

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

IN RE CHARGE OF)	
KATALIN BALAZS-KILGORE)	
)	
UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324b Proceeding
)	Case No. 93B00109
AUBURN UNIVERSITY,)	
Respondent.)	
_____)	

ORDER DISMISSING COMPLAINT WHILE RETAINING
CASE ON THE DOCKET

(July 14, 1994)

As confirmed by the Fifth Prehearing Conference Report and Order, dated June 15, 1994, and the Order, Including Order to Show Cause, dated June 30, 1994, the United States -- the Office of Special Counsel (OSC) -- on June 10, 1994 filed a motion to withdraw as a party. As reflected by those orders, I understand the OSC motion to intend withdrawal of OSC's complaint with prejudice to a subsequent filing by it arising out of the same facts as the subsisting complaint. Those orders provided an opportunity to the charging party, Dr. Balazs-Kilgore (Balazs), to inform the record as to her intentions to maintain a private cause of action. By letter/pleading filed July 1, 1994, Balazs states that she does "not wish to litigate this case," in view of her understanding that, as stated by OSC in its motion,

the United States has now concluded in light of an in-depth analysis of all the currently available evidence that it will be unable to meet its burden, as required by 8 U.S.C. §1324b(a)(1)(B), of proving that Respondent's decision not to hire Dr. Katalin Balazs-Kilgore was made on the basis of her citizenship status.

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The Balazs letter/pleading expressing the Balazs declination to maintain a private action, filed July 1, obviously crossed in the mail with the order of June 30, and implicitly satisfies that order. Subsequently, on July 12, 1994, Respondent filed a reply to OSC's motion to withdraw, and a motion for attorney's fees, accompanied by a brief in support (with exhibits 1-8). Respondent does not object to dismissal of the complaint provided its motion for fee shifting survives that dismissal. By telephone, counsel for Respondent advised my office on July 13, 1994 that he did not receive the June 30 order until July 13.

Upon consideration, the further provisions of the order of June 30, 1994 having been overtaken by events subsequent, I adjudge that:

1. The complaint is dismissed with prejudice to any subsequent filing by or on behalf of the United States or Balazs before an administrative law judge pursuant to 8 U.S.C. §1324b, arising out of the circumstances alleged in the complaint in this case.

2. The hearing previously scheduled is canceled.

3. The case is retained on the docket in order to adjudicate the motion for fee shifting.

4. OSC will be expected to respond to the pending motion within fifteen days of service of the motion. OSC's response should advise, inter alia, whether the motion is reasonably susceptible to an agreed disposition, and of the efforts of the parties in that respect. I will determine whether a telephonic conference is appropriate, upon filing of OSC's response.

SO ORDERED. Dated and entered this 14th day of July, 1994.

MARVIN H. MORSE
Administrative Law Judge