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

IN RE CHARGE OF PAUL KHATAMI UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	Case No. 92B00217
GUARDSMARK, INC. Respondent.	)	

DECISION AND ORDER DENYING
RESPONDENT'S MOTION FOR SUMMARY DECISION.

I. *Background and Procedural History.*

In November of 1991 Guardsmark ("Guardsmark" or "Respondent"), a California corporation, hired Paul Puya Khatami ("Khatami" or "Complainant"), a permanent resident alien, for the position of a security guard at its business offices in San Francisco, California. Answer to Amended Complaint at ¶ 9.[1] Respondent is a corporation whose headquarters are located in Memphis, Tennessee and who maintains places of business in 46 states and the District of Columbia. Respondent employed more than three employees on the date of the alleged discriminatory acts and practice relating to Khatami, and continues to do so today. See Answer to Amended Complaint at ¶ 2 and ¶ 7. As a prerequisite to employment with the Respondent, Mr Khatami was required to complete an employment application upon which there appeared a question asking for the applicant's citizenship status and, in the case of non-citizens, the applicant's registration

[1] Although the pleadings in this case show that there are significant facts in dispute, the material facts relating to this motion are not in dispute. For example, Complainant alleges in its amended complaint that Khatami was hired in September of 1991, but I have used the date of December 1991 taken from Respondent's answer to the amended complaint for purposes of stating the factual background to this case.

number. Amended Complaint at ¶ 10. Answer to Amended Complaint at ¶ 10. According to the amended complaint, one of Respondent's employees reviewed Khatami's application and requested that he present his "green card", referring to Khatami's alien registration card. Amended Complaint at ¶ 11. Respondent denies that any of of its employees asked for Khatami's green card. Answer to Amended Complaint at ¶ 11. At the time Khatami was hired by Guardsmark he was authorized for employment in the United States. Khatami became eligible for naturalization in 1982, but, has never applied for naturalization.[2] At the time of hire, Khatami completed the Immigration and Naturalization Service ("INS") Employment Verification Form (Form I-9) by using his social security card, California driver's license and INS Form G-641 to establish his work authorization. Amended Complaint at ¶ 14 and Answer to Amended Complaint at ¶ 14.

In December 1991, an employee at the Guardsmark San Francisco office asked Khatami to present his immigration documents. The employee who requested Khatami's immigration documents in December of 1991 was acting on directives from Respondent's main office in Memphis, Tennessee. Amended Complaint at ¶ 16 and Answer to Amended Complaint at ¶ 15 and ¶ 16. Khatami complied with the request by providing his social security card, California driver's license and INS Form G-641. Amended Complaint at ¶ 17 and Answer to Amended Complaint at ¶ 17. Complainant states that on or about January 31, 1992, Guardsmark again asked Khatami to present his alien registration card. Khatami could not comply with the request. Amended Complaint at ¶ 19.[3] On February 2, 1992 Khatami was laid off from work by Guardsmark because he did not present his alien registration card.[4] Amended Answer at ¶ 19.

On March 10, 1992 Khatami filed his charge of discrimination with the Office of Special Counsel ("OSC"). OSC investigated the case and on October 6, 1992 filed the Complaint in this case with the Chief

---

[2] These facts are not in dispute and are the material facts that I must consider in determining the merits of Respondent's motion.

[3] Respondent denies that it made this additional request for Khatami's alien registration card. Amended Answer at ¶ 18.

[4] Respondent agrees that Khatami was laid off from work on February 2, 1992, but denies it was because Khatami failed to present an alien registration card.

Administrative Hearing Officer ("CAHO"). The complaint alleges inter alia that Respondent committed an immigration-related unfair employment practice in discharging Khatami on February 2, 1992 because he failed to present his alien registration card to prove his work authorization. The complaint alleges that this request constituted a request for more or different documents than required by 8 U.S.C. § 1324a(b) and violated 8 U.S.C. § 1324b(a)(6). Respondent answered the complaint and denied many of the allegations in the complaint, asserting five affirmative defenses, including that Khatami was not a "protected individual."

On April 19, 1993 Complainant filed a motion to amend the complaint, and submitted the amended complaint. The amended complaint makes two changes: (1) the addition of a pattern and practice count to the count of individual discrimination contained in the original complaint, and (2) a general clarification of the statement of facts as a result of information received through the discovery process and through subsequent investigation by the Special Counsel.

On April 20, 1993 Complainant filed its First Status Report, stating that Respondent had provided partial responses to its first set of discovery requests; it was continuing to seek voluntary compliance from Respondent on its remaining discovery requests; it had received discovery requests from Respondent; the parties were in the process of scheduling depositions of various individuals; and, there were settlement discussions taking place between the parties.

On May 4, 1993 Complainant, pursuant to 28 C.F.R. § 68.23(a), filed a motion to compel discovery.

On May 7, 1993 Respondent filed opposition pleadings to the motion to amend and the motion to compel discovery.

On May 20, 1993 I issued an order granting Complainant's motion to amend the complaint and stayed its motion to compel discovery until Complainant complied with ¶ 3(a) of my Order Directing Prehearing Procedures, issued on January 5, 1992. I further ordered Complainant to file, on or before June 18, 1993, a supplemental motion to compel if it was unable to obtain the production of the documents after discussing the matter with Respondent's counsel.

On May 25, 1993 Respondent filed a motion for summary decision, for a stay of discovery, and for an award of attorney fees. On June 4,

1993 Complainant filed its response to the motion for summary decision.

On June 21, 1993 Respondent filed its answer to the amended complaint and on June 30, 1993 Respondent filed a reply memorandum in support of its motion for summary decision. I have carefully considered all the pleadings filed in this case by both parties, and for the reasons stated below deny Respondent's motion for summary decision, but only partially lift the stay order on discovery, and deny Respondent's motion for attorney fees.

II. *Legal Analysis*

A. Respondent's Argument.

Respondent argues that Khatami is not a "protected individual" as defined by IRCA because he is a permanent resident alien who failed to apply for naturalization six months after he became eligible, and therefore, he does not have any standing to bring a claim of document abuse.

More specifically, Respondent states that the language of 8 U.S.C. § 1-324b(a)(6) clearly states that, "For the purposes of paragraph (1), a person's or other entity's requests . . . for more or different documents than are required . . . shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals. Respondent points out that ¶ 1, § 1324b(a)(1) defines "unfair immigration-related employment practice" only as "national origin discrimination, or discri-mination against a "protected individual" . . . because of such individual's citizenship status." Respondent argues that by referring back to ¶ 1, § 1324b(a)(6) expressly limits the document abuse prohibition to persons with standing to claim discrimination under § 1324b(a)(1).

Respondent further states that ¶ 3, § 1324(a)(3) excludes from the class of "protected individuals" a permanent resident who "fails to apply for naturalization within six months of the date the alien first becomes eligible." Guardsmark argues that based on the unambiguous limiting language of § 1324b(a)(6), Khatami, who does not have standing to claim citizenship discrimination, cannot state a claim for document abuse.

Respondent also argues that in the legislative history, IRCA shows that Congress intentionally limited the scope of persons protected

against citizenship coverage, and this was not changed with the passage of IMMACT. More specifically, Respondent states that the original version of the proposed legislation did not even include a non-discrimination provision. This type of provision was first proposed by Representative Barney Frank.

The so-called Frank Amendment prohibited national origin and citizenship discrimination. Significantly, states Respondent, the Frank Amendment made no distinction between classes of aliens. H.R. 1510, 98th Cong., 2nd Sess. § 274A(h)(1)(A), 130 Cong. Rec. H6168 (daily ed. June 30, 1984). Respondent further states that the IRCA proposal died in conference committee at the end of the Ninety-Eighth Congress. See id at H6185. Respondent next points out that when IRCA was re-introduced, opponents of the non-discrimination provision were successful in limiting citizenship discrimination to citizens and "intending citizens."

Respondent next focuses his attention on the debate in Congress on the need for a non-discrimination provision which ended with legislation which limited the scope of persons protected from citizenship protection because it did not offer protection to long term permanent residents who do not apply or intend to apply to become citizens.

Respondent further states that when IRCA was amended in 1990 to include the new document abuse prohibition, the debate in Congress again centered on whether there was a continuing need for the non-discrimination provision. Respondent argues that there is no indication in the legislative history that Congress intended to broaden the scope of the protection against discrimination to cover long term permanent residents like Khatami who fail to apply for naturalization. Although Congress changed "intending citizen" to "protected individual", Respondent states Congress left intact the exclusion for permanent resident aliens who fail to obtain naturalization. Respondent concluded that based upon the legislative history of IRCA and IMMACT, long term permanent resident aliens who have not applied for naturalization were never intended to be protected from document abuse. In my view, Respondent has misread and misinterpreted the legislative history and the application of 8 U.S.C. § 1324b(a)(6) to the facts in this case.

B. History of the Immigration and Reform and Control Act of 1986 ("IRCA") and the Immigration Act of 1990 (IMMACT").

IRCA made it unlawful for an employer to knowingly hire an alien who was not authorized for employment in the United States. 8 U.S.C. § 1324a(a). In addition, IRCA required that all employers verify the employment eligibility of all persons hired after November 6, 1986, by viewing certain combinations of documents and having the employee complete an I-9 Form. 8 U.S.C. § 1324a(b). Civil and criminal penal-ties could be imposed on employers who hired undocumented aliens, or who failed to verify the employment eligibility of new employees. 8 U.S.C. § 1324a(e).

Many feared that because of the sanctions imposed by IRCA, employers would become overly cautious and would refuse to hire foreign-looking or for-eign-sounding individuals as a sure method of not violating 8 U.S.C. § 1324a(a). See Ryba v. Tempel Steel Company, 1 OCAHO 289 (January 23, 1991). To address this fear, Congress included within IRCA an anti-discrimination provision, which made it an unfair immigration-related employment practice for a person or entity to discriminate with respect to the hiring, recruitment or referral for a fee, or the discharging of an individual. See United States v. Lasa Mktg. Firms, 1 OCAHO No. 141, 1990 OCAHO LEXIS 12 (March 14, 1990). This prohibited discrimination was limited to discrimination on the basis of an individual's national origin, and, for a more limited category of individuals, to discrimination on the basis of their citizenship status.

Recognizing that IRCA represented an experiment, Congress included a sunset provision within IRCA. 8 U.S.C. § 1324a(1). This provision required that the General Accounting Office ("GAO") submit three annual reports to Congress concerning problems with IRCA's implementation. The GAO's report was to address:

1) whether IRCA's provisions had been carried out satisfactorily;

2) whether IRCA caused a pattern of discrimination; and

3) whether IRCA created an unreasonable regulatory burden on employers.

8 U.S.C. § 1324a(j)(1).

In its third, and final report, the GAO reported that IRCA's provisions had been carried out satisfactorily and that IRCA had not created an unreasonable regulatory burden on employers. However, the report also found that IRCA had caused widespread discrimination. U.S. General Accounting Office, Report to the Congress,

Immigration Reform: Employer Sanctions and the Question of Discrimination, at 3 GAO/GGD-90-62 (March 1990) ("GAO" Report"). The GAO Report found that among the most common forms of discrimination was an employer's demand for more or different documents than are required to satisfy 8 U.S.C. § 1324a. GAO Report at 53, 59.[5]

The GAO's finding of widespread discrimination set into operation two of IRCA's other provisions. First, the finding triggered Congressional consideration of the repeal of IRCA. See 8 U.S.C. § 1324a(l)(1)(A). Second, a task force established by the Attorney General was required to review the GAO Report and make recommendations for legislation to remedy the problem. 8 U.S.C. § 1324a(k)(2); see Task Force on IRCA-Related Discrimination, Report to Congress, Report and Recommendations of the Task Force on IRCA-Related Discrimination (September 1990) ("Task Force Report").

After reviewing both the GAO Report and the Task Force Report, Congress chose to address the problems set forth in both reports by passing the IMMACT, which in part strengthened the unfair employment practices provisions of the statute. IMMACT's Section 535, later codified as 8 U.S.C. § 1324b(a)(6), specifically addressed a problem identified by the GAO Report regarding certain employment practices. That section provides that:

> For purposes of paragraph (1) [8 U.S.C. § 1324b(a)(1)] a person's or other entity's request, for purposes of satisfying § 1324a(b)of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as a unfair immigration-related employment practice relating to the hiring of individuals.

8 U.S.C. § 1324b(a)(6).

C. It Is a Violation of 8 U.S.C. § 1324b(a)(6) to Engage in an Act of Document Abuse Against Any Work Authorized Individual

The issue presented to this agency is whether it is a violation of 8 U.S.C. § 1324b(a)(6) for an employer to engage in document abuse

[5] The Report states that "of the 168 EEOC/IRCA-related charges, 64 allege employer refusal to accept documents and 59 allege discrimination on the basis of citizenship or immigration status. We did not have sufficient information to classify the remaining IRCA-related charges." GAO Report at 59.

against work authorized individuals who are not "protected individuals" for purposes of 8 U.S.C. § 1324b(a)(1)(B).[6]

Mesa, 66.

To resolve this issue, this agency must engage in an exercise in statutory construction to determine who is protected against document abuse pursuant to 8 U.S.C. § 1324b(a)(6). The agency's objective in resolving this issue is "to ascertain the congressional intent and to give effect to the legislative will." E.g., Philbrook v. Glodgett, 421 U.S. 707, 713, 95 S. Ct. 1893, 1898 (1975). To determine the congressional intent behind a statutory section, one first looks to the statutory language itself. E.g., Blum v. Stenson, 465 U.S.L. 886, 898, 104 S. Ct. 1541, 1548 (1984).

1. The Plain Meaning of 8 U.S.C. § 1324b(a)(6) establishes that it is an Unfair Immigration-Related Employment Practice To Engage in Acts of Document Abuse Against Any Work Authorized Individual.

As stated above, IMMACT amended IRCA, in pertinent part, to prohibit certain document practices as unfair employment practices. The new section states that:

> For purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of § 1324a(b) of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration- related employment practice relating to the hiring of individuals.

---

[6] Even prior to the passage of IMMACT, case law suggested that the United States could obtain a civil penalty in cases where an employer discriminated against aliens who did not meet the definition of "intending citizen" as stated in IRCA. In United States v. Mesa Airlines, 1 OCAHO No. 74, 1989 OCAHO LEXIS 15 (July 24, 1989), appeal dismissed as untimely, 951 F. 2d 1186 (10th Cir. 1991), Administrative Law Judge Marvin Morse indicated that in a pattern and practice case, such as the instant case, it would be appropriate to asses a civil penalty against an employer that has discriminated against persons who were not intending citizens, even though these persons were not entitled to back pay. Mesa, 46-55. As Judge Morse stated:

> I have found that Martin Riebeling was not an intending citizen as that statutory term has been implemented by the Department of Justice; nevertheless, he was a qualified non-U.S. citizen applicant rejected by Mesa. In my judgment, it follows that there is power to assess a civil money penalty as to him.

8 U.S.C. § 1324b(a)(6). On its face, 8 U.S.C. § 1324b(a)(6) is not limited to the narrow scope of "protected individuals" as defined by 8 U.S.C. § 1324b(a)(3), but rather applies to the more general group of work authorized individuals.

Distinctions between "individuals" and "protected individuals" appear throughout in 8 U.S.C. § 1324b(a)(3). All "individuals" are protected under the general rule of 8 U.S.C. § 1324b(a)(1), as long as they are work authorized. A "protected individual", on the other hand, is either a U.S. citizen or national, or a person who falls within one of four specific classes of aliens who has applied for naturalization within six months of becoming eligible, and completes naturalization within two years of the date of applying for naturalization. 8 U.S.C. § 1324b(a)(3).

Having created these terms, and inserted them into 8 U.S.C.§ 1324b, it is clear that Congress knew that there is a difference between an "individual" and a "protected individual" for purposes of 8 U.S.C. § 1324b. In fact, Congress has used these terms to limit protection against citizenship status discrimination. Had Congress intended to limit document abuse violations to persons who are "protected individuals" for purposes of 8 U.S.C. § 1324b(a)(1)(B), it would have said so in 8 U.S.C. § 1324b(a)(6). Since Congress instead used the word "individuals", it is clear that 8 U.S.C. § 1324b(a)(6) applies to all individuals, regardless of whether they are "protected individuals."

The document abuse provision found in 8 U.S.C. § 1324b(a)(6) begins with the words, "For the purposes of paragraph 1 . . . " Guardsmark asserts that the plain meaning of these words is that it is not a violation of 8 U.S.C. § 1324b(a)(6) to demand more or different documents from anyone who is not a protected individual, or to refuse to accept the valid documents presented by anyone who is not a "protected individual." I do not agree.

Under the general rule of paragraph 1, all "individuals" are protected against unfair immigration-related employment practices. The only persons excluded from the definition of "individuals" that appears in the general rule against immigration-related unfair employment practices are unauthorized aliens. 8 U.S.C. § 1324b(a)(1). "Individuals" are protected against national origin discrimination pursuant to 8 U.S.C. § 1324b(a)(1)(A). Limits on the protection provided to work authorized individuals do not appear until subparagraph B of the general rule. Subparagraph B specifically limits actions for citizenship

status discrimination to persons who are "protected individuals." Nothing in the general rule, in 8 U.S.C. § 1324b(a)(6), or anywhere else in 8 U.S.C. § 1324b permits an employer to engage in document abuse against persons who are not "protected individuals."

Guardsmark concludes that because 8 U.S.C. § 1324b(a)(6) refers to 8 U.S.C. § 1324b(a)(1), all actions alleging document abuse are in fact actions alleging citizenship status discrimination pursuant to 8 U.S.C. § 1324b(a)(1)(B) is not correct. National origin claims filed under 8 U.S.C. § 1324b(a)(1)(A), citizenship status claims filed under 8 U.S.C. § 1324b(a)(1)(B), document abuse claims filed under the section at issue in this case, 8 U.S.C. § 1324b(a)(6), and retaliation claims filed under 8 U.S.C. § 1324b(5) are all completely separate violations of 8 U.S.C. § 1324b. In fact, this difference can be seen in the remedies available upon a finding of a violation.

A person or entity that has been found to have violated 8 U.S.C. § 1324b(a)(1) is subject to a civil penalty of not less than $250 and not more than $2,000. 8 U.S.C. § 1324b(g)(2)(B)(iv)(I). However, the civil penalty for violating 8 U.S.C. § 1324b(a)(6) is not less than $100 and not more than $1,000. 8 U.S.C. § 1324b(g)(2)(B)(iv)(I). If, as Guardsmark asserts, 8 U.S.C. § 1324b(a)(6) is but a subset of 8 U.S.C.
§1324b(a)(1)(B), Congress would not have created a wholly different penalty for violations of 8 U.S.C. § 1324b(a)(6).

The only conclusion is that a document abuse claim filed pursuant to 8 U.S.C. § 1324b(a)(6) alleges a violation that is separate and apart from a citizenship status discrimination claim pursuant to 8 U.S.C. § 1324b(a)(1)(B). Even Guardsmark, in its wording of the issue in its Motion, tacitly recognized that document abuse is a separate and distinct cause of action under 8 U.S.C. § 1324b. Guardsmark called the instant action an action for document abuse, not an action for citizenship status discrimination based on document abuse. Guardsmark's Motion for Summary Decision at 2.

The Rules of Practice and Procedure before this Court also recognize that a document abuse claim brought pursuant to 8 U.S.C. § 1324b(a)(6) is separate and distinct from a claim of citizenship status discrimination brought pursuant to 8 U.S.C. § 1324b(a)(1)(B). The pertinent rule defines unfair immigration-related employment practices as:

> (1) The hiring, or recruitment or referral for a fee, of an individual for employment, by a person or other entity:
>
> (i) Because of such individual's national origin, or
>
> (ii) in the case of a protected individual, as defined in section 274B(a)(3) of the INA, because of the individual's citizenship status.
>
> (2) The use, by a person or other entity, of intimidation, threats, coercion, or retaliation against an individual for purposes described in section 274B(a)(5) of the INA; or
>
> (3) A person or other entity's request, for purposes of satisfying the requirements of section 274A(b) of the INA, for more or different documents than are required under that section, for refusing to honor documents tendered, that on their face reasonably appear to be genuine, and to relate to the individual.

28 C.F.R. § 68.2(u). This section recognizes that there are three district types of claims that can be brought to allege an unfair immigration-related employment practice, and that document abuse claims are not the same as national origin or citizenship status claims.

2. The Legislative History Establishes that Congress Intended that 8 U.S.C. § 1324b(a)(6) Apply To All Work Authorized Individuals, and Not Just To "Protected Individuals."

A statute's legislative history provides an important key to statutory construction. For even if the statutory language is clear on its face, it is not conclusive if there exists a clearly expressed legislative history to the contrary. E.g., Consumer Product Safety Com'n v. GTE Sylvania, Inc., 447 U.S. 102, 108, 100 S. Ct. 2051, 2056 (1980). On the other hand, if the intent of Congress is not found in the clear words of the statute, then one looks to the legislative history. E.g., Blum, 465 U.S. at 898, 104 S. Ct. at 1548. In either case, the legislative history provides significant illumination in statutory construction.

Congressional pronouncements concerning 8 U.S.C.§ 1324b (a)(6) are limited. However, taking into account the contemporaneous circumstances and the problem Congress sought to address, the legislative history confirms that Congress intended that all work authorized individuals be afforded protection against document abuse, not merely those persons who could establish that they are protected individuals.

(a) Congressional pronouncements

The only specific mention of 8 U.S.C. § 1324b(a)(6) in the Conference Report created when IMMACT was passed appears to be a discussion, in a separate section which was later deleted from the IMMACT, of the use of a biometric driver's license as an additional work authorization document. In addressing fears that this biometric driver's license would become the exclusive method to establish work eligibility, the Conference Report stated:

> This provision is not intended to be the exclusive means by which an individual may establish the individual's identity and authorization to work. In fact under section 535 of the Conference Report [later codified at 8 U.S.C. §1324b(a)(6)] an employer who does not accept a document that reasonably appears to be genuine and that is among the list of documents that can be used to establish either identity or work authorization, or both, may be subjected to significant administrative fines.

H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 133-134 (1990) (emphasis added).

I note that this passage refers to an "individual" establishing his identity and authorization to work, not to a "protected individual." In this context, Congress understood 8 U.S.C. § 1324b(a)(6), to prohibit discrimination against "individuals" by an employer that did not accept their genuine documentation, as opposed to "protected individuals." While this passage is the only Congressional pronouncement on 8 U.S.C. § 1324b(a)(6), it is illustrative of Congressional intent Also, it is only part of a greater legislative history which indicates that Congress intended to extend 8 U.S.C.§ 1324b(a)(6) protection to all individuals.

(b) Congress intended to solve a problem identified by the GAO report.

Ultimately, the purpose of statutory construction is to define Congressional intent. Aids to help define that intent are not limited to Congressional pronouncements. In determining Congressional intent, statutory construction "cannot be divorced from the circumstances existing at the time it was passed, and from the evil which Congress sought to correct and prevent." United States v. Champlin Refining Co., 341 U.S. 290, 297, 71 S. Ct. 715, 719 (1951). Accord, Universal Camera Corp. v. NLRB, 340 U.S. 474, 489, 71 S. Ct. 456, 465 (1951); In re Arizona Appetito's Stores, Inc., 893 F. 2d 126, 219 (9th Cir. 1990).

The circumstances existing with respect to IRCA are not found in any Congressional report. Nor are the evils that Congress sought to address through IMMACT listed in any Congressional report. However, this is not to say that Congress did not know the existing circumstances or the evils it sought to address. While Congress did not hold extensive hearings on IMMACT's implementation, Congress obtained a great deal of information regarding the circumstances and problems created by IRCA's implementation by delegating this fact-finding to the GAO and the Attorney General.

The problem faced by Congress was simple. Despite an attempt to avoid IRCA-related discrimination through the addition of the unfair employment practices provision to IRCA, the GAO Report found that IRCA had resulted in a widespread pattern of discrimination. Citing various sources, the GAO Report found that the IRCA-related discrimination had resulted from employers' improper implementation of the employment verification provisions.

Discussing the types of IRCA-related charges and complaints received by the Office of Special Counsel, the GAO Report noted that fifty-five percent of the charges resulted from an employer's refusal of a work authorization document. GAO Report at 53. In addition, the GAO Report quoted an Office of Special Counsel official as stating that: "[M]any charges involved job applicants, who apparently were not hired because employers did not understand what was acceptable proof of work authorization under IRCA." GAO Report at 53.

Reviewing other sources, the GAO Report found that an employer's improper implementation of IRCA's employment verification provisions was the major source of IRCA-related discrimination. The plurality of IRCA-related charges received by the Equal Employment Opportunity Commission alleged that an employer refused to accept proper work authorization documents. GAO Report at 59. A San Francisco employers survey revealed that 79 percent of employers accepted only the most common and "official" documents, "even though there are many other INS approved documents that authorized employment." GAO Report at 83. In fact, the GAO Report noted that a common finding of various other studies was that employers refused to accept valid work eligibility documents. GAO Report at 86.

Reviewing the GAO Report reveals that the victims of the discrimination identified by the GAO were not only those job applicants who qualified as "protected individuals." Scattered throughout the GAO

Report are references to "persons," "job applicants," "authorized workers," and "individuals." The problem that the GAO described to Congress was one confronted by all job applicants, not just "protected individuals." Never did the GAO's methodology differentiate between "individuals" and "protected individuals."

Each method used by the GAO to gather information with respect to whether discrimination had occurred focused upon "individuals" or an equivalent term. The GAO employer survey inquired as to employment practices with respect to persons. GAO Report, Table 3.1 at 39. The GAO hiring audit involved paired individual testers, posing as "job applicants." GAO Report at 46.

The problem, as presented by the GAO Report to Congress, was that "individuals" were being discriminated against in great numbers by employers misapplying IRCA's employment verification provisions. According to the GAO Report the discrimination existed because employers were being overly cautious. They were demanding more or specific documents, or were refusing to honor documents, that Congress had mandated as being sufficient. When viewed in this manner, the Congressional intent behind the solution that became 8 U.S.C. § 1324b(a)(6) becomes apparent. Congress intended to prohibit employers from demanding too many documents from job applicants in general.

As noted above, the GAO's finding of a widespread pattern of IRCA-related discrimination also triggered an IRCA provision requiring the Attorney General to submit recommendations after reviewing the GAO Report. The Task Force Report analyzed the information collected by the GAO and focused on the problems that needed Congressional attention. The Task Force report was an official report to Congress, made pursuant to 8 U.S.C. § 1324b(k).

The Task Force Report summarized the GAO Report's findings in two sentences:

> GAO concluded, however, that employers have failed to implement IRCA properly. Specifically, GAO found that employers' improper implementation of their work verification responsibilities has resulted in a wide spread pattern of discrimination affecting many citizens and other eligible workers.

Task Force Report at 6. (Emphasis added.)

The Task Force Report took the problem identified by the GAO Report and reiterated that the victims were "citizens and other eligible workers." Thus, the problem presented to Congress by the GAO Report, and summarized by the Task Force Report, was one affecting all work authorized individuals, not just persons who are "protected individuals."

With the problem clearly identified as one affecting eligible workers in general, the Task Force Report focused on making recommendations to solve the problem through legislation. The Task Force Report recommended additional education for both employers and present and future job-seekers. In language nearly parallel to 8 U.S.C. § 1324b(a)(6), the Task Force Report notes that:

> Employers must understand that IRCA was intended to close the door only to individuals who are not authorized to work in the United States. Rejecting individuals who have proper documentation of their work eligibility is a violation of IRCA, and rejecting some kinds of employment verification documents but not other kinds or demanding additional documents from certain individuals is a violation of IRCA.

Task Force Report at 51-52. (Emphasis added.)

The similarities between 8 U.S.C. § 1324b(a)(6) and the language used by the Task Force Report are not coincidental. Through IMMACT, specifically 8 U.S.C. § 1324b(a)(6), Congress sought to solve the problem of discrimination reported to it in the GAO Report. The problem that Congress attempted to address was identified by the GAO as one of employers improperly applying IRCA's employment verification provisions. Congress' solution was to make it unlawful for employers to improperly apply IRCA's employment verification provisions in the manner identified by the GAO. I find that in order to fulfill Congressional intent, 8 U.S.C. § 1324b(a)(6) must be interpreted to prohibit document abuse against any work authorized individual. Since Khatami was authorized for employment in the United States, he has standing in this case to file a claim for document abuse. Respondent's motion for summary decision is therefore DENIED.

III. *Guardmark's Motion for Staff of Discover and Attorney Fees*.

Respondent's motion for attorney fees is DENIED.

Respondent's motion to stay discovery is conditionally DENIED as more fully described herein. Although I granted Respondent's motion

to stay discovery until I had determined the merits of its motion for summary decision, there is also pending before me Complainant's motion to compel discovery. This motion to compel was filed prior to the approval of the filing of the amended complaint. See my Order of May 20, l993 Granting Complainant's Motion to Amend and Staying a Ruling on Complainant's Motion to Compel. In my May 20, l993 Order, I directed Complainant to comply with ¶ 3(a) of my Order Directing Prehearing Procedures issued on January 5, l992 and I directed Complainant to file a Supplemental Motion to Compel the Production of Documents.

Although Complainant has not completed discovery with respect to allegations in the amended complaint that Respondent was engaged in an alleged pattern and practice of document abuse, prior to allowing OSC to begin discovery in this area, I want to determine if this case can be settled. Moreover, it is not clear from the record whether Complainant has complied with ¶ 3(a) of my January 5, l993 order with respect to its prior production requests that have been included in its motion to compel.

Accordingly, all discovery in this case shall be stayed until I have held a telephonic settlement conference to determine whether this case can be settled and additionally, but only with respect to those items requested for production in Complainant's motion to compel, until Complainant has notified this office that it has complied with ¶ 3(a) of my Order Directing Prehearing Procedures. It is further ORDERED that a settlement conference in this case will be held telephonically at 2:00 EST on Thursday, November 4, l993.

SO ORDERED this 2nd day of November, 1993.

ROBERT B. SCHNEIDER
Administrative Law Judge