

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

MARCOS VALENCIO,)
Complainant,)
v.) 8 U.S.C. § 1324b Proceeding
) Case No. 94B00214
VASP BRAZILIAN AIRLINES,)
Respondent.)
_____)

ORDER SCHEDULING PREHEARING CONFERENCE
(March 13, 1995)

This order confirms that a prehearing conference in this proceeding will be conducted by telephone on Monday, April 24, 1995, at 2:00 p.m. EDT, as previously advised and arranged by the Judge's staff. The conference call will be initiated by my Office.

1. Prior to the conference, the parties will be expected to attempt a settlement of any or all issues of fact and law, and to develop stipulations of facts and procedural matters. At the conference, they shall report on their efforts.

2. The prehearing conference will focus primarily on the scheduling of an evidentiary hearing; in addition, the parties should be prepared to discuss trial preparation in the context of the final rules of practice and procedure of this Office, 28 C.F.R. Part 68, particularly those sections governing prehearing statements and prehearing conferences, i.e., § 68.12(b)¹

¹ Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41, 243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k) [hereinafter cited as 28 C.F.R. pt. 68].

3. Specifically, the parties should be prepared to discuss Respondent's first affirmative defense as alleged in its Answer to the Complaint. Under 8 U.S.C. § 1324b(a)(3)(B)(i), an alien lawfully admitted for permanent residence is not considered a "protected individual" for purposes of filing a § 1324b discrimination complaint based on citizenship status if that alien

fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986.

It would appear from the Complaint that Complainant obtained permanent residence status on October 27, 1988 but has never applied for naturalization. The parties are therefore requested to comment on the viability of Complainant's citizenship status discrimination Complaint in light of § 1324b(a)(3)(B)(i).

4. Complainant has also alleged unfair employment discrimination on the basis of national origin. Under Title VII of the Civil Rights Act of 1964, as amended (Title VII), the Equal Employment Opportunity Commission (EEOC) has jurisdiction over national origin discrimination charges against employers having "fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U.S.C. § 2000e(b). As a complement to this provision, OCAHO ALJs have jurisdiction over only those national origin discrimination claims involving employers who employ between three and fourteen individuals. 8 U.S.C. § 1324b(a)(2). See also Lardy v. United States Airlines, Inc., 4 OCAHO 595 (1994); Williams v. Lucas Associates, Inc., 1 OCAHO 254 (1990). As neither party addresses the number of individuals employed by Respondent, this Order invites the parties to clarify this issue during the prehearing conference.²

5. An original and two copies of all pleadings shall be filed with my Office.

6. The parties should not provide copies to the Judge of either discovery requests or responses. If, however, a request for relief is filed, it should be accompanied by the underlying requests or responses. I will not entertain any discovery motion unless:

² The only reference made to Respondent's size is in the OSC charge form in which Complainant checked a box denoting that Respondent employs in excess of 15 individuals.

- a) I direct otherwise or
- b) the motion is accompanied by a certification that the moving party has conferred, or has made a reasonable effort to confer, with the opposing party concerning the matter.

SO ORDERED.

Dated and entered this 13th day of March, 1995.

MARVIN H. MORSE
Administrative Law Judge