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

HADDON SPEAKMAN, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding
	)	Case No. 92B00186
THE REHABILITATION HOSPITAL OF SOUTH TEXAS, Respondent.	)	

ORDER DISMISSING COMPLAINT FOR ABANDONMENT AND LACK OF JURISDICTION

I. *History of the Case*

On November 6, 1992, I issued an Order To Show Cause Why Com-plaint Should Not Be Dismissed For Lack Of Jurisdiction And Order Granting Complainant Extension Of Time to Respond To Respondent's Motion To Dismiss. The Orders contained a detailed discussion of this case's procedural history and an Order to Complainant to file on, or before, November 25, 1992, sufficient documentation establishing that he is a protected individual under 8 U.S.C. 1324b. See, e.g., Prado- Rosales v. Montgomery Donuts, 3 OCAHO 438 (6/26/92). In my Order, I explained to Complainant that he was required to establish this threshold requirement in order to invoke the Court's jurisdiction. I strongly warned Complainant that should he not establish his protec-ted status, I would not have jurisdiction to hear his case and would dismiss it as a matter of law.

The issue of Complainant's protected status arose after I reviewed his undated Charge Form filed with the Office of Special Counsel for Immigration-Related Employment Practices and his Complaint filed on August 17, 1992 with the Office of the Chief Administrative Hearing Officer. The record revealed that Complainant had indicated in his Charge Form and in his Complaint that he had an H-1 visa at

the time of the alleged discriminatory act(s), that he currently was in possession of a J-1 visa, and that he also had the status of "alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1)."

Under Section 274B(a)(3)(B) of the Immigration and Nationality Act, a "protected individual" is an alien who is "lawfully admitted for permanent residence, is granted the status of alien lawfully admitted for temporary residence under section 210(a), 210A or 245A, is admitted as a refugee under section 207, or is granted asylum under section 208...." Thus, Complainant who alleged that at the time of the alleged discriminatory act, he had been admitted to the United States on the basis of an H-1 visa, did not appear to fall under the definition of a protected individual in the Act. Further, Complainant's alleged non-immigrant status under an H-1 visa seemed to conflict with Complainant's alleged status under 8 U.S.C. 1255a(a)(1) which applies to non-immigrants who have lived continuously and unlawfully in the United States since January 1, 1982 and who may become lawful permanent residents under certain additional conditions.

To date, Complainant has not responded to the November 6, 1992 Order To Show Cause.

II. *Discussion*

Although Complainant is pro se, I find that his status is not the cause of his nonresponse to my Order To Show Cause. I base this belief on a review of the case file which contains Complainant's well-written letters to the agency, Complainant's assertion that he has filed an EEOC charge, the literate and well presented Charge Form, the formal Complaint filed June 15, 1992, and Complainant's educational and professional background. Thus, based on Complainant's past efforts in this case as noted above, it is clear to me that Complainant was capable of understanding and responding to my Order to Show Cause.

Under 28 C.F.R. 68.37(b)(1), I may find that a party has abandoned its complaint or request for hearing if such party has failed to respond to the Court's orders. United States of America v. McDonnell Douglas Corporation, OCAHO Case No. 90200363 (8/28/92); see also Arrieta v. Michigan Employment Security Commission, OCAHO Case No. 92B00149 (11/10/92); Egal v. Sears Roebuck and Company, 3 OCAHO 442 (7/25/92) at 12 note 9. As a review of the Court file reveals that no document served on Complainant by mail has been returned by the

U.S. Postal Service since this case began in August, 1992 and that Complainant has not notified this Court of a change of address, the Court is satisfied that proper service of the Order To Show Cause has been effected and that Complainant is aware of the consequences of a nonresponse.

As Complainant has not complied with my Order and had sufficient access to this Court should there have been some problem with filing its response, I find that Complainant has abandoned his Complaint. 28 C.F.R. 68.37(b)(1). On this basis alone, I may, and do, dismiss this case.

It should be noted that I may also grant dismissal based on lack of jurisdiction as Complainant has not established that he is a protected individual under the Immigration and Nationality Act. 28 C.F.R. 68.10, 68.28; 8 U.S.C. 1 3 24b(a)(3)(B); Arrieta. Based on Complainant's statements in its Charge Form and Complaint, I hold that Complainant did not establish that he is a protected individual as defined in Section 274B(a)(3)(B) of the Act. Therefore, under this alternate analysis, as a matter of law, this case must be dismissed.

This Decision and Order is the final decision and order of the Attorney General. Pursuant to 8 U.S.C. 1324b(i) and 28 C.F.R. 68.53(b), any person aggrieved by this final Order may, within sixty (60) days after entry of the Order, seek its review in the United States Court of Appeal for the circuit in which the violation is alleged to have occurred, or in which the Respondent transacts business.

IT IS SO ORDERED this 1st day of December, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge