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

DALILA KAMAL-GRIFFIN, Complainant,	)
v.	) 8 U.S.C. §1324b Proceeding
	) CASE NO. 92B00067
CAHILL GORDON & REINDEL, Respondent.	)

ORDER DENYING COMPLAINANT'S MOTION TO COMPEL

I. *Introduction and Procedural History*

Currently before me is Complainant's motion, filed January 7, 1993, to compel Respondent to comply with Complainant's Fourth Request for Production of Documents and to answer interrogatories 7 and 9 of Complainant's Fourth Set of Interrogatories. Complainant initiated discovery early in this case, requesting the production of documents and answers to interrogatories.[1] Respondent has voluntarily provided Complainant with substantial information and documents on its hiring policy of attorneys in general as well as its decision not to hire Complainant for an attorney position.

Respondent has attempted to comply with many of Complainant's discovery requests, but has objected to several on various legal grounds. As a result of Respondent's objections, Complainant has filed two motions to compel discovery, the first on which I have already ruled. I will now set out the procedural history of this case relating to discovery, which will show the extent of Complainant's discovery requests, Respondent's disclosures, and Respondent's objections to Complainant's most recent discovery requests which resulted in the pending motion.

On May 24, 1992, Complainant served on Respondent Complainant's First Set of Interrogatories and First Request for Production of Documents. On June 25, 1992, Respondent served on Complainant its responses and objections. Prior to Complainant's filing of her first

[1] The record does not indicate whether Complainant has taken or has requested to take any depositions.

motion to compel discovery, Respondent had provided Complainant with the following information pursuant to Complainant's discovery requests:

(1) all non-privileged recruiting advertisements the law firm has used since January 1, 1989, indicating the date and the media used;
(2) all communications and documents in its possession which relate to Complainant;
(3) the number of lawyers in the firm and their positions;
(4) the law firm's method and procedures for hiring an associate attorney;
(5) the names of all attorneys Respondent hired laterally as associates from 1989 through 1992 and the records Respondent used or made in deciding to hire or reject each applicant;
(6) the names and addresses of all law schools, employment agencies and other organizations that Respondent has used since 1989 to recruit attorneys;
(7) the names of all associates who have been elected to partnership since January 1, 1990;
(8) a description of Respondent's efforts to encourage the submission of applications and the hiring and promotion of female, minority and non-United States citizen applicants;
(9) the number of law graduates and attorneys who expressed an interest in Respondent's law firm since January 1, 1991;
(10) the names of all partners who have been members of the firm's hiring committee since January 1, 1991;
(11) the names of all attorneys Respondent hired directly out of law school from January 1, 1989 August 1992;
(12) the approximate number of law students Respondent interviewed on campus during the 1990 and 1991 recruiting seasons;
(13) the resumes (with names and addresses redacted) of the approximately 500 applicants who were invited to Respondent's New York office for an interview during the 1991 hiring season after either being interviewed on campus or applying directly to Respondent;
(14) the National Association of Law Placement ("NALP") forms for the years 1989-90, 1990-91 and 1991-92 which contain information as to the race and sex of all Cahill attorneys; and
(15) the number of non-U.S. citizen attorneys hired by Respondent since 1989 and the number currently employed.

Complainant filed her first motion to compel discovery on September 4, 1992. She amended this motion on September 14, 1992 to compel Respondent to answer interrogatories 3, 8, 9, 16, and 23 of Complainant's First Set of Interrogatories and to comply with requests 5 and 6 of Complainant's First Request for Production of Documents. On

September 25, 1992, I granted in part this motion, but limited discovery to the "resume and cover letter, interview notes taken by Respondent which comprise, contain, reflect, mention, refer or relate in any way to Respondent's reasons why it failed to hire [the applicant], and the rejection letter Respondent sent to the [applicant]," but only of those non-U.S. citizen applicants who were: (a) law students interviewed by Respondent on campus for an attorney position at some point during 1990 or 1991 who were invited to a second-round interview at Respondent's New York office and were not offered a position and (b) applicants who wrote in directly to Respondent for an attorney position at some point from 1990 to 1991, who interviewed at Respondent's New York office and were not offered a position.

I directed Respondent to identify, if able, the citizenship status of these applicants. I also limited discovery by requiring Complainant to obtain a waiver of the privacy rights of the applicants described in (a) and (b) above. I further directed Complainant to file with this office a form letter, subject to my approval, requesting a waiver of privacy rights, consent to be contacted for this lawsuit and consent to have certain employment information disclosed to Complainant.

Subsequent to the issuance of my September 25, 1992 order, each party filed a proposed form letter regarding the rejected applicant's waiver of privacy rights. Finding neither form letter satisfactory, I amended my September 25th order and issued an order on October 13, 1992, to which I attached a copy of a form letter that I had drafted.[2] I also directed Respondent to administer the mailing of the waiver form letters to the applicants identified in my September 25th order[3] and to provide to Complainant the responses and any and all pertinent documents. I further ordered Respondent to provide this office with a status report on or before December 31, 1992.

My September 25th order also instructed Respondent to supplement its responses to interrogatories 3 and 8 of Complainant's First Set of Interrogatories. Respondent filed its supplemental responses to these interrogatories on October 19, 1992. Respondent states in response to interrogatory 3, that two associates in the New York office are not

[2] The form letter provides that if the applicant is a non-U.S. citizen, he or she may wish to waive his or her privacy rights and permit Respondent to disclose documents pertinent to Respondent's decision not to hire him or her. The letter also provides that if the applicant was a U.S. citizen at the time Respondent refused to hire him or her, Complainant is not entitled to any employment information.

[3] Respondent performed this laborious task professionally and in a timely manner.

citizens of the United States. More specifically, Respondent asserts that Philippe Benedict is a Swiss citizen with permanent residence in the United States and Sahir C. Surmeli is a Turkish citizen with permanent residence in the United States. In addition, Respondent states that two attorneys employed in its Paris office, Freddy Dressen, (European counsel) and Philippe Key (associate) are not citizens of the United States.

On January 4 and February 1, 1993, Respondent filed status reports with this office concerning the results of the mailing of the waiver letters. In the first status report, Respondent states that on October 30, 1992, it mailed waiver letters to 197 persons, 58 for whom Respondent had two addresses on record. As Respondent mailed letters to both addresses, it mailed a total of 255 letters and also enclosed a stamped, self-addressed return envelope with each letter. Respondent states further that on December 17, 1992, it sent 61 letters to 46 additional people; and that as of December 31, 1992, the post office returned 56 letters to Respondent because they could not be delivered or forwarded. In addition, Respondent reports that of the 84 individuals who sent Respondent their waiver form, only two were not U.S. citizens; and only one of the two non-U.S. citizens agreed to a waiver of privacy rights. Respondent asserts that on December 4, 1992, it provided Complainant with the relevant documents in that individual's file.

Respondent's second status report states that Respondent mailed a total of 361 waiver letters to 243 people, mailing to two addresses for each person, where known. The post office returned 57 letters which could not be delivered or forwarded. Respondent further states that it received 118 completed waiver forms, of which four from non-U.S. citizens. Three of the four non-U.S. citizens waived their privacy rights. Respondent then provided Complainant and this office with the pertinent documents.

Subsequent to the issuance of my September 25, 1992 order, Complainant continued to request discovery from R, seeking answers to five additional sets of interrogatories and compliance with three additional sets of requests for the production of documents. To date, Complainant has a total of 70 answers to interrogatories and the production of 20 documents.[4]

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[4] Complainant's discovery requests were divided as follows:

Set of Interrogatories	# of Interrogatories Asked

(continued...)

On January 7, 1993, Respondent filed its response to Complainant's Fourth Request for Production of Documents and its answers to interrogatories seven and nine. On January 7, 1993, Complainant filed her second motion to compel, in which she seeks an order compelling Respondent to answer interrogatories 7 and 9 of Complainant's Fourth Set of Interrogatories and to compel Respondent to produce all five documents requested in Complainant's Fourth Request for Production of Documents. On January 19, 1993, Respondent filed the Affidavit of Charles A. Gilman in Opposition to Complainant's Motion to Compel Discovery. For the reasons stated below, Complainant's motion to compel will be denied.

II. *Legal Analysis*

A. Governing Regulations and Guiding Federal Case Law

As discussed in my Order of September of 25, 1992, in which I ruled on Complainant's first motion to compel Respondent to comply with her discovery requests, the federal regulations regarding discovery in this case provide that an administrative law judge ("ALJ") may limit the frequency or extent of discovery. 28 C.F.R. § 68.18(a).[5] The regulations further provide that unless I otherwise limit discovery, "the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . . ." 28 C.F.R. § 68.18(b).

As these regulations are similar to the rules applicable to discovery in federal district court proceedings, see Rule 26(a), (b) and (c) of the Federal Rules of Civil Procedure ("FRCP"), I will examine federal case

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[4](...continued)

First	24
Second	9
Third	3
Fourth	16
Fifth	17
Sixth	1

Request for Production of Documents	# of Documents Requested
First	9
Second	3
Third	3
Fourth	5

[5] Part 68 of Volume 28 of the Code of Federal Regulations was amended by the Final Rule of December 7, 1992, Rules of Practice and Procedure for Administrative Hearings, 57 Fed. Reg.. 57669 (to be codified at 28 C.F.R. Part 68) (hereinafter "28 C.F.R. § 68").

law interpreting the purpose and scope of discovery as a guide in deciding Complainant's motion to compel.

Since the Supreme Court decided Hickman v. Taylor, 329 U.S. 495 (1947), there has been no doubt that the rules regarding discovery are to be liberally construed. It is also well recognized, however, that while the scope of discovery is broad, it is not unlimited. Hecht v. Pro-Football, Inc., 46 F.R.D. 605 (D.D.C. 1969); see also Re Application of Malev Hungarian Airlines, 964 F.2d 97, 102 (2d Cir.), cert. denied, United Technologies Int'l, Inc. v. Malev Hungarian Airlines, __ U.S. __, 113 S.Ct. 179 (1992) ("Rule 26 (c) allows the court to order . . . that the scope of discovery be limited to certain matters."). If the information sought is more likely than not to reasonably lead to discovery of admissible evidence, the matter sought from the opposing party must be provided. See Rule 26(b)(1). In any dispute as to appropriate discovery, the court must exercise its discretion as to whether the motion to compel should be granted, Burns v. Thiokol Chemical Corp., 483 F.2d 300, 304-05 (5th Cir. 1973), and the court is given wide latitude in its handling of such matters. O'Neal v. Riceland Foods, 684 F.2d 577, 581 (8th Cir. 1982).

While the rules of discovery are to be liberally applied, they are not a license for foraging expeditions which require inordinate expense or amount to overly broad and far-reaching discovery requests. Jones v. Colorcraft Corp., 37 Fed. R. Serv. 2d (Callaghan) 819; 33 Empl. Prac. Dec. (CCH) P34, 012 (S.D. Ga. 1983). Discovery should be tailored to the issues and circumstances of the particular case. See, e.g., Robbins v. Camden City Bd. of Education, 105 F.R.D. 49, 56 (D.N.J. 1985). Relevancy therefore means that the material sought will have a substantial effect on the case's outcome, Greene v. Raymond, 41 F.R.D. 11, 14 (D. Col. 1966), and the matters being asked are relevant to the issues to be tried. Smith v. United States, 834 F.2d 166, 169 (10th Cir. 1987) Fisher v. City of New York, 1992 WL 77606, *3 (S.D.N.Y. 1992); United States v. Trucking Employers, Inc., 72 F.R.D. 101 (D.D.C. 1976).

With these principles in mind, I will consider the merits of Complainant's motion and Respondent's corresponding objections.

B. The Interrogatories At Issue

Complainant moves that I compel Respondent to answer interroga-tories 7 and 9 of Complainant's Fourth Set of Interrogatories. Interrogatory 7 states that if Respondent answers "no" to interrogatory 6, to state why. Interrogatory 6 ask Respondent to state whether it

"considers a foreign J.D. degree coupled with an LLM (sic) degree from an American School of Law as the functional equivalent of an American J.D. degree to practice law in New York." Interrogatory 9 states that "if the answer to [interrogatory 8] is no, state why." Interrogatory 8 asks Respondent to state:

> whether the holder of a foreign J.D. degree, who holds his J.D. degree from a prestigious and reputable school outside the United States, who obtained an LLM (sic) degree from a top American school of law in honors, who is admitted to practice law in the United States, and who has clerked for a federal court or worked for a prestigious law firm for at least two years would be considered, by Respondent, as qualified as the holder of an American J.D. degree graduate.

Complainant argues that these interrogatories are "relevant to the issue of qualifications" because Complainant "needs to know whether Respondent's refusal to hire her, and other lawyers similarly situated, stems from a belief that such applicants are not as qualified as the holders of American J.D. degrees." Respondent objects to interrogatory 7 as "vague, overbroad and incapable of response as phrased." Respondent asks: "E.g.,: What foreign school? With honors or without? Etc. What American school? With honors or without? Etc. What is meant by the term 'functional equivalent'?"

In attempt to clarify interrogatory 7, Complainant defined several terms as follows:

> 1. "Foreign school" means "school that is not situated in the United States."
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> 2. The "honors" are irrelevant to this question which is phrased in general terms on purpose. They are relevant only in [Respondent's] decision to consider a candidate for employment or not; not for equivalency purposes. Please note that A.B.A. accredited Schools of Law and the states (sic) Board of Law Examiners of the State of New York have granted such an equivalency without inquiring on (s i c) whether [the candidate] received honors or not upon graduation. Also, when granting [the candidate] an equivalency the State of New York does not [differentiate] between the kind of [law school the candidate] graduated from, as long as the school is A.B.A. accredited.
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> 3. "Functional equivalent" means "equivalent that allows a job performance that is at least as satisfactory as if it had been rendered by a graduate from an A.B.A. accredited school of Law (sic)."

I agree with Respondent that despite Complainant's attempt to define the terms in interrogatory 7, the interrogatory is overbroad, vague and incapable of being answered as framed. See Jarosiewicz v. Conlisk, 60 F.R.D. 121, 126 (N.D. Ill. 1973) (In drafting interrogatories, the plaintiff should seek to make them simple and concise); Rucker v. Wabash R. Co., 418 F.2d 146, 154 (7th Cir. 1969) (Defendant

was not required to answer interrogatory containing incomplete sentence, meaning of which defendant was under no obligation to decipher, and seeking information not shown to be material to the issues of the case); Wing v. Challenge Machinery Co., 23 F.R.D. 669, 673 (D.C. Ill. 1959) (Defendant would not be required to answer interrogatories which were so broad, ambiguous and lacking in specificity that they were burdensome and oppressive).

Respondent similarly objects to interrogatory 9 as "vague, overbroad and incapable of response as phrased." Respondent further objects "because [interrogatory 9] asks an irrelevant hypothetical question insofar as it describes background, experience and qualifications that are clearly not possessed by C." I agree with Respondent that interrogatory 9 is vague, overbroad and incapable of response as phrased, see Jarosiewicz, 60 F.R.D. at 126; Rucker, 418 F.2d at 154; Wing, 23 F.R.D. at 673 (D.C. Ill. 1959), and irrelevant insofar as it asks a hypothetical question premised on a background, experience and qualifications that Complainant does not possess.

Complainant's motion to compel is therefore denied as to interrogatories 7 and 9.

B. Production of Documents

Complainant moves that I compel Respondent to produce all the documents requested in Complainant's Fourth Request for Production of Documents. C, after realizing that many of the applicants whose waiver of privacy rights she sought have either relocated or will be difficult to reach, has requested these documents "so as to ascertain the merits of her own case against Respondent." Complainant prefaces her requests with the statement that Respondent may "redact the names and addresses on the documents produced." Complainant now seeks:

> 1. . . . the cover letters and resumes of all the holders of foreign J.D. degrees who have applied for a position as an associate (permanent or temporary) since January 1, 1990; also . . . Respondent's responses to those applicant's (sic) applications.
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> 2. . . . the resumes and cover letters of all the United States citizens who have applied for an associate position with [R]Respondent while holding a foreign J.D. degree, since January 1, 1990; . . . also the responses sent by Respondent to those applicants.
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> 3. . . . the resumes and cover letters of all the applicants who have applied for an associate position with Respondent since January 1, 1990, and who were rejected by Respondent on the ground that there [were] no openings for foreign lawyers.

4. . . . the resumes and cover letters of all the applicants, since January 1, 1990, who appeared foreign.

5. . . . all the documents identified in Complainant's Fourth Set of Interrogatories.

Respondent responded to this request for the production of documents on or about December 11, 1992. Complainant supplemented her Fourth Request for Production of Documents in a letter to Respondent, dated January 6, 1993. In this letter, Complainant states that "each and everyone (sic) of her document requests is relevant because it pertains to the applications of applicants who are not U.S. citizens and/or whose background is similar to [her's]." In its opposition to Complainant's motion to compel, Respondent objects to Complainant's first four requests, contending that Complainant "seeks to obtain discovery beyond that which [I] permitted in my Order of September 25, 1992," in which I determined that "Respondent would be entitled to documents relating only to applicants for employment with Respondent during the relevant time period, who were not United States citizens, who were denied employment by Respondent and waived their rights of privacy." Respondent further objects to these four requests on the ground that they are "overbroad, oppressive, unduly burdensome and harassing" in that Respondent has already provided Complainant with copies of the resumes of all applicants interviewed at Respondent's New York office during the 1991 hiring season as well as the resumes of all the U.S. citizens who applied for an attorney position with Respondent sometime during 1990 or 1991, and who subsequently were hired by Respondent. Respondent's response to Complainant's document request 5 is that "there are no responsive documents."

Respondent argues that the "discovery sought in Complainant's Fourth Request for the Production of Documents is clearly duplicative of the discovery sought in Requests No. 5 and 6 of Complainant's First Request for the Production of Documents." Respondent further argues that to the extent Respondent has documents properly responsive to Complainant's new requests, all such documents have already been provided to Complainant pursuant to my Order of September 25, 1992. Respondent further argues that "[t]o the extent that in her new requests Complainant seeks documents as to which [I] have already ruled she is not entitled, no production is required."

I disagree with Respondent's argument that the document requests Complainant seeks are duplicative of the discovery sought in requests 5 and 6 of Complainant's First Request for Production of Documents, which was covered by my Order of September 25th. Complainant's Fourth Request for Production of Documents deals with individuals

who applied to Respondent for an attorney position since January 1, 1990 and who did not necessarily interview with Respondent, whereas requests 5 and 6 of Complainant's First Request for Production of Documents deal only with individuals who were interviewed by Respondent. I find, however, that Complainant's motion to compel must be denied as to the production of the five documents in her Fourth Request for the Production of Documents for the following reasons.

Complainant has provided me with a letter she received from Respondent stating: "Although our firm has in the past hired foreign lawyers on a temporary basis, there are no such positions available at this time." While this letter indicates that Complainant's citizenship status may have been the basis for Respondent's decision not to hire her, this is the only evidence in the record suggesting possible citizenship status discrimination. For instance, Complainant has not submitted any evidence indicating that any member of Cahill, Gordon & Reindel has made a statement suggesting that Respondent has a policy of not hiring qualified applicants because they are not U.S. citizens; nor a statement suggesting that her application for an attorney position was denied because of her citizenship status. In addition, the documents produced in reference to the three waivers of privacy rights of non-U.S. citizen applicants rejected by Respondent for attorney positions, including Respondent's internal memoranda, do not suggest that any of the three applicants were rejected because of their citizenship status. Furthermore, the procedure to obtain waivers of privacy rights, authorized in my Order of September 25, 1992, permitted a significant number of applicants who were not offered to be contacted to determine whether any were non-U.S. citizens.

Moreover, there is much exculpatory evidence in the record, including that (1) Respondent interviews candidates for summer associate and associate attorney positions at the NALP/Black Law Student Association Northeast Law Student Job Fair for African-American, Asian- American, Latino and American Indian law students and from the Joint Minority Clerkship Program of Texas Law School and Tulane Law School; (2) Respondent is a signatory to the "statement of goals" for the hiring, retention and promotion of minority attorneys, promulgated by the Association of the Bar of the City of New York; (3) Respondent's firm brochure discusses Respondent's commitment to "a nondiscriminatory hiring and advancement policy" and mentions the firm's "special effort to recruit qualified lawyers from minority groups and participates in a minority internship program designed to expose minority law students to Wall Street

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practice"; and (4) two associates in Respondent's New York office are not citizens of the United States.

While it is important for Complainant to have reasonable discovery to determine the merits of her allegation, Complainant's motion to compel is denied as to her five document requests which, where not overbroad, vague or incapable of being answered as framed, are beyond that to which she is entitled, given the minimal basis in the record for Complainant's allegation of citizenship status discrimination.[6]

Based upon the foregoing, it is hereby **ORDERED** that:

1. Complainant's motion to compel Respondent to respond to Complainant's interrogatories 7 and 9 of its Fourth Set of Interrogatories and to produce the five document requests in Complainant's Fourth Request for Production of Documents is DENIED.

2. Complainant shall file a status report with this office on or before March 1, 1993, stating when she anticipates completion of all discovery necessary to respond to Respondent's pending motion for summary decision.

3. Respondent's requests for a final briefing schedule on its motion for summary decision is DENIED.

4. Respondent's request to file a reply in response to Complainant's opposition to its motion for summary decision is granted. After Complainant files an opposition pleading to Respondent's motion for summary decision, Respondent shall have 30 days after receipt of Complainant's response to file its reply.

SO ORDERED this 11th day of February, 1993, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge

[6] Complainant should note, however, that I have not cut her off from seeking further discovery in this case.