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

United States of America, Complainant vs. Nu Look Cleaners of Pembroke Pines, Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100162.

ORDER REQUIRING COMPLAINANT TO CLARIFY ITS PRESENT POSITION REGARDING MOTION TO DISUALIFY

1. The complaint herein, filed on March 30, 1989, alleges that respondent violated 8 U.S.C. § 1324a(a)(1)(A)(B)(2) after November 6, 1986, by hiring Sherida Allen for employment, or continuing to employ her, in the United States knowing that she was an alien not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act or the Attorney General to accept employment, and by failing to properly verify her on a verification Form I-9. These allegations are denied in respondent's undated answer, postmarked May 2, 1989.

2. On April 26, 1989, attorney Joel Stewart filed a notice of appearance on respondent's behalf. Since that time, he has represented respondent in the instant proceeding.

3. Mr. Stewart has acted as Mrs. Allen's counsel, in connection with her alien status and her right to employment in the United States, since at least November 7, 1989, and probably much earlier than that.[1]On that day, Mrs. Allen appeared before Immigration Judge Daniel Meisner for a continued deportation hearing, at which she was represented by attorney Stewart. At this hearing, Mrs. Allen was charged by the Immigration and Naturalization Service with being deportable for remaining in the United States beyond October 26, 1987, the time permitted by her visa, without authority from the

[1]An application for alien employment certification, naming her and filed in June or July 1988 with an appropriate Federal agency, names Mr. Stewart as her agent to represent her for the purposes of labor certification. Mrs. Allen conferred with Mr. Stewart on September 30, 1988, after she had been taken into custody by the Immigration and Naturalization Service.

INS, and for working for respondent in violation of her immigration status. Judge Meisner found her to be deportable. This decision was not appealed and became a final order.

4. Over date of March 15, 1990, complainant filed a motion to disqualify Mr. Stewart from continuing to act as counsel for respondent in this case. This motion alleged, inter alia, that complainant expects to call Mr. Stewart as a witness to show (1) that Mr. Stewart prepared an application for labor certification which was allegedly filed by respondent on behalf of Mrs. Allen (see supra fn. 1); and (2) that at her deportation hearing, Mrs. Allen, through her attorney Mr. Stewart, admitted working for respondent in violation of her immigration status. Complainant alleged that Mr. Stewart's status as a potential witness for complainant calls for him to withdraw as counsel for respondent.

5. In a document postmarked April 11, 1990, but dated March 11, Mr. Stewart opposed the March 15 motion to disqualify, on the ground that ``an attorney-client privilege exists which would prevent [him] from providing any testimony . . . In addition, there exists a work product doctrine which is an independent source of immunity from discovery, distinct from and broader than the attorney-client privilege. In view of the above, there would be no legal basis for Joel Stewart to be called to testify and therefore to be disqualified.''

6. By letter to me dated May 9, 1990, in response to a letter from me to him dated April 30, 1990, Mr. Stewart stated, inter alia:

> You stated that you will infer that the copy of the application for alien employment certification [see rhetorical paragraph 4, supra] is a true copy of an application filed by respondent with an appropriate Federal agency. I have no further objection to this inference.

7. Complainant's motion to disqualify was accompanied by an affidavit by complainant's attorney, which stated that he had represented the INS at Mrs. Allen's November 7, 1989, deportation hearing; and that ``During the course of this hearing, Mr. Joel Stewart, acting on behalf of his client, Mrs. Sherida Allen, admitted all the allegations in the Order to Show Cause, Form I-221S, and `Additional Charges of Deportability, Form I-9261,['] and conceded that Mrs. Sherida Allen was deportable as charged.''[2] These allegations

[2]Form I-221S alleged that she had been admitted to the United States for pleasure and had remained in the United States beyond the authorized date of October 26, 1987, and without the authority of the INS. Form I-261 alleged that on Septem-

have never been denied by Mr. Stewart. Further, complainant's motion to disqualify avers that tapes and/or transcripts from these proceedings can be made available to me.

8. On July 20, 1990, in connection with documents which have been subpoenaed from respondent but not produced, I made the following findings of inference:

A. That if produced, such documents would have shown that after November 6, 1986, respondent hired Sherida Allen for employment, and continued to employ her, in the United States knowing before hiring her and at all times thereafter that she was an alien not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act, as amended, or the Attorney General to accept employment; and

B. That if produced, such documents would have shown that respondent, after November 6, 1986, failed to properly verify Sherida Allen on a verification form I-9.

9. In view of the foregoing, counsel for complainant is hereby ordered to advise me, on or before 14 days from the date of this order, whether he adheres to his March 15, 1990, motion to disqualify, which motion was based on his then expectation of calling Mr. Stewart as a witness at a hearing.[3]If counsel for complainant adheres to that motion, he is further ordered to advise me what testimony he expects to elicit from Mr. Stewart which would not be subject to the attorney-client or work-product privilege or, if so subject, counsel for complainant anticipates would not be withheld on the basis of such privilege. If complainant fails to reply within the specified period, the motion to disqualify will be deemed to be withdrawn.

Dated: July 26, 1990.

NANCY M. SHERMAN
National Labor Relations Board

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ber 30, 1988, she had failed to maintain the nonimmigrant status in which she was admitted, in that on September 30, 1988, she had been found ``working at the cash register at Nu Look Cleaners, Inc. d/b/a Nu Look Cleaners'' without permission from the INS.

[3]It is suggested that the words ``ought to'' in the third line of the quotation on page 3 of complainant's motion should read ``may.'' See Cossette v. Country Style Donuts, Inc., 647 F.2d 526, 529 fn. 5 (5th Cir. 1981).