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

April 1, 1996

SHENSHENG ZHAO,	)
Complainant,	)
	) 8 U.S.C. §1324b Proceeding
v.	) OCAHO Case No. 94B00177
	)
SACOT, INC. AND/OR GRAND	)
CMS CO., LTD.,	)
Respondent.	)
_____	)

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS**

On October 11, 1994, Shensheng Zhao (complainant), filed a Complaint Regarding Unfair Immigration-Related Employment Practice against Sacot, Inc., and/or Grand CMS Co., Ltd. (respondent), alleging that he was knowingly and intentionally discharged by respondent firms based solely upon his citizenship status, in violation of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324b(a)(1)(B). Complainant also alleged that respondents intimidated, threatened, coerced or retaliated against him because of his citizenship status, in violation of 8 U.S.C. §1324b(a)(5).

In its Answer, filed December 6, 1994, respondent denied that complainant had been employed by Sacot, Inc., but admitted that he had been employed by Grand CMS Co., Ltd., from "September 1988 until on or about March 21, 1994, when complainant refused his recall to China and voluntarily quit without good cause." Answer at 1. Respondent also addressed the other accusations in the Complaint, alternately admitting, denying or stating that it had insufficient basis to do either, and set forth three (3) affirmative defenses.

On May 9, 1995, respondent filed a Motion to Dismiss, in which it challenges IRCA's applicability on the grounds that "[b]oth Sacot and Grand CMS had never employed more than three employees

from the time of their incorporation to the present.” Mot. Dismiss at 10. Under IRCA, persons or entities that employ three (3) or fewer employees are exempt from the provisions of 8 U.S.C. §1324b(a)(1) under the exception listed at 8 U.S.C. §1324b(a)(2)(A). Respondent states that “[f]rom inception, Sacot employed no more than three employees—two intracompany transferees and one locally hired.” *Id.* at 4. Further, respondent avers that “Complainant was never an employee nor was he ever compensated by Sacot. From 1991 through 1993, the Complainant was the sole employee of Grand CMS.” *Id.*

On May 19, 1995, complainant filed a Response to Respondent’s Memorandum of Law in Support of Its Motion to Dismiss which asserted that respondent’s motion “strategically indicates the Complainant was never compensated by Sacot. According to its theory, Mr. Lin Shang, Mr. Yongping Tian, Mr. Xin Chen and many other people should be countered [sic] as Grand CMS employees because they had been compensated by Grand CMS since 1991.” Resp. Resp’t’s Mem. Law Supp. Mot. Dismiss at 5–6. Other than that statement, however, complainant has not offered any information concerning the number of persons employed by either of the respondent firms on the date(s) of the alleged discriminatory acts.

On March 7, 1996, following a telephonic prehearing conference conducted on February 26, 1996, in the course of which the issue of subject matter jurisdiction was discussed, complainant filed a Motion to Dismiss Respondent’s Motion to Dismiss, in which it more specifically addressed the number of employees employed by Sacot, Inc. and Grand CMS. In that motion, also, complainant furnished documentary evidence that the two (2) named respondent firms are one and the same business entity, and he also charged that:

Sacot, or Grand CMS, had only 3 L–1 employees (Mr. Lin Shang, Mr. Yongping Tian and the Complainant) from China in July 1991. At least 3 more local employees were added. Mr. Xin Chen was employed since July 1991 in charge of Sales (Exhibit C–2, C–3 and C–4). Mr. Heping Cheng was employed in charge of Purchasing (Exhibit C–5 and C–6). Lisa was employed as Secretary.

Mot. Dismiss Resp’t’s Mot. Dismiss at 2. Exhibit C–2 consists of three (3) business cards identifying Lin Shang as President of Sacot, Inc.; Xin Chen (no English title) of Sacot, Inc.; and Yongping Tian as Financial Officer of Sacot, Inc. Exhibits C–3 and C–4 consist of a memorandum in Chinese, and a purported English translation. The memorandum was prepared for one Xin Chen, and concerned the purchase and delivery of an Oldsmobile automobile to a customer. Exhibit C–5 is a letter signed by Heping Cheng, Purchasing, on a

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Sacot, Inc. letterhead. Exhibit C-6 is an Airborne Express receipt addressed to the attention of one Heping Cheng at Sacot, Inc.

Viewing the evidence in the light most favorable to the non-moving party, complainant has clearly created an issue of fact as to whether either respondent firm employed four (4) or more persons at all times relevant. If complainant is correct, respondent is not exempt from IRCA's provisions, 8 U.S.C. §1324b(a)(2)(A), and respondent's Motion to Dismiss must be denied. On the other hand, should it be shown that respondent is correct, and that it employed three (3) or fewer employees during the germane time period, the Complaint will be dismissed. However, there are insufficient relevant facts presently available to enable the undersigned to rule upon respondent's dispositive motion.

Accordingly, respondent's Motion to Dismiss is denied.

The parties are hereby advised that a telephonic prehearing conference will be conducted shortly to determine the earliest mutually convenient date upon which this matter can be set for hearing in Los Angeles, California.

JOSEPH E. MCGUIRE  
Administrative Law Judge