

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

CHIEF ADMINISTRATION
HEARING OFFICER

2011 JUL 14 AM 8:10

DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA,)
)
COMPLAINANT,)
)
v.)
)
MAR-JAC POULTRY, INC)
)
RESPONDENT)
)
)
)

8 U.S.C. § 1324b PROCEEDING

OCAHO CASE NO. 11B00111

COMPLAINT

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

1. This action is brought on behalf of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (the "Office of Special Counsel") to enforce the provisions of the Immigration and Nationality Act ("INA") relating to immigration-related unfair employment practices pursuant to 8 U.S.C. § 1324b.
2. In 1986, as part of an effort to advance new immigration policy, Congress amended the INA to require every employer to ensure that each employee is eligible to work in the United States, through the review of one or more specified documents establishing an employee's identity and work authority. This employment eligibility verification process is codified at 8 U.S.C. § 1324a(b).
3. Having created an employment eligibility verification requirement through 8 U.S.C. §

- 1324a(b), Congress also amended the INA to protect all employees from employment discrimination based on citizenship status or national origin in the hiring, firing, referral or recruitment for a fee of employees, and in connection with the employment eligibility verification process. This anti-discrimination provision is codified at 8 U.S.C. § 1324b.
4. Consistent with Congress' purpose in 1986 that employers should apply the employment eligibility verification process equally to all employees, the INA's anti-discrimination provision at 8 U.S.C. § 1324b(a)(1)(B) prohibits employers from subjecting applicants or employees to citizenship or immigration status discrimination in, among other things, the hiring process. 8 U.S.C. § 1324b(a)(6) also prohibits an employer from intentionally subjecting applicants or employees to different employment eligibility verification documentary policies or practices based on citizenship status or national origin.
 5. This suit arises out of the discriminatory conduct of Mar-Jac Poultry, Inc. ("Respondent" or "Mar-Jac") in violation of the anti-discrimination provisions of the INA, 8 U.S.C. §§ 1324b(a)(1) and (a)(6), with regard to its systematic pattern and practice of treating non-U.S. citizens differently than U.S. citizens in the employment eligibility verification process. Specifically, Respondent required non-citizen applicants to show immigration documents issued by the U.S. government before considering them for employment, but gave U.S. citizens greater latitude in showing documentation before considering them for employment, resulting in the potential loss of job opportunities for non U.S. citizens.
 6. Furthermore, once the application process was complete, Respondent gave U.S. citizens the ability to choose what documents they wanted to provide for the Form I-9 process pursuant to the available options under 8 U.S.C. 1324a, whereas non-U.S. citizens were required to produce DHS-issued List A documents.

JURISDICTION

7. 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.
8. [REDACTED] (“Charging Party”) is a recipient of Temporary Protected Status (TPS) and is protected from discriminatory documentary practices based on citizenship status or national origin (“document abuse”) under 8 U.S.C. § 1324b(a)(6).
9. Respondent is a fully integrated poultry processor, with its principle place of business at 1020 Aviation Blvd. Gainesville, Georgia, 30501.
10. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b.
11. On December 13, 2010, 166 days after Respondent hired the Charging Party, the Office of Special Counsel accepted as complete a charge (Attachment “A”) of document abuse from the Charging Party.
12. On February 16, 2011, the Office of Special Counsel notified Respondent via email and certified mail (“Attachment B”) that it had expanded its investigation to include a pattern or practice of document abuse.
13. On April 16, 2011, the Charging Party received notice (Attachment “C”) by certified mail from the Office of Special Counsel, that the Office of Special Counsel was continuing its investigation of the charge. In this letter, the Charging Party was advised that he had the right to file his own complaint before an Administrative Law Judge. Accordingly, the date by which the Charging Party can file a complaint with OCAHO is July 15, 2011.
14. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

15. On or about June 23, 2010, the Charging Party went to the Mar-Jac human resources office seeking employment. Upon the Charging Party's request for an employment application, Respondent's human resources officer requested that the Charging Party show a photo ID and social security card to obtain an employment application.
16. Based on Respondent's request, the Charging Party produced his Employment Authorization Document (EAD), bearing an expiration date of July 5, 2010, and a restricted Social Security card.
17. Upon discovering that the Charging Party had Temporary Protected Status (TPS), and despite her actual knowledge that the Secretary of Homeland Security had extended the validity of the document presented by the Charging Party to January 5, 2011, Respondent's human resources personnel advised the Charging Party that his employment would be conditioned upon the production of his United States Citizenship and Immigration Services (USCIS) receipt proving that he had reapplied for TPS.
18. On or about June 29, 2010, the Charging Party returned to Mar-Jac with the USCIS receipt demanded by Respondent's official.
19. After showing Respondent his EAD and USCIS receipts upon demand, the Charging Party met with Respondent's human resources personnel, [REDACTED] (Ms. [REDACTED]), to discuss his employment.
20. During this interview, Ms. [REDACTED] completed a U.S. Department of Homeland Security ("DHS") Employment Eligibility Verification Form ("Form I-9") on behalf of the Charging Party, and signed her name under the preparer/translator field in Section 1 of the Form I-9.
21. While Ms. [REDACTED] was filling out the Form I-9 on the Charging Party's behalf, the

- Charging Party indicated that he was an alien authorized to work.
22. Upon learning that the Charging Party was an alien authorized to work, Ms. [REDACTED] requested that the Charging Party produce a List A document issued by the Department of Homeland Security (DHS). The Charging Party complied.
 23. Following the completion of his employment application, Ms. [REDACTED] required the Charging Party to provide his USCIS receipt, EAD, and Social Security card so that she could make a photo copy of the documents. Ms. [REDACTED] placed the copies of these documents in the Charging Party's employment file.
 24. On July 29, 2010, upon conclusion of his human resources orientation, the Charging Party began work as forklift operator.
 25. On February 10, 2011, the Office of Special Counsel conducted a taped interview of Ms. [REDACTED] to inquire about Respondent's hiring practices.
 26. During this interview, Ms. [REDACTED] stated that she required all non-U.S. citizens to provide DHS issued List A documents for the Form I-9 and E-Verify process, and that this practice has occurred since at least 2008. Ms. [REDACTED] also stated that she requires all TPS recipients with expired EADs to show proof that they reapplied for TPS.
 27. Between July 1, 2009, and January 27, 2011, of Respondent's 572 non-U.S. citizen hires, Respondent required 571 of the non-U.S. citizens to show DHS issued List A documents for the Form I-9 and E-Verify processes.

COUNT I
DOCUMENT ABUSE AGAINST [REDACTED] AND
OTHER SIMILARLY SITUATED PARTIES

28. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 27

as if fully set forth herein.

29. Respondents knowingly and intentionally committed document abuse discrimination against the Charging Party and other similarly situated individuals on the basis of their citizenship status, when they required non-U.S. citizens to produce specific documents pursuant to its obligations under 8 U.S.C. § 1324a to establish employee identity and work authorization.
30. 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 DISCRIMINATION
IN THE HIRING AND EMPLOYMENT ELIGIBILITY
VERIFICATION PROCESS AT MAR-JAC

31. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 30 as if fully set forth herein.
32. The pattern of discriminatory documentary practices described in Paragraphs 1 through 30, above, is not exhaustive but is illustrative of a pattern of discriminatory documentary practices that existed since at least July 1, 2009, and that continued until at least January 27, 2011.
33. Respondent relied upon documentary policies in connection with its determinations of employment eligibility under 8 U.S.C. §1324a. These policies discriminate against individuals based on citizenship status, and impose additional burdens on some employees because of their status as non-U.S. citizens, in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(6). Respondent has implemented this pattern or practice of discrimination, among other ways, by requiring only non-U.S. citizens to

produce specific documents, or more than the minimum number of documents required under 8 U.S.C. § 1324a, to establish their identity and work authorization in connection with the completion of the Form I-9 required under the INA.

34. Respondent's hiring policies and practices described above constitute a pattern or practice of document abuse in violation of 8 U.S.C. §1324(a)(6), depriving non-U.S. citizens of their right to equal employment opportunities without discrimination based on citizenship status. This pattern or practice is of such a nature and is intended to deny the full exercise of rights secured by 8 U.S.C. §1324b.

THEREFORE, Complainant respectfully requests:

- A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law Judge to preside at a hearing on this matter as soon as practicable; and
- B. That the Administrative Law Judge grant the following relief:
1. Order Respondents to cease and desist from the alleged illegal practices described in the complaint;
 2. Order Respondents to provide full remedial relief to work authorized non-U.S. citizens who were not hired by Respondent because they could not comply with Respondent's request for specific documents, but who had sufficient documents with which to comply with hiring requirements under 8 U.S.C. §1324a.
 3. Take other appropriate measures to overcome the effects of the discrimination.
 4. Order Respondents to pay a civil penalty of \$1,100 for each violation of 8 U.S.C. §1324b(a)(6).

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

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division



SEEMA NANDA
Acting Deputy Special Counsel

C. SEBASTIAN ALOOT
Acting Special Litigation Counsel

BYRON WONG
LIZA ZAMD
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Telephone: (202) 307-2246
Facsimile: (202) 616-5509

Dated: July 13, 2011