

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

GRZEGORZ PIOTEREK,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. §1324b Proceeding
	)	OCAHO Case No. 92B00261
SCOTT WORLDWIDE FOOD	)	
SERVICE,	)	
Respondent.	)	
_____	)	

FINAL DECISION AND ORDER GRANTING MOTION TO  
DISMISS  
(June 9, 1993)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Grzegorz Pioterek, pro se.  
William D. Bubb, for Respondent.

I. Statutory and Regulatory Background

This case arises under Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. §1324b. Section 1324b provides that it is an "unfair immigration-related employment practice" to discriminate against any individual other than an unauth-orized alien with respect to hiring, recruitment, referral for a fee, or a discharge from employment because of that individual's national origin or citizenship status. . . ." Also prohibited is intimidation or retaliation as the result of recourse to the protection under §1324b, and overdocumentation in compliance with the employer sanctions program under 8 U.S.C. §1324a. Section 1324b covers "protected individual[s]." Such individuals include aliens lawfully admitted for either permanent or temporary residence. 8 U.S.C. §1324b(a)(3).

Congress established the §1324b cause of action out of concern that the employer sanctions program, 8 U.S.C. §1324a, might lead to employment discrimination against those who appear "foreign," including those who, although not citizens of the United States, are lawfully present in this country. "Joint Explanatory Statement of the Committee of Conference," Conference Report, H.R. REP. NO. 1000, 99th Cong., 2d Sess. 87 (1986). Protected individuals alleging discriminatory treatment on the basis of national origin or citizenship must initially file their charges with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel or OSC). The OSC is authorized to file complaints before administrative law judges designated by the Attorney General. 8 U.S.C. §1324b(e)(2).

In the event that OSC does not file a complaint before an administrative law judge within a 120-day period, IRCA permits private actions. Upon receipt of notification by OSC that it will not file a complaint the person making the charge has 90 days to file a complaint. 8 U.S.C. §1324b(d)(2).

## II. Procedural Summary and Relevant Precedent

Complainant, Grzegorz Pioterek (Pioterek or Complainant), filed a discrimination charge with OSC against Scott Worldwide Food Service (Scott) on March 20, 1992. OSC advised Complainant by letter dated August 27, 1992 that it had determined not to file a complaint. OSC explained that it lacked jurisdiction "of [the Complainant's] allegations of national origin discrimination because of the number of individuals employed by this employer." In that letter, OSC advised further that Pioterek could file his own complaint within 90 days.

On November 22, 1992, Pioterek filed a complaint, amended on January 4, 1993. Pioterek, an alien authorized to work in the United States, contends that he was discriminated against because of his national origin. He contends that he was employed by both Scott and Anderson Cleaning Service, Inc.

On January 6, 1993, OCAHO issued its notice of hearing transmitting the complaint to Respondent.

On February 11, 1993, Scott filed a Motion to Dismiss dated February 10, 1993. Scott contends that Complainant's only claim is national origin discrimination, that it employs more than fourteen

individuals, and denies that it ever employed Complainant. Scott asserts that Complainant has, therefore, failed to state a claim upon which relief can be granted.

The relevant statute provides that:

[I]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien as defined in section 274A(h)(3)) with respect to the hiring, firing, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment.

8 U.S.C. §1324b(a)(1).

An exception to 8 U.S.C. §1324b coverage excludes those employers who have sufficient employees to meet the jurisdictional requirement of Title VII of the Civil Rights Act of 1964, as amended, *i.e.*, more than three but fewer than fifteen employees. See 8 U.S.C. §1324b(a)(2)(B); Parkin-Forrest v. Veterans Administration, 4 OCAHO 516 (4/30/93) at 3-4. (Additional precedent cited therein).

### III. Discussion

Complainant alleges only national origin discrimination. Respondent employs more than fourteen individuals. Therefore, the Respondent entity is too large to fall within IRCA national origin jurisdiction. Furthermore, it appears from the filings in this case, as well as those in Pioterek v. Anderson Cleaning Service, Inc., OCAHO Case No. 92B00260, that although Complainant was assigned duties at Scott's facility he was at all times an employee of Anderson, not an employee of Scott. Since Scott did not employ Complainant, I conclude that Complainant has failed to state a claim on which relief can be granted.

Accordingly, Scott's motion is granted, and the complaint, as amended, is dismissed.

### IV. Ultimate Findings, Conclusion, and Order

I have considered the pleadings and accompanying documentary support as submitted by the parties. All motions and other requests not previously disposed of, are denied. Accordingly, as more fully explained above, I find and conclude that because Complainant alleges discrimination based exclusively on national origin and because Scott never employed Complainant, his claim is not cognizable under 8 U.S.C. §1324b(a)(1).

3 OCAHO 530

Pursuant to 8 U.S.C. §1324b(g)(1), this Decision and Order is the final administrative order in this proceeding and "shall be final unless appealed" within 60 days to a United States Court of Appeals in accordance with 8 U.S.C. §1324b(i).

**SO ORDERED.**

Dated and entered this 9th day of June, 1993.

---

MARVIN H. MORSE  
Administrative Law Judge