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

JOSE JASSO, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	CASE NO. 92B00036
DANBURY HILTON & TOWERS, Respondent.	)	

FINAL DECISION AND ORDER REGARDING RESPONDENT'S MOTION FOR ATTORNEY'S FEES AND COSTS

(October 1, 1993)

Appearances:

For the Complainant
Mr. Jose Jasso
Pro Se

For the Respondent
Christopher G. Winans, Esq.
PINNEY, PAYNE, Van LENTEN,
BURRELL, WOLFE AND DILLMAN, P.C.

Before:
E. MILTON FROSBURG,
Administrative Law Judge

I. *Introduction*

On May 14, 1993, I issued a Final Decision and Order finding, among other things, that the Respondent did not engage in immigration- related employment discrimination regarding the Complainant, in violation of 8 U.S.C. § 1324b. On June 14, 1993, Respondent filed a Motion for Attorney's Fees and Costs under 8 U.S.C. § 1324b(h).

In my May 14, 1993 Decision and Order I found that:

1. the Complainant, Mr. Jasso, a native of Mexico, had been a legal permanent resident alien since July 12, 1988;

2. Mr. Jasso was a protected individual under 8 U.S.C. § 1324b;

3. Mr. Jasso had filed a timely charge with OSC by virtue of a constructive simultaneous filing with EEOC and OSC, on or about April 22, 1991;

4. this court lacked jurisdiction under 8 U.S.C. § 1324b as to the national origin discrimination subject matter because the Respondent employed more than 14 employees;

5. Mr. Jasso's charge and complaint incorporated a claim of citizenship discrimination, in violation of 8 U.S.C. 1324b, over which I did have jurisdiction;

6. Mr. Jasso was employed by Respondent as a dishwasher from March 16, 1990 until January 2, 1991, when he was fired;

7. Mr. Jasso was qualified for his position as a dishwasher when he was hired on March 16, 1990;

8. Mr. Jasso, however, was not qualified for his position as a dishwasher on January 2, 1991 due to medical reasons; and,

9. the Respondent hired a Hispanic individual to replace Mr. Jasso as a dishwasher.

After, a study of all the evidence of record, I found that the Complainant had not established a prima facie case under, either, OCAHO or the Second Circuit standards; that Mr. Jasso was terminated for good cause, as Respondent had a legitimate business reason; and that

Mr. Jasso had not proven, by a preponderance of the evidence, that Respondent's explanation of his termination was a pretext for discriminatory actions.

II. *Attorney's Fees and Costs*

As indicated, Respondent has requested recovery of reasonable attorney's fees and costs against the Complainant. Under 8 U.S.C. § 1324b(h), discretionary fee shifting by the Administrative Law Judge is authorized. The statute states:

> (h) Awarding of Attorney's Fees.-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.

As applied in this case, to grant Respondent's Motion, I would have to find both that, (1) that Danbury Hilton & Towers was the "prevailing party" in this litigation, and, (2) that Mr. Jose Jasso's argument was without reasonable foundation in law and fact. 8 U.S.C. § 1324b(h). A finding in favor of the Respondent on both of these factors would then necessitate inquiry into attorney's time and related fee and expense data to determine reasonableness. 28 C.F.R. 68.52(c)(2)(v).

1. Danbury Hilton and Towers is found to be a prevailing party within the meaning of 8 U.S.C. § 1324b(h).

Case law has interpreted "prevailing party" to mean the party who has succeeded on any significant claim which afforded him some of the relief he sought, either pending the suit, during the actual progress of the suit, during litigation or at the end of litigation. Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782, (1989); see also Hensley v. Eckerhart, 461 U.S. 424, 433 n.7. In a similar case, applying an analogous prevailing factor under the Voting Rights Act, the Court of Appeals has ruled that a party prevails if it has:

(1) substantially received the relief it sought and .... (2) the law suit itself...is a catalytic, necessary and substantial factor in obtaining the relief.

Commissioner Court of Medina County, Texas, v. United States, 683 F 2.d 435, 440 (D.C. Cir. 1982), Mantolete v. Bolger, 791 F 2.d 784 (9th Cir. 1986); Martin v. Heckler, 773 F.2d 1145, 1149 (11th Cir. 1985) (a

prevailing party must prevail on the central issue). Thus, Danbury Hilton and Towers has met the prevailing party standard. In United States of America v. Mester, 1 OCAHO 44 (1989), the CAHO employed a two prong test in determining whether the fee claimant, a Respondent, was a prevailing party. The first prong required a determination of whether the fee claimant had substantially received the relief sought. The second prong required a determination as to whether the fee claimant's defense of the suit could be considered a catalyst that motivated the Immigration & Naturalization Service (Service) to provide the requested relief. Id. at 7. Applying this test to the instant case, it is obvious that the Respondent here meets both proofs as its defense of the suit resulted in a dismissal, i.e., the relief it sought which was a dismissal of the Case.

I note that the second strand of Medina requires a strong causal link between a party's receipt of relief and the role of that litigant's victory in obtaining that relief. As the Respondent's successful defense relieved it from legal obligation toward the Complainant, the causal link requirement is fulfilled. Accordingly, I hold that the Respondent is properly characterized as the "prevailing party" for the purpose of determining the collateral issue of attorney's fees.

2. Complainant's Arguments were not Without Reasonable Foundation in Law and Fact

In an EAJA case, the finding that a party has prevailed does not necessarily entitle that party to an award of attorney fees and costs; The losing party's argument must be found to have been without substantial justification in law and fact. U.S. v. Yoffe, 775 F.2d 447, 450 (1st Cir. 1985).

(1) Under 8 U.S.C. § 1324b(h), the prevailing party obtains the benefit of fee shifting only upon a finding that the arguments of the opposing party were without reasonable foundation in law and fact. 8 U.S.C. 1324b(h); Jones v. Dewitt Nursing Home, 1 OCAHO 189, (6/29/90) at 25-29.

The parameters for IRCA's reasonable foundation standard follow EAJA case law, even though the IRCA terminology, "without reasonable foundation," does not appear in the EAJA, standard which follows a substantial justification standard. The First Circuit has construed that "substantial justification" is a reasonableness test. U.S. v. Yoffe, 775 F.2d at 449 (1st Cir. 1985). The EAJA standard, as applied by the

courts, approximates IRCA's subsection 1324(h) reasonableness standard. U. S. v. Charo's Corporation, d.b.a., Charo's Restaurant, 3 OCAHO 402 (1/22/92).

Title VII of the Civil Rights Act also illuminates the reasonableness test for fee shifting. Under Title VII the Supreme Court has held that a District Court may, in its discretion, award attorney's fees to a prevailing Defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, groundless and without foundation, even though not brought in subjective bad faith. See Christiansburg Garment Company v. EEOC, 434 U.S. 412 421 (1978).

Therefore, in considering the motion before me for attorney's fees and costs, and the remedial purpose of the statute, as well as the Complainant's pro se status, apparent unsophistication in legal matters and public policy which specifically encourages efforts by covered individuals to redress, I do not find the Complainant's filing of this action to be unreasonable.

The fee shifting mechanism of 8 U.S.C. § 1324b(h) authorized an award of attorney's fee in the judge's discretion. For the foregoing reasons and upon careful consideration, I decline to allow Respondent attorney's fees and/or costs in this case.

b. Ultimate findings of facts and conclusions of law

I have considered the pleadings, testimony, evidence and arguments submitted by the parties. All motions and requests not previously disposed of are denied. Accordingly, and in addition to the findings and conclusions already stated, I make the following determinations, findings of fact and conclusions of law:

1. That the Respondent is found to be a "prevailing party" in this matter. 28 C.F.R. 68.52(c)(vi).

2. That the Complainant was substantially justified in bringing and maintaining this action against the Respondent. 28 C.F.R. 68.52(c)(vi).

3. That the Respondent is found not to be entitled to attorneys fees or costs in this matter.

4. This proceeding is now concluded. A Decision and Order issued on May 14, 1993, regarding the merits of this case and the immediate

decision regarding the Respondent's claim for fee shifting are the final administrative orders in this case pursuant to 8 U.S.C. 1324b(g)(1).

An appeal of this final decision and order may be made, no later than 60 days after entry, in the U.S. Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. 8 U.S.C. 1324b(i).

IT IS SO ORDERED this 1st day of October, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge