

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 or the employment eligibility verification process. 8 U.S.C. § 1324b(a)(1), (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, Rose Acre Farms, Inc. ("Rose Acre"), 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 similarly situated U.S. citizens to show any specific documentation.

JURISDICTION

7. Respondent, a privately-held Indiana corporation with headquarters in Seymour, Indiana, produces and processes eggs and egg-related products in over forty locations in six states, and employs approximately 1,850 workers.
8. 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 dates of the alleged immigration-related unfair employment practices described below.
9. On December 14, 2011, the Office of Special Counsel opened an independent investigation against Rose Acre, pursuant to 8 U.S.C. § 1324b(d)(1) and 28 C.F.R. 44.304(a), because it had a reason to believe that Rose Acre utilized documentary policies and practices that potentially constituted a pattern or practice of document abuse under 8 U.S.C. § 1324b(a)(6).
10. The Office of Special Counsel's independent investigation established reasonable cause to believe that Respondent engaged, at least until December 22, 2011, in a pattern or practice of discrimination against non-U.S. citizen new hires in connection with satisfying its employment eligibility verification requirements under 8 U.S.C. § 1324a(b).
11. Pursuant to 8 U.S.C. § 1324b(d)(2), the United States' complaint filing deadline is June 19, 2012.
12. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

STATEMENT OF FACTS

13. From at least June 2009 to December 22, 2011, Respondent implemented a routine practice of requiring all non-U.S. citizen new hires to present a List A document during the initial employment eligibility verification process as a condition of employment.
14. Respondent had no policy or practice of demanding specific documents from U.S. citizen new hires during the employment eligibility verification process.
15. Since at least July 2008, and in connection with Respondent's enrollment in E-Verify, Respondent implemented an electronic I-9 process. After it began using the new electronic process, Respondent's human resources personnel filled in all sections of the Form I-9.
16. In or around June 2009, Respondent purchased and implemented a commercially-available employment eligibility verification software program sold under the name of "nowHIRE" that integrated both the process of generating an electronic Form I-9 and access to the E-Verify program.
17. Like its prior procedure for completing electronic Form I-9 during its first year using the E-Verify program, Rose Acre's human resources personnel fully controlled the input of information into the nowHIRE software program, and continued to input information for all sections of the Form I-9 for all new hires.
18. The nowHIRE software program guided authorized users through the electronic Form I-9 process and the E-Verify program by soliciting information about a new hire and, based on the information provided, presented a series of additional informational screens.

19. When a new hire was identified as a U.S. citizen, the nowHIRE software program provided a listing of the List A, List B and List C documents acceptable to establish identity and work authority in Section 2 of the Form I-9.
20. When a new hire was identified as a non-U.S. citizen, however, the nowHIRE software program did not provide a listing of all List A, List B, and List C documents acceptable to establish identity and work authority. Instead, for Section 2 of the Form I-9, the nowHIRE software prompted the user to obtain information only about the List A document presented by the non-U.S. citizen new hire.
21. From June 2009 through October 2011, 325 out of 328 of Rose Acre's non-U.S. citizen new hires nationwide, or 99.1 percent, produced a List A document to establish their work authority. During the same period, only 0.66 percent (10 out of 1519) of U.S. citizens hired produced a List A document to establish their work authority.
22. From at least June 2009, Respondent knowingly treated individuals differently in the employment eligibility verification process on account of their citizenship status.

COUNT I

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

23. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 22 as if fully set forth herein.
24. Respondent's standard practice, from at least June 2009 to December 22, 2011, was to require non-U.S. citizen employees to provide more, different, or specific documents than required of U.S. citizens to establish work authority in connection with the Form I-9 employment eligibility verification process.

25. U.S. citizen employees were not subjected to the same requirements imposed on non-U.S. citizen employees to provide more or specific documents during the Form I-9 employment eligibility verification process.
26. Respondent's differential treatment of non-U.S. citizen employees, as compared to similarly situated U.S. citizen employees in the Form I-9 employment eligibility verification process, was knowing, intentional and based on an employees' status as non-citizens.
27. Respondent's actions were committed with the purpose or with the intent of discriminating against non-U.S. 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 shown at hearing to have suffered economic injury as a result of Respondent's pattern or practice of discrimination alleged in this Complaint, including back pay, front pay and/or reinstatement;
 2. Take other appropriate injunctive measures to overcome the effects and prevent the recurrence of the discriminatory practices, including, but not limited to, ordering

Respondent to cease or limit its use of the nowHIRE software program until such time as it is shown to comply with the requirements of 8 U.S.C. § 1324b; 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 pattern or practice of discriminatory employment eligibility verification 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
LINDA WHITE ANDREWS
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

Dated: June 19, 2012