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

Olimpia Tovar, Complainant v. United States Postal Service; Anthony Frank, Postmaster General in His Official Capacity as Chief Executive Officer of the Postal Service: Joseph Caraveo, in His Official Capacity as Western Regional Director of the Postal Service: Arthur Hambric, in His Official Capacity as General Manager and Postmaster of the City of Oakland and the County of Alameda: Clara M. Nealy, in Her Official Capacity as Acting Supervisor, Employment and Placement, Oakland Division of the Postal Service, and Betty Miller, in Her Capacity as Personnel Analyst for the Oakland Division of the Postal Service, Respondents; 8 U.S.C. 1324b Proceeding; Case No. 90200006.

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

E. MILTON FROSBURG, Administrative Law Judge

Appearances: **STEPHANIE GARRABRANT**, Esquire and
MANUEL ROMERO, Esquire for Complainant
STEPHEN E. ALPERN, Esquire and
SUZANNE H. MILTON, Esquire for Respondents.

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I. INTRODUCTION

In the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. No. 99-603, 100 Stat. 3359 (November 6, 1986), Congress es-

tablished a system to prevent the hiring of unauthorized aliens by significantly revising the policy on illegal immigration. In section 101 of IRCA, which enacted section 274A of the Immigration and Nationality Act of 1952 (the Act), codified at 8 U.S.C. § 1324a, Congress prohibited the hiring, recruiting, or referral for a fee, of aliens not authorized to work in the United States, and provided for civil penalties for employers who failed to comply with the employment eligibility verification requirements of 8 U.S.C. § 1324a(b).

As a complement to the employer sanctions provisions, section 102 of IRCA, section 274B of the Act, prohibited discrimination by employers on the basis of national origin or citizenship status. Found at 8 U.S.C. § 1324b, these antidiscrimination provisions were passed to provide relief for those employees or potential employees who are authorized to work in the United States, but who are discriminatorily treated because they are foreign citizens or of foreign descent.

The aims of IRCA are thus dual in nature. The plan seeks to prevent employers from hiring unauthorized workers, but is alternatively designed to prevent employers from being overly cautious or zealous in their hiring practices by avoiding certain classes of employees or treating them in a discriminatory fashion.

Title 8 U.S.C. § 1324b dictates which classes of employees are provided protection under the Act. These include United States citizens and nationals, permanent resident aliens, temporary resident aliens, refugees, and persons granted asylum who evidence their intention to become citizens.

The IRCA legislation expanded the national policy on discriminatory hiring practices, found in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. Claims under Title VII did not raise a distinction between national origin and alienage discrimination. See Espinoza v. Farah Mfg. Co., Inc., 414 U.S. 86 (1973). Further, Title VII provided for claims solely against employers of 15 or more employees. Accordingly, IRCA was enacted to provide for causes of action arising out of unfair immigration-related employment practices resulting in citizenship and/or national origin discrimination, while providing jurisdictional requirements based on the size of the employer's business, in order to avoid overlap with Title VII claims.

Section 102 provides for claims of discrimination based upon national origin with respect to employers of more than three, but less than 15 employees. This section also fills in the gap left in Title VII by allowing for causes of action based upon citizenship discrimination against all employers of more than three employees.

IRCA authorizes individuals to file charges of national origin or citizenship discrimination with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). OSC can then file complaints with the Office of the Chief Administrative Hearing Officer (OCAHO) on behalf of the individual. If the OSC does not file such a charge within 120 days of receipt of the claim, the individual is authorized to file a claim directly with an Administrative Law Judge (ALJ). 8 U.S.C. §§ 1324b(b)(1) and 1324b(d)(2).

II. PROCEDURAL HISTORY

Consonant with the statute and regulations, on or about May 30, 1989, Olimpia Tovar, by and through her attorney Manuel Romero, filed a Complaint with the OSC, alleging that the United States Postal Service (USPS), et al., discriminated against Ms. Tovar on the basis of her citizenship status. Complainant alleged that she had applied with and been interviewed by the USPS for a position as a flat sorting machine operator, but that she was refused a job because of the USPS policy of hiring only United States citizens and permanent resident aliens. According to the Complaint, Ms. Tovar was a temporary resident alien, and was thus disqualified, despite meeting other employment qualifications.

On August 29, 1989, the OSC responded by letter to Attorney Romero, stating that the OSC would not file a complaint regarding this matter with OCAHO. The OSC informed Attorney Romero that he could file a Complaint directly with an ALJ, if filed not later than January 2, 1990.

On January 2, 1990, Complainant Tovar, by and through her attorneys, Stephanie Garrabrant and Manuel Romero filed a Complaint with OCAHO against the USPS, et al. Complainant alleges that she was discriminated against because of her citizenship status as a result of Respondent's discriminatory official hiring policy. Complainant alleges that she was screened by USPS for hire, had been selected for training, and was prepared to undergo training as a flat sorting machine operator, when she was told that her temporary resident alien status would prevent her from qualifying for a position with USPS, and was released from further consideration.

On January 10, 1990, OCAHO issued a Notice of Hearing on Complaint Regarding Unfair Immigration-Related Employment Practices. This Notice provided time limits in which Respondents could file an Answer, and scheduled a hearing on this matter in or around Oakland, California, on a date to be determined.

On February 5, 1990, Respondents, by and through counsel, Stephen E. Alpern and Suzanne H. Milton, filed an Answer to the

Complaint, specifically admitting or denying, or stating they were without sufficient information to answer, each allegation. Respondents also asserted an affirmative defense, specifically that Complainant failed to state a claim for which relief could be granted because the USPS regulations fall within the exception to the nondiscrimination provisions of IRCA.

On June 13, 1990, Respondents filed a Motion for Summary Decision, with a memorandum in support thereof, and a Declaration of Carol L. Booher of the Employee Relations Department of USPS. On July 11, 1990, Complainant filed a Motion for Summary Decision, followed on July 27, 1990 with a memorandum of points and authorities in support thereof.

A proceeding was held in San Diego, California on July 27, 1990 for the purpose of hearing oral argument on the cross-motions for summary decision. Argument was received from Stephanie Garrabrant and Stephen E. Alpern, and a 31 page transcript was compiled.

Upon my learning that all parties had received their copies of the hearing transcript, I issued an Order on September 25, 1990, indicating my understanding that neither side desired to submit additional written materials for my consideration. I indicated also that my Decision and Order would be forthcoming.

III. STATEMENT OF MATERIAL FACTS

The following list is a summary of the material facts which were disputed when oral argument began on July 27, 1990:

1. Ms. Tovar is not a United States citizen, but filed a declaration of her intention to become a citizen on April 27, 1989.

2. On February 2, 1989, Ms. Tovar took an examination for a ``distribution clerk, machine'' position within the USPS, and received notification that she had passed this examination, making her eligible for a flat sorting machine operator position.

3. Ms. Tovar received a notice on April 28, 1989, informing her that she was eligible for consideration as a flat sorting machine operator, and that she was to report for orientation and prescreening on May 2, 1989.

4. Ms. Tovar appeared at the orientation meeting on May 2, 1989 where she and the other applicants learned that they would be required to participate in 30 days of dexterity practice, after which they would be tested. If they passed the dexterity examination the applicants would be placed on an eligibility register for two years.

5. During the orientation process, Ms. Tovar was required to see Ms. Betty Miller, Personnel Assistant, to complete her Form I-9 and to schedule an appointment for an eye and ear examination.

Ms. Tovar presented identification documentation, including her temporary resident card, to Ms. Miller.

6. Ms. Miller informed Ms. Tovar that she was not qualified for employment with the USPS because she had not yet obtained permanent resident status.

7. In denying Ms. Tovar employment, the USPS was acting in accordance with its regulation regarding employment eligibility which stated that the individual was required to be either a U.S. citizen or a permanent resident alien.

8. After Ms. Tovar was rejected as a USPS employee, the USPS continued to seek employment applications and to hire similarly qualified employees who did meet citizenship requirements.

IV. LEGAL STANDARDS FOR A MOTION FOR SUMMARY DECISION

The parties in their respective motions agree that there are no material facts in dispute. Accordingly, summary adjudication of this case is appropriate as a matter of law.

The federal regulations applicable to this proceeding authorize an Administrative Law Judge to ``enter summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise . . . 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. Part 68.36; see also Fed. R. Civ. Proc. 56(c).

The purpose of the summary judgment procedure is to avoid an unnecessary trial when there is no genuine issue as to any material fact, as shown by the pleadings, affidavits, discovery, and judicially-noted matters. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A material fact is one which controls the outcome of the litigation. See Anderson v. Liberty Lobby, 477 U.S. 242 (1986); see also Consolidated Oil & Gas, Inc. v. FERC, 806 F.2d 275, 279 (D.C. Cir. 1986) (an agency may dispose of a controversy on the pleadings without an evidentiary hearing when the opposing presentations reveal that no dispute of facts is involved).

Once it is determined that no genuine issues of material fact exist, the analysis for summary decision in the IRCA framework follows the analysis used in Title VII disparate treatment cases. See Fayyaz v. The Sheraton Corp., OCAHO Case No. 89200430, (Apr. 10, 1990); Bethishou v. Ohmite Mfg. Co., OCAHO Case No. 89200175, (Aug. 2, 1989). In Fayyaz, the ALJ stated that the same burden of proof exists for complaints filed under section 102 of IRCA as for complaints filed under Title VII.

The Supreme Court established the order and allocation of proof to be used in discrimination cases in McDonnell Douglas Corp. v.

Green, 411 U.S. 792 (1973). The claimant must first establish a prima facie case of discrimination or disparate treatment by showing that, (i) she belongs to a minority or suspect class; (ii) she applied and was qualified for employment by the employer; (iii) she was rejected for employment despite her qualifications; and (iv) after being rejected, the position remained open and the employer continued to seek applications from similarly qualified applicants. Then the burden shifts to the employer who must show a legitimate, nondiscriminatory reason for its refusal to hire the claimant. The claimant must then be given the opportunity to prove that the reason offered by the employer was a pretext to cover an illegal motive.

This analysis was followed again by the Court in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). The Court expanded upon its ruling in McDonnell Douglas by explaining that the employer bears only the burden of explaining the nondiscriminatory reasons for its actions. The employer need not prove by a preponderance of the evidence that its reasons for rejecting the claimant were legitimate. The employer must only meet the claimant's prima facie case with evidence of a nondiscriminatory explanation for its actions. The burden of persuasion remains at all times with the claimant, who then has the opportunity to show that the employer's reason was pretextual.

In the case of Trans World Airlines, Inc., v. Thurston, 469 U.S. 111, (1985), the Court concluded that in certain cases, direct evidence of discrimination is shown. In these instances, the McDonnell Douglas/Burdine test is inapplicable. If an employer's policy is discriminatory on its face, the claimant need not rely on McDonnell Douglas, which is designed to provide the claimant a day in court, despite the unavailability of direct evidence.

This analysis was followed in the IRCA case of In Re Charge of Rosita Martinez, U.S. v. Marcel Watch Corp., OCAHO Case No. 89200085, (Mar. 22, 1990). The ALJ stated, ``[i]n a case where the complainant has presented substantial direct evidence of discrimination the complainant may not be required to show that the employer's reason was pretextual. The direct evidence alone can establish that discrimination was a significant factor in the employment decision.'' Although not a summary decision, the same guidance can apply in the summary decision context. As Marcel and Thurston demonstrate, the employer is still permitted to explain its reasons for the discriminatory conduct, although the shifting burden scheme of McDonnell Douglas may not be necessary.

In analyzing the facts agreed upon by the parties to this action, it is apparent that a discriminatory act occurred. IRCA provides in

section 102 that discrimination is proven by a showing of deliberate discriminatory intent on the part of an employer. Discrimination or disparate treatment is defined in the case of Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978), wherein the Court explained, it is when ``the employer is treating some people less favorably than others because of their race, color, religion, sex, or national origin.'' 438 U.S. at 577. See also U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983).

Here, the applicable USPS hiring regulations, found in Section 312.2 of Personnel Operations Handbook, EL-311, 2/1/89 (Respondents' Exhibit 2), eliminate from consideration as employees those who are temporary resident aliens. Permanent resident aliens, like United States citizens, are eligible. There is no doubt that the preference for permanent aliens over temporary resident aliens is disparate treatment.

Since the parties do not dispute this fact, I do not find it necessary to apply the McDonnell Douglas/Burdine test to this matter. I will consider the discriminatory actions of Respondents, and the affirmative defense raised by Respondents to this charge. Respondents Answered the Complaint by stating that Complainant failed to state a claim for which relief could be granted because the USPS policy, which prohibits the employment of non-citizens, or non-permanent resident aliens, falls within the exception to the discrimination provisions of IRCA set out at 8 U.S.C. § 1324b(a)(2)(C). Complainant has raised several arguments regarding the misapplication of this statutory exception and the alleged arbitrary distinction drawn by Respondents in their employment policy. I will consider all of the arguments presented in my determination of this summary decision.

V. DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

In 8 U.S.C. § 1324b(a)(2)(C) Congress provided that the prohibitions at section 1324b(a)(1) (unlawful discrimination) shall not apply to:

> discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

8 U.S.C. § 1324b(a)(2)(C) (emphasis added).

Respondents contend that their regulations, the authority for which is found in the Postal Reorganization Act, 39 U.S.C. § 101, et seq., bestow upon them the ability to establish employment guide-

lines, to include the criteria of citizenship. Although these regulations were established prior to the passage of IRCA, they were reviewed for sufficiency and compatibility with IRCA after its passage, and found to be justified. See Declaration of Carol L. Booher, attached to Respondents' Motion for Summary Decision.

Respondents reason that since the USPS employment regulation, on its face, is a type of ``law, regulation, or executive order'', the IRCA language prohibiting discrimination against non-citizen aliens who are authorized to work cannot be the basis for an action against the USPS. Respondents' argument is a persuasive one.

I have, in a previous case, found in favor of the USPS in a summary decision based upon the very same argument. See Sosa v. U.S. Postal Service, OCAHO Case No. 89200001, (Dec. 15, 1989). The fact situation in Sosa was substantially similar to the present case. In Sosa, I found that the USPS regulation caused the employment candidate, a temporary resident alien, to be treated less favorably than other similarly qualified candidates who were United States citizens or permanent resident aliens. I found, however, that the USPS regulation did fall within the exception clause of 8 U.S.C. § 1324b(a)(2)(C), therefore such disparate treatment was not proscribed by IRCA.

In Sosa I stated, ``[i]t therefore appears that the USPS policy of hiring only permanent resident aliens and U.S. citizens . . . , as articulated in the personnel handbook of USPS, is a regulation of USPS, an independent establishment of the executive branch of the United States government. Such a regulation appears, on its face, to be the kind of regulation covered by the statutory exceptions in IRCA.'' I find for Respondents here in this summary decision based upon the same reasoning. I have carefully considered Complainant's strong arguments to the contrary, however, I am not persuaded that the USPS regulation in question is not to be considered a valid exception to IRCA's discrimination prohibitions.

Complainant argues first that IRCA is a remedial legislation designed to prevent discrimination of aliens authorized for employment. Therefore, the exception language should not be construed in such a way as to justify a regulation, such as that of the USPS, which produces results contrary to the expressed remedial intent of IRCA. Complainant further argues that remedial legislation should be liberally construed and that any exceptions thereto should be construed narrowly.

This is a compelling argument, however, I am not convinced, without more evidence of Congressional intent, that the statutory exception of IRCA should not apply to the USPS regulation. As Respondents contend, section 1324b(a)(2)(C) does not limit the types of

regulations to which the exception applies. I have not been presented with any evidence to support Complainant's contention that the broad language of the statutory exception was not intended to apply to every agency regulation. In the absence of such proof, I will not make a determination which is so limiting.

Complainant raises several points regarding the distinction between the two classes of aliens in the USPS regulation and suggests that such a distinction is not valid if not created for national security or foreign policy purposes. Complainant cites Hampton v. Mow Sun Wong, 426 U.S. 88 (1976), for this proposition.

In Hampton the Court considered a challenge to the Civil Service Commission's (CSC) regulation which barred all non-citizens from employment. The Court found the regulation to be unconstitutional in that it deprived the resident aliens of a substantial liberty interest without due process of law. The Court found that the CSC's ``indiscriminate policy'' was not based upon any legitimate reasons. Without a showing of a justifiable reason for its implementation, which is within the scope of that agency's concern, the policy could not stand. 426 U.S. at 115-116.

The argument continues by Complainant's contention that the USPS regulation, which pertains to employment criteria, is void because it exceeds the grant of authority conferred by Congress to the USPS. This statutory grant extends to the USPS' control over day-to-day operations. Complainant argues that broad policy decisions such as hiring, which involve discriminatory practices, go beyond this authority.

Respondents counter with the argument that the USPS has broad powers conferred by 39 U.S.C. § 101, et seq. These powers include the management of personnel and establishment of employment qualifications. Respondents cite to the Declaration of Carol L. Booher which explains the logic behind the USPS distinction between permanent and temporary resident aliens. They base this distinction primarily on economic factors. Respondents concluded upon their review of this regulation after IRCA's passage that the administrative and financial burden which would be created by a expansion of the hiring policy to include temporary resident aliens would be too great to justify such a change. They determined that their policy was not inconsistent with IRCA and that their review satisfied the principles of Hampton.

In his argument on behalf of Respondents, Attorney Alpern stated that the Supreme Court, in Hampton, recognized the USPS' broad grant of authority which necessarily encompasses the establishment of hiring guidelines. Transcript of Proceedings at 12. He cited the case of Chevron U.S.A., Inc. v. Natural Resources Def.

Council, Inc., 467 U.S. 837 (1984) for the theory that courts must defer to the agencies' interpretations of their own statutes. He further argued that the USPS' interpretation of their authority to establish employment criteria, including citizenship standards, must stand unless found to be arbitrary and capricious.

Based on the information presented for my consideration, I agree with Respondents that courts have traditionally deferred to agencies' interpretations of their own statutes. In this case I find that Respondents did have the authority to promulgate their broad policy regarding employment qualifications, based upon their interpretation of section 1001 of the Postal Reorganization Act. Complainant has not proven that the USPS' broad grant of authority does not encompass alienage classifications with respect to employment.

Respondents also point out that the regulation of the CSC in Hampton differs from that of the USPS in that the CSC policy eliminates all non-citizens, not just temporary resident aliens. In Hampton the CSC could not articulate its reasons for establishing such a policy to the satisfaction of the Court. Here, Respondents argue, the regulation of the USPS was changed from one barring non-citizens to one permitting permanent resident aliens in 1974. This was done after the Hampton litigation began. Respondents again considered their policy in 1976, after President Ford issued Executive Order 11935, which substantially created a citizenship requirement for federal employment. The USPS retained its policy of permitting permanent resident aliens at that time.

They further argue that the doors are not forever closed to individuals who are temporarily authorized to work in the United States, but that those same individuals can apply with the USPS once they attain the status of permanent residents. Because it is such a large organization which necessarily invests quite a large sum in the hiring and training of its employees, the USPS contends that the uncertainty in hiring temporary residents would not be cost-effective. Their operation demands an employee pool with greater stability, which temporary aliens do not fulfill.

Respondents rely on the case of Matthew v. Diaz, 426 U.S. 67 (1976), for their argument that this type of regulation, which differentiates among classes of aliens, does not require the same scrutiny as would a regulation which excludes all non-citizens from employment. I agree. The USPS regulation does not result in a sweeping ban of all non-citizens, therefore it does not warrant the type of scrutiny Complainant requests.

I do not imply that employment practices which discriminate against a part of a protected class do not require examination.

However, the level of scrutiny is less in a case such as this, where the bar to employment is not absolute. Whether I will conduct that type of examination will be discussed below.

Complainant's remaining arguments center on the constitutionality of the regulation. Its arguments center on the proposition that Complainant was denied due process and equal protection as a result of Respondents' hiring guidelines. Those arguments would certainly demand close scrutiny of the regulations to determine whether the due process and equal protection principles of the United States Constitution are violated.

I will go no further in this matter than is necessary, and I do not believe my determination in this summary decision requires that I examine the contents of the USPS regulation for constitutional muster. As in Sosa, Complainant requests my consideration of the Constitutional issues presented, while Respondents deny that my authority extends to such arguments.

Not only do I believe a Constitutional review to be unwarranted here, but my power to rule on constitutional questions might not extend to a review of the constitutionality of other-agency statutes or regulations. See Montana Chapter of Ass'n of Civ. Tech., Inc. v. Young, 514 F.2d 1165 (1975).

I disagree with Respondents' contention that an ALJ does not have authority to determine any constitutional questions. See U.S. v. Moyle Mink Farm, OCAHO Case No. 89100286, (July 30, 1990) (An ALJ has power to hear and decide procedural due process questions); see also U.S. v. Manulkin, 2 AdL 3d 254 (1989). However, I agree with the philosophy of the Young court regarding my power to rule on the constitutionality of another agency's regulations. I reiterate my opinion that the federal appellate courts may provide the most appropriate forum for this constitutional issue. As I stated in Sosa:

> Doubt has been cast in the instant case on the constitutionality of the USPS regulation, not on the constitutionality of the IRCA regulation. Therefore, I am declining to decide the constitutional issues of whether Congress has exceeded its delegational authority and whether USPS has denied Complainant due process in the development of its regulation.

Sosa, at 11; see also Plaquemines Port, Harbor and Terminal Dist. v. F.M.C., 838 F.2d 536 (D.C. Cir. 1988) (an agency is entitled to decline to decide whether the Constitution has been violated on the ground that federal appellate courts provide more appropriate forums for Constitutional issues).

It appears that the USPS has, as Hampton dictates, articulated reasons for its employment requirement which arguably are within the proper scope of the agency's concern. Without determining the

reasonableness or legitimacy of this policy, I find that Respondents have established their affirmative defense. As I have concluded above, the regulation in question does indeed fall within the exception language of section 1324b(a)(2)(C). Complainant has the burden of showing by a preponderance of the evidence that the intent of Congress was to exclude laws and regulations, which resulted in discrimination, from the exception clause. That it has not done. No reason appearing to the contrary, I find for Respondents in this summary decision.

VI. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

I have considered the pleadings, memoranda, supporting documents, and oral arguments submitted in support of Complainant's and Respondents' cross-motions for summary decision. All motions and all requests not previously disposed of are denied.

Accordingly, and in addition to the findings and conclusions already mentioned, I make the following findings of fact and conclusions of law:

1. That Complainant Olimpia Tovar is an intending citizen within the meaning of 8 U.S.C. § 1324b(a)(3).

2. That, in conformity with its hiring policy, the USPS denied Ms. Tovar's application for employment because of her citizenship status.

3. That a prima facie case of discrimination was established in that Ms. Tovar was authorized for employment in the United States when she applied to and was rejected by the USPS, when the USPS continued to seek applications from U.S. citizens and permanent resident aliens.

4. That the basis used by Respondents for their refusal to hire Ms. Tovar is the clause of IRCA, found at 8 U.S.C. § 1324b(a)(2)(C), which excepts USPS from the prohibition against unlawful discrimination.

5. That, because Respondents' actions are excepted under ⌐8 U.S.C. § 1324b(a)(2)(C), and because no issue as to any material fact has been shown to exist with respect to Respondents' affirmative defense, I therefore find that Respondents did not violate 8 U.S.C. § 1324b(1).

6. Pursuant to 28 C.F.R. Part 68.50(c)(1)(iv), the Complaint is dismissed and the hearing scheduled to be heard in Oakland, California is cancelled.

7. This Decision and Order is the final decision and order of the Attorney General. Pursuant to 8 U.S.C. § 1324b(i) and 28 C.F.R. Part 68.51(b), any person aggrieved by this final Order may, within

sixty (60) days after entry of the Order, seek review of the Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the Respondents transact business.

SO ORDERED: This 19th day of November, 1990, at San Diego, California.

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