

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

CHIEF ADMINISTRATION
HEARING OFFICE

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DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA,

COMPLAINANT,

v.

UNIVERSITY OF CALIFORNIA,
SAN DIEGO MEDICAL CENTER,

RESPONDENT.

8 U.S.C. § 1324b PROCEEDING

OCAHO CASE NO. _____

COMPLAINT

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

1. Pursuant to 8 U.S.C. § 1324b, 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.
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 designated documents establishing an employee's identity and employment authorization. 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 prohibits employers from subjecting applicants or employees to citizenship or national origin status discrimination in, among other things, the hiring process or from subjecting applicants or employees to different employment eligibility verification documentary policies or practices based on citizenship status or national origin. 8 U.S.C. § 1324b(a)(1)(B), (a)(6).
5. During the initial employment eligibility verification process, employees have a choice with respect to which documents to present in order to establish their employment eligibility: "The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity." 8 C.F.R. § 274a.2(b)(1)(v). Thus, employees may present any document that establishes identity and employment authorization (List A document) or a combination of an identity document (List B document) and an employment authorization document (List C document). *U.S. Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification (Form I-9, Rev. 08/07/09), p. 1.*
6. Respondent engaged in a pattern or practice of discriminatory employment eligibility verification practices against non-U.S. citizen employees when it required non-U.S. citizens to produce specific List A documents for completion of the Form I-9 but did not require U.S. citizens to show any specific documentation.

7. Respondent further extended its pattern or practice of discriminatory employment eligibility verification practices against non-U.S. citizen employees to the reverification stage when it required all non-U.S. citizens, including those not subject to reverification, to present specific List A documents.

JURISDICTION

8. Respondent, a full service public teaching hospital based in San Diego, California, is engaged in the provision of services in inpatient and outpatient general acute patient care.
9. Respondent 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.
10. On December 14, 2010, the Office of Special Counsel received a telephone call from a lawful permanent resident employed by Respondent, who complained that she received a letter from Respondent requiring her to provide an unexpired Form I-551 by the date her current Form I-551 was set to expire or else risk termination.
11. On December 14, 2010, the Office of Special Counsel made inquiries to Respondent regarding this document request, and Respondent confirmed that it had issued a letter to the lawful permanent resident, requesting that she provide an unexpired Form I-551 by the date that her current Form I-551 was set to expire or risk termination.
12. As a result of these inquiries, the Office of Special Counsel had reason to believe that Respondent was engaging in discrimination in violation of 8 U.S.C. § 1324b.
13. On January 25, 2011, pursuant 8 U.S.C. § 1324b(d)(1) and 28 C.F.R. 44.304(a), the Office of Special Counsel commenced an independent investigation of Respondent's employment eligibility reverification practices.

14. The initial investigation revealed that Respondent was engaging in a pattern or practice of discrimination against non-citizen new hires in the initial employment eligibility verification process.
15. On June 28, 2011, the Office of Special Counsel notified Respondent that the investigation had been expanded to encompass a potential pattern or practice of document abuse, based on findings that Respondent maintained discriminatory practices against non-citizen new hires in the employment eligibility verification and reverification process.
16. Pursuant to 8 U.S.C. § 1324b(d)(2), the United States' complaint filing deadline is December 6, 2011.
17. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

18. From at least January 2004 to June 2011, Respondent adopted and implemented a policy of requiring all non-citizen new hires to present a List A document issued by the U.S. Department of Homeland Security (DHS) or its predecessor agency during the initial employment eligibility verification process as a condition of employment.
19. Respondent's employment eligibility verification policy with respect to non-citizens stated that non-citizen new hires were required to present an original "visa" or "work permit" for inspection.
20. Respondent viewed Forms I-551 as a form of "visa" or "work permit."
21. A Form I-551 or Permanent Resident Card with "either an expiration date or no expiration date is a List A document that should not be reverified." *U.S. Citizenship and*

Immigration Services, Handbook for Employers, Instructions for Completing Form I-9, (Form M-274, Rev. 06/01/11), p. 9.

22. Respondent had no policy or practice of demanding specific documents from U.S. citizen new hires during the employment eligibility verification process.
23. Respondent rejected a combination of a List B and a List C documents for Form I-9 purposes if presented by non-citizen new hires, but accepted them if presented by U.S. citizen new hires.
24. Respondent's practice was to request that all new non-citizen hires present a List A document during the orientation sessions for new employees.
25. Respondent identified non-citizen new hires by examining section 1 of the Form I-9.
26. Respondent asked non-citizen new hires that presented a combination of a List B and a List C document during the orientation session to produce a DHS-issued List A document for the purpose of establishing employment authorization.
27. For these employees, Respondent either recorded in section 2 of the Form I-9 the List A document together with the List B and List C document, recorded the List A document and crossed out the information for the List B and List C document, or destroyed the Form I-9 containing information for the List B and List C document and instead completed a new Form I-9 to record only the List A document.
28. From January 2006 to January 2011, 266 of 267 non-citizen new hires and 259 of 260 lawful permanent resident new hires presented a List A document during the initial employment eligibility verification process.

29. From at least January 2004 to June 2011, Respondent adopted and implemented a policy of requiring all non-citizen new hires to present a List A document during the employment eligibility reverification process.
30. By requiring all non-citizen new hires to present a List A document during the employment eligibility verification process, Respondent was able to enter information on the expiration dates of their List A documents in its Personnel Payroll System.
31. Respondent's employment eligibility reverification policy required all non-citizen employees with expiring "visas" and "work permits" to provide Respondent with valid "visa" or "work permit" documentation or risk termination.
32. Respondent reverified non-citizen employees by updating the expiration dates of their List A documents in Respondent's Personnel Payroll System.
33. Respondent's policy and practice of reverifying all non-citizen employees included the reverification of lawful permanent resident employees who presented a Form I-551 during the initial employment eligibility verification process.
34. Respondent reverified lawful permanent resident employees by requiring an unexpired Form I-551 to be presented.
35. From at least January 2004 to June 2011, Respondent knowingly treated individuals differently in the employment eligibility verification and reverification process on account of their citizenship status.

COUNT I

PATTERN OR PRACTICE OF DOCUMENT ABUSE IN THE EMPLOYMENT ELIGIBILITY VERIFICATION AND REVERIFICATION PROCESSES

36. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 35 as if fully set forth herein.

37. Respondent's standard policy and practice, from at least January 2004 to June 2011, was to require all non-citizen employees to provide more, different, or specific documents to establish employment authorization in connection with the Form I-9 employment eligibility verification and reverification processes.
38. U.S. citizen employees were not subjected to the same requirements imposed on all non-citizen employees to provide more or specific documents during the Form I-9 employment eligibility verification and reverification processes.
39. Respondent's differential treatment of non-citizen employees in the Form I-9 employment eligibility verification and reverification processes was knowing and intentional and adopted because of such employees' status as non-citizens.
40. Respondent's actions were committed with the purpose or with the intent of discriminating against non-citizen employees on the basis of their citizenship status and constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

REQUEST FOR RELIEF

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 Respondent to provide full remedial relief to any work-authorized non-U.S. citizens for the losses they have suffered as a result of the discrimination alleged in this complaint, including back pay and reinstatement;
 2. Take other appropriate injunctive measures to overcome the effects and prevent the reoccurrence of the discriminatory practices; and

3. Order Respondent to pay an appropriate civil penalty as determined by the Administrative Law Judge for each work-authorized non-U.S. citizen who is found to have been subjected to the discriminatory employment eligibility verification and reverification practices alleged in this complaint.
4. The Complainant prays for such additional relief as justice may require.

Respectfully Submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By:



SEEMA NANDA
Acting Deputy Special Counsel
Office of Special Counsel for Immigration-Related
Unfair Employment Practices

C. SEBASTIAN ALOOT
Acting Special Litigation Counsel
Office of Special Counsel for Immigration-Related
Unfair Employment Practices

LUZ V. LOPEZ-ORTIZ
RONALD H. LEE
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Telephone: (202) 616-5594
Facsimile: (202) 616-5509

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