

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

IN RE CHARGE OF)
JOSE SANTOS LOPEZ)
)
UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. § 1324b Proceeding
) Case No. 94B00061
PANCHO'S MEXICAN)
BUFFET, INC.,)
Respondent.)
_____)

FINAL DECISION AND ORDER OF DISMISSAL, SETTLED

(May 3, 1994)

MARVIN H. MORSE, Administrative Law Judge

This is a case under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, enacting 8 U.S.C. § 1324b. By letter dated April 4, 1994, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), notified the Judge that the United States and Pancho's Mexican Buffet, Inc., had reached a settlement in principle and that OSC had sent a written agreement to Respondent for signature. Subsequently, on May 3, 1994, OSC filed a Request For Dismissal accompanied by a Settlement Agreement and General Release (Agreement).

The motion, dated April 29, 1994, transmits the agreement dated and signed by the charging party on April 22, 1994, by Respondent's vice president for human resources on April 1, 1994, and by OSC on April 29, 1994. The motion, although executed unilaterally by OSC and not by the charging party or Respondent, reflects service on those parties

to the Agreement. Accordingly, it is appropriate to give effect to the intent of the parties manifest from the execution by them of the settlement agreement.

Although the focus of the complaint alleged discrimination by Respondent against the charging party, the pattern or practice allegations of the complaint are sufficiently broad to implicate discrimination against other aliens. The prayer for relief seeks a civil money penalty "for each individual adversely affected by" the discriminatory practices alleged, i.e., a standard operating practice of verifying eligibility of prospective alien employees by requesting a specific INS-issued document. The Agreement is silent as to how many aliens are included within the scope of the settlement. The better practice upon asking approval of a settlement which includes a penalty whose quantum exceeds the maximum allowable to one individual, would be to relate the agreed civil money penalty, i.e., \$10,000.00, to the number of individuals involved. See 8 U.S.C. §1324b(g)(2)(B)(iv). Because, however, the Agreement is not inconsistent with the complaint I will not withhold approval.

The motion is granted, and the complaint is dismissed, settled.

SO ORDERED. Dated and entered this 3rd day of May, 1994.

MARVIN H. MORSE
Administrative Law Judge