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

Jesse C. Jones, Complainant v. De Witt Nursing Home, Respondent; 8 U.S.C. § 1324b Proceeding; Case No. 88200202.

ORDER GRANTING MOTION TO INTERVENE

(March 5, 1990)

This case began before me pursuant to the Notice of Hearing issued November 22, 1988, upon the filing of a complaint by Jesse C. Jones on November 16, 1988. Previously, by letter dated August 17, 1988, the Special Counsel for Immigration Related Unfair Employment Practices (OSC), had advised counsel for complainant that OSC would not file a complaint before an administrative law judge because it had ``determined that there is not a reasonable basis on which to conclude that Mr. Jones was terminated from his employment . . . because of his citizenship status.''

After six prehearing conferences, five of them by telephone, one, on September 12, 1989 held in New York City, and extensive prehearing discovery, a two-day evidentiary hearing was held in New York City on November 7 and 8, 1989. Post-hearing procedures established on the record and confirmed by my order dated December 7, 1989 included the filing of concurrent opening briefs by February 16, 1990 and concurrent reply briefs by March 9, 1990. In response to a motion filed February 8 by counsel for complainant, to which respondent did not object, by order dated February 12, I extended opening brief dates to March 2 and reply brief dates to March 23, 1990.

On February 9, 1990, OSC, for the United States, filed a motion to intervene on the ground that ``this case presents for the first time the interrelationship of the documentation requirements of Section 101 and the citizenship status discrimination prohibitions of Section 102 of the Immigration Reform and Control Act'' (IRCA). OSC asserts that its ``continually developing experience and expertise in the enforcement of the antidiscrimination provisions'' of IRCA make it ``uniquely qualified to undertake'' the ``complex

analysis of the documentary material included in the record'' in respect to the issues it intends to address.

Pending action on the motion to intervene, by order dated February 21, 1990, I extended the briefing dates to March 16 and April 6 respectively.

Complainant on February 23, filed a statement that he does not object to the intervention. By an Opposition filed February 28, Respondent opposes, contending that because Special Counsel had ``found no basis to institute proceedings before this action was started, was not present at the hearing and ``the decision may very well turn . . . on credibility'' it would be prejudicial to permit intervention at this time. Respondent made no objection on the basis of delay.

Upon consideration, consistent with 28 C.F.R. § 68.13, the motion is granted, the Opposition overruled. I have many times during this and other proceedings under section 102 of IRCA noted that the parties and the bench are early on the learning curve under section 102. Recognizing OSC's statutory responsibilities, it would be unreasonable to deny intervention to OSC on the ground that a year and a half ago it had not found grounds to initiate the particular section 102 proceeding. In contrast to the Opposition, I understand that OSC will concentrate its attention to the interplay between documentation requirements of section 101 in context of employer obligations under section 102.

I do not entirely agree with the OSC suggestion that the interrelationship between the requirements of the two sections of IRCA has not been judicially addressed. See e.g., U.S. et al. v. Todd Corporation,_____ Fed. 2d_____ (Nos. 88-7419, 88-7420) 9th Cir., February 26, 1990, affirming Romo v. Todd, OCAHO No. 8720001, August 19, 1988 (Morse, J.), Empl. Prac. Guide (CCH) para. 5190. I do agree, however, that it may be helpful to obtain OSC expertise by applying its understanding of the statutory imperatives to the evidentiary record before me. I do not understand how as a matter of law such participation can be ``prejudicial'' to respondent.

In my judgment it is self-evident at this stage in the administration of the important new program enacted by section 102 of IRCA, that the United States, through OSC, has a legitimate interest in this proceeding. While OSC participation at this juncture will further prolong the post-hearing briefing schedule, it will not unduly delay the outcome. Without at all predicting the impact, if any, to be accorded to OSC participation, I concur that in light of its statutory role, its intervention at this stage ``is likely to contribute materially to the proper disposition'' of this proceeding. 28 C.F.R. § 68.13.

The briefing schedule is once again enlarged as follows:

Concurrent opening briefs not later than March 30, 1990.

Concurrent opening briefs not later than April 20, 1990. If, not later than April 27, respondent so notifies the bench and all parties of its intent to do so, it may file a further response not later than May 4, 1990 addressed only to the reply brief, if any, of the intervenor.

SO ORDERED.

Dated this 5th day of March, 1990.

MARVIN H. MORSE
Administrative Law Judge