

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

Anthony F. Lundy, Complainant v. OOCL (USA), et al., Respondent; 8 USC § 1324b Proceeding; Case No. 89200457.

ORDER DENYING TEMPORARY RESTRAINING ORDER PROHIBITING MR. TED WANG
FROM LEAVING THE UNITED STATES

(July 12, 1990)

Subsequent to filing of the complaint on November 2, 1989, numerous motions and other pleadings have been filed, some of which have been discussed in detail in previous orders. Respondent's Motion to Dismiss and Complainant's responses thereto are now pending.

On July 10, 1990 Complainant filed a motion requesting that I ``issue a temporary restraining order prohibiting Mr. Ted Wang from going beyond the jurisdiction of the United States Courts.'' I understand Complainant to be asking me to enjoin Mr. Wang's departure from the United States. It is my judgment that Complainant has not made out a showing sufficient to justify injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure (FRCP). Specifically, Mr. Lundy has not demonstrated that he would suffer irreparable harm without a temporary restraining order. Moreover, he has failed to tender security ``for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.'' FRCP 65(c) (``No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant . . .'). Id. Accordingly, I do not need to reach the question whether I have the authority to grant injunctive relief. See, however, Banuelos v. Transportation Leasing Company, OCAHO Case No. 89200457, April 2, 1990 (Order Denying Complainants' Motion For A Preliminary Injunction).

In the interest of time, this Order issues without awaiting a responsive filing by Respondent. In lieu of the severe remedy sought by Complainant, the rules of practice and procedure of this Office

provide an opportunity to Complainant to depose Mr. Wang. 28 CFR § 68.20. Mr. Lundy can take Mr. Wang's deposition and thus perpetuate his testimony for possible use in event this case comes to hearing and that testimony is relevant. At hearing, absence from the United States generally permits use in evidence of such a deposition. 28 CFR § 68.22 [4][ii].

Accordingly, I deny Complainant's motion.

SO ORDERED.

Dated this 12th day of July, 1990.

MARVIN H. MORSE
Administrative Law Judge