

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

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| MARIA GORDILLO, |) |
| Complainant, |) |
| |) |
| v. |) 8 U.S.C. §1324b Proceeding |
| |) CASE NO. 93B00122 |
| ILLINOIS DEPARTMENT |) |
| OF EMPLOYMENT, |) |
| SECURITY, |) |
| Respondent. |) |
| _____ |) |

FINAL ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDIC-
TION

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. 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. 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 in relation to either being hired, fired or recruitment or referring for a fee, because they are foreign citizens or of foreign descent. 8 U.S.C. 1324b. 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 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) should it find reasonable cause to believe that such discrimination occurred. If, however, the OSC does not file such a charge within 120 days of receipt of the claim, the protected individual is authorized to file a claim directly with an Administrative Law Judge (ALJ), through Office of the Chief Administrative Hearing Officer (OCAHO). 8 U.S.C. §§ 1324b(b)(1), 1324b(d)(2).

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, but fewer than fifteen employees, and also allows for causes of action based upon citizenship discrimination against all employers of more than three employees.

II. Procedural History

Complainant, Mrs. Maria Gordillo, a Peruvian national, who alleges that she is a legal permanent resident of the United States with work authorization, filed a charge with the Office of Special Counsel (OSC) on July 15, 1992, alleging national origin and citizenship discrimination by Respondent. In a determination letter dated March 23, 1993, OSC advised Complainant that, in its opinion, it did not have jurisdiction over her charge as Respondent was not an employer or an organization which made job referrals for a fee. See 8 U.S.C. 1324b. OSC further informed her that her charge had been referred to the Equal Employment Opportunity Commission and that she had the right to file her own timely Complaint with OCAHO. As such, on June 10, 1993, Complainant filed her Complaint alleging that Respondent did not hire her based on her citizenship status, in violation of 8 U.S.C. 1324b.

On June 24, 1993, a Notice of Hearing On Complaint Regarding Unlawful Immigration-Related Employment Practices was issued by OCAHO, advising the parties of Complainant's filing of the Complaint

and Respondent's obligation to file a timely Answer in order to avoid the possible issuance of a default judgment. On June 29, 1993, as is my normal practice, I issued a Notice of Acknowledgment in which I informed the parties that I had been assigned to the case and again cautioned Respondent that a timely Answer to the complaint was due in order to forestall the issuance of a default judgment. On July 28, 1993, Respondent filed its timely Answer, affirmative defenses and a Motion To Dismiss For Lack of Subject Matter Jurisdiction.

III. Discussion

As Complainant is pro se, and the issue before me and the law are clear, I find that there is no prejudice to Complainant in my ruling on Respondent's pending motion without benefit of her response. Respondent argues that it is part of a statewide system of public employment offices established as part of the Illinois' unemployment insurance program. Ill. Rev. Stat. 1991, ch. 48, par. 172(a) (Section 172(a) and Section 173). Respondent quotes from the relevant portion of the statute as follows:

Section 173, §1. The Department of Employment Security is authorized to establish and maintain free employment offices, for the purpose of receiving applications of persons seeking employment and applications of persons seeking to employ labor...(Emphasis added).

Ill. Rev. Stat. 1991, ch. 48, par. 172(a) (Section 172(a) and Section 173).

My authority to hear cases stems from the Congressional grant and limitation of 8 U.S.C. 1324b(a)(1) which states:

It 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) [8 USC 1324b(h)(3)]) with respect to the hiring, 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))

Specifically, Complainant alleges that an agent of the Respondent treated her rudely, would not give her three job referrals, but would only give her one, that Respondent made copies of her work authorization documents and told her that he would send them to the Immigration and Nationality Service for verification before making any other employment referrals and that she was escorted from the office by security. As Complainant does not allege that she was seeking

employment with Respondent, but was seeking referral for employment, and as Respondent is not a referrer for a fee, it is clear that Respondent is not subject to 8 U.S.C. 1324b. Thus, without making any comment on Complainant's claim, I must dismiss this case for lack of subject matter jurisdiction. As such, Respondent's motion is granted.

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 Appeals for the circuit in which the violation is alleged to have occurred, or in which the Respondent transacts business.

IT IS SO ORDERED this 29th day of July, 1993,
at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge