

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

Errol Williams, Complainant v. Deloitte & Touche (formerly, Touche Ross & Co.), Respondent; 8 U.S.C. § 1324b Proceeding, Case No. 89200537.

ORDER DISMISSING CLAIM OF NATIONAL ORIGIN DISCRIMINATION, AND TO SHOW
CAUSE WHY CITIZENSHIP DISCRIMINATION CLAIM IS NOT TIME BARRED

(August 22, 1990)

This Office has before it a Complaint filed by Errol Williams alleging citizenship and national origin-based discrimination in employment in violation of 8 U.S.C. § 1324b. Complainant alleges that he was refused employment on or about January 27, 1989 in spite of repeated applications to Respondent ``in favor of less qualified applicants.'' He asserts that the refusal to employ was based on his national origin and citizenship status.

A charge form dated March 19, 1989 was filed with the Office of Special Counsel (OSC) on March 23, 1990. OSC determined in a letter dated July 20, 1989 that there was ``no reasonable cause to believe that the charge of citizenship status discrimination is true.'' OSC also concluded that it ``lacked jurisdiction over the allegation of national origin discrimination because it was covered by section 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2.'' OSC notified Complainant that he could file a complaint directly before an administrative law judge no later than October 19, 1989. 28 C.F.R. § 44.303(c)(2).

Complainant on October 23, 1989 filed a complaint with this Office dated October 19, 1989. That filing appears to be four days after the filing deadline established at 28 C.F.R. 44.303(c)(2). In an Order of Inquiry to the Parties issued May 24, 1990 I stated that the rules of practice and procedure of this Office provide at 28 C.F.R. § 68.7(b) that `` `[P]leadings are not deemed filed until received by the Office of Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case when filed by mail.' Moreover, at Section 68.7(c)[7] `Service of all pleadings other than

complaints is deemed effective at the time of mailing.' ' Accordingly, I requested in that Order that Complainant explain why his action is not time-barred, cautioning that failure to respond ``may result in dismissal of this action.''

No response from Complainant having been received, and considering Respondent's affirmative defense alleged in its Answer filed March 28, 1990 that Complainant's filing with this Office is time-barred, examination of the Complaint suggests it is defective in the following respects:

(1) The Complaint was filed four days after expiration of the time frame required by regulation, 28 C.F.R. § 44.303(c)(2). The Complaint was filed more than 90 days after OSC's election not to file a complaint, i.e., 90 days after the OSC 120 day investigatory period. 8 U.S.C. § 1324b(d) (1) and (2).

(2) There is no basis for Complainant's allegation of national origin discrimination under IRCA. Respondent is an entity covered by section 703 of Title VII of the Civil Rights Act of 1964 because as stated in response to my May 24th Order of Inquiry it is an entity employing more that 14 persons; it is therefore no subject to the jurisdiction of an administrative law judge. 8 U.S.C. § 1324b(a)(2)(B).

As to (2), the national origin portion of Complainant's claim is dismissed. Ndusorouwa v. Prepared Foods, Inc., OCAHO Case No. 89200191 (July 3, 1990); Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990); Wisniewski v. Douglas County School District, OCAHO Case No. 8820037 (October 17, 1988).

As to (1), Complainant is directed to show cause why the balance of the Complaint should not be dismissed as a matter of law for failure to timely file his Complaint arising out of the alleged citizenship-based discrimination. By this Order to Show Cause, Complainant is provided a further opportunity to explain his reasons why this action is not time-barred.

A response to this Order will be timely if received no later than Friday, September 7, 1990. In the event Complainant makes such a filing, Respondent may file a reply not later than Friday, September 14, 1990. Any filing by either party shall contain a statement that a copy has been delivered or mailed postage prepaid to the other party, showing the date of such delivery or mailing. The parties are cautioned that I may dispose of this proceeding on the basis of the pleadings after time for filings has expired.

SO ORDERED.

Dated this 22nd day of August 1990.

MARVIN H. MORSE
Administrative Law Judge