

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

ESTHER DIN BROOKS, )  
Complainant, )  
 )  
v. ) 8 U.S.C. §1324b Proceeding  
 ) OCAHO Case No. 92B00193  
WATTS WINDOW WORLD, )  
Respondent. )  
\_\_\_\_\_ )

ORDER  
(March 24, 1993)

I. Procedural Background

On January 8, 1993, I issued an extensive First Prehearing Conference Report and Order. In that order I posed a number of questions, directing each party to respond by February 16, 1993. I anticipated eventually issuing a summary decision, in the event that the responses were to demonstrate a lack of dispute of material fact. Both parties complied with the January order in a timely fashion. This order supplements the previous inquiry.

II. Legal Background

The jurisdiction of an administrative law judge (ALJ) is limited in several ways pertinent to the facts of this case, as they have been plead so far. At the threshold, §1324b protections are available to "any individual (other than an unauthorized alien) as defined in section 274A(h)(3). . ." 8 U.S.C. §1324b (a)(1) (emphasis added). In the context of the Immigration Reform and Control Act (IRCA), the term "unauthorized alien" means

with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

8 U.S.C. §1324a(h)(3).

It is imperative that a complainant provide documentation establishing that he/she is within the ambit of §1324b.

IRCA authorizes this forum to adjudicate statutorily specified workplace injustices, even though injustices can occur at the workplace in a myriad of ways. An ALJ is competent to hear cases in which the issue is whether or not the discharge of a particular individual was based on national origin discrimination. 8 U.S.C. §1324b(a)(1)(A).<sup>\*</sup> Additionally, the ALJ is competent to hear cases in which the issue is whether or not an individual or entity engaged in retaliatory behavior towards an individual who filed an IRCA charge or complaint. 8 U.S.C. §1324b(a)(5). I have no jurisdiction over a discharge based on a complainant's alleged knowledge of an employer's alleged sexual indiscretion.

III. *Directions to Parties*

In an effort to ascertain whether or not I have the requisite jurisdiction under the facts presented by this case, the parties are directed to supplement their prior responses as outlined below. Such supplements will be filed not later than April 20, 1993.

Complainant

Complainant is to provide documentation demonstrating her authorization to work in the United States during the time pertinent to this case. Complainant's response to the inquiry of the January 8, 1993 is not up to date; her response indicates work authorization only through April 17, 1991.

Respondent

Complainant recites that she and Respondent had two telephone conversations subsequent to the filing of her charge with the Office of Special Counsel. The first conversation allegedly occurred on or about September 17, 1992; the second conversation allegedly occurred on or about January 6, 1992. See Complainant's Inquiry Responses, dated February 4, 1993, ##7, 13. Respondent is to recite whether or not the

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<sup>\*</sup> As confirmed in the January 8 order, there is no issue of citizenship status discrimination in this case. 8 U.S.C. §1324b(a)(1)(B).

specified conversations took place, and if so its version of the contents of those conversations.

Complainant and Respondent

Complainant and Respondent are to file separate statements addressing their respective understanding of the reason for Complainant's discharge. Inter alia, each party should clearly state whether or not Complainant was discharged because she allegedly witnessed her employer embracing another employee.

The parties are notified that no filing will be accepted which fails to recite that a copy was mailed or otherwise delivered to the other party, and the date of such service.

**SO ORDERED.**

Dated and entered this 24th day of March, 1993.

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MARVIN H. MORSE  
Administrative Law Judge