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

ELIZABETH KLIMAS, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding
	)	CASE NO. 91200146
DEPARTMENT OF TREASURY Respondent.	)	

FINAL DECISION AND ORDER DISMISSING
COMPLAINANT'S COMPLAINT
(April 6, 1992)

E. MILTON FROSBURG, Administrative Law Judge

APPEARANCES:

Andrew Schwartz, Esquire, for Complainant

Jean Wilcox, Esquire, for Respondent

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I. *Introduction*

In the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. No. 99-603, 100 Stat. 3359 (November 6, 1986), Congress established a system to prevent the hiring of unauthorized aliens by significantly revising the policy on illegal immigration. In section 101 of IRCA, which enacted Section 274A of the Immigration and Nationality Act of 1952 (the Act), codified at 8 U.S.C. § 1324a, Congress prohibited the hiring, recruiting, or referral for a fee, of aliens not authorized to work in the United States, and mandated civil penalties for employers who failed to comply with the employment eligibility verification requirements of 8 U.S.C. § 1324a(b).

As a complement to the employer sanctions provisions contained in section 101, section 102 of IRCA, Section 274B of the Act, prohibited discrimination by employers on the basis of national origin or citizenship status. Found at 8 U.S.C. § 1324b, these antidiscrimination provisions were passed to provide relief for those employees, or potential employees, who are authorized to work in the United States, but who are discriminatorily treated because they are foreign citizens or of foreign descent. These protected individuals include United States citizens and nationals, permanent resident aliens, temporary resident aliens, refugees, and persons granted asylum who intend to become citizens.

Section 102 of IRCA authorizes a protected individual to file charges of national origin and/or citizenship discrimination with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). OSC can then file complaints with the Office of the Chief Administrative Hearing Officer (OCAHO) on behalf of the individual. If, however, the OSC does not file such a charge within one hundred twenty (120) days of receipt of the claim, the protected individual is authorized to file a claim directly with an Administrative Law Judge (ALJ), through OCAHO. 8 U.S.C. §§ 1324b(b)(1), 1324b(d)(2).

The aims of IRCA are thus dual in nature. The intent is to prevent employers from hiring unauthorized workers, but at the same time to prevent these same employers from being overly cautious or zealous in their hiring practices by avoiding certain classes of employees or, alternatively, treating them in a discriminatory fashion.

With its enactment, the IRCA legislation expanded the national policy on discriminatory hiring practices found in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Claims under Title VII did not raise a distinction between national origin and alienage discrimination. See Espinoza v. Farah Mfg. Co., Inc., 414 U.S. 86 (1973). Further, Title VII provided for claims solely against employers of fifteen (15) or more employees.

Accordingly, IRCA was enacted to provide for causes of action arising out of unfair immigration-related employment practices resulting in citizenship and/or national origin discrimination, while providing jurisdictional requirements based on the size of the employer's business in order to avoid overlap with Title VII claims. Specifically, Section 102 provides for claims of discrimination based upon national origin with respect to employers of more than three (3) but less than fifteen (15) employees, and also allows for causes of action based upon

citizenship discrimination against all employers of more than three (3) employees.

II. *Facts*

Complainant, Elizabeth Klimas, an alleged naturalized citizen of the United States and a native of Poland, was hired by Respondent on June 17, 1990. Her position carried with it an initial one year probationary period.

According to Complainant's personnel file, beginning on November 30, 1990, Complainant was advised by her manager, in writing, of incidents wherein Complainant displayed inappropriate and unacceptable conduct in the workplace. Complainant received further written reprimands and criticism including those given to her on December 3, 1990 and December 13, 1990. When presented with these latter memoranda at "counseling" sessions with her supervisor, Complainant refused to sign them and apparently stated that she would respond to them in writing.

On December 7, 1990, Complainant filed a discrimination complaint alleging sexual harassment by her supervisor. On January 23, 1991, Complainant submitted a memorandum to Respondent describing what she deemed to be inappropriate behavior by her supervisor during Complainant's "counseling" sessions. In response, the supervisor documented Complainant's continued disruptive behavior and advised her of the possibility of disciplinary action should the inappropriate behavior continue.

On February 21, 1991, Complainant's Job Element Appraisal, which is a detailed job performance review, was completed by one of Complainant's superiors. Complainant submitted a written response and "corrections" to this review.

On March 1, 1991, the sexual harassment charge was settled by agreement; part of the agreement was that Complainant would no longer work with her former supervisor.

Four (4) short memos dated March 20, 1991, which state that Complainant was verbally harassing other employees on that date, are contained in Complainant's personnel file. On March 25, 1991, a memorandum directed to Complainant from the Chief of Team N, Section I shows that there were other complaints about Complainant's behavior towards other employees. A notation on the memorandum stated that Complainant refused to discuss these issues with the

Section Chief until she was accompanied by a union representative. According to the memorandum, no date was set for that meeting and there is no indication in the personnel file that the meeting ever took place.

Sometime during Complainant's employment with Respondent, she was interviewed as part of her background search. This interview possibly occurred on or about March 28, 1991.

Complainant was notified of her termination on April 19, 1991, effective May 3, 1991. On May 6, 1991, she filed a charge based on immigration-related discrimination with the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), but on August 2, 1991, she was notified that OSC would not file a charge based on her alleged citizenship status claim and that OSC had forwarded her national origin claim to the Equal Employment Opportunity Commission (EEOC). Complainant filed a Complaint on her own behalf on August 16, 1991 alleging national origin and citizenship status discrimination by Respondent, i.e., alleging that Complainant was singled out for a background citizenship investigation.

III. *Procedural History*

On May 6, 1991, Complainant filed a charge with OSC alleging citizenship and national origin discrimination by Respondent. Complainant exercised her statutory right and filed a Complaint with the Office of Chief Administrative Hearing Officer against Respondent with OSC on August 16, 1991 based on the charge when OSC did not file a Complaint on her behalf.

On August 28, 1991, A Notice of Hearing On Complaint Regarding Unlawful Immigration-Related Employment Practices was issued by the Chief Administrative Hearing Officer in which Respondent was notified of the filing of the Complaint and of its right to file an Answer within thirty (30) days of receipt of the Notice so as avoid a default judgment. On the same date I was assigned to the case.

As is the regular course of business, on September 4, 1991, a Notice of Acknowledgment was sent from this office to the parties, wherein Respondent was again cautioned with regard to the time limitations associated with the Answer. On September 30, 1991, Respondent filed a timely Answer to the Complaint in which it raised three (3) affirmative defenses, i.e., that OCAHO had no jurisdiction over the Com-

plaint, that Complainant had failed to state a claim upon which relief could be granted, and that Complainant had been terminated from employment for legitimate, nondiscriminatory reasons. Respondent's Motion To Dismiss and supporting documentation were simultaneously filed. To date, Complainant has not filed a response to this motion.

On October 23, 1991, I held a pre-hearing telephonic conference with the parties in order to discuss both the case in general and the possibility of Complainant's obtaining legal representation. Upon inquiry, Complainant asserted that she would be represented shortly, but I proceeded to consider and reject Respondent's jurisdictional argument presented in its outstanding motion as I found that, under the relevant statutes and case law, I had jurisdiction of the case. See 8 U.S.C. § 1324b(a)(2)(C); Sosa v. U.S. Postal Service, 1 OCAHO 115 (12/15/89); Tovar v. U.S. Postal Service, 1 OCAHO 269 (11/19/90), appeal docketed, No. 91-70027 (9th Cir.); Roginski v. Department of Defense, 2 OCAHO 324 (5/6/91).

In addition, I advised Complainant that, based on the documents and statements before me, there was no apparent support for her alleged claim of citizenship discrimination. I also advised Complainant that I had no jurisdiction for her national origin claim and that the appropriate forum for that issue was the EEOC.

However, as Complainant was pro se and, in the interest of justice, I set a pre-hearing date, subject to her new counsel's schedule, for the limited purpose of taking testimony from Complainant in support of her alleged citizenship discrimination claim. On November 15, 1991, Complainant's new counsel filed a letter of representation and an Affidavit of Facts in support of Complainant's citizenship discrimination claim.

On November 26, 1991, I held a second pre-hearing telephonic conference to discuss the status of the case. I again informed Complainant and her counsel, as well as Respondent's counsel that, even with Complainant's Affidavit of Facts, there was no evidence before me which would support a prima facie case of citizenship discrimination. However, based on Complainant's counsel's assertions made at the conference, I tentatively reset the previously scheduled December 6, 1991 pre-hearing for January 24, 1992, to allow discovery to take place. I then scheduled another pre-hearing telephonic conference for January 7, 1992 in order to hear what new evidence, if any, Complainant's counsel would discover.

At the third pre-hearing telephonic conference on January 7, 1992, at which time I set guidelines for the January 24, 1992 pre-hearing, I advised Complainant again of the deficiency of her alleged citizenship discrimination claim. Complainant's counsel advised, when asked, that he had not begun discovery despite my canceling the prior pre-hearing in order to allow him to do so. At that point, I specifically directed him to investigate and obtain reliable evidence that might prove his client's prima facie case of citizenship discrimination, i.e., that she was singled out for a background check of citizenship status.

In response, Respondent set forth its position that Complainant's arguments were meritless. Respondent asserted that, as all federal employees must submit to a background investigation, Respondent's argument that she was singled out had no merit. In addition, Respondent argued that since Complainant's background check had not been completed at the time of her termination, its results could not have caused her to be terminated. Respondent further asserted that it was Complainant, and not Respondent, who had raised an issue reaching the possibility of Complainant's falsifying her employment application; Respondent stated that it did not know whether Complainant had falsified said employment application or not. In addition, contrary to Complainant's claim, Respondent stated that Complainant had been terminated for poor job performance and directed me to review the documents submitted with its Motion To Dismiss as evidence and support for this position.

Upon reflection of the parties' positions and statements, and despite Complainant's counsel's apparent disregard for my earlier directions to begin discovery to try to find support for his client's case, I allowed the previously scheduled pre-hearing to stand based on my concern for justice and fairness to the Complainant. I indicated that at the hearing, upon Complainant's setting forth a prima facie case of citizenship discrimination through her testimony and her presentation of admissible affidavits, depositions or other evidence, I would set a hearing date.

At the pre-hearing on January 24, 1992, after Complainant's counsel admitted that he still had not engaged in any type of meaningful discovery, i.e., he had not contacted any individual whom he believed could support his client's position, that he had not scheduled or taken any deposition of any individual, and that he had not requested any documents from Respondent, I was inclined to dismiss this matter as no facts or evidence were before me which would support a prima facie case of citizenship discrimination by Respondent, despite my patience and my repeated instructions to counsel to do discovery.

However, again in the interests of justice and fairness, I allowed Complainant to give sworn testimony.

During Complainant's testimony, she stated that she had audio tapes of at least one, if not two, meetings between herself and Respondent's internal security personnel wherein her termination was discussed. (Tr. 17-20, 21-22, 23-24). She stated that these discussions included charges that she had falsified her citizenship status and thus she was being fired. (Tr. 17-20, 21-22, 23-24).

Due to this new alleged evidence, I ordered Complainant's counsel to obtain and submit as evidence, both affidavits or depositions from the individuals present at those meetings, and certified transcripts of the said tape(s). Counsel was directed to submit all affidavits and transcript copies of the tape(s) on or before close of business on February 24, 1992. Counsel was reminded to serve all documents on opposing counsel.

As Respondent indicated that it would be cooperative in locating and turning over any such tapes, I stated that I would be inclined to issue an administrative subpoena only on a showing of Respondent's noncooperation or for other good cause.

On February 10, 1992, Complainant, sans counsel, filed an Affidavit For Issuance Of Subpoena Duces Tecum And Extension Of Time. On February 12, 1992, I issued an Order, and served it on all parties and counsel, in which I denied Complainant's requests because said requests were unclear, did not comply with our Rules of Practice and Procedure, and were contrary to my Order of January 28, 1992. I ordered further that Complainant's counsel contact his client in a timely manner to help obtain the alleged audio tapes and that Complainant should only request an administrative subpoena if necessary. Counsel was reminded that any such request must be in compliance with the relevant regulations. Counsel was again reminded of the time limitation in my prior Order.

On February 19, 1992, Complainant, on her own, telephonically contacted this court for instructions on how to get a certified transcript copy of the alleged audio tapes since she stated that she was having difficulty in reaching her attorney. After instructing her that the court could not get involved in her relationship with her attorney, she was advised that either a notary public or court reporter might be able to help her produce a certified transcript of the tapes. She was specifically instructed that she could not transcribe the tape herself.

On February 24, 1992, Complainant, sans counsel, filed a Declaration For Discovery, dated February 17, 1992, which she did not serve on her attorney. Complainant's purpose, I assume, in filing this document and its attachments was to submit "transcripts" of the two audio tapes alleged to exist by Complainant. One "transcript", I assume, is possibly from a meeting that took place on Complainant's last day at the office between Complainant and Respondent's representatives, and the other "transcript" is supposedly from a March 28, 1991 meeting and allegedly consists of a conversation among Complainant, an investigator and a union representative. Neither "transcript" was certified. Although the transcripts they are accompanied by a notary's seal notarizing Complainant's signature, they apparently had been typed and transcribed by Complainant herself in opposition to my Order. To add insult to injury, the notary did not certify to the transcriptions' contents, accuracy or the existence of the respective tapes.

On that same date, February 24, 1992, Respondent filed a letter pleading, along with supporting declarations, in which it asserted that their copy of the audio tape of the first meeting between Complainant and Respondent was destroyed in compliance with their normal procedures. It also asserted that there was no official tape made of the second meeting between Complainant and Respondent's personnel. Respondent further moved for a dismissal of this case.

At this point in time, I have before me Complainant's Complaint with its bold allegations, her Affidavit of Facts, her testimony from the pre-hearing on January 24, 1992, her uncertified "transcripts" of two alleged taped meetings between herself and Respondent, and Respondent's Motions To Dismiss based on both Complainant's failure to state a claim upon which relief can be granted and the fact that Complainant was terminated for legitimate, nondiscriminatory reasons.

IV. *Analysis and Legal Standards*

In this case, I have had to take into consideration, at all times, that although Complainant speaks English fluently, she does not always express herself clearly. In fact, if some statements Complainant has made are not considered in context, they do not make sense. Thus, I have at all times looked at the whole situation in making any determinations. Although this is really true in all cases, it was especially so in this one. In addition, many times, I believe, due to Complainant's intermittent language difficulty and her passion to be heard, Complainant allowed the facts regarding her sexual harassment

claim to blend with this case. (Tr. 13). I have taken extreme care to make sure that my determinations have not been influenced by that situation because not only was the charge settled, but it is not within my jurisdiction.

A. Respondent's Motion To Dismiss Based On Failure To State A Claim

I will first consider Respondent's Motion To Dismiss based upon Complainant's failure to state a claim upon which relief can be granted. In order to deny this motion, I must find that Complainant's Complaint has stated a factual situation that would come under the umbrella of 8 U.S.C. 1324b's protection.

Complainant has asserted that she is a United States naturalized citizen who was employed by Respondent, an employer with more than three (3) employees on the date of the discriminatory act. She alleges that she worked as a tax examiner and was qualified for that position and was terminated based on her national origin. Complainant further alleges that after she was terminated, her position remained open and that other individuals with her qualifications were sought.

Although Complainant has alleged only national origin discrimination in her Complaint, her filed charge contains an allegation of citizenship discrimination as does her accompanying written statement. It has been determined and is undisputed that at the time of the alleged discrimination, Respondent employed more than fifteen (15) employees. Under the controlling statute, Section 274B of the Immigration & Nationality Act, I do not have jurisdiction over this national origin discrimination claim and thus it must be dismissed. See Suchta v. U.S. Postal Service, 2 OCAHO 327. The proper jurisdiction is with the Equal Employment Opportunity Commission (EEOC).

However, due to the newness of the law, the fact that Complainant has alleged citizenship discrimination in her original charging documents, and the fact that Complainant was unrepresented at the time she filed her Complaint, I will follow the reasoning in Ryba v. Tempel Steel Company, 2 OCAHO 289, and allow Complainant the "widest ambit of administrative review" and consider her Complaint to be based on citizenship discrimination over which I do have jurisdiction. Id. at 10.

Therefore, I find that Complainant has stated a claim upon which I can grant relief, providing that she proves her claim. Therefore, I deny Respondent's Motion To Dismiss on that ground.

B. Respondent's Motion To Dismiss Based On Legitimate, Nondiscriminatory Reasons For Complainant's Termination

Respondent also moves that I dismiss based on the fact that Complainant was fired for legitimate, nondiscriminatory reasons. Before ruling on this motion, I must analyze the parties' respective burdens and the legal standards associated with them.

Under IRCA, it is a violation to discriminate with respect to hiring, recruitment or referral for a fee, of the individual for employment or the discharge from employment because of an individual's citizenship status. Section 274B(a)(1)(A).

1. Legal Standards

An allegation of discrimination may be proven by a showing of deliberate discriminatory intent on the part of an employer, regardless of the employer's motive. See 52 Fed. Reg. 37404. Discrimination or disparate treatment (as opposed to disparate impact) is defined as when "the employer is treating some people less favorably than others because of their race, color, religion, sex, or national origin." See Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978), citing to Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977); U. S. Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983). IRCA added to this list of protected classifications an individual's citizenship status. 8 U.S.C. 1324b(a)(1).

The majority of IRCA discrimination cases previously decided have relied upon the body of law pertaining to Title VII discrimination cases. It should be noted that at this point, I agree with the reasoning in United States v. Marcel Watch Co., 1 OCAHO 143 (3/22/90), that "(t)itle VII disparate treatment jurisprudence provides the analytical point of departure for Section 102 cases."

The Supreme Court established the order and allocation of proof to be used in discrimination cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). The claimant must first establish a prima facie case of discrimination or disparate treatment by showing that: (i) he belongs to a minority or suspect class; (ii) he applied and was qualified for employment by the employer; (iii) he was rejected for employment despite his qualifications; and (iv) after being rejected, the position

remained open and the employer continued to seek applications from similarly qualified applicants. The burden of production then shifts to the employer who must show a legitimate, nondiscriminatory reason for its refusal to hire the claimant. Upon this production, the claimant will then be given the opportunity to prove that the reason offered by the employer was a pretext used to cover an illegal motive.

This analysis was followed again by the Court in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). The Court expanded upon its ruling in McDonnell Douglas by explaining that the employer bears only the burden of explaining the nondiscriminatory reasons for its actions after the claimant has proven by a preponderance of the evidence a prima facie case. The employer need not prove by a preponderance of the evidence that its reasons for rejecting the claimant were legitimate. Burdine supra, at 254. The employer must only meet and contradict the claimant's prima facie case with evidence of a nondiscriminatory explanation for its actions. Marcel, supra, at 14, citing to Howard v. Roadway Express, 726 F.2d 1529 (11th Cir. 1984); see also Burdine, supra at 254. The burden of persuasion remains at all times with the claimant, who then has the opportunity to show that the employer's reason was pretextual. Burdine, supra, at 253.

Although the elements required to make out a prima facie case of employment discrimination as set forth in McDonnell Douglas focus on the "refusal to hire" scenario, wrongful termination of employment is also encompassed in 8 U. S. C. § 1324b(a)(1). See Crawford v. Northeastern Oklahoma State University, 713 F.2d 586 (10th Cir. 1983); see also Brown v. Parker-Hannifin Corporation, 746 F.2d 1407 (10th Cir. 1984); Whately v. Skaggs Companies, Inc., 707 F.2d 1129 (10th Cir. 1983). The Tenth Circuit has held that a Complainant can establish a prima facie case of discriminatory termination by showing: (1) that he was a member of a protected group; (2) that he was qualified for the position from which he was dismissed; (3) that he was removed from that position; and (4) he was replaced by someone not a member of the protected group. Whately v. Skaggs Companies, Inc., supra; Prieto v. News World Communications, Inc., 1 OCAHO Case 178 (5/24/90); Fayyaz v. The Sheraton Corp., 1 OCAHO Case 152 (4/10/90).

As in a case of discriminatory hiring or failure to promote, once the claimant makes out a prima facie case of discrimination, the burden of production shifts to the employer who must explain the legitimate reasons for his action. Id. The claimant must then attempt to show that the reasons offered are pretextual. Id.; see also Ryba v. Tempel

Steel Co., 1 OCAHO 289 (1/23/91). The shifting burden scheme of McDonnell Douglas and Burdine is equally applicable to a discriminatory discharge scenario in this circuit. See for instance, Samarzia v. Clark County, 859 F.2d 88 (9th Cir. 1988).

It is instructive to consider other Supreme Court discrimination cases. In the age discrimination case of Trans World Airlines, Inc., v. Thurston, 469 U.S. 111 (1985), the Court stated that in cases where direct evidence of discrimination is shown, the McDonnell Douglas test does not apply. The Court reasoned that the shifting burden test was necessary to provide a plaintiff a day in court despite the unavailability of direct evidence. In Thurston, the Court found that TWA's policy was discriminatory on its face; therefore, direct evidence was shown. See Tovar v. United States Postal Service, 1 OCAHO Case 269 (11/19/90) (policy of U.S. Postal Service which excluded all aliens but permanent residents from employment found to be discriminatory on its face, but found to be an exception within the parameters of 8 U.S.C. § 1324b(a)(2); therefore, the claimant did not prevail).

Therefore, it appears that to bypass the McDonnell Douglas/Burdine test, the direct evidence must show that the contested employment practice is discriminatory on its face. Thurston, 469 U.S. at 121. When the direct evidence excludes the McDonnell Douglas/Burdine scheme, Thurston permits the employer to attempt to prove an affirmative defense to its discriminatory practice. Id. at 122.

2. Application of Legal Standards

In the Complaint, Complainant's Affidavit of Facts, and her sworn testimony on January 24, 1992, Complainant stated that she was a naturalized citizen of the United States and that she hired by Respondent on June 17, 1990 and promoted one salary grade on September 23, 1990. She stated that, based on sexual harassment by her supervisor, she had filed a sexual harassment charge on December 7, 1990.

According to Complainant, in retaliation for her filing this complaint, her supervisor, along with the supervisor's friends and family who were also employed by the Respondent, tried to have Complainant fired. When their alleged efforts were fruitless, Complainant alleged that "management illegally investigated (her) immigration status in the United States.

Somehow management was able to view the papers filed with the INS concerning emigration (sic) to the United States and (her)

subsequent acquisition of citizen status." See Affidavit of Facts, filed November 15, 1991 at page 1.

Complainant alleged that, based on this "illegal" inspection of her background, she was interviewed by Respondent's Internal Security division and accused of falsifying her employment application, that her tax return was scrutinized, and that former employers were contacted illegally, all in an effort to terminate her. Id. In fact, she states that she was terminated on May 3, 1991 due to these allegedly discriminatory acts.

As there is no evidence of direct discrimination in this case, I must analyze Complainant's claim under the McDonnell-Douglas/Burdine tests. Thus, it is Complainant's burden to prove by a preponderance of the evidence a prima facie case of citizenship discrimination. It would be Respondent's burden to articulate a legitimate nondiscriminatory reason for Complainant's termination only after Complainant has sustained her burden.

a. Complainant Must Prove A Prima Facie Case of Discrimination Before Respondent Must Articulate A Legitimate Nondiscriminatory Reason for Complainant's Termination

To meet her burden, in the Ninth Circuit, Complainant must prove, by a preponderance of the evidence that:

1. she was a member of a protected class;
2. she was terminated from her position;
3. there is a causal connection between her protected status and her termination resulting in disparate treatment.

United States v. San Diego Conductors, 2 OCAHO 314 (4/4/91).

i. Complainant must prove that she is a member of a protected class.

Complainant alleges in her Complaint and in her sworn testimony at the pre-hearing on January 24, 1992 that she is a naturalized citizen of the United States, and thus is protected under IRCA. (Tr. 7). Respondent admits in its Answer that Complainant is a United States citizen. Therefore, I find that this first element of the prima facie case has been satisfied.

ii. Complainant must prove that she was terminated from her position with Respondent.

Complainant also had the burden to prove that she was terminated from her position. In her Complaint, in her Affidavit of Facts and in her sworn testimony, Complainant asserts this fact. Although Respondent denies the allegation that it fired Complainant based on discriminatory motives, it has submitted documentation to the court which includes Respondent's letter of termination addressed to Complainant which is signed by Complainant. Therefore, I find that this element of the prima facie case is also satisfied.

iii. Complainant must prove that there is a causal connection between her protected status and her termination resulting in disparate treatment.

This is the final element of the prima facie case which Complainant has the burden of proving by a preponderance of the evidence.

I want to note that in the interest of giving Complainant every opportunity to sustain her burden of establishing a prima facie case of citizenship discrimination, and despite the fact that Complainant did not fully comply with my prior Order in regard to certification of the alleged tapes from meetings with Respondent, I have reviewed the uncertified self-transcribed "transcripts" of the two meetings between Respondent and Complainant since Complainant has testified that it was during these meetings that Respondent discussed the discriminatory nature of Complainant's termination.

Despite a thorough review of these "transcripts", I have found no support for Complainant's prima facie case or for anything that would indicate to me that any discriminatory activities by Respondent had occurred. Therefore, I find that, despite the many opportunities I allowed Complainant in which to do so, she has not satisfied this element of her prima facie case.

V. *Findings of Fact and Conclusions of Law and Order*

Based on the total record in this case and the relevant law, I find that:

1. Complainant has stated a claim upon which relief can be granted;

2. Respondent's Motion To Dismiss based upon the position that Complainant has not stated a claim upon which relief may be granted must be denied;

3. Complainant has not met her burden of proving a prima facie case of citizenship discrimination by a preponderance of the evidence;

4. Complainant's Complaint must be dismissed based on the fact that she has not met her burden of proving a prima facie case.

5. Any motions not previously ruled on are denied.

This Decision and Order is the final decision and order of the Attorney General. Pursuant to 8 U.S.C. 1324b(i) and 28 C.F.R. 68.53(b), any person aggrieved by this final Order may, within sixty (60) days after entry of the Order, seek its review in the United States Court of Appeal for the circuit in which the violation is alleged to have occurred, or in which the Respondent transacts business.

IT IS SO ORDERED this 6th day of April, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge