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

JUAN FRANCISCO MARTINEZ, Complainant,	)	
v.	)	8 U.S.C. §1324b Proceeding
	)	Case No. 90200320
LOTT CONSTRUCTORS, INC. Respondent.	)	

DECISION AND ORDER
(April 30, 1991)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Juan Francisco Martinez, Complainant, pro se. John J. McNamara, Esq., for Respondent.

I. *Background*

This case arises under Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. §1324b. Juan Francisco Martinez (Martinez or Complainant) is a permanent resident alien of Salvadoran national origin, authorized to be employed in the United States.

Complainant, formerly a laborer employed by Lott Constructors, Inc. (Lott or Respondent) filed a charge on July 16, 1990 with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), alleging that Lott had discharged him from employment in violation of 8 U.S.C. §1324b.[1] Complainant filed his charge on OSC's

[1] On the day he filed his charge with OSC, Martinez also executed a Declaration of Intending Citizen (Form I-772), as then required by statute, 8 U.S.C. §1324b(a)(3)(B)(ii), and by regulation, 28 C.F.R. §§44.101(a)(7)(ii), 44.101(c)(2)(ii). That requirement was eliminated by Section 533 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990). See e.g., Ryba v. Tempel Steel Co., OCAHO Case No. 90200206
(NOTE: IF CITING TO THIS FOOTNOTE, THE REMAINDER OF THIS FOOTNOTE SHOULD APPEAR ON THE BOTTOM OF PAGE 179)
(Jan. 23, 1991) at 11 (failure to file a Declaration no longer precludes jurisdiction); OSC Notice, "Elimination of Requirement That Aliens File a Declaration of Intending Citizen In Order To File a Discrimination Complaint", 56 Fed. Reg. 11272 (March 15, 1991) (retroactive effect given to charges otherwise deemed complete as of November 29, 1990).

standard Spanish language form, electing only to claim national origin, but not citizenship-based discrimination as the reason he was fired.

Despite Martinez' apparent election of remedies, OSC treated his claim as having been based on both citizenship and national origin grounds. As to both, OSC advised in an October 4, 1990 determination letter "that it will not file a discrimination complaint with the Office of the Chief Administrative Hearing Officer, U.S. Department of Justice." OSC noted that it had referred the national origin portion of the charge to the Equal Employment Opportunity Commission (EEOC) but that Martinez "may still pursue his claim under IRCA by filing his own complaint directly with an administrative law judge . . . before February 11, 1991." 28 C.F.R. §44.303(b).[2] Martinez filed his Complaint on October 22, 1990.

The Complaint is set forth on a format provided to Complainant by the staff of the Office of the Chief Administrative Hearing Officer (OCAHO), containing the legend "Revised 7/30/90, #OOO1C." On its face, that format calls for judgments to be made by putative complainants as to the gravamen of the discrimination complained of, i.e., national origin or citizenship or both; to identify whether Complainant is a citizen or not; and to specify whether the claim is for failure to hire or for discharge. Regrettably, Martinez did not make appropriate selections by filling in pertinent blanks or

[2] On the date of the OSC determination letter only the cited regulation dictated the timetable for filing of a private action before an administrative law judge, i.e., within 90 days of the expiration of the 120-day investigatory period accorded to OSC by statute, 8 U.S.C. §1324b(d)(1). Now, 8 U.S.C. §1324b(d)(2), as amended by Section 537 of the Immigration Act of 1990, requires OSC to notify a charging party during the 120 day period of the determination not to file a complaint and to advise that a private action may only be filed "within 90 days after the date of receipt" of such notification.

deleting mutually exclusive or overlapping designators.[3] Respondent filed a timely Answer on November 16, 1990, noting as to those paragraphs of the Complaint format which Complainant had not completed that no answer was required. Respondent sufficiently answered the Complaint so as to put Complainant to his proof.

Respondent, by its affirmative defenses, asserted that Martinez had been fired for "unexcused absences, insubordination, and decreased work productivity," and asked for award of its attorney's fees.

By Order issued December 18, 1990 I scheduled a prehearing conference to be held in Falls Church, Virginia, on January 17, 1991. On January 3, 1991 Respondent filed a Motion for Leave to Amend Answer and Affirmative Defenses dated December 31, 1990, incorporating a motion to dismiss as to the national origin charge on the ground that Lott employs at least fifteen persons. At the January 17 conference, Complainant participated with assistance of a Spanish language interpreter provided by OCAHO. I explained to Complainant that I do not have jurisdiction to hear cases of national origin discrimination where an employer employs fifteen or more individuals. Complainant agreed that Respondent employs and employed at all relevant times, more than fourteen persons in Virginia, the location of the alleged discrimination. Accordingly, as reflected in the January 17, 1991 Prehearing Conference Report and Order, I granted Respondent's motion to dismiss the national origin charge and its request to amend the Answer.

Expanding on that ruling, I note that as a permanent resident alien Complainant is within the class of individuals protected against discharge from employment because of national origin discrimination. Title 8 U.S.C. §1324b makes plain, however, at subsection (a)(2), that administrative law judges are not empowered to adjudicate national origin employment discrimination claims that are within the jurisdiction of the EEOC.

IRCA excepts from the definition of an unfair immigration-related employment practice "discrimination because of an individual's

[3] As the result of failure to fill in blanks and to select among mutually exclusive choices there is a paucity of informative content in the Complaint. Certainly, as filed, this Complaint is of meager assistance to the administrative law judge although it is presumptively marginally informative to an employer who, charged with wrongful discharge, is likely to have some knowledge of the underlying factual issues implicated by such claim. In any event, the essence of the Martinez charge can be gleaned from the Complaint taken as a whole, although not readily.

national origin if the discrimination ... is covered under section 703 of the Civil Rights Act of 1964," 8 U.S.C. §1324b(a)(2)(B). That Act, codified at 42 U.S.C. §§2000e et seq., generally covers national origin discrimination by employers of fifteen or more employees, conferring enforcement jurisdiction on the EEOC and the district courts.

The logic of the exception is plain. IRCA empowered administrative law judges to adjudicate claims arising out of the newly established citizenship venue and the enlarged national origin jurisdiction. IRCA citizenship jurisdiction applies to employers of more than three individuals; national origin jurisdiction applies to employers of more than three but fewer than fifteen individuals. National origin jurisdiction established before enactment of IRCA was not to be disturbed. Case law under IRCA has clearly so understood. See e.g., Romo v. Todd Corp., OCAHO Case No. 87200001 (Aug. 19, 1988), aff'd., United States v. Todd Corp., 900 F.2d 164 (9th Cir. 1990); Adatsi v. Citizens & Southern National Bank of Georgia, OCAHO Case No. 89200482 (July 23, 1990), appeal dismissed, Adatsi v. Dep't. of Justice, No. 90-8943, slip op. (11th Cir. Feb. 25, 1991); Ching-Hua Huang v. United States Postal Service, OCAHO Case No. 91200022 (April 4, 1991); Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990), and Bethishou v. Ohmite Mfg., OCAHO Case No. 89200175 (Aug. 2, 1989).

By motion filed February 6, 1991, with a memorandum in support, Respondent sought summary judgment and award of attorney's fees against Complainant. By Order issued February 12, 1991 I rejected the motion and Lott's reliance on my decision and order in Bethishou, OCAHO Case No. 89200175, on the basis that in that case there was no allegation of citizenship discrimination. Martinez, unlike the complainant in Bethishou, had sufficiently alleged conduct by Respondent to raise a genuine issue of material fact as to reasons for his discharge. The February 12 Order held that because Complainant "persisted at the prehearing conference in reciting alleged discharge based on citizenship, thereby rejecting Respondent's claim that he was fired for unexcused absences and substandard productivity, I am unable to agree with Respondent that there is no genuine dispute of material fact as to the reasons for Complainant's discharge."

Accordingly, the evidentiary hearing was held as scheduled on February 27, 1991 in Falls Church, Virginia. Complainant was assisted by a Spanish language interpreter. In addition to Martinez, another former employee, Will Alfredo Rivera testified on his behalf

through the interpreter. Three employee witnesses appeared for Respondent. No post-hearing briefs were filed.

II. *Summary of Facts*

Complainant is a permanent resident alien of the United States and national of El Salvador. Respondent is a nation-wide construction company. Respondent employed Martinez as a laborer from on or about November 9, 1987 until his discharge on June 25, 1990. On that same date, Respondent also fired two other Salvadorans, Will Alfredo Rivera and Santos Mendez.

At the time of his discharge, Complainant worked at the Ritz Carlton Hotel construction site in Tysons Corner, Virginia under the immediate supervision of Daniel Davis, lead carpenter and foreman. Davis scheduled the individual laborer's work hours, which included occasional Saturdays. Communications at the work site were primarily in the English language.

A. *Complainant's Version*

Martinez repeatedly asserted at hearing that he wanted to know why he was fired by Lott. The reasons purported by Respondent, unexcused absences, insubordination, and decreased work productivity, were characterized by Martinez as lies. "When this gentleman (referring to Daniel Davis) asked me to do certain tasks, I always did them. I tried to do as much as I could. I never said to them, 'No, I am not going to do this.' And then this gentleman fired me without any reason, after being mistreated." Tr. 14. Prior to June 25, 1990 Davis had told Martinez to pick up his check if he did not like the way he was treated, but he stayed because he needed the work.

Martinez testified that Davis called him "a son of a bitch." Martinez took that comment literally, explaining "I love my mother. I have not seen (her) for . . . ten years." Tr. 15. In addition, Davis made fun of the way he walked; he called him stupid. Martinez told Davis that he did not like the way he was being treated. Martinez "begged him to treat me differently." Tr. 15. He was "humiliated in this job. . . . When I arrived at work, within me I felt this fear I was discriminated upon, I was humiliated." Tr. 22. Because of the way he was treated, Martinez became ill and required medical treatment.

Martinez did not know the citizenship status of other workers but he believed that had he been a citizen, he and others would not have been discharged or at least they would have been given the true reason why they were fired. Contrary to Respondent's assertion, Martinez never

received warnings as to his poor job performance. He also claimed that Respondent had been given notice by him that he was sick and unable to work on certain scheduled Saturdays. Martinez stated that he called his previous supervisor, Glen Mims, and advised him that he was unable to work on Saturday. Mims had agreed that Martinez was mistreated, but there was nothing Mims could do to help.

In addition to his own testimony, Complainant presented one other witness at the hearing, Will Alfredo Rivera.[4] Rivera's testimony lent nothing in the way of support to Martinez' citizenship discrimination allegations. His testimony amounted to an inquiry to the bench to find out why he and Martinez were fired. He testified that if they were fired because they were not "performing up to standards", they would have received such explanation like other laborers had received. Tr. 27.

B. *Respondent's Version*

Robert Power testified as Respondent's contract administrator, familiar with Lott's employment policies. He discussed the Equal Employment policy statement of Lott, "to recruit and hire employees without discrimination." Exh. 1. He also testified that although the total number of employees at any time varies, the percentage of non-citizens at the work site is substantially constant, i.e. thirty percent. The policy statement does not address citizenship-based discrimination, but according to Power, Lott does not distinguish between citizens and non-citizens for the purposes of employment. He admitted that citizenship, as distinct from national origin, has not been addressed in the employment policy statement; it had never before been an issue.

[4] The parties were advised at the January 17, 1991 prehearing conference that they could subpoena witnesses. At the February 27 hearing, Martinez produced a copy of a letter dated January 30, 1991 which requested subpoenas for two witnesses, Mr. Will Alfredo Rivera and Mr. Santos Mendez. The letter was misaddressed to me at the Armed Services Board of Contract Appeals (ASBCA), Skyline Building, Seventh Floor, 5109 Leesburg Pike, Falls Church, Virginia 22041. I had not received the letter. Presumably, Martinez used the ASBCA address because it was the original location designated for the hearing. Regrettably, it was never forwarded to me; Martinez failed to contact my office to inquire as to the status of his subpoena requests. Mr. Rivera, however, voluntarily appeared. Complainant made no offer of proof as to the proposed testimony of Mr. Mendez, nor did Complainant request a postponement of the hearing.

Lott also called James Etzel, Ritz Carlton project field superintendent. He testified as to Daniel Davis' reputation and productivity. He affirmed that Davis "treats everybody on an equal basis regardless of race, color, or creed." Tr. 46. During Etzel's eighteen years of employment by Lott, Respondent employed many minorities and non-citizens. Etzel also discussed Lott's policy as to termination of employees. Generally, three warnings are issued, unless the conduct is so egregious as to warrant immediate discharge. There is, however, no standard termination policy.

Etzel had observed Martinez perform in a lackadaisical manner on several occasions, and Martinez had not appeared for Saturday work as scheduled. There was nothing unusual in the reasons and method by which Complainant was terminated.

Daniel Davis has been employed by Lott for two years as a lead carpenter and foreman, but has worked in the construction industry for twelve years. He described his duties as a supervisor in building the concrete columns for the deck of a building. He also described laborer duties which were to supply the carpenters with materials and to clean up the general work area. He was Complainant's immediate supervisor but he spoke no Spanish. Some carpenters and laborers, including his brother, were bilingual and interpreted for him when needed.

Davis also discussed the weekly payroll records of Respondent, which were introduced to show the dates that Martinez failed to report for Saturday work as scheduled by Davis. He testified that Martinez' work productivity decreased because he needed repeated individual instruction. Martinez should have been able to perform without direct supervision. Davis had fired his close friend Daniel Brady for chronic tardiness and unexcused absences. He also had fired his brother, a United States citizen, for fighting on the job.

Davis testified that he did not know Complainant's citizenship status, or that of his other employees. He did, however, guess that Martinez was of Hispanic origin because of the language difficulty. Only the central office, by handling the paperwork, knew the workers' citizenship statuses. He testified that he hired two individuals presumably of Hispanic origin, Jose Hernandez and Andres Munoz, to replace Martinez and Rivera. He did not know their citizenship statuses.

Davis testified to the exigencies to keep on schedule at the Ritz Carlton construction site. He acknowledged that he is hard-headed and has a temper. He admitted also that he used abusive language towards all his crewmen, but that foul language was his way of coping with the pressures of his job and dealing with his crew; his harsh language was not directed at Complainant in particular.

C. *Factual Findings*

Complainant's description of his treatment by Respondent and its employees is moving. Humiliation and hyper-sensitivity to abusive language, however, can obtain no relief in this forum, and do not per se constitute evidence to establish a citizenship-based motive for discriminatory discharge.

Based on the testimony of Etzel and Davis as to their personal observations of Martinez at the work site, and Martinez' explanations as to those observations, there may have been miscommunication as to the events that led to Martinez' discharge. Complainant disputes Respondent's stated reasons for his discharge: insubordination, unexcused absences and decreased work productivity. I do not here reach the question whether in fact Martinez was discharged for the reasons proffered by Respondent. Rather, for the reasons explained below, I find that Martinez has not proven by a preponderance of the evidence that the reasons given by Respondent for discharge were a pretext for citizenship discrimination. Without concluding whether Lott's stated reasons for dismissing Martinez were valid; I do find that they were not a pretext for a citizenship based discriminatory discharge.

III. *Discussion*

The issue is whether on July 25, 1990 Lott discharged Martinez from his position as a laborer because of his citizenship status, in violation of the prohibition against unfair immigration related employment practices. 8 U.S.C. §1324b(a)(1)(B). I hold that Complainant has not proved by a preponderance of the evidence that he was discriminated against because of his citizenship status. Accordingly, this Decision and Order finds in favor of Respondent.

A. *Generally*

In proving a case of citizenship status discrimination under IRCA, the burden is on the party seeking relief to establish by a preponderance of the evidence that the respondent has engaged in an

unfair immigration related employment practice. See 8 U.S.C. 1324b(g)(2)(A); Adatsi, OCAHO Case No. 89200482; Jones v. De Witt Nursing Home, OCAHO Case No. 88200202 (June 29, 1990); Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990); U.S. v. Marcel Watch, OCAHO Case No. 89200085 (March 22, 1990); U.S. v. Mesa Airlines, OCAHO Case Nos. 88200001-2 (July 24, 1989), appeal docketed, No. 89-9552 (10th Cir. Sept. 25, 1989). The administrative law judge is obliged to dismiss the complaint if the complainant does not meet that burden. 8 U.S.C. §1324b(g)(3); 28 C.F.R. §68.50(c)(1)(iv). Here, I find that Complainant has failed to meet his burden. The evidence does not provide a basis for judgment that Complainant's discharge turned on his citizenship status.

B. *Facts Applied*

Complainant's case heavily depends on his belief that he should not have been discharged for unexcused absences, insubordination, and decreased work productivity. To the extent that his claim depends on a finding that Respondent's stated reason for discharge is a pretext for an unlawful discrimination, Complainant must first establish a prima facie case. See McDonnel Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Once a prima facie case is established the burden shifts to Respondent to articulate a legitimate, nondiscriminatory reason for the adverse employment decision, here, the discharge. The question becomes whether non-performance of duties, absenteeism, and insubordination were the only reasons for Complainant's discharge or the pretext for a discriminatory motive in Complainant's dismissal.

Complainant pointed to the fact that he, Rivera and Santos Mendez, all three Salvadorans, were fired on the same day. As I stated at the conclusion of the evidentiary hearing, the burden of persuasion that citizenship discrimination was the reason for firing rests with Complainant. The testimony, however, does not make a prima facie showing that Complainant and the other Salvadorans were discharged by Lott because of their citizenship status.

Having heard and observed the witnesses I am certain that whether Respondent acted reasonably or with undue haste in discharging Martinez, there is no basis on this record for an inference that he was discharged by reason of his citizenship. At best, Complainant's supervisor Davis, who initiated the discharge process, was aware that Complainant was of Salvadoran national origin. He denied, and I do not doubt him, having any knowledge of the citizenship status of his Hispanic-origin employees. His lack of sophistication with respect to the difference between national origin

and citizenship status is consistent with that of Respondent institutionally, as demonstrated by its witness, Robert Power.

In support of its effort to persuade of its lack of bias, Respondent introduced a January 1, 1990 fair employment practices policy statement which commits to a "maximum effort to achieve full employment . . . of all our citizens without regard to . . . national origin." (Emphasis supplied.) Exh 1. Robert Power explained that Lott did not by the use of the term "citizens" distinguish between citizenship and national origin status. Although there may be a case under IRCA where citizenship status discrimination is found to exist absent knowledge on the part of the employer that the individual is of one citizenship or another, this is not such a case. At most, aware that he was of Hispanic origin, Davis initiated Complainant's discharge along with others of similar origin and, in a significantly identical time frame and for substantially similar reasons, American born employees, including Davis' close friend, Daniel Brady.

I have no basis for rejecting Lott's evidence as to the composition of its labor force, i.e., thirty percent are non-citizens.

Complainant has failed to make a prima facie showing that he was discriminated against or that he was treated less favorably than any similarly situated non-citizen employee because of his citizenship status. Nothing on this record confirms Martinez' allegations that the reasons advanced by Respondent for his discharge were a pretext for citizenship based discrimination. Lott did not discriminate against Martinez based on his citizenship status and therefore did not violate the prohibition against unlawful citizenship discrimination in 8 U.S.C. §1324b. Accordingly, the complaint is dismissed. 8 U.S.C. §1324b(g)(3).

C. *Fee Shifting*

Respondent has requested award of its attorney's fees, arguing in reliance on the statutory formulation that Complainant's "argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). Quite obviously I agree that Martinez has failed to prove by a preponderance of the evidence that Respondent engaged in the unfair immigration-related employment practice alleged to have occasioned his discharge from employment. The conclusion that Complainant failed to sustain his burden of proof is not, however, tantamount to a conclusion that his case was so totally lacking as to fall unerringly within the parameters of subsection 1324b(h). See, e.g., Grodzki v. OOCL, OCAHO Case No. 9020095 (Feb. 13, 1991), at 10; Williams v. Lucas, OCAHO Case No. 89200552 (Decision and Order

Granting in Part Respondent's Motion to Dismiss, and Order to Show Cause, Oct. 22, 1990) at 6; Williamson v. Autorama, OCAHO Case No. 89200540 (May 16, 1990) at 8. But see United States v. San Diego Semiconductors, Inc., OCAHO Case No. 89200442 (April 4, 1991) at 24; United States v. Educational Employment Enterprises, OCAHO Case No. 90200242 (Jan 2, 1991) at 6-7 (amended Feb. 1, 1991); Banuelos v. Transportation Leasing Co., OCAHO Case No. 89200314 (Oct. 24, 1990) at 25-27; Becker v. Alarm Device Mfg. Co., OCAHO Case No. 89200013 (Order Granting . . . Respondent Union's Request for Attorneys' Fees, Nov. 28, 1989), (Final Order Fixing Amount of Attorneys' Fees Due from Complainant . . ., July 27, 1990).

It cannot be doubted that Respondent was required to defend against what proved to be a vacuous Complaint. But neither can it be doubted that IRCA holds out to the alien community in particular the promise for relief against immigration-related workplace grievances. I take as sincere Complainant's claim, indeed witness Davis' acknowledgment, that the construction workplace in which Complainant labored for Lott lacked sensitivity to his personal characteristics.

I find disingenuous the Martinez claim that if only he would have been given the reason(s) for his discharge he would have gone along with it, for when confronted with the reasons, i.e., unacceptable job performance, attendance, and insubordination, he argued that it was untrue. Given the broad differences, however, in ethnic, cultural and linguistic background between this Salvadoran born laborer and his Anglo supervisors, misunderstanding in the milieu of a construction project is hardly a revelation.[5]

Martinez may have been proud, complacent, or naive in his responses to Davis or in his hope for protection by his former supervisor, Glen Mims, from workplace conflict real or imagined. Whether any or all of these characteristics led to his discharge, they made him blind to the deficiencies in his cause of action so as to render unrealistic, but not inexplicable, his persistence in seeking a hearing.

Without suggesting that the American workplace need adapt in every respect to the differences among its foreign-born personnel, I am satisfied that the awkwardness of Complainant's fit into that workplace needs to be taken into account in adjudging whether to award attorney's fees against him. In this respect it is not

[5] See, e.g., "Workplace Still Considered Unsafe for Many Hispanics," The Washington Post, Apr. 29, 1991, at D1, col. 5.

unimportant that the 1990 amendments to IRCA dictate more and broader public education about redress offered by 8 U.S.C. §1324b. See Section 531, Immigration Act of 1990, enacting 8 U.S.C. §1324b(1).

The question whether it was unreasonable for Complainant to bring his action must be resolved in context of public comment critical of unfair immigration related employment practices, even before enactment of the 1990 amendments. See e.g., "Discriminating Against Aliens," editorial, The Washington Post, Apr. 1, 1990 at C6, col. 1.

Accordingly, in light of Complainant's pro se status, apparent unsophistication in legal matters, and the public policy which specifically encourages efforts at redress by covered individuals, I do not find his filing this action to be unreasonable or, as a prudential matter as distinct from legal niceties, lacking foundation. Upon consideration, Respondent's request is denied.

There is need for caution in awarding attorney's fees lest those who most need IRCA's protection become vulnerable for what was intended to be an expansion of civil rights remedies. See Soto v. Romero Barcelo, 559 F. Supp. 739, 742 (D. Puerto Rico 1983), where the court cautioned that prevailing defendants in civil rights cases should not be routinely awarded attorney's fees "given the purposes of the civil rights laws. . . ."

The fee shifting mechanism of 8 U.S.C. §1324b(h) authorizes an award of attorney's fees in the judge's discretion. For the foregoing reasons, considering also Complainant's apparent financial inability to pay, innocent though Lott is of wrongdoing on this record, I decline to mulct Martinez with Lott's expenses.

IV. *Ultimate Findings of Fact and Conclusions of Law*

I have considered the pleadings, testimony, evidence 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 stated, I make the following determinations, findings of fact and conclusions of law:

1. That Complainant, Juan Martinez, being a permanent resident alien qualifies as a protected individual by virtue of the prohibition of 8 U.S.C. §1324b against unfair immigration-related employment practices, including citizenship-based discriminatory discharge from employment in the United States.

2. That Complainant was discharged from his employment as a laborer by Lott Constructors on June 25, 1990.

3. That because Respondent employs more than fourteen individuals I have jurisdiction under IRCA over so much of the Complaint as alleges citizenship based discrimination but none as to national origin-based discrimination in discharge from employment. 8 U.S.C. §1324b(2)(B).

4. That Complainant has failed to prove by a preponderance of the evidence that Respondent discriminated against him based on citizenship status. I do determine upon the preponderance of the evidence that Respondent has not engaged in citizenship status discrimination with respect to Martinez. 8 U.S.C. §§1324b(g)(2)(A); 1324b(g)(3).

5. That this proceeding, including the Complaint, is dismissed on the merits. 8 U.S.C. §1324b(g)(3); 28 C.F.R. §68.50(c)(1)(iv).

6. That this proceeding is now concluded. This Decision and Order in favor of Respondent is the final administrative order in this case pursuant to 8 U.S.C. §1324b(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." 8 U.S.C. §1324(b)(i).

SO ORDERED.

Dated this 30th day of April, 1991.

MARVIN H. MORSE
Administrative Law Judge