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

JACK HUANG, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	CASE NO. 91200021
QUEENS MOTEL, Respondent.	)	

Appearances:

Jack Huang, Complainant, pro se.

James Lin, Respondent Queens Motel, pro se.

Before: ROBERT B. SCHNEIDER
Administrative Law Judge

FINAL DECISION AND ORDER ON MOTION FOR SUMMARY DECISION

I. *Statutory and Regulatory Background:*

This case arises under Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324b. Section 1324b provides that it is an "unfair immigration-related employment practice" 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 . . . ." The statute covers a "protected individual," defined at Section 1324b(a)(3) as one who is

a citizen or national of the United States, an alien lawfully admitted for either permanent or temporary residence, an individual admitted as a refugee or granted asylum.[1]

Congress established the new cause of action out of concern that the employer sanctions program, codified at 8 U.S.C. § 1324a, might lead to employment discrimination against those who appear "foreign," including those who, although not citizens of the United States, are lawfully present in this country. "Joint Explanatory Statement of the Committee of Conference," Conference Report, H.R. Rep. No. 99-1000, 99th Cong., 2d Sess. 87 (1986). Protected individuals alleging discriminatory treatment on the basis of national origin or citizenship must file their charges with the Office of Special Counsel for Immigration-related Unfair Employment Practices (Special Counsel or OSC). The OSC is authorized to file complaints before administrative law judges designated by the Attorney General. 8 U.S.C. § 1324b(e)(2).

IRCA permits private actions in the event that OSC does not file a complaint before an administrative law judge within a 120-day period. The person making the charge may file a complaint directly before an administrative law judge within 90 days of receipt of notice from OSC that it will not prosecute the case. Section 537, IA 90, to be codified at 8 U.S.C. § 1324b(d)(2).[2]

Jack Huang is an individual of Taiwanese national origin, authorized to work in the United States. Mr. Huang (Complainant) charges that "Queens Motel" (Queens or Respondent) on or about January 16, 1990, unlawfully discriminated against him when it discharged him from his position as manager of the motel located at 16959 Stoddard Wells Road, Victorville, California. Complaintant alleges only discrimination arising out of his national origin status.

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[1] Section 533 of the Immigration Act of 1990 (IA 90), Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990), eliminated the requirement that a protected individual, who is not a citizen, file a declaration as an intending citizen in order to bring a citizenship discrimination complaint. See 56 Fed. Reg. 11272 (March 15, 1991) (retroactive effect given to charges otherwise deemed incomplete as of November 29, 1990).

[2] This provision amends and codifies the regulation at 28 C.F.R. § 44.303(c)(2), which requires the charging party to file its complaint directly before an administrative law judge "within 90 days of the end of the 120-day period." Section 537 of IA 90 only applies to charges received by OCAHO on or after the enactment date, i.e., November 29, 1990.

II. *Procedural History:*

On July 17, 1990, Complainant filed a charge with the Office of Special Counsel (OSC) against Respondent, alleging an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1)(A). By letter dated November 14, 1990, OSC advised Mr. Huang that "there is no reasonable cause to believe that you were discriminated against based on your national origin." OSC advised Mr. Huang that it would not file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), but that he could file his own complaint with an administrative law judge at any time after receipt of its letter, but not later than February 12, 1991.

On February 4, 1991, Complainant, acting pro se, filed a Complaint, in letter form, with OCAHO, alleging that Respondent dismissed him from his employment at Queens Motel because of his national origin in violation of 8 U.S.C. § 1324b. On March 7, 1991, Complainant filed an Amended Complaint.

On March 13, 1991, OCAHO issued its Notice of Hearing, advising the parties of my assignment to the case, and forwarded the Amended Complaint to Respondent.

On April 16, 1991, pro se Respondent filed its Answer, in letter form, generally denying the allegations of the Complaint and arguing that the actual grounds for Complainant's discharge were as follows: (1) "extremely poor managing skills"; (2) "poor interpersonal relationship with co-workers and racism"; and (3) "dishonesty". . . ."

After thoroughly reviewing all the pleadings and other documents filed in the case, I was of the view that this case might appropriately be resolved by a Motion for Summary Decision made pursuant to 28 C.F.R. § 68.36. I, therefore, on May 1, 1991, directed Respondent to file with this office, on or before May 15, 1991, a Motion for Summary Decision, utilizing an attached form pleading and affidavit. I further directed Complainant to file a response to Respondent's motion.

On May 20, 1991, Respondent filed its Motion for Summary Decision. In support of its Motion for Summary Decision, Respondent attached the affidavits of (1) James Ming-Hung Lin, a co-owner of Queens Motel; (2) Mirrian Lin, a co-owner of Queens Motel (3) Ayako Renfroe, an employee at Queens Motel; and (4) Lucy Perez, a maid employed by Respondent.

On May 29, 1991, Complainant filed its Opposition to Respondent's Motion for Summary Decision. In support of its Opposition, Complainant attached his affidavit, but no others.

In response to my orders of June 6 and June 11, 1991, Complainant and Respondent filed additional statements, affidavits and documents in connection with the pending Motion for Summary Decision.

III. *Statement of the Facts as Presented by Each Party*

A. *Complainant's Version*

Complainant has presented his version of the facts to support the allegation in this case in his affidavits dated May 22, 1991, and June 19, 1991; his letter dated September 27, 1990, written to Ms. Linda R. White, a representative from the Special Counsel's Office; his letter dated January 30, 1991, submitted to OCAHO as a Complaint; and his letter with attached documents dated June 12, 1991.

Although Mr. Huang's affidavit and letters are awkwardly written and words are missing or misspelled, I have been able to comprehend what he alleges are the factual basis for the allegations set forth in the Complaint. The following is a comprehensive summary of the facts submitted by Complainant in support of his Complaint.

Complainant, Jack Huang, was born on April 8, 1941, at Shin-Chu, Taiwan, Republic of China. He arrived in the United States at Anchorage, Alaska, on June 4, 1981. Between June 4, 1981, and May 4, 1988, the record is not clear as to Mr. Huang's immigration status in this country. On May 4, 1988, INS issued Mr. Huang his temporary resident alien card on May 4, 1988, with an expiration date of November 30, 1990. INS issued Mr. Huang his permanent resident alien card ("green card") in the summer of 1990.

On July 12, 1983, Mr. Huang went to work for Respondent as a manager and maintenance worker for its 54-unit motel.[3] The owners agreed to pay Complainant $1,500.00 a month. Mr. Huang assumed the job was an eight-hour/day job.

[3] Prior to working for Respondent, Complainant was employed as the Chief of the Auto Sales Division of San Young Industry, Inc. Mr. Huang's wife also worked for the company as an assistant manager. Shi-Hei Huang, the brother-in-law of James Lin (co-owner of Respondent Queens Motel), was a major share holder of the company.

On July 14th, the owners told him that he would have to work 18 hours a day because they had hired a person to work at night at the front desk for six hours-a-day, seven days-a-week. The co-owner, James Lin, told Mr. Huang that he would not pay him overtime, but that in one or two months he would lease the motel to Mr. Huang.

Several days later, James Lin told Mr. Huang that he and his wife would be returning to Taiwan to attend the wedding ceremony of their oldest daughter.

On or about July 20, 1991, Mr. Huang asked his wife (hereinafter referred to as Mrs. Huang) to quit her job and help him operate the motel because he was having difficulty working 18 hours a day. Shortly, thereafter, Mrs. Huang began working with her husband at the motel.

The owners of the motel stayed in Taiwan from July 24, 1989 to August 26, 1989. During this period of time, Mr. Huang managed the motel and handled the maintenance work and Mrs. Huang worked at the front desk.

After the owners returned to the United States, they paid Mr. Huang a $100.00 bonus for his excellent work while they were in Taiwan. Mr. Huang, however, decided to return the money, hoping they would lease the motel to him.

Approximately a month after the owners had returned from Taiwan, Mr. Huang asked them to lease him the motel. Mrs. Lin responded to Mr. Huang's request and told him that he still needed time to become more familiar with the operation of the motel.

During the period between September 1989 and October 1989, the business slowed down; Mr. and Mrs. Huang rejected a salary payment of $1,900.00 a month for their work; the night front desk clerk's working hours were reduced from six hours a day to five hours a day; Mr. Huang was asked by the owners to work one hour at the front desk without pay; Mrs. Huang obtained another job where she worked during the day; and Mr. and Mrs. Huang began, collectively, working approximately 123 hours a week at the motel.

Sometime in November 1989, the night clerk quit his job. The owners asked Mr. and Mrs. Huang to take over the job duties and responsibilities of the night clerk and agreed to pay them $5.00 an hour or an additional $30.00 a day.

Although Mr. and Mrs. Huang took over the duties of the night clerk, the owners never paid them for their additional work. James Lin told Mr. and Mrs. Huang the reason that he was not paying them for their additional work was because business was very slow.

After a number of arguments between Mr. Huang and the owners relating to payment of wages, on December 18, Mr. and Mrs. Huang reached a compromise agreement with the owners on their salary for the next three months of work. The agreement was in writing and was subject to renewal every three months.

On January 7, 1990, the owners came to the motel and argued with Mr. Huang over the amount of the bonus and whether or not Mr. and Mrs. Huang could have four days off for a vacation. Although Mrs. Lin wanted to fire Mr. and Mrs. Huang, Mr. Lin agreed to permit them to have a four-day vacation. The Huangs agreed to return to work on January 12, 1990.

Mr. and Mrs. Huang left on their vacation on the morning of January 8, 1990. When they returned to the motel on January 14, 1990, they were locked out of the building.

On the morning of January 16, 1990, Mr. Huang returned to the motel for his pay. The owners agreed to pay Mr. Huang $500.00, but wanted him to remove all his personal belongings from the motel and sign a note before they would be pay him anything.[4] Mrs. Lin told Mr. Huang that, if he did not sign the note and accept payment of $500.00 as his wages, she would report him to the Immigration and Naturalization Service (INS) and he and his wife would be deported. After Mr. Huang signed the note and was paid the $500.00, he told the owners he would sue them "at court" and then left the premises.

Mr. and Mrs. Huang returned to the motel at approximately 10:30 p.m. on January 16, argued with the owners, and were allowed to remove only some of their personal belongings. Moreover, the owners towed Mr. Huang's car from the motel parking lot, removed the license plates, hammered nails in three of the car's tires, broke the windows of the car, and removed a cassette from the car.

[4] Mr. Huang does not explain in any of his statements what the note stated, but this is explained in detail in Respondent's Answer to the Complaint. Mr. Huang argues that he was forced to sign the note in order to get his wages.

B. *Respondent's Version of the Facts*

Respondent's version of the facts is set forth in its Answer and affidavits submitted in support of its Motion for Summary Decision. The following is a summary of the relevant portions of those pleadings and affidavits.

James Ming-Hung Lin and his wife, Mirrian Lin, were born in Taipei, Taiwan, China. They lived in China for approximately forty years before they immigrated to the United States. Mr. and Mrs. Lin immigrated to the United States on June 5, 1975, and sometime thereafter became United States citizens. Since August of 1981, Mr. and Mrs. Lin have owned and operated the Queens Motel located in Victorville, California.

In July of 1989, Mr. Huang was hired by Respondent to manage its motel as a live-in manager and take care of basic maintenance. Mr. Lin's affidavit states that Mr. Huang's job responsibilities included "supervising all other employees of the motel, checking in and out motel customers, collecting money, registering, maintaining accurate amount of money received and making previous day's and daily report to the owners, performing maintenance work on the motel premises and managing any other work necessary to conduct and maintain a normal motel operation."

Respondent agreed to pay Huang $1,500.00 a month, plus provide him with lodging and free use of a telephone. Mr. Huang's working hours added up to less than eight hours a day, because he was working on an on-call basis.[5]

At the time Mr. Huang was hired, he expressed an interest in leasing the motel from the owners. Mr Lin told him that an observation period was needed to assess his abilities and, if Mr. Lin felt he was qualified; he would lease the motel to him because Mr. Lin wanted to retire.

During the first six months on the job, Mr. Huang showed extremely poor managing skills. Frequently, when Mr. Lin came to check the operation of the motel during this period, he discovered an average of 20% of the motel rooms unable to be rented because of minor maintenance problems which could have been easily corrected. In addition,

[5] According to Respondents' version of the facts, there was no written agreement between Queens Motel and Mr. Huang concerning the terms of his employment.

Mr. Huang's attitude toward the customers was often hostile and impolite. He frequently argued with customers.

Although Mr. Lin asked Mr. Huang to change his conduct and told him how to repair "minor problems with the rooms in order to retain customers," Mr. Huang did not show any signs of making any changes either in his behavior or maintenance of the motel rooms. As a result, during the first six months that Mr. Huang operated the motel, the gross income took a sharp decline of $17,000.00 from the previous ten year average of equivalent months.

Mr. Huang also did not work well with other motel employees. Mr. Lin received numerous complaints from other employees about Mr. Huang's poor interpersonal relationship with them. Moreover, Mr. Lin was offended by Mr. Huang's racist comments against blacks and hispanics.

On November 13, 1989, the owners of Queens Motel audited income from the previous day and discovered a shortage of $160.00. They immediately confronted Mr. Huang about the shortage. Mr. Huang admitted to having taken the money for "personal emergency use," apologized to the owners and promised not to do it again.

Approximately a week later, on November 19th, the owners made another audit of the motel's financial records and discovered that $150.00 was missing from the previous day's income. They immediately confronted Mr. Huang about the missing money and asked him to leave the job. Mr. Huang apologized and pleaded for another chance. The owners decided to permit Mr. Huang to continue working for them, but gave him a warning in writing that he would be fired if he stole any more money from the motel.

Mr. Lin also told Mr. Huang that because of his poor work performance and dishonesty, the owners would not lease the motel to him. However, in order to encourage Mr. Huang to improve his management of the motel, Mr. Lin told him that if he made an improvement in operating the business, he would receive a bonus. The amount of the bonus would be decided by Mr. Lin.

Sometime between December 31, 1989, and January 16, 1990, the owners discovered that Mr. Huang had taken $500.00 from the motel on December 29th and another $500.00 on December 30th. Mr. Huang

claimed that the money he took was his earned bonus. As a result of this discovery, on January 16, 1990, the owners fired Mr. Huang.[6]

On the morning of January 16, 1990, the owners paid Mr. Huang his remaining salary of $550.00, which covered his employment from January 1 through January 11, 1990. Mr. Huang was told to vacate the building. After Mr. Huang had removed all his property from inside the motel, he signed a note stating that he had received his wages and that he had taken all of his belongings from the motel.

According to Mr. Lin's affidavit, he fired Mr. Huang because of his poor management skills, his inability to get along with other employees and customers at the motel, his racism, his lying to the owners and his stealing money from the motel.

Shortly after Mr. Huang was fired, the owners hired Thomas Adkerson, who is not of Taiwanese national origin, to manage the motel.

IV. *Discussion, Findings and Conclusions*

The amended Complaint filed in this case is four pages in length and is a conclusory Complaint. Although the Complaint does allege that Complainant was "an alien authorized to be employed in the United States" (Complaint, at paragraphs 2 and 2A), and he was wrongfully discharged "because of his Taiwanese national origin," Complainant has not presented any evidence in response to Respondent's Motion for Summary Decision to support his allegations.[7]

The federal regulations applicable to this poceeding authorize an Administrative Law Judge (ALJ) to "enter 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 material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.36; see also, Fed. R. Civ. P. 56(c).

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[6] According to Mr. Lin's affidavit, on January 16th, Queens Motel employed four other employees besides Mr. Huang.

[7] Jurisdiction of OCAHO over claims of national origin discrimination in violation of 8 U.S.C. § 1324b(a)(2)(B) is necessarily limited to claims against employers employing between four and fourteen employees. Since Respondent employed five employees, on the date of Complainant's termination, OCAHO has jurisdiction under IRCA in this case based on the claim charging Respondent with national origin discrimination.

Prior OCAHO administrative law judge decisions, determining whether or not an employer has discriminated against an employee because of his/her national origin or citizenship in violation of Title 8 U.S.C. § 1324b, have relied upon federal court decisions interpreting alleged violations of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) ("Title VII") for precedent and guidance. United States v. Lasa Marketing Firms, OCAHO 106 (11/27/89); Fayyaz v. The Sheraton Corp., 1 OCAHO 152 (4/10/90); Bethishou v. Ohmite Mfg. Co., 1 OCAHO 77 (8/2/89).

This is a case of alleged disparate treatment. The Supreme Court developed a framework for allocating burdens of proof in a Title VII disparate treatment case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). The plaintiff carries the initial burden to prove, by a preponderance of the evidence, the prima facie case of discrimination. This burden is not onerous, but plaintiff must show that "(i) [she] belongs to a . . . minority; (ii) [she] applied and was qualified for a job for which the employer was seeking applicants, (iii) that, despite [her] qualifications, [she] was rejected; and (iv) that, after [her] rejection, the position remained open and the employer continued to seek applicants from persons of plaintiff's qualifications." Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, n.6, 101 S. Ct. 1089, 1094 (1981) (quoting McDonnell Douglas, 411 U.S., at 802, 93 S. Ct., at 1824).

The prima facie cases raises an inference of discrimination for which defendant carries a burden of rebuttal; defendant need only articulate a legitimate, nondiscriminatory reason for the employee's rejection to successfully rebut this inference. Id.

The plaintiff then has the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804, 93 S. Ct. at 1825. This burden of proof carried by plaintiff merges with the ultimate burden of persuading the court that the plaintiff has been intentionally discriminated against. Burdine, 450 U.S. at 257, 101 S. Ct. at 1095. "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Id. at 253, 101 S. Ct. at 1093.

The McDonnell Douglas principles have been applied by both federal courts and OCAHO administrative law decisions, with necessary modifications, to discharge cases. Said v. Institute of Int'l Educ., Inc., No. 80 Civ. 3294 (S.D.N.Y. April 15, 1982) (dism'd D.C.N.Y. 1982);

Powell v. Syracuse University, 580 F.2d1150, 1155 (2d Cir. 1978), cert. denied, 439 U.S. 984 (1978); Flowers v. Crouch-Walker Corp., 552 F.2d- 1277, 1281 n.3 (7th Cir. 1977); Bethishou, 1 OCAHO 77, at 5.

In cases alleging discriminatory discharge, the federal courts have added the requirement of showing that plaintiff was satisfying the normal requirements of his work, and have permitted the final element of the prima facie case to be satisfied by proof that plaintiff was replaced by a non-minority worker. Wade v. New York Telephone Co., 500 F. Supp. 1170, 1174 (S.D.N.Y. 1980); see also Wooten v. New York Telephone Co., 485 F. Supp. 748 (S.D.N.Y. 1980). Thus, in a case of discriminatory discharge under Title VII, the elements of a prima facie case may be summarized as follows: (1) that the plaintiff was a member of a minority; (2) that he was qualified for the job he was performing; (3) that he was satisfying the normal requirements of his work; (4) that he was discharged; and (5) that after his discharge he was replaced by a non-minority employee. Flowers, 552 F.2d 1282.

Applying the federal case law to this case, the Complainant, in order to establish a prima facie case of discriminatory discharge in violation of IRCA, must show: (1) that he was a member of the group of individuals protected by IRCA; (2) that he was qualified for the job he was performing; (3) that he was satisfying the normal requirements of his work (4) that he was discharged; and (5) that after his discharge he was replaced by an employee whose national origin was not Taiwanese.[8]

In the case at bar, Complainant has established certain elements of the prima facie case. His national origin was Taiwanese and he was authorized for employment in the United States. He thus falls within an identifiable protected group within the context of IRCA; that is to say, his employer could not discharge him because of his national origin. Mr. Huang was unquestionably

[8] Decisions by ALJS for OCAHO have used a different test to determine whether or not a complainant has established a prima facie case of discriminatory discharge. These decisions have held that in order for a complainant to establish a prima facie case of discharge, he must show that: (1) he was a member of a protected class; (2) he was discharged; and (3) a causal connection existed between the protected status and the discharge, resulting in disparate treatment. See In Re Charge of Shahrokh Dagighian, United States v. San Diego SemiConducters, Inc., OCAHO Case No. 89200442 (4/4/91); Ryba v. Tempel Steel Co., 1 OCAHO 289 (1/23/91); Bethishou, 1 OCAHO 77 (8/2/89); and Wisniewski v. Douglas County School Dist., 1 OCAHO 29 (10/17/88).

discharged; and following that discharge, Respondent hired a non-Taiwanese to replace him. Thus, the first, fourth, and fifth elements are satisfied.

The second element required is that Mr. Huang prove that he was qualified for the job he was performing. The evidence presented by the parties clearly shows that Mr. Huang was not qualified for the job of managing a motel. Mr. Huang's prior work experience was employment as a Division Chief in sales for San-Young Industry, Inc., a Taiwanese Company, which manufactured and sold Honda automobiles. Although Mr. Huang's job with San-Young arguably involved management skills, I do not find from the record in this case that Mr. Huang's management experience and skills qualified him to manage a motel. I, therefore, find that Mr. Huang has failed to show that there are any material facts in dispute as to whether or not he was qualified for the job of motel manager.

The third element of a prima facie case is that Mr. Huang was satisfying the normal requirements of his work. Respondent's evidence clearly shows that Mr. Huang was not satisfying the normal requirements of his job. Respondent has stated in support of its motion that Mr. Huang was discharged from his job because, inter alia, of his poor management skills, his poor interpersonal relationship with co-workers and for his stealing motel funds. Although Mr. Huang has stated in his pleadings that he and his wife worked long hours everyday of the week and Respondent failed to hire professionals to fix up the motel, he does not refute Respondent's statements that he was not satisfactorily performing his job. Specifically, Mr. Huang does not dispute Respondent's statements that he was having problems getting along with other employees that he stole money from the motel funds and that because of his poor management skills, "the gross income took a sharp decline of $17,000 from the previous ten year average." I, therefore, find that Mr. Huang has failed to show there is any material fact in dispute as to the third element of a prima facie case.

Since there are no material facts in dispute in this case, i.e., that Complainant was not qualified to perform the job of managing Queens motel and that he was not satisfying the normal requirements of his work, Complainant is unable to establish a prima facie case. For that reason alone, Respondent's Motion for Summary Decision should be granted. There are additional reasons, however, why Respondent's Motion for Summary Decision should be granted.

In addition to Complainant's failure to make a prima facie case of discrimination under IRCA, Complainant's pleadings, letters to Special Counsel, and statements in response to Respondent's Motion for Summary Decision allege causes of action which are not covered by IRCA.

The Complainant has not presented any specific evidence to show that he was discharged because of his national origin. More specifically, there has been no evidence either directly or indirectly presented by Complainant to show that Respondent discriminated against Mr. Huang and fired him on January 16, 1990, because of his Taiwanese national origin.[9]

The only evidence presented by Complainant to support his claim that he was discharged because of his national origin is contained in the Complaint and is conclusory. In my view, conclusory statements of national origin discrimination are not sufficient to defeat a motion for summary decision, especially where there are undisputed legitimate grounds shown for the employee's discharge.

Complainant has not disputed Respondent's documentary evidence in support of its Motion for Summary Decision, showing that he was terminated because of his poor management skills, inability to get along with other employees, his racism against black employees, his lying to the owner and stealing motel funds. In my view, Complainant's failure to specifically deny Respondent's reasons for discharging Complainant constitutes an admission as to their truthfulness. See United States v. USA Cafe, 1 OCAHO 42 (2/6/89) (quoting Morrison v. Walker, 404 F.2d 1046, 1048-49 (9th Cir. 1968) ("If facts stated in the affidavit of the moving party for summary judgment are not contraindicated by facts stated in the affidavit of the party opposing the motion, they are admitted.").

A careful reading of Complainant's statements and documents submitted in response to the Motion for Summary Decision, as stated above, clearly show that complainant's actual dispute with Respondent is over his terms and conditions of employment, including wages, bonuses, and opportunity to lease the motel. Whether or not there was

[9] Assuming, arguendo, that I accept all of Complainant's statements regarding his employment and termination from Queens Motel as reliable and accurate, Complainant has stated a cause of action in tort for damage and loss of personal property, for breach of contract and/or failure to pay proper wages under the Fair Labor Standards Act (29 U.S.C. § 201), but not for discrimination under IRCA.

discrimination against Complainant because of his national origin with respect to his compensation, terms, conditions and privileges of employment are not covered by IRCA. See Fayyaz v. The Sheraton Corp., 1 OCAHO 153 (4/10/90).

The purpose of the summary judgment procedure is to avoid an unnecessary trial when there is no genuine issue as to any material fact, as shown by the pleadings, affidavits, and discovery. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). A material fact is one which controls the outcome of the litigation. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); see also, Consolidated Oil and Gas, Inc. v FERC, 806 F.2d 275, 279 (D.C. Cir. 1986) (an agency may dispose of a controversy on the pleadings without an evidentiary hearing when the opposing presentations reveal that no dispute of facts is involved).

It is clear from the record in this case that there are no material facts in dispute which I have jurisdiction to hear and decide. Since this case involves disputes over wages and terms of employment and not termination from employment because of Complainant's national origin, Respondent's Motion for Summary Decision is hereby GRANTED.

Accordingly, no hearing will be held in this case and the Complaint is dismissed.

Pursuant to 8 U.S.C. § 1324b(g)(1), this Final Decision and Order is the final administrative order in this proceeding and "shall be final unless appealed" within sixty (60) days to a United States Court of Appeals in accordance with 8 U.S.C. § 1324b(i).

SO ORDERED, this 9th day of August, 1991, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge