

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

LAZARO ANTONIO ARRIETA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. §1324b Proceeding
	)	Case No. 92B00135
MICHIGAN EMPLOYMENT	)	
SECURITY COMMISSION	)	
Respondent.	)	
_____	)	

FINAL ORDER AND DECISION GRANTING RESPONDENT'S  
MOTION TO DISMISS

I. Procedural History

On February 10, 1992, Complainant, Mr. Lazaro Arrieta, an alleged legal permanent resident, filed a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practice (OSC) against Respondent, the Michigan Employment Security Commission (MERC), alleging national origin discrimination in violation of section 274B of the Immigration and Nationality Act (Act), 8 U.S.C. §1324b. On August 7, 1992, Respondent filed its Answer and Motion To Dismiss. Complainant filed his response on September 8, 1992, entitled Request For Motion Not To Be Dismissed. As Complainant was pro se and his response did not fully address the determinative arguments raised on Respondent's motion, on September 23, 1992, I issued an Order To Show Cause Why Respondent's Motion To Dismiss Should Not Be Granted.

On October 8, 1992, Complainant filed a Request For Motion (sic) For Extension Of Time which I granted on October 9, 1992 and allowed Complainant until October 19, 1992 in which to address the relevant issues and to establish that he met the definition of "protected individual" under Section 274B(a)(3)(B) of the Act. Complainant then telephonically notified this Court that he had moved and I reserved

the Order To Show Cause on October 15, 1992 and granted Complainant, sua sponte, an extension of the time until October 29, 1992 to respond to the Order. To date, Complainant has not filed any response.

## II. Discussion

### A. Abandonment

As previously stated, to date, this pro se Complainant has not responded to my Order To Show Cause. However, in this case, there is no doubt in my mind that Complainant's pro se status is not the cause of Complainant's nonresponse. I base this belief on the evidence in the case file, i.e., Complainant's literate and well presented Complaint filed June 15, 1992, its Request for Motion Not to Be Dismissed filed September 8, 1992, its written request for extension of time to file its response to my Order To Show Cause filed October 8, 1992, and Complainant's wife's clear and repeated telephonic communications<sup>1</sup> with this Court. Thus, it is clear to me that Complainant was aware of this Court's procedures and its own responsibilities.

Under 28 C.F.R. 68.37(b)(1), I may find that a party has abandoned its complaint or request for hearing if such party has failed to respond to the Court's orders. United States of America v. McDonnell Douglas Corporation, OCAHO Case No. (8/28/92); see also Egal v. Sears Roebuck and Company, 3 OCAHO 442 (7/25/92) at 12 note 9. In this case, a review of the Court file reveals that Mrs. Arrieta telephonically contacted this court on October 14, 1992, and stated that she and her husband had moved and that a former neighbor had called them to inform them that my Order To Show Cause had been delivered to their old address. Mrs. Arrieta advised that the Order had been read to her. Based on the circumstances, though, I directed that the Order be reserved at Complainant's new address and, sua sponte, granted Complainant an extension of time to file a response. Therefore, the Court is satisfied that proper service of the Order To Show Cause has been effected and that Complainant is aware of the consequences of a nonresponse.

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<sup>1</sup> Mrs. Arrieta called this Court twice on June 22, 1992, and once on each of the following dates: August 5, 1992, August 6, 1992, August 17, 1992, August 31, 1992, September 10, 1992, October 2, 1992, and October 14, 1992. Each call advised the Court of, either, a filing in transit or a change of temporary or permanent mailing address.

As Complainant has not complied with my Order and, as evidenced, had sufficient access to this Court should there have been some problem with filing its response, I find that Complainant has abandoned his Complaint. 28 C.F.R. 68.37(b)(1). On this basis alone, I may, and do, dismiss this case.

It should be noted that I may also grant dismissal based on Respondent's motion should I have found that Complainant had not stated a claim upon which relief can be granted. 28 C.F.R. 68.10. In this case, Respondent had raised the issue of whether Complainant was protected under the Immigration and Nationality Act.

In order for this Court to have jurisdiction, Complainant must establish that he is a protected individual. Section 274B(a)(3)(B) of the Act; see also Speakman v. The Rehabilitation Hospital Of South Texas, OCAHO Case No. 92B00186 (11/6/92). Based on Complainant's statements in its Request For Motion Not To Be Dismissed, filed on September 8, 1992, and the averments in the Complaint, I hold that Complainant did not establish that he is a protected individual as defined in Section 274B(a)(3)(B) of the Act. Therefore, under this alternate analysis, as a matter of law, this case must be dismissed.

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 10th day of November, 1992, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge