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

John C. Grodzki, Complainant v. OOCL (USA), Inc., Respondent; 8 USC § 1324b Proceeding; Case No. 90200095.

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION
(February 13, 1991)

MARVIN H. MORSE, Administrative Law Judge.

Appearances: **JOHN C. GRODZKI**, Complainant.
LAURA H. ALLEN, Esq. for Respondent.

I. STATUTORY AND REGULATORY BACKGROUND

The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 enacted a prohibition against unfair immigration-related employment practices at section 102, by amending the Immigration and Nationality Act of 1952 (INA § 274B), codified at 8 U.S.C. §§ 1101 et seq. Section 274B, codified at 8 U.S.C. § 1324b, provides that it is an ``unfair immigration-related employment practice'' for a person or other entity to discriminate against any individual other than an unauthorized alien with respect to hiring, recruitment, referral for a fee, or discharge from employment because of that individual's national origin or citizenship status. Discrimination arising either out of an individual's national origin or citizenship status is thus prohibited. Section 274B protection from citizenship status discrimination extends to an individual who is a United States citizen or a protected individual as defined by 8 U.S.C. § 1324b(a)(3), as amended by Immigration Act of 1990 (IA 90), Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

II. PROCEDURAL SUMMARY

Complainant, John C. Grodzki filed charges with the Office of Special Counsel (OSC or Special Counsel) alleging unfair immigration related employment practices by Respondent, OOCL (USA), Inc. OSC accepted the charges on August 9, 1989. OSC advised

Complainant by determination letter dated December 7, 1990, that OSC would not file a complaint on his behalf. Complainant was advised by that letter that he had until March 7, 1990 to file a complaint before an administrative law judge in the Office of the Chief Administrative Hearing Officer (OCAHO).

On March 8, 1990 Grodzki filed with OCAHO a pro se complaint in letter form, dated March 6, 1990. He filed an Amended Complaint on May 18, 1990. The Amended Complaint alleges national origin and citizenship based discrimination in violation of 8 U.S.C. § 1324b. Specifically, Complainant alleges that on or about May 5, 1989 Respondent fired him ``because of his citizenship status and his status as a white American'' and replaced him with non-U.S. citizens and persons of Asian national origin.

OCAHO issued a Notice of Hearing dated June 11, 1990 which transmitted the Complaint to Respondent. On July 13, 1990 Respondent filed an Answer and Counterclaim accompanied by a Motion for Summary Decision.

On July 26, 1990 Grodzki filed a transmittal requesting an extension of time to respond to Respondent's July 13, 1990 filings. By Notice to the Parties, issued July 27, 1990, I treated Complainant's request as a motion for extension of time in which to file his opposition to Respondent's motion. I granted Complainant until September 12, 1990 to submit his responses. I did not receive timely responses from Complainant.

By Order issued October 1, 1990 I requested certain information from both parties, asking Complainant to show cause why he had not complied with my July 27 Order. Complainant replied by letter pleading filed October 11, 1990, that on or about September 7, 1990, he mailed his responses to OCAHO as confirmed by supporting documents, but directed them to the wrong individual, and not to the judge. By Order dated October 15, 1990, I found that Grodzki had timely complied with my July 27, 1990 Order. Respondent filed a memorandum in response to the October 1, 1990 Order on October 16, 1990.

Respondent's Motion for Summary Decision is now pending. For the reasons discussed below, I grant Respondent's Motion and dismiss the Complaint in its entirety.

III. ANALYSIS

A. General Standards for a Motion for Summary Decision

Under the rules of practice and procedure of this Office, an administrative law judge may ``enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, . . . show that there is no genuine issue as to any mate-

rial fact and that a party is entitled to summary decision.'' 28 C.F.R. § 68.36(c). See also Fed. R. Civ. P. 56 (to the extent contemplated by 28 C.F.R. § 68.1). When a party fails to comply with the procedural filing requirements of the forum, there is no genuine issue of material fact to be decided, and the complaint may be dismissed on that basis alone. Here, where an affidavit and additional materials have been presented, it is appropriate to consider the request for dismissal in a motion for summary decision. See Fed. R. Civ. P. 12(c).

B. The Complaint is Time-Barred

Respondent asserts as an affirmative defense that Grodzki's Complaint is time-barred, and that, therefore, the Complaint should be dismissed and summary decision granted in its favor.[1] Grodzki's Complaint dated March 6, 1990 was filed on March 8, 1990, one day after the filing deadline determined pursuant to 28 C.F.R. § 44.303(c)(2), i.e., 90 days after expiration of the 120 day period for investigation by the Office of Special Counsel. See 8 U.S.C. § 1324b(d).[2]

OSC notified Grodzki by determination letter dated December 7, 1989, that he had ``within 90 days from the end of (the OSC) 120-day investigatory period, i.e., before March 7, 1990'' to file a complaint before an administrative law judge. Grodzki filed his Complaint with this Office on March 8, 1990. The rules of practice and procedure of this Office provide at 28 C.F.R. § 68.7(b) that pleadings filed by mail are not deemed filed until received by the Office of

[1]Respondent objects to the form of Grodzki's original Complaint, filed March 8, 1990, as inadequate under 28 C.F.R. § 68.6(b). The Amended Complaint was filed on May 18, 1990. Common practice dictates leniency with respect to form when dealing with pro se complainants. It is difficult to perceive that Respondent might have been prejudiced by permitting Complainant to amend his Complaint. IRCA makes clear, however, that subsequent amending of a charge does not impair the timeliness of an original filing. 8 U.S.C. § 1324b(d)(3). Similarly, a complaint may be amended. 8 U.S.C. § 1324b(e)(1); 28 C.F.R. § 68.8(e). In any event, however, the Amended Complaint does not cure the untimely filing of the Complaint.

[2]Although not controlling in this case, notice of the 90 day filing period for private actions is now statutory. Section 537(a) of the Immigration Act of 1990, (IA 90) Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990) amended 8 U.S.C. § 1324b(d)(2), inter alia, by specifying that a person making the charge may file a complaint directly before an administrative law judge ``within 90 days after the date of receipt of the notice'' from Special Counsel that it will not file a complaint.

Although a number of provisions of the IA 90 are explicitly retroactive, the amendment to 8 U.S.C. § 1324b(d)(2) is not retroactive, i.e., it ``shall apply to charges received on or after the date of the enactment of this Act.'' IA 90, § 537(b).

the Chief Administrative Hearing Officer (OCAHO) or the administrative law judge.[3]

Grodzki's rejoinder to the time-bar argument is that he has a certified mail receipt which shows that he mailed the Complaint on March 6, 1990. Unfortunately for Complainant, his Complaint was not filed until March 8th. Without having further shown that he is eligible for equitable relief from an untimely filing of a private action, his Complaint is out of time.

C. Equitable Relief Issue

Respondent characterizes the administrative filing deadline as a statute of limitations which bars Complainant from asserting his national origin and citizenship discrimination claims. Agency filing periods are understood to be in the nature of statutes of limitations as distinct from jurisdictional bars. See, e.g., Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 395, reh. denied sub nom. Independent Federation of Flight Attendants v. Trans World Airlines, Inc., 456 U.S. 940 (1982); Dillman v. Combustion Engineering, Inc., 784 F.2d 57, 59 (2d Cir. 1986); Johnson v. Al Tech Specialties Steel Corp., 731 F.2d 143, 146 (2d Cir. 1984). Time limits on agency filings, however, are subject to equitable modifications, such as tolling. Tillett v. Carlin, 637 F. Supp. 245, 248 (D. Conn. 1985) citing Malave v. Bolger, 599 F. Supp. 221 (D. Conn. 1984); Williams v. Deloitte & Touche, OCAHO Case No. 89200537 (Nov. 1, 1990) at 5; Lundy v. OOCL (USA), Inc., OCAHO Case No. 89200457 (Aug. 8, 1990) at 8; U.S. v. Mesa Airlines, OCAHO Case Nos. 88200001-2 (July 24, 1989) at 22, appeal docketed, No. 89-9552 (10th Cir. Sept. 25, 1989). See also In re Investigation of St. Christopher Ottilie, OCAHO Subpoena Nos. 882010016AO-DO (May 5, 1988) (Order Denying Petitions to Quash But Requiring That Subpoenas, If Any, Newly Issue).

Equitable relief may be invoked in an appropriate case to protect lay persons from the harsh consequences of strict application of procedural requirements. Thus, when there is a late filing, a complainant who demonstrates that the filing deadline should be equitably modified will be allowed to proceed. Here, Complainant neither alleges equitable modification of the filing period, nor makes a sufficient showing to invoke equitable relief. See Williams, OCAHO Case No. 89200537 at 5.

[3]Title 28 C.F.R. § 68.7(b) addresses computation for filing by mail: ``Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case.'' Subsection (c) further clarifies that, ``(s)ervice of all pleadings other than complaints is deemed effective at the time of mailing . . . .'' (Emphasis added).

1. General requirements

Under IRCA, there are two time periods where equitable modifications of the filing requirements may apply.[4] First, a complainant must file a charge of unfair immigration-related employment discrimination before the Office of Special Counsel within 180 days of the alleged discriminatory act. 8 U.S.C. § 1324b(d)(3); 28 C.F.R. § 44.300(b). If the OSC does not file a complaint, the complainant may be sent a determination letter in which the individual is given notice that they have 90 days from the end of the 120 day OSC investigatory period to file their own complaint before an administrative law judge. 8 U.S.C. § 1324b(d)(2), amended by IA 90; 28 C.F.R. § 44.303. See n. 2, supra.

[4]Courts have fashioned three equitable doctrines which may be invoked in order to cure a late filing: tolling, estoppel and waiver. See Zipes, 455 U.S. at 393. Courts are generally parsimonious, however, in granting equitable modifications of procedural time requirements. The Second Circuit markedly distinguishes the doctrines of equitable tolling and equitable estoppel. Equitable tolling is applied when a complainant is unaware that he has a claim of discrimination. The ``essence of the doctrine `is that a statute of limitations does not run against a plaintiff who is unaware of his cause of action.' '' Cerbone v. International Ladies' Garment Workers' Union, 768 F.2d 45, 48 (2d Cir. 1985), quoting Long v. Abbott Mortgage Corp., 459 F. Supp. 108, 113 (D.Conn. 1978). It is generally necessary to find that the employer's misleading conduct was responsible for the employee's failure to timely maintain his cause of action. See Certone, 768 F.2d at 48; Dillman, 784 F.2d at 60; Seedman v. Alexander's, Inc., 683 F. Supp. 924, 926 (S.D.N.Y. 1987); Cole v. CBS, Inc., 634 F. Supp. 1558, 1564 (S.D.N.Y. 1986). See also Bowers v. Transportacion Maritima Mexicana, S.A., 901 F.2d 258 (2d Cir. 1990) (requirement of diligence on the part of the party seeking to invoke equitable tolling and requirement of fraud or unfair conduct by the opposing party).

According to the Second Circuit, the doctrine of equitable estoppel applies on behalf of a complainant who is aware of the basis for his claim but is prevented from commencing an action within the filing period due to conduct on the part of the respondent. This misconduct later works to estop the respondent from raising a dismissal of the complaint based on timeliness of the filing. Cerbone, 768 F.2d. at 50; Seedman, 683 F. Supp. at 926. Thus, in order to invoke either of the equitable doctrines the Second Circuit requires some affirmative misconduct on the part of the respondent employer in causing the delay in complainant's filing.

The Seventh Circuit recently has suggested that the Second Circuit's threshold requirement of affirmative misconduct on the part of the employer as to the cause of complainant's filing delay goes beyond Supreme Court precedent. Cada v. Baxter Healthcare Corp., No. 90-1888, slip op. at 14 (7th Cir. Dec. 13, 1990) (LEXIS, Gen. Fed. Library, Courts File) citing Holmberg v. Armbrecht, 327 U.S. 392, 397 (1945); Irwin v. Veterans Administration, _____U.S. _____, 111 S.Ct. 453 (1990). even the Seventh Circuit, which has criticized the Second Circuit's refusal to apply equitable tolling except where the employer has attempted to mislead the employee, requires an employee to show ``that he could not by the exercise of reasonable diligence have discovered essential information bearing on his claim.'' Cada, No. 90-1888, slip op. at 14 (7th Cir. Dec. 13, 1990) (LEXIS, Gen. Fed. Library, Courts File).

The statutory and regulatory procedures governing the commencement of IRCA discrimination claims before OCAHO are similar to with those governing actions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., before the Equal Employment Opportunity Commission (EEOC). Mesa Airlines, OCAHO Case Nos. 88200001-2, analyzes Title VII and ADEA caselaw in holding that in IRCA discrimination claims the 180 day period in which to file a charge of citizenship discrimination may be equitably tolled. Similarly, Williams, OCAHO Case No. 89200537, applies Title VII caselaw analysis, and refuses to equitably toll the filing of a pro se complaint four days after expiration of the 90 day filing period.

The Supreme Court makes clear in Baldwin County Welcome Center v. Brown, 466 U.S. 147 (1984) the various factors will be examined in order to determine whether the 90 day filing period under Title VII may be equitably modified. Brown involves a plaintiff's filing of an Equal Employment Opportunity Commission ``right-to-sue'' letter with the district court. The Court holds that the filing of a right-to-sue letter, without more, does not satisfy the requirements of a complaint, and is insufficient to toll the 90 day filing deadline and commence a district court action.

The Court outlines instances where tolling may occur: (1) when a claimant has received inadequate notice; (2) where a motion for appointment of counsel is pending; (3) where the court has misled the plaintiff to believe that she/he complied with the court's requirements; (4) or where affirmative misconduct on the part of the defendant lulled the plaintiff into inaction. Moreover, the absence of prejudice to a defendant may be considered in determining whether tolling should apply once a factor that might justify tolling is identified, but it is not an independent basis for invoking the doctrine. Id. at 151.

As the Supreme Court indicates in Brown, equitable tolling is applicable in situations where the employer has affirmatively caused an employee to miss a filing deadline, but it also makes clear that tolling may be appropriate in cases where the employer has not induced a complainant's inaction. Andrew v. Orr, 851 F.2d 146, 151 (6th Cir. 1986); Wilburn v. Dial Corp., 724 F. Supp. 530, 533 (W.D. Tenn. 1989). When an employer has not contributed to the tardy filing of a claim, different factors have been considered by the courts to determine whether to modify the filing requirements.

For example, in Hladki v. Jeffrey's Consolidated, Ltd., 652 F. Supp. 388 (E.D.N.Y. 1987), although declining to waive the statutory filing requirement, the court articulates eight factors to determine whether equitable modification is available to a plaintiff al-

leging gender-based discrimination. The decision lists the four factors enunciated in Brown, 466 U.S. at 151 (1984), and adds four others:

> (5) when a `plaintiff has in some extraordinary way been prevented from asserting his rights'; (6) when a plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum,' citations omitted . . .; (7) when a right to sue letter has been received subsequent to commencement of a Title VII action and while the action is still pending, citations omitted; or (8) when the EEOC or Attorney General has incorrectly refused to issue a right to sue letter, citation omitted.

652 F. Supp. at 393.

Courts do not hesitate to reject equitable relief where, as here, the form's deadline is breached only by a matter of days. See Robinson v. Illinois Masonic Medical Center, No. 83 C 7940, slip. op. (N.D. Ill. Oct. 25, 1984) (misinformation from court clerk on 91st day when plaintiff attempted to file complaint held as harmless error, because the complaint was already untimely); Davis v. Sears, Roebuck & Co., 29 Fair Empl. Prac. Cas. (BNA) 1341 (D. Mass. 1982) (Title VII complaint filed on 91st day time-barred; distance of travel to the courthouse for filing and absence of prejudice to the defendant held not sufficient justifications for invoking equitable tolling). Cf. Johnson v. USPS, 863 F.2d 48 (unpublished), No. 86-2189, slip op. (6th Cir. Nov. 16, 1988) (LEXIS, Gen. Fed. Library, Courts File) (court denied relief for a one day delay in mailing appeal by a pro se plaintiff where date of mailing controls). Tillett, 637 F. Supp. 245 (D. Conn. 1985) (court finds time-barred a four day delay in filing a racial discrimination claim against the Postal Service where date of mailing controls.) Contra Royall v. USPS, 624 F. Supp. 211 (E.D.N.Y. 1985) aff'd. 849 F.2d 1467 (2d Cir. 1988) (requirement for filing of formal EEOC complaint within 15 days of final interview with Postal Service EEO counselor forgiven where filing was two days late).

The prevailing judicial view of limitations is summarized by the Johnson court:

> If courts were to toll the limitation period whenever a plaintiff was one day late, the effect would be to create a twenty-one-day limitation period. Of course, a plaintiff who filed her appeal on the twenty-second day would then argue that the doctrine of equitable tolling applied to her because she missed the effective filing date by only one day. The line must be drawn somewhere, and the Secretary . . . , pursuant to Congressional authorization, has drawn it at twenty days.

863 F.2d 48, (unpublished), No. 86-2189 slip op. at 6-7 (6th Cir. Nov. 16, 1988) (LEXIS, Gen. Fed. Library, Courts File).

2. Equitable relief denied

Grodzki filed his complaint one day late. In response to the motion for summary decision, his claim for relief of the late filing is that his complaint is postmarked the 89th day. This claim overlooks the regulatory requirement that timely filing of a complaint is receipt in this Office, 28 C.F.R. §§ 68.5(a); a requirement not satisfied by mailing or postmarking. 28 C.F.R. § 68.7(c)(1). Unmistakably, the filing date of a complaint is the date it is received by OCAHO.

Ignorance of filing requirements does not entitle a complainant to a time extension. Tillett, 637 F. Supp. at 249, citing Arrington v. Bailar, 481 F. Supp. 50, 53 (S.D. Tex. 1979). See Osei-Bonsu v. Federal Home Loan Bank of New York, 726 F. Supp. 95, 98-99 (S.D.N.Y. 1989) (where a pro se plaintiff in a Title VII action claimed he was `` `seeking to pursue his rights in a quagmire of time limits and regulations' . . .''; holding that ``lack of knowledge of the proper filing procedure and his pro se status are not sufficient to invoke the doctrine of equitable tolling.'') A complainant ``who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence.'' Brown, 466 U.S. at 151.

Failure to effect a proper filing is linked to the fact that Grodzki lacks legal counsel. Pro se status, however, without more, does not justify equitable relief. Johnson, supra, No. 86-2189 slip op. at 6; Oseai-Bonsu, 726 F. Supp. at 98 (S.D.N.Y. 1989); Cruz v. Triangle Affiliates, Inc., 571 F. Supp. 1218 (E.D.N.Y.); Williams, OCAHO Case No. 89200537 at 5. Cf. Ruiz v. Shelby County Sheriff's Dept., 725 F.2d 388 (6th Cir. 1984), cert. denied, 469 U.S. 1016 (1984) (one day late filing not equitably tolled merely because plaintiff was unrepresented by counsel); Seedman, 683 F. Supp. 924 (S.D.N.Y. 1987) (equitable modification denied where employee was on notice by the posting of ADEA filing deadlines).

Complainant does not contest that he received the December 7, 1989 OSC determination letter, nor that he received notice in that letter that the complaint must be filed within 90 days i.e., before March 7, 1990. Cf. Espinoza v. Missouri Pacific Railroad Co., 754 F.2d 1247 (5th Cir. 1987) (Title VII plaintiff contests constructive receipt of the EEOC right-to-sue letter by his wife; complaint filed two days late dismissed as untimely); Irwin, 111 S.Ct. 453; Brown, 466 U.S. 147. Grodzki has not asserted that he was misled by OCAHO, by OSC, or by Respondent as to the timing of his filing. Cf. Carlile v. South Routt School District RE 3-J, 652 F.2d 981 (10th Cir. 1981) (Reliance on a court order by appointed counsel held to toll the statutory filing period). Grodzki does not assert ex-

traordinary circumstances or other justifications utilized by the courts to grant equitable relief.

Accordingly, I hold that there can be no equitable relief from the regulatory filing deadline in this case. Although the practical consequences of this determination appear harsh, ``in the absence of a recognized equitable consideration, the court cannot extend the limitations period by even one day.'' Johnson v. Al Tech Specialties Steel Corp.. 731 F.2d 143, 146 (2d Cir. 1984) citing Rice v. New England College, 676 F.2d 9, 11 (1st Cir. 1982).[5]

D. Attorney's Fees Denied

Respondent asks for recovery of its attorneys' fees under 8 U.S.C. § 1324b(h) as a prevailing party within the meaning of that provision. Subsection (h) confers discretion on the administrative law judge to ``allow a prevailing party, other than the United States, a reasonable attorneys' fee, if the losing party's argument is without reasonable foundation in law and fact.'' I find Respondent to be the prevailing party. I do not grant fee shifting, however, because I do not find Complainant's ``argument'' to lack reasonable foundation in law and fact as those terms are used in IRCA.

In Williamson v. Autorama, OCAHO Case No. 89200540 (May 16, 1990), upon analyzing the prevailing respondent's request for attorney's fees, I found the complainant's filing not to be ``unreasonable or, as a prudential matter as distinct from legal niceties, lacking foundation,'' and accordingly denied the request. Id. at 8. That same reasoning is applied here.

Grodzki, appearing pro se, failed to comply with a regulatory filing deadline. That Complainant was unsuccessful in his quest for relief in this forum does not mean that his argument lacked rea-

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[5]Even if the administrative filing period were tolled and the Complaint were not time-barred, it is clear on the record before me that the charge of national origin discrimination must be dismissed for lack of jurisdiction. IRCA limits national origin discrimination jurisdiction to OCAHO to claims against employers who employ between four and fourteen employees. 8 U.S.C. § 1324b(a)(2)(B). Since it is undisputed that Respondent employs more than fifteen employees, OCAHO has no jurisdiction under IRCA, as amended by IA 90, based on a claim charging Respondent with national origin discrimination. See Williamson v. Autorama, OCAHO Case No. 89200540 (Decision and Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction) (May 16, 1990); Akinwande v. Erol's Inc., OCAHO Case No. 89200263 (March 23, 1990); Martinez v. Marcel Watch, Corp., OCAHO Case No. 89200085 (March 22, 1990). The proper venue, already pursued by Complainant, is the Equal Employment Opportunity Commission.

In view of the outcome of Respondent's Motion, I do not reach the merits of Complainant's citizenship discrimination claim. I make no determination, therefore, as to the validity of an alleged settlement agreement and release between Grodzki and Respondent, and I do not address Respondent's counterclaim for breach of contract.

sonable foundation in law and fact. It is not frivolous to bring a suit which is tardy by one day, and therefore held to be time-barred. The statute of limitations is an affirmative defense which may be waived if not pleaded or otherwise properly raised. Ford v. Temple Hospital, 790 F.2d 342, 348 (3d Cir. 1986). See Fed. R. Civ. P. 8(c). Moreover, from the limited filings which form the record of this proceeding it appears that Complainant's citizenship discrimination claim is not facially unreasonable or so lacking any legal foundation as to persuade me to shift fees.

Accordingly, in the exercise of my discretionary authority, Respondent's request for fee shifting is denied.

IV. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER

I have considered the pleadings, affidavit, memoranda, materials and arguments submitted by the parties. All motions and requests not previously disposed of are denied. Accordingly, and in addition to the findings and conclusions already specified, I make the following determinations, findings of fact and conclusions of law:

1. That Complainant was advised by a December 7, 1989 determination letter from the Office of Special Counsel that a complaint would be timely if filed before the expiration of the 90 day period, i.e. before March 7, 1990.

2. That Complainant mailed a Complaint on March 6, 1990.

3. That Complainant filed a Complaint with this Office on March 8, 1990, alleging an unfair immigration-related employment practice based on both national origin and citizenship status.

4. That the Complaint was filed one day after the expiration of the regulatory filing period.

5. That equitable modification of the filing period is not granted.

6. That I dismiss an untimely Grodzki's filing of the Complaint alleging both national origin and citizenship status.

7. That Respondent's Motion for Summary Decision is granted.

8. That Respondent's request for attorney's fees is denied.

This proceeding is now concluded. This Decision and Order granting summary decision in favor of Respondent is the final administrative order in this case pursuant to 8 U.S.C. § 1324(b)(g)(1). An appeal of this Decision and Order may be made not later than 60 days after entry ``in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.''

SO ORDERED.
Dated this 13th day of February, 1991.

MARVIN H. MORSE
Administrative Law Judge