

DEPARTMENT OF JUSTICE
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CHIEF ADMINISTRATION
HEARING OFFICE

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

UNITED STATES OF AMERICA,)
)
COMPLAINANT,)
)
v.)
)
JOHN JAY COLLEGE,)
)
RESPONDENT.)

8 U.S.C. § 1324b PROCEEDING

OCAHO CASE NO. 10B00074

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 (“Office of Special Counsel”) to enforce the provisions of the Immigration and Nationalization Act relating to immigration-related unfair employment practices pursuant to 8 U.S.C. § 1324b (“INA”).
2. This suit arises out of the discriminatory conduct by John Jay College (“Respondent” or “College”) in violation of the anti-discrimination provisions of the INA, 8 U.S. § 1324b(a)(6) with regard to the discriminatory treatment of certain individuals in the employment eligibility verification process.

JURISDICTION

3. 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.

4. [REDACTED] ("Charging Party") is a lawful permanent resident and is protected under 8 U.S.C. § 1324b(a)(3).
5. Respondent a public educational institution located in New York, NY, is a person or entity within the meaning of 8 U.S.C. § 1324b(a)(1), and employed more than three employees on the date of the alleged immigration-related unfair employment practices described below.
6. On June 16, 2008, 136 days after the Charging Party was discriminatory discharged by Respondent, the Office of Special Counsel accepted as complete a charge of citizenship status discrimination from the Charging Party against Respondent.
7. On November 18, 2008, the Charging Party received notice by certified mail from OSC that it was continuing its investigation of the charge and that the Charging Party had the right to file her own complaint before an Administrative Law Judge.
8. On January 5, 2009, the parties reached an agreement that extended the United States' complaint filing period until March 30, 2009.
9. Subsequent complaint filing extension agreements were executed on March 6, 2009, May 18, 2009, August 11, 2009, November 5, 2009, December 30, 2009, March 5, 2010 and March 18, 2010. The most recent agreement extended the United States' complaint filing period until April 15, 2010. A copy of the agreement with the April 15, 2010, complaint filing deadline is appended hereto as Exhibit One.
10. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e).

STATEMENT OF FACTS

11. The immigration-related unfair employment practices described below occurred in New York, NY.
12. When the Charging Party started working for Respondent in 2004 she was employed as a part-time computer lab assistant.
13. Between 2004 and 2008 the College suspended the Charging Party several times because it insisted she produce a new, unexpired employment authorization document ("EAD"), her Green Card; I-551, issued by the Department of Homeland Security ("DHS"), for employment eligibility reverification.
14. On or about January 30, 2008, the Charging Party was told by Respondent that her EAD had expired.
15. On or about January 30, 2008, Respondent refused to accept the Charging Party's unrestricted Social Security card and driver's license to reverify her employment eligibility.
16. On or about January 30, 2008, Respondent requested that Charging Party produce either an unexpired EAD or I-551 card.
17. On or about January 30, 2008, Respondent terminated the Charging Party when she failed to produce the documents requested by Respondent.
18. Since at least 2007, if not earlier in time, through sometime in 2009, Respondent's policy and practice has been to require each non-U.S. citizen employee to provide an employment eligibility verification document issued by the former Immigration and Nationalization Service ("INS") or DHS in order to verify or reverify his or her employment eligibility.

19. Since at least 2007, if not earlier in time, Respondent did not require employees who are U.S. citizens to provide documents specified by Respondent in order to verify or reverify their employment eligibility, but, instead, allowed these individuals to provide any document, or combination of documents, permitted on the Form I-9.
20. Since 2007 at least one hundred three non-U.S. citizens were required by Respondent to present their documents issued by INS or DHS in order to order to verify or reverify their employment eligibility.

COUNT I

DOCUMENT ABUSE AGAINST SHOULAN CHANG AND OTHER SIMILARLY SITUATED PARTIES

21. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.
22. Respondent knowingly and intentionally committed document abuse discrimination against the Charging Party, and other similarly situated individuals, when it required that they provide an employment eligibility verification document issued by INS or DHS in order to verify or reverify their employment eligibility.
23. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(6).

COUNT II

PATTERN OR PRACTICE OF DOCUMENT ABUSE IN THE HIRING AND EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS

24. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 24 above as if fully set forth herein.

2. Order Respondent to provide full remedial relief to make the Charging Party, and similarly situated protected individuals, whole for the losses they 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 a civil penalty of \$1,100 for each protected individual who was discriminated against.

The Complainant prays for such additional relief as justice may require.

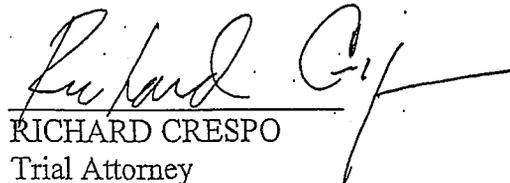
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Unfair Employment Practices



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Dated: April 15, 2010

EXHIBIT 1

STIPULATION TO EXTEND CHARGE INVESTIGATION PERIOD AND
TO ESTABLISH COMPLAINT FILING DEADLINE

WHEREAS, the Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") is currently investigating charge number 197-52-249, filed by [REDACTED] ("Charging Party") alleging that John Jay College ("Respondent") engaged in activity prohibited by 8 U.S.C. § 1324b.

WHEREAS, 8 U.S.C. §1324b(d)(1) provides an initial 120-day period from the date OSC receives a complete charge of discrimination for OSC to investigate the charge, determine whether there is reasonable cause to believe the charge is true, and decide whether to file a complaint with an administrative law judge with the Office of the Chief Administrative Hearing Officer ("OCAHO").

WHEREAS, 8 U.S.C. §1324b(d)(2) provides that if OSC has not filed a complaint with an OCAHO administrative law judge within the initial 120-day charge investigation time period, OSC shall notify the Charging Party of OSC's determination not to file a complaint during that 120-day period, and that the Charging Party may file a complaint directly with an OCAHO administrative law judge within 90 days following the Charging Party's receipt of the notice.

WHEREAS, the Charging Party received such notice from OSC regarding the above-referenced charge on November 18, 2008. The Charging Party's complaint filing deadline is therefore February 16, 2009.

WHEREAS, OSC and the Respondent agree that extending the charge investigation time period identified and described in the preceding paragraphs will increase judicial efficiency by allowing additional time to resolve the charge.

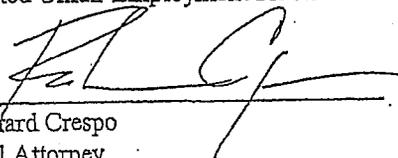
NOW, THEREFORE, OSC and the Respondent stipulate and agree to extend the charge investigation time period identified and discussed above until April 15, 2010. Consequently, OSC and the Respondent agree that OSC may file a complaint with an OCAHO administrative law judge on or before April 15, 2010.

OSC and the Respondent agree that this stipulation to extend the charge investigation time period and to establish a complaint filing deadline does not result in any harm or prejudice to the Respondent. In addition, the Respondent will not assert that any complaint filed on or before April 15, 2010 is untimely.

This Stipulation may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. OSC and the Respondent agree to be bound by facsimile signatures.

Office of Special Counsel for Immigration
Related Unfair Employment Practices

By:

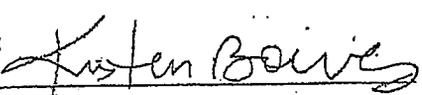

Richard Crespo
Trial Attorney

Date:

3/18/10

John Jay College

By:


Kristen Bowles
Respondent

Date:

3/18/10

EXHIBIT 2

RECEIVED
CIVIL RIGHTS DIVISION

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U.S. Department of Justice
Office of Special Counsel

Charge Form for Unfair Immigration-Related
Employment Practices Instructions

Instructions

COUNSEL (I.R.U.E.P.)

This charge form is to be used only to file a charge alleging an unfair immigration-related employment practice in violation of 8 U.S.C. §1324b. This charge form must be filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices.

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

On the form, "Injured Party" means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a Charging Party other than the Injured Party, is alleged to be so affected.

On the form, "Charging Party" means: (1) an individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice; or (2) an individual or private organization who is authorized by an individual to file a charge with the Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or (3) an officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related practice has occurred.

The "Charging Party" should complete the charge form in its entirety by typing, or neatly printing, the information requested. If a question is not applicable, it should be left blank.

This charge form must be delivered or mailed to the Office of Special Counsel within 180 days of the alleged discrimination.

Questions concerning this charge form can be directed to the Office of Special Counsel by mail at the above address or by telephone at (202) 616-5594 or 1-800-255-7688 (toll free), TDD (202) 616-5525 or 1-800-237-2515 (toll free).

1. Charging Party

Full Name: [Redacted]

Other Names Ever Used: [Redacted]

Street Address: [Redacted]

City: [Redacted] State: [Redacted] Zip Code: [Redacted]

Injured Party (IF INJURED PARTY is same as CHARGING PARTY, write "same")

Full Name: Same Telephone: ()

Other Names Ever Used:

Street Address:

City: State: Zip Code:

2. Individual, Business or Entity Which You Believe Has Committed Unfair Employment Practice:

Full Name: John Jay College of Criminal Justice Telephone: 212 237-8495

Street Address: 899 Tenth Avenue

City: New York State: NY Zip Code: 10019

Form OSC-1
Nov. 01

Formerly Form CRT-37 which is obsolete.

3. Individual, Business or Entity Has (check one):

Less than 15 employees, but more than 3 employees.

15 or more employees.

Unable to estimate number of employees.

4. Injured Party Has Suffered an Unfair Immigration-Related Employment Practices (check one or more)

National Origin Discrimination (with respect to the hiring, recruitment or referral, or discharging of the Injured Party)

Citizenship Status Discrimination (with respect to the hiring, recruitment or referral, or discharging of the Injured Party)

Retaliation for Asserting Rights Protected Under 8 U.S.C. §1324b

Document Abuse (The individual, business, or organization refused to accept a valid document or demanded more or different documents that are required for completing the INS Form I-9).

5. Injured Party Is:

Citizen or National of the United States (if this box is marked continue on to #6)

Alien Authorized to Work in the United States (if this box is marked you must complete the rest of #5)

If INJURED PARTY is an alien authorized to work in the United States:

Alien Registration Number (s):

Date of Birth: 04 (day) 04 (month) 1952 (year)

If INJURED PARTY is an alien authorized to work in the United States:

Injured Party (check one if applicable):

Is lawfully admitted for permanent residence date granted: _____

Has status of alien lawfully admitted for temporary residence under 8 U.S.C. §1160(a), 8 U.S.C. §1161(a), or 8 U.S.C. §1255(a)(1)

Is admitted as refugee under 8 U.S.C. §1157

Has been granted asylum under 8 U.S.C. §1158

Is Otherwise Authorized to work

Injured Party (check one):

Has applied for naturalization

Has not applied for naturalization

Date of Application: _____

6. When did the unfair practice occur: (date) Jan. 30, 2008

7. Where did the unfair practice occur: (Place) New York, NY

8. Has a charge based on this set of facts been filed with the Equal Employment Opportunity Commission, or other

governmental agency?

Yes If yes, which office?

No

Address:

City: _____ State: _____ Zip Code: _____

Date Filed: _____ File No (if known) _____

9. Describe the Unfair Employment Practice (use additional sheets if necessary)

As employment's eligibility verification documents for the Form I-9, the employer refused to accept my social security card (unrestricted) and driver license. The employer demanded to see a green card or employment authorization card issued by immigration and suspended me from the work.

10. Affirmation and Signature of Charging Party

(a) If this charge is being filed by the Injured Party:

As a person alleging that I have been injured by an unfair immigration-related employment practice, I understand that the Office of Special Counsel may find it necessary to reveal my identity and other information during the conduct of the investigation of my charge, during any hearing or other proceeding as result of my charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent. I affirm that, to the best of my knowledge, the information provided on this form is true.

July 16, 2008
(Date)

(b) If this charge is being filed by an authorized representative of the Injured Party:

I affirm that, to the best of my knowledge, the information provided on this form is true and that I am authorized to file this charge on behalf of the Injured Party. I understand that the Office of Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

(Signature of Authorized Representative)

(Date)

(c) If this charge is being filed by an INS officer:

I affirm that, to the best of my knowledge, the information provided on this form is true. I understand that the Office of Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

(Signature of INS Officer)

(Date)