker, Facebook's standard operating procedure was to decline to hire the U.S. worker for the PERM-related position, and to temporarily abandon or suspend the PERM process.

**COMPARING THE RESULTS OF FACEBOOK'S PERM HIRING PRACTICES  
WITH FACEBOOK'S NON-PERM HIRING PRACTICES**

50. From January 1, 2018 to April 28, 2019, Facebook's online job postings for non-PERM-related positions that it ultimately filled received on average 104 total applicants per position.
51. In contrast, in the 1,128 recruitment reports that Facebook prepared in connection with its PERM applications filed between July 1, 2018 and April 28, 2019, reflecting PERM-related recruiting that began no earlier than January 1, 2018, Facebook reported that it received zero U.S. worker applicants in 81.5% of these reports (919 reports), that it received one U.S.

worker applicant in 18.3% of these reports (206 reports), and that it received 2-4 U.S. worker applicants in the remaining 0.3% of these reports (3 reports).

52. From January 1, 2018 to April 28, 2019, Facebook engaged in recruitment in connection with PERM applications encompassing at least 154 occupations while simultaneously recruiting for comparable non-PERM-related positions in the same occupations, using Facebook's normal recruiting process.
53. From January 1, 2018 to April 28, 2019, at least 4,034 candidates applied to non-PERM-related positions that were comparable to PERM-related positions that Facebook was simultaneously recruiting for, but Facebook did not hire these candidates for the non-PERM jobs because Facebook determined that, though they were not unqualified, there was another more qualified candidate for the position sought.
54. Facebook did not consider any of these at least 4,034 candidates for the comparable PERM-related positions.

**AN EXAMPLE OF THE DIVERGENT RESULTS FROM FACEBOOK'S  
TWO RECRUITMENT PROCESSES**

55. On September 18, 2018, Facebook filed a PERM application for an Art Director position with the Department of Labor, certifying that it had conducted good-faith recruitment but found no qualified and available U.S. workers for the position. Facebook certified in the PERM application that the Art Director position required a bachelor's degree and two years of experience, and that Facebook had advertised the position between April 27, 2018 and May 30, 2018. The advertisements specified that applicants were required to apply by mail. In its recruitment report in connection with the PERM application for the Art Director position, Facebook asserted that it had received zero U.S. worker applications for the position.

56. Between January 1, 2018 and September 18, 2018, Facebook advertised on its website at least 22 non-PERM-related Art Director positions, all of which allowed for online applications, and all of which had higher minimum qualifications than the PERM-related Art Director position that Facebook advertised during the same period.
57. These advertised positions for non-PERM-related Art Director positions received a total of at least 2,612 applications. Facebook did not hire at least 288 applicants for these Art Director positions because, though they were not unqualified, there was another more qualified candidate.
58. Facebook did not consider or hire any of the U.S. workers who applied to the non-PERM-related Art Director positions for its PERM-related Art Director position, even though they were comparable positions advertised at the same time with the same company.

**COUNT I**  
**PATTERN OR PRACTICE OF DISCRIMINATION AGAINST U.S. WORKERS**  
**IN THE RECRUITMENT PROCESS**

59. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 58 as if fully set forth herein.
60. Facebook's standard operating procedure beginning no later than January 1, 2018, and continuing until at least September 18, 2019, was to rely on less effective advertising methods, designed to deter applicants, including declining to advertise the positions on Facebook.com/careers, when recruiting for bona fide, permanent, PERM-related positions, based on its preference to give the positions to temporary visa holders.
61. Facebook's standard operating procedure beginning no later than January 1, 2018, and continuing until at least September 18, 2019, was to subject applicants to more burdensome application requirements, designed to deter applicants, including requiring them to apply by

mail, when recruiting for bona fide, permanent, PERM-related positions, based on its preference to give the positions to temporary visa holders.

62. Facebook knowingly and intentionally deterred U.S. workers from applying to and failed to meaningfully recruit U.S. workers for its PERM-related positions, when it subjected such applicants to more burdensome recruitment procedures because it preferred to employ temporary visa holders in those positions, because of their citizenship or immigration status.
63. Facebook knowingly and intentionally discriminated against U.S. workers because of their citizenship or immigration status by designing and implementing a recruitment process that would deter them from applying.
64. Facebook's actions constitute a pattern or practice of unfair immigration-related employment practices prohibited under 8 U.S.C. § 1324b(a)(1)(A) against U.S. workers who were protected individuals as defined in 8 U.S.C. § 1324b(a)(3)(B), many of whom were qualified for the PERM-related positions.
65. At the very least, U.S. workers who either (a) applied to contemporaneous comparable non-PERM-related positions with Facebook, or (b) would have applied to Facebook's PERM-related positions but for the discriminatory practices, had a real and present interest in working for Facebook but were deterred from applying to the PERM-related position(s) because of Facebook's discriminatory practices.
66. No law; regulation; executive order; provision of Federal, State or local government contract; or Attorney General determination required the citizenship status discrimination committed by Facebook.

**COUNT II**  
**PATTERN OR PRACTICE OF FAILING TO CONSIDER U.S. WORKERS**

67. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 58 as

if fully set forth herein.

68. Facebook's standard operating procedure beginning no later than January 1, 2018, and continuing until at least September 18, 2019, was not to consider otherwise available U.S. workers for bona fide positions because it reserved those positions for temporary visa holders seeking permanent employment with Facebook through the PERM process.
69. Facebook knowingly and intentionally failed to consider for hire U.S. workers for its PERM-related positions, because it preferred to employ temporary visa holders in those roles, because of their citizenship or immigration status.
70. Facebook knowingly and intentionally discriminated against U.S. workers because of their citizenship or immigration status by failing to consider them for PERM-related positions.
71. Facebook's actions constitute a pattern or practice of unfair immigration-related employment practices prohibited under 8 U.S.C. § 1324b(a)(1)(A) against U.S. workers who are protected individuals as defined in 8 U.S.C. § 1324b(a)(3)(B), many of whom were qualified for the positions.
72. At the very least, U.S. workers who (a) applied to Facebook's PERM-related position(s), (b) applied to contemporaneous comparable non-PERM-related position(s) that lacked the deterring effect of the PERM-related position(s), or (c) would have applied to Facebook's PERM-related positions but for the discriminatory practices, had a real and present interest in working for Facebook.
73. No law; regulation; executive order; provision of Federal, State or local government contract; or Attorney General determination required the citizenship status discrimination committed by Facebook.
74. As a result of Facebook's pattern or practice of discriminatory recruitment, otherwise

qualified U.S. workers were denied consideration for Facebook's PERM-related positions because of Facebook's preference to give the positions to temporary visa holders on the basis of their citizenship or immigration status.

**COUNT III**  
**PATTERN OR PRACTICE OF FAILING TO HIRE U.S. WORKERS**

75. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 58 as if fully set forth herein.
76. Facebook's standard operating procedure beginning no later than January 1, 2018, and continuing until at least September 18, 2019, was to deny employment to otherwise qualified and available U.S. workers for bona fide positions that it reserved for temporary visa holders seeking permanent employment through the PERM process.
77. Facebook knowingly and intentionally failed to hire U.S. workers for its PERM-related positions, because it preferred to employ temporary visa holders in those roles, on the basis of their citizenship or immigration status.
78. Facebook knowingly and intentionally discriminated against U.S. workers because of their citizenship or immigration status by failing to hire them for PERM-related positions.
79. Facebook's actions constitute a pattern or practice of unfair immigration-related employment practices prohibited under 8 U.S.C. § 1324b(a)(1)(A) against otherwise qualified U.S. workers who are protected individuals as defined in 8 U.S.C. § 1324b(a)(3)(B).
80. At the very least, U.S. workers who (a) applied to Facebook's PERM-related position(s), (b) applied to contemporaneous comparable non-PERM related position(s) that lacked the deterring effect of the PERM-related position(s), or (c) would have applied to Facebook's PERM-related positions but for Facebook's discriminatory practices, had a real and present interest in working for Facebook.

81. No law; regulation; executive order; provision of Federal, State or local government contract; or Attorney General determination requires the citizenship status discrimination committed by Facebook.
82. As a result of Facebook's pattern or practice of discriminatory recruitment and hiring, otherwise qualified applicants were denied hire for Facebook's PERM-related positions because of Facebook's preference to give the positions to temporary visa holders because of their citizenship or immigration status.
83. From no later than January 1, 2018 to at least September 18, 2019, Facebook's discriminatory practices allowed it (a) to get Department of Labor certification of 2,606 PERM applications, at least some of which would have been denied had Facebook considered the available and qualified U.S. workers, and (b) to extend the employment of temporary visa holders for longer periods than they would have been automatically entitled.

### **REQUEST FOR RELIEF**

THEREFORE, Complainant respectfully requests:

That the Administrative Law Judge assigned to this proceeding grant the following relief:

1. Order Facebook to cease and desist from the alleged illegal practices described in the Complaint and to take affirmative steps to address the illegal practices;
2. Order Facebook to pay an appropriate civil penalty as determined by the Administrative Law Judge for each individual discriminated against in violation of 8 U.S.C. § 1324b(a)(1);
3. Order Facebook to pay back pay, including interest, to each protected individual discriminated against who is found to have suffered uncompensated lost wages due to denied or delayed employment as a result of the discriminatory practices



alleged in this Complaint; and

4. Order such additional relief as justice may require.

Dated: December 3, 2020

Respectfully Submitted,

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