

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

LEONID NAGINSKY,)
Complainant,)
)
v.) 8 U.S.C. §1324b Proceeding
) CASE NO. 93B00087
DEPARTMENT OF DEFENSE)
AND EG & G DYNATREND,)
Respondent.)
_____)

ORDER DENYING COMPLAINANT'S
REQUEST FOR FOREIGN COUNSEL

On July 28, 1993, I received a request from the Complainant, Leonid Naginsky, a Russian born naturalized citizen, for permission to obtain legal representation in Russia instead of engaging legal counsel in the United States.

Mr. Naginsky supports his request on the following grounds:

1. alleged similar employment discrimination directed at him in Russia;
2. alleged political overtones in this case involving the changing and evolving nature of the relationship between the United States and Russia;
3. Complainant's lack of legal awareness regarding, both, the standards used in granting security clearances and his access to legal process;
4. the total lack of information he has been given as to the basis for denial of the level of security clearance he alleges was necessary to perform his job and the issue of whether he will be able to work on a defense contract in the future;
5. the lack of knowledgeable attorneys who can handle this case;
6. the benefit to others in similar circumstances from this case's publicity, i.e., encouraging them to come forward to vindicate their rights; and,

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7. his lack of financial resources to engage knowledgeable counsel in the United States in this case, but the availability of funds to pay for a Russian attorney who works for considerably less.

As the regulations are clear on this issue, I will rule on this request without waiting for Respondent's response.

This Court is bound by the Rules of Practice and Procedure, 28 C.F.R. Part 68, on this novel issue. Specifically 28 C.F.R. 68.33 states, in relevant part:

Representation (1) A party may be represented by an attorney qualified under paragraph (b)(4) of this section, at no expense to the Government....

(4) Qualifications of attorneys. An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

28 C.F.R. 68.33(B).

A reading of the regulations reveals that unless the Russian based attorney that Complainant wishes to engage meets the requirements of the above regulation, i.e., he is admitted to practice in the United States as specified, I must deny Complainant's request. Based on the contents of Complainant's request and the fact that he does not state that he wishes to engage counsel who meets the requirement's of 28 C.F.R. 68.33, I infer that said unnamed attorney does not meet the requirements for proper representation. As such, I must deny Complainant's request.

Complainant is reminded that he is required to respond to Respondent's pending Motion for Summary Decision on or before August 11, 1993.

SO ORDERED this 30th day of July, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge