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

September 3, 1997

GREGORY OLSON, Complainant	)	
	)	8 U.S.C. 1324b Proceeding
vs.	)	
	)	OCAHO Case No. 97B00093
UNIVERSITY MEDICAL CENTER CORP., Respondent	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

I. Background

On October 8, 1996, Gregory Olson (Olson/complainant) filed a charge with the Office of Special Counsel (OSC), U.S. Department of Justice, alleging that on August 25, 1995, University Medical Center Corp. (UMC/respondent), by having refused to discontinue withholding federal taxes from his wages, committed unfair immigration-related employment practices namely, national origin and citizenship status discrimination, as well as document abuse, in violation of the pertinent provisions of the Immigration Reform and Control Act (IRCA), 8 U.S.C. § 1324b(a)(1) and the Immigration Act of 1990 (IMMACT), 8 U.S.C. § 1324b(a)(6).

More particularly, Olson, who is a U.S. citizen, was hired by UMC in February, 1987 as a polysomnography[1] technician in that firm's offices in Tuscon, Arizona.

On August 25, 1995, Olson presented a self-created document entitled "Statement of Citizenship" to UMC for the purpose of having UMC discontinue withholding income and social security taxes from his wages. On October 11, 1995, Olson presented a second self-created document entitled "Affidavit of Constructive Notice" for that purpose, also.

UMC refused to comply with Olson's request and continued to withhold taxes from his wages.

Resultingly, on February 8, 1996, Olson filed a Title VII charge of national origin

[1] Polysomnography is one of the most widely used tests to diagnose sleep disorders.

discrimination with the Equal Employment Opportunity Commission (EEOC) containing an allegation that "I have been denied exemption from withholding of income taxes by my employer".

On September 27, 1996, the EEOC, in lawful exercise of its jurisdiction over that charge, ruled that the charge failed to state a claim under any of the statutes enforced by the Commission.

Olson then filed his discrimination charges with OSC on October 8, 1996. It should be noted that ordinarily an individual who has allegedly been the subject of an unlawful immigration-related employment practice completes and files a standard OSC charge form (Form OSC-1).

In this case, however, OSC accepted for filing an eight (8)-page letter, dated October 8, 1996, and signed by John B. Kotmair, Jr., Olson's designated representative in this proceeding. In that correspondence, Kotmair alleged the following facts:

> On the date of August 25, 1995, Mr. Olson provided his employer, University Medical Center, in Tuscon, Arizona, with his Statement of Citizenship, since he is a Citizen of the U.S., who may claim to not be subject to the only law requiring the withholding from income taxes in the Internal Revenue Code as that law is only applicable to non resident aliens . . . [i]t was additionally communicated to Ms. Zabaleta, at University Medical Center, by service of an Affidavit of Constructive Notice, that Mr. Olson does not have, nor does he recognize a social security number in relationship to himself . . . [a]fter reviewing his position, Ms. Zabaleta informed him that they would not be following the law nor honoring his rights as asserted in the documents presented.

After completing its investigation, OSC provided complainant a determination letter, dated January 30, 1997, advising him that "there is insufficient evidence of reasonable cause to believe that any of these charges state a cause of action under 8 U.S.C. § 1324b," and that it also "appears that [the] charges . . . were not timely filed with this Office".

For those reasons, OSC informed complainant that it was declining to file an action on his behalf before an Administrative Law Judge assigned to this Office and that he was entitled to file a private action directly with this Office if he did so within 90 days of his receipt of that correspondence.

On April 14, 1997, complainant timely commenced this private action by having filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging citizenship status discrimination and document abuse in violation of IRCA.

Olson seeks reinstatement and back pay from August, 1995.

It can be readily seen that Olson's April 14, 1997 Complaint does not reallege the charge of national origin discrimination that was contained in his initial OSC charge. Complainant has not moved to amend his Complaint to add that allegation, which is ordinarily permitted under OCAHO's liberal amendment policy. 28 C.F.R. § 68.9(e); Fed. R. Civ. P. 15; United States v. Carter, 6 OCAHO 865, at 3 (1996); Monjaras v. Blue Ribbon Cleaners, 3 OCAHO 496, at 3 (1993); see also Westendorf v. Brown & Root, Inc., 3 OCAHO 477, at 7 (1992) (consideration is given to allegation not specifically alleged in the complaint, but described in OSC charge).

However, because this Office lacks statutory authority to hear a claim of national origin discrimination where, as under these facts, that claim has already been adjudicated on the merits by the Equal Employment Opportunity Commission (EEOC), consideration of a claim of national origin discrimination is precluded in this proceeding. 8 U.S.C. § 1324b(b)(2); Smiley v. City of Philadelphia, 7 OCAHO 925, at 25 (1997); Winkler v. Timlin, 6 OCAHO 912, at 5 (1997) ("once the EEOC exercises jurisdiction, the ALJ no longer is authorized to act"); Wockenfuss v. Bureau of Prisons, 5 OCAHO 767, at 2 (1995); Adame v. Dunkin Donuts, 5 OCAHO 722, at 3-5 (1995).

Therefore, our inquiry is limited to assessing the two (2) remaining allegations at issue in the Complaint, that of citizenship status discrimination and document abuse.

On April 15, 1997, a Notice of Hearing on Complaint Regarding Unfair Immigration-Related Employment Practices, together with a copy of the Complaint, were served on respondent by certified mail, return receipt requested.

On April 28, 1997, John B. Kotmair, Jr. filed a Notice of Appearance on behalf of the complainant.

On May 16, 1997, Sarah R. Simmons and D. Douglas Metcalf, Brown & Bain, P.A., filed a Notice of Appearance on behalf of the respondent.

On May 16, 1997, respondent filed its answer in which it denied having discriminated against Olson based upon his citizenship status and also denied having committed acts of document abuse. UMC also raised several affirmative defenses, including a statement that OCAHO lacks jurisdiction; that the Complaint fails to state a claim upon which relief can be granted; that complainant's Complaint is time barred under the applicable statute of limitations; and collateral estoppel.

On May 16, 1997, also, UMC filed a pleading captioned Motion to Dismiss for Failing to State a Claim, or In the Alternative, Motion for Summary Decision, together with a supporting memorandum.

On June 23, 1997, complainant filed a pleading captioned Motion to Strike Respondent's Answer requesting that UMC's answer be stricken for failure to comply with the pertinent OCAHO procedural rule governing answers, 28 C.F.R. § 68.9(c) (1996).

It is found that respondent's answer filed on May 16, 1997 complies in all respects with the procedural requirements set forth at 28 C.F.R. § 68.9(c). Accordingly, complainant's Motion to Strike Respondent's Answer is denied.

Complainant has not filed a response to UMC's dispositive motion.

II. Standards of Decision

OCAHO rules of practice and procedure authorize the Administrative Law Judge to dispose of cases, as appropriate, upon motions to dismiss for failure to state a claim upon which relief can be granted, 28 C.F.R. § 68.10 (1996), and motions for summary decision, 28 C.F.R. § 68.38(c) (1996).

In support of its motion, the respondent argues quite succinctly that the Complaint does not state a claim upon which relief can be granted since there is no allegation of an unfair immigration-related employment practice, rendering dismissal proper pursuant to section 68.10. Alternatively, respondent urges that the complainant did not timely file a charge with OSC, thereby barring this action under the statute of limitations.

To support those two (2) arguments, respondent has provided the sworn declarations of James Richardson (UMC's in-house counsel), Veronica Angulo (UMC's human resources manager), and Vina Keeling (UMC's human resources coordinator). UMC also has provided documentary evidence and referred to matters outside the immediate pleadings.

In OCAHO proceedings, if matters outside the pleadings are presented and not excluded by the Administrative Law Judge, a motion to dismiss is treated as one for summary decision. See Fed. R. Civ. P. 12(c); Toussaint v. Tekwood Assocs., 6 OCAHO 892, at 5 (1996); United States v. Italy Department Store, 6 OCAHO 847, at 2- 3 (1996).

The pertinent procedural rule governing motions for summary decision in unfair immigration-related employment practices cases provides that "[t]he Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, and material obtained by discovery or otherwise, or matters officially noticed 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. § 68.38(c) (1996).

Section 68.38(c) is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal court cases. For this reason, federal case law interpreting Rule 56(c) is instructive in determining whether summary decision under section 68.38 is appropriate in proceedings before this Office. United States v. Limon-Perez, 5 OCAHO 796, at 5, aff'd, 103 F.3d 805 (9th Cir. 1996).

The purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact. An issue of material fact is genuine only if it has a real basis in the record and, under the governing law, it might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); United States v. Primera Enters., Inc., 4 OCAHO 615, at 2 (1994). If material factual issues exist for trial, summary decision is not proper. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, __ U.S. __, 116 S.Ct. 1261 (1996).

The party seeking summary decision assumes the initial burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. Celotex Corp., 477 U.S. at 323. In determining whether the complainant has met its burden of proof, all evidence and inferences to be drawn therefrom are to be viewed in a light most favorable to the respondent. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

Once the movant has carried this burden, the opposing party must then come forward with "specific facts showing that there is a genuine issue for trial." Id.; Fed. R. Civ. P. 56(e).

The procedural rule governing motions for summary decision in OCAHO proceedings explicitly provides that "a party opposing the motion may not rest upon the mere allegations or denials of such pleading . . . [s]uch response must set forth specific facts showing that there is a genuine issue for trial." 28 C.F.R. § 68.38(b) (1996).

III. Analysis

For the reasons set forth more fully below, respondent's May 16, 1997 dispositive motion is being granted.

A. Citizenship Status Discrimination

With respect to complainant's initial claim of citizenship status discrimination, IRCA provides that "[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual . . . with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment . . . in the case of a protected individual, because of such individual's citizenship status." 8 U.S.C. § 1324b.

The burden of stating a prima facie case of citizenship status discrimination under IRCA is quite simple. A complainant must allege that: 1) he is a member of a protected class; 2) the employer had an open position for which he applied or was discharged; 3) he was qualified for the position; and 4) he was rejected or discharged under circumstances giving rise to an inference of unlawful discrimination. Lee v. Airtouch Communications, 6 OCAHO 901, at 11 (1996); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 248 (1981); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-07 (1993).

Once a complainant states a prima facie case, the burden of production shifts to the employer to present a legitimate non-discriminatory reason for its employment action.

However, if the complainant fails to plead a prima facie case, the inference of discrimination never arises and the employer has no burden of production, and the complaint is dismissed. Airtouch Communications, 6 OCAHO 901, at 11. That is precisely the posture in which this case presents itself.

Although Olson is a U.S. citizen and therefore within the class which IRCA seeks to protect from unlawful citizenship status discrimination, the second and fourth elements of his prima facie case are wholly absent.

The Complaint does not contain an allegation of either discharge or refusal to hire. Moreover, the undisputed facts of this case also demonstrate quite clearly that those elemental facts cannot be pleaded. And complainant cannot cure that defect by amending his Complaint.

Olson was hired by UMC on February 21, 1987 for the position of polysomnography technician, respondent's answer at ¶ 6. On September 29, 1987, Olson properly completed a Form I-9 and tendered an Arizona driver's license to show identity and his social security card to show employment eligibility, Keeling Declaration at ¶ 4.

On August 25, 1995, Olson presented a self-created document entitled "Statement of Citizenship" to UMC for the purpose of having UMC discontinue withholding income and social security taxes from his wages, Richardson Declaration at ¶ 2.

On October 11, 1995, Olson presented another self-created document entitled "Affidavit of Constructive Notice" for the purpose of having UMC discontinue withholding federal taxes from his wages, Richardson Declaration at ¶ 2.

UMC did not discontinue withholding either income taxes or social security taxes from Olson's wages, Angulo Declaration at ¶¶ 6-7, and did not take adverse employment action against Olson, Angulo Declaration at ¶ 9.

Olson voluntarily resigned on March 8, 1997, and reapplied for a position with UMC and was rehired to an unspecified position on April 23, 1997, answer at ¶ 7. Olson completed a new Form I-9 and again tendered his Arizona driver's license as an identity document and his birth certificate as an employment eligibility document.

The conduct of which Olson complains, i.e. UMC's refusal to accede to his demands to discontinue federal tax withholding, is plainly not an unfair immigration-related employment practice proscribed by section 1324b, which limits relief to cases involving "hiring, firing, recruitment or referral for a fee, retaliation and document abuse." Wilson v. Harrisburg School Dist., 6 OCAHO 919, at 8 (1997) (citing Tal v. M.L. Energia, 4 OCAHO 705, at 14 (1991)).

In OCAHO rulings involving parallel factual scenarios, an employer's act of withholding federal taxes from an employee's wages has been held to be a term or condition of employment which IRCA simply does not reach. Horne v. Hampstead, 6 OCAHO 906, at 5 (1997); Smiley v. City of Philadelphia, 7 OCAHO 925, at 6 (1997).

Absent facts showing that Olson was either discharged or refused employment by UMC, his claim of citizenship status discrimination is without foundation.

Accordingly, UMC has met its burden of demonstrating that it did not discriminate against Olson on the basis of his citizenship status. Olson has failed to offer specific facts showing that there is a triable issue of material fact which would preclude the entry of summary decision in UMC's favor.

Respondent's motion for summary decision is granted as it pertains to complainant's citizenship status discrimination claim, and that claim is hereby ordered to be and is dismissed with prejudice to refiling.

B. Document Abuse

Having disposed of complainant's first cause of action, a consideration of Olson's final cause of action, that of document abuse, is now in order.

The document abuse provisions of IRCA, 8 U.S.C. § 1324b(a)(6), provide that it is an unfair immigration-related employment practice for an employer to request more or different documents, or to refuse to honor documents tendered that on their face reasonably appear to be genuine, for purposes of satisfying the requirements of the employment verification system, 8 U.S.C. § 1324a(b).

The employment verification system, among other things, requires an employer to verify at the time of hire that its employees are eligible to work in the United States by inspecting identity and work eligibility documents provided by the employee.

That task is accomplished by the completion of a Form I-9, officially known as the Employment Eligibility Verification Form.

The documents which an employee may tender for purposes of establishing identity and work authorization are those specified in IRCA's implementing regulations, 8 C.F.R. § 274a.2(b)(1)(v) (1996). At the risk of engaging in document abuse, the employer may not request a particular document or demand more or different documents than are necessary to verify identity and employment eligibility, nor may an employer refuse to accept facially valid documents.

To state a prima facie case of document abuse, the complainant must allege at a minimum that the employer requested documents for purposes of satisfying IRCA's employment verification system. Olson has failed to make those elemental allegations. For example, Olson contends at ¶ 16 of his April 14, 1997 Complaint:

> The Business/Employer refused to accept the documents that I presented [to show I can work in the United States].
>
> a) The Business/Employer refused to accept the following documents: Statement of Citizenship/Affidavit of Constructive Notice

Olson has crossed out the language "to show I can work in the United States," thus clearly negating facts which are essential to prove that UMC engaged in proscribed document abuse.

Olson has alleged that he tendered two (2) documents, a Statement of Citizenship and an Affidavit of Constructive Notice, not to show that he can work in the U.S., but rather to demonstrate his purported exemption from participation in the federal social security system and from federal tax withholding.

If indeed Olson had shown that UMC requested documents for the purpose of verifying his identity and employment eligibility, a self-created Statement of Citizenship and an Affidavit of Constructive Notice are not among the documents prescribed at 8 C.F.R. § 274a.2(b)(1)(v), and thus are not satisfactory for that purpose.

IRCA simply does not render unlawful an employer's refusal to accept documents that are not related to the employment eligibility verification procedures. Costigan v. NYNEX, 6 OCAHO 918, at 9-10 (1997).

As noted earlier, Olson was hired on February 21, 1987 for the position of polysomnography technician, respondent's answer at ¶ 6. On September 29, 1987, Olson properly completed a Form I-9 and tendered his Arizona driver's license to show identity and his social security card to demonstrate his employment eligibility, Keeling Declaration at ¶ 4.

Olson voluntarily resigned on March 8, 1997, and was rehired by UMC to an unspecified position on April 23, 1997, answer at ¶ 7. Olson completed a new Form I-9 and tendered his Arizona driver's license to show identity and his birth certificate to show employment eligibility.

There is no evidence that UMC requested documents to verify Olson's identity and employment eligibility either in August, 1995 or in October, 1995, and that evidentiary shortcoming cannot be remedied.

In summary, UMC has met its burden of demonstrating that it did not engage in acts of proscribed document abuse. Olson has failed to offer specific facts showing that there is a triable issue of material fact precluding the entry of summary decision in UMC's favor.

Accordingly, respondent's motion for summary decision is granted as it pertains to complainant's document abuse claim, and that claim is also hereby ordered to be and is dismissed with prejudice to refiling.

C. Subject Matter Jurisdiction

Administrative Law Judges assigned to this Office are under an obligation to examine the complaint and determine whether there is subject matter jurisdiction. Jarvis v. AK Steel, 7 OCAHO 930, at 8 (1997); Boyd v. Sherling, 6 OCAHO 916, at 7 (1997); Pena v. Downey Sav. and Loan Ass'n, 929 F. Supp. 1308, 1311 (C.D. Cal. 1996) (even if party had failed to raise the jurisdictional issue, court would be required to examine it sua sponte); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 229 (1990). In the event none is found, the complaint should be dismissed.

This case is another in a series of cases involving individuals who purport to be exempted from the payment of federal taxes. Lee v. Airtouch Communications, 6 OCAHO 901 (1996); Horne v. Town of Hampstead, 6 OCAHO 906 (1997); Wilson v. Harrisburg School District, 6 OCAHO 919 (1997); Winkler v. Timlin Corporation, 6 OCAHO 912 (1997); Costigan v. NYNEX, 6 OCAHO 918 (1997); Austin v. Jitney-Jungle Stores of Am., Inc., 6 OCAHO 923 (1997); Mathews v. Goodyear Tire & Rubber Co., 7 OCAHO 929 (1997); D'Amico v. Erie Community College, 7 OCAHO 948 (1997); Hogenmiller v. Lincare, Inc., 7 OCAHO 953 (1997).

Most of those complaints have advanced the same theories as those at issue and were filed by individuals represented by Kotmair, director of the National Worker's Rights Committee, and were dismissed at an early stage for want of jurisdiction and for failure to state a claim upon which relief can be granted.

As those rulings clearly instruct, this Office provides access only to those complainants seeking to resolve, among other things, disputes involving unfair immigration-related employment practices.

There is nothing in the provisions or IRCA, or in the pertinent implementing regulations,

which even remotely suggest that this forum has jurisdiction over disputes which involve the withholding of federal taxes from wages. Lee v. Airtouch Communications, 7 OCAHO 926, at 8 (1997) (order granting request for attorney's fees); Smiley v. City of Philadelphia, 7 OCAHO 925, at 21 (1997).

Complainant's allegations are based upon an "ideological dispute with the Internal Revenue Service over the method of withholding for taxes and over the constitutionality of the system of taxation in the United States" and do not implicate the immigration-related employment discrimination provisions of IRCA. Airtouch Communications, 7 OCAHO 926, at 4 (1997).

Accordingly, this Complaint is also being dismissed with prejudice for lack of subject matter jurisdiction.

In view of the foregoing rulings, respondent's remaining argument in support of summary decision, to the effect that complainant did not timely file his OSC charge, is rendered moot.

IV. Respondent's Request For Costs and Attorney's Fees

Respondent has requested its costs and attorney's fees in this matter. IRCA provides statutory authority for such fee shifting:

> In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

8 U.S.C. § 1324b(h).

It is clear that the respondent, in having its dispositive motion granted in its entirety, is the prevailing party in this case. Given that fact, it must now be determined whether complainant's argument has been shown to have been without reasonable foundation in law and fact.

In making that determination, prior OCAHO rulings have applied the standard established by the U.S. Supreme Court in Christianburg Garment Co. v. EEOC, 434 U.S. 412 (1978), wherein it was held that a court may award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith. Wije v. Barton Springs, 5 OCAHO 785 (1995); Jarvis v. AK Steel, 7 OCAHO 952, at 2 (1997). The purpose of this rule is to deter the filing of frivolous lawsuits.

The Supreme Court, however, has cautioned that the court must resist the temptation to conclude that, because the complainant did not ultimately prevail, the action must have been unreasonable or without foundation, logic that would discourage all but the most airtight claims. Airtouch Communications, 7 OCAHO 926, at 2.

It has been patently obvious from the very outset that complainant's dispute with UMC had nothing whatsoever to do with IRCA's purpose of remedying unfair immigration-related employment practices. Instead, this factual scenario clearly demonstrates that complainant's claim is ideological in nature and that his dispute is with the Internal Revenue Service concerning federal tax laws namely, the withholding of taxes from his wages.

Olson's theory has previously been reviewed in this forum numerous times and has been found to be totally without merit. See, for example, the list of cases cited by the Administrative Law Judge in the first footnote in Hogenmiller v. Lincare, Inc., 7 OCAHO 953 (1997). Because Olson's claims bear no discernible difference, they are likewise being found to be without reasonable foundation in law and fact.

An award of attorney's fees to UMC would serve the purpose of deterring subsequent lawsuits of this nature while avoiding any chilling effect on the filing of meritorious IRCA claims.

Olson may not claim unfair surprise upon learning that he will be ordered to pay UMC's attorney's fees and costs since he was advised in OSC's January 30, 1997 determination letter and prior to having filed his OCAHO Complaint, that an administrative law judge may allow a reasonable attorney's fee to UMC in the event his argument is found to be without reasonable foundation in law and fact.

And Olson's chosen representative, Kotmair, is also aware that attorney's fees have been awarded against other individuals alleging similar tax-related claims in this forum. Lee v. Airtouch Communications, 7 OCAHO 926 (1997); Jarvis v. AK Steel, 7 OCAHO 952 (1997); Werline v. Public Serv. Elec. & Gas Co., OCAHO Case No. 97B00023 (August 1, 1997).

However, before an order can be entered directing Olson to pay attorney's fees and costs, it must also be determined whether the requested fees and costs are reasonable. In accordance with the pertinent procedural rule, 28 C.F.R. § 68.52(c)(2)(v) (1996), UMC will provide this Office an itemized statement of fees containing the actual time expended and the rate at which the fees and other expenses were computed.

In providing that information, UMC should identify the individuals (partners, associates, or paralegals) who incurred billable time on this matter and state whether the rates charged are comparable to those charged in similar matters handled by UMC's attorneys and by other law firms in the Tuscon, Arizona metropolitan area.

V. Order

In view of the foregoing, respondent's Motion for Summary Decision filed on May 16, 1997 is granted.

Further, complainant's April 14, 1997 Complaint alleging two (2) unfair immigration-related employment practices, that of citizenship status discrimination and document abuse, in violation of the Immigration Reform and Control Act (IRCA), 8 U.S.C. § 1324b(a)(1) and the Immigration Act of 1990 (IMMACT), 8 U.S.C. § 1324b(a)(6), is hereby ordered to be and is dismissed, with prejudice to refiling, for lack of subject matter jurisdiction.

Respondent is ordered to provide this Office an itemized statement of fees stating the actual time expended and the rate at which the fees and other expenses were computed, and to have done so by Friday, September 12, 1997.

A final order will be entered following receipt of that information. All motions and requests not previously disposed of are hereby denied.

Joseph E. McGuire
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks a timely review of this Order 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, and does so no later than 60 days after the entry of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 1997, I have served copies of the foregoing Order Granting Complainant's Motion for Summary Decision to the following persons at the addresses shown, in the manner indicated:

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