

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

UNITED STATES OF AMERICA,)

COMPLAINANT,)

v.)

FARMLAND FOODS INC.)

RESPONDENT.)

8 U.S.C. § 1324b PROCEEDING.

OCAHO CASE NO. 11600103

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 pertinent part, the anti-discrimination provision of the INA protects individuals who are authorized to work in the United States from employment discrimination in hiring and from unfair documentary practices relating to the employment eligibility verification process based on their citizenship, immigration status, or national origin.

3. This suit arises out of the discriminatory pattern and practice of discriminatory hiring and employment eligibility verification based on citizenship status and national origin by Farmland Foods Inc. (“Respondent”) in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1) and (a)(6).

JURISDICTION

4. 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.
5. ██████████ (“Charging Party”) is a naturalized United States citizen and is protected from discrimination on the basis of citizenship status in the employment eligibility verification process (“document abuse”) under 8 U.S.C. § 1324b(a)(6).
6. Respondent is a major producer of pork products for customers in the United States and abroad. Respondent is located at 7501 NW Tiffany Springs Parkway, Kansas City, Missouri, 64153-1386. Respondent has nine facilities in the United States. The facility where the discrimination took place is located in Monmouth, Illinois and employs approximately 1,424 employees.
7. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b(a)(1) and (6) that employed more than three employees on the date of the alleged immigration-related unfair employment practices described below.
8. On June 2, 2010, less than 180 days after the Respondent committed document abuse against the Charging Party, the Office of Special Counsel received an incomplete charge of document abuse from the Charging Party against the Respondent. The charge was subsequently made complete on September 28, 2010 (“Attachment A”).

9. On January 26, 2011, the Charging Party received notice (“Attachment B”) by certified mail from the Office of Special Counsel 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. Accordingly, the time within which the Charging Party could have filed a complaint with the Office of the Chief Administrative Hearing Officer (“OCAHO”) expired on April 29, 2011.
10. On March 28, 2011, Respondent and the Office of Special Counsel reached an agreement (“Attachment C”) that extended the United States’ complaint-filing period until June 27, 2011.
11. Jurisdiction of OCAHO is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

12. On December 2, 2009, Respondent extended a conditional offer of employment to the Charging Party to work at its Monmouth, Illinois facility. At that time, Respondent completed an Employment Eligibility Verification Form I-9 using the Charging Party’s driver’s license and unrestricted Social Security card.
13. On or after December 2, 2009, Respondent forwarded a copy of the Charging Party’s driver’s license, Social Security card, and Employment Eligibility Verification Form I-9 to Phoenix Loss Prevention (“Phoenix”), an independent company, to complete a background check. On information and belief, Phoenix used this information to, among other things, verify the Charging Party’s identity and authorization to work.
14. After the background check was completed, Respondent invited the Charging Party to attend Respondent’s orientation for new employees on February 1, 2010.

15. On February 2, 2010, Respondent ran an E-Verify query on the Charging Party.
16. The Respondent received a Social Security “Tentative Non-Conformation” in response to its E-Verify query concerning the Charging Party.
17. The Respondent subsequently asked the Charging Party to bring in her naturalization certificate and/or other documents to prove her citizenship status.
18. At least since December 1, 2009, Respondent has required non-U.S. citizens to specifically produce a Department of Homeland Security (“DHS”)-issued “List A” document to complete an Employment Eligibility Verification Form I-9, but has not imposed the same requirement on U.S. citizens.
19. At least since December 1, 2009, Respondent has required non-U.S. citizens to produce one or more additional documents than were required by law during the Employment Eligibility Verification Form I-9 process, but has not imposed the same requirement on U.S. citizens.
20. At least since December 1, 2009, Respondent also required some foreign-born (or perceived to be foreign-born) U.S. citizens to produce specific documents and/or more document than were legally required, to complete Respondent’s employment eligibility verification process.
21. Between December 1, 2009, and January 26, 2011, Respondent required 100% of non-U.S. citizens hired by Respondent in Monmouth, Illinois to produce a “List A” documents during the Form I-9 Employment Eligibility Verification process, while only 4.9% of U.S. citizens were required to do so.

22. When questioned about the documents an employee is required to present to complete the Form I-9, [REDACTED], Respondent's Human Resources Assistant Manager, explained that she required all non-U.S. citizens to produce a "List A" document.
23. Between December 1, 2009, and January 26, 2011, Respondent required 100% of non-U.S. citizens hired by Respondent in Monmouth, Illinois to produce identity and work authorization documents in addition to a "List A" documents during the Form I-9 Employment Eligibility Verification process, while only 1.6% of U.S. citizens were required to do so.
24. Respondent required 88% of the non-U.S. citizen employees to produce a List A, B, and C document, while only 0.8% of the U.S. citizen employees were required to do so.
25. For the over-documented non-U.S. citizen employees, Respondent only recorded the List A document on section 2 of the Form I-9 and attached photocopies of the additional documents to the Form I-9.
26. Of the U.S. citizens hired by Respondent's Monmouth, Illinois facility between December 1, 2009 and January 26, 2011, almost all (95.1%) produced varied List B and List C documents.
27. Those who produced U.S. passports indicating they were foreign-born citizens (or perceived to be foreign-born) were required to produce additional documents.
28. On information and belief, the employment eligibility practices described above may have occurred at other of Respondent's facilities.

COUNT I

PATTERN OR PRACTICE OF DOCUMENT ABUSE BASED ON CITIZENSHIP STATUS AND NATIONAL ORIGIN AGAINST [REDACTED] AND OTHER SIMILARLY SITUATED PARTIES (REQUESTS FOR SPECIFIC DOCUMENTS)

29. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.
30. The pattern of discriminatory documentary practices described in Paragraphs 12 through 28, above, is not exhaustive but is illustrative of a pattern of discriminatory documentary practices that existed since at least December 1, 2009.
31. Respondent has relied upon, and continues to rely upon, documentary policies in connection with its determinations of employment eligibility under 8 U.S.C. § 1324a that discriminate against individuals based on citizenship status and/or national origin, and that impose additional burdens on some employees because of their status as non-U.S. citizens or naturalized U.S. citizens, in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1) and (a)(6).
32. Respondent has implemented this pattern or practice of discrimination, among other ways, by requiring that non-U.S. citizen applicants specifically produce DHS-issued “List A” documents to establish their identity and work authorization in connection with the completion of the Form I-9 required under the INA, but not imposing the same requirement on U.S. citizens.
33. The hiring policies and practices of Respondent described above constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(1) and (a)(6) depriving non-U.S. citizens and naturalized U.S. citizens of their right to equal employment opportunities without discrimination based on citizenship status or national origin. 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. Unless restrained by order of this Court, Respondent will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

COUNT II

PATTERN OR PRACTICE OF DOCUMENT ABUSE BASED ON CITIZENSHIP STATUS AND NATIONAL ORIGIN AGAINST [REDACTED] AND OTHER SIMILARLY SITUATED PARTIES (REQUESTS FOR MORE OR DIFFERENT DOCUMENTS)

34. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.
35. The pattern of discriminatory documentary practices described in Paragraphs 12 through, 28 above, is not exhaustive but is illustrative of a pattern of discriminatory documentary practices that existed since at least December 1, 2009.
36. Respondent has relied upon, and continues to rely upon, documentary policies in connection with its determinations of employment eligibility under 8 U.S.C. § 1324a that discriminate against individuals based on citizenship status and/or national origin, and that impose additional burdens on some employees because of their status as non-U.S. citizens or naturalized U.S. citizens, in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1) and (a)(6).
37. Respondent has implemented this pattern or practice of discrimination, among other ways, by requiring that non-U.S. citizen and other foreign-born applicants produce 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, but not imposing the same requirement on U.S. citizens.

38. The hiring policies and practices of Respondent described above constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(1) and (a)(6) depriving non-U.S. citizens and naturalized U.S. citizens of their right to equal employment opportunities without discrimination based on citizenship status or national origin. 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. Unless restrained by order of this Court, Respondent will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

REQUEST FOR RELIEF

THEREFORE, Complainant respectfully requests:

- A. That OCAHO assign an Administrative Law Judge to preside at a hearing on this matter;
and
- B. That the Administrative Law Judge grant the following relief:
 - 1. Order Respondent to cease and desist from the alleged illegal practices described in the complaint;
 - 2. Order Respondent to provide full remedial relief to the Charging Party and similarly situated work-authorized individuals for the losses they may 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 back pay to each economic victim shown at trial to have been denied employment due to Respondent's illegal pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(6).

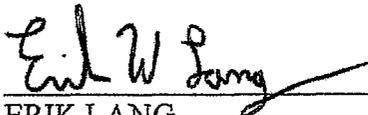
5. Order Respondent to pay maximum civil penalties for each violation of 8 U.S.C. § 1324b(a)(1) and (a)(6) shown at trial to have been committed by Respondent.
6. Such additional relief as justice may require.

Respectfully Submitted,

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