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

BERTALINA MONJARAS, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	Case No. 92B00263
BLUE RIBBON CLEANERS, Respondent.	)	

FINAL DECISION AND ORDER
(June 15, 1993)

MARVIN H. MORSE, Administrative Law Judge

Appearances:

Bertalina Monjaras, Complainant.
Simon M. Osnos, Esq., for Respondent.

I. *Statutory and Regulatory Background*

This case arises under Section 102 of the Immigration and Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. §1324b. Section 1324b provides that it is an "unfair immigration-related employment practice" to discriminate against any individual other than an unauthorized alien with respect to hiring, recruitment, referral for a fee, or a discharge from employment because of that individual's national origin or citizenship status. . . ." The statute covers a "protected individual," defined at Section 1324b(a)(3) as one who is a citizen or national of the United States, an alien lawfully admitted for either permanent or temporary residence, an individual admitted as a refugee or granted asylum.

Congress established the new cause of action out of concern that the employer sanctions program, codified at 8 U.S.C. §1324a, might lead

to employment discrimination against those who appear "foreign," including those who, although not citizens of the United States, are lawfully present in this country. "Joint Explanatory Statement of the Committee of Conference," Conference Report, H.R. Rep. No. 99-1000, 99th Cong., 2d Sess. 87 (1986). Protected individuals alleging discri-minatory treatment on the basis of national origin or citizenship must file their charges with the Office of Special Counsel for Immigration- Related Unfair Employment Practices (Special Counsel or OSC). The OSC is authorized to file complaints before administrative law judges designated by the Attorney General. 8 U.S.C. §1324b(e)(2).

IRCA permits private actions in the event that OSC does not file a complaint before an administrative law judge within a 120-day period. The person making the charge may file a complaint directly before an administrative law judge within 90 days of receipt of notice from OSC that it will not prosecute the case. 8 U.S.C. §1324b(d)(2).

II. *Procedural Summary*

A. Charge, OSC Correspondence and Complaint

Complainant, Bertalina Monjaras (Monjaras), filed a discrimination charge against Blue Ribbon Cleaners (Blue Ribbon) with OSC on April 9, 1992. It appears from the charge that Monjaras alleged both citizenship and national origin discrimination.

On August 26, 1992, OSC informed Monjaras that the 120 day investigation period had elapsed. OSC advised Monjaras to file a complaint with an adminis-trative law judge even though OSC had at that time not yet completed its investigation. Therefore, a complaint would have to be filed within ninety days of receipt of the August 26 letter.[1] In a subsequent letter dated November 23, 1992, OSC advised that it had completed its investigation and had concluded that there

[1] Presumably, in order to accommodate the language needs of the charging party, OSC forwarded its correspondence to Complainant in Spanish. The text of the letter is, "Esta carta es para informarle que nuestra oficina, no ha concluido la investigacion de su queja de discriminacion contra Blue Ribbon Cleaners. El periodo inicial de 120 dias que la ley provee para investigar tal quejas se ha vencido. . . . [U]sted ahora tiene el derecho de presentar su propia denuncia directamente ante un juez administrativo."

was "insufficient evidence of reasonable cause to believe that the law was violated."[2]

On November 27, 1992, Monjaras filed a pro se complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint alleges both citizenship and national origin discrimination.

B. Notice of Hearing, Show Cause and Answer

OCAHO issued a Notice of Hearing (NOH) on December 3, 1992. The NOH transmitted the Complaint to Respondent and cautioned Respondent that failure to answer the Complaint within thirty days of receipt might result in a waiver of the right to appear and contest Complainant's allegations. Respondent did not timely answer the Complaint.

On January 28, 1993, I issued an Order to Show Cause Why Default Judgment Should Not Issue. Later that day, Respondent filed its Answer comprising a general denial of the allegations alleged in the Complaint.

Respondent filed a Response to Show Cause on February 4, 1993. Respondent, by counsel, recites that its manager "is not literate in English and could not understand the importance of the Complaint or the NOH in this proceeding." Having misperceived OSC's determination letter to be the final administrative action, Respondent did not respond promptly. Counsel "mailed an Answer in this proceeding on the 26th of January, 1993, in a good faith effort to prevent injustice to the Respondent."

Blue Ribbon's Answer claims that Complainant forfeited her entitle-ment to employment. Blue Ribbon says it replaced Monjaras when she did not return as scheduled from a visit to her native country, El Salvador. Additionally, Blue Ribbon notes that the Complaint does not request reinstatement or damages. Therefore, Respondent concludes that Complainant is not entitled to relief.

On February 4, 1993, I issued an order holding that Respondent satisfied the Show Cause and accepting the Answer.

[2] The Spanish version is "el consejero Especial ha determinado que no existe suficiente prueba de causa razonable para creer que se ha violado la ley."

C. Prehearing Conference

A telephonic prehearing conference was held on March 1, 1993. Inter alia, it was established that English is not the primary language of Complainant nor Respondent's principals. Complainant's primary language is Spanish; Respondent principals' primary language is Korean.

Complainant, in effect, amended her Complaint to include a request for damages, curing Respondent's earlier objection.

During the conference, I determined that there existed genuine issues of factual dispute. The case was set for an evidentiary hearing.

On March 7, 1993, Respondent filed a Motion for Summary Judgment. Blue Ribbon asserts that Complainant had been one of three Salvadorans employed by Respondent. It also recites that prior to Complainant's departure for El Salvador, Monjaras and Eul-Soo Kim (Kim) had agreed that Complainant would provide Respondent employer with a temporary replacement during her absence. Respondent argues that Complainant did not comply with the agreement to provide a replacement. Respondent rejects Complainant's claim, made during the prehearing conference, that Monjaras provided a replacement whom Respondent unreasonably rejected. Respondent's motion asserts also that Complainant had failed to amend her Complaint to incorporate the temporary replacement controversy.

On March 10, 1993, I denied Respondent's motion, noting that "both parties agree that the employer conditioned a leave of absence on Complainant's provision of a replacement." Furthermore, the temporary replacement controversy was implicated both in the Complaint and in the Answer. I determined the replacement issue to be material since it is "potentially outcome determinative in the context of this litigation."

An evidentiary hearing was held on April 7, 1993, as scheduled. The Department of Justice provided both Spanish and Korean translation.

III. *Statement of Facts*

A. The Parties

Complainant is a national of El Salvador who is authorized to work in the United States. Respondent is a small corporation which owns and operates dry cleaning establishments. Although the size of Respondent's staff fluctuates, Kim testified that on average ten employees work at Blue Ribbon. The principals of Blue Ribbon are Korean. Several employees are also Korean. It is undisputed that two individuals on Respondent's current staff are from El Salvador.

As demonstrated at hearing, Kim has considerable English language facility, whereas Complainant has very little.

Monjaras was a pants presser at Blue Ribbon. The parties had an intermittent employer/employee relationship spanning several years. Blue Ribbon initially employed Monjaras from August, 1989 to April, 1990. Kim testified that she left

> [b]ecause at that time, 1990, she has a baby. After the baby born, April or May, something like that, this is why she stopped [sic] my store.

Tr. 65.

In December 1990, Respondent hired Complainant again. The second employment ended February, 1992.

Kim testified that during the course of both employments, he was kind to Monjaras, e.g., he provided transportation to an obstetrical clinic and to a pediatric clinic.

B. The Leave of Absence

During her second employment, Complainant requested leave of absence to visit her ailing mother in El Salvador. Details surrounding that leave of absence are at issue here.

(1) Complainant's Account

According to Complainant, she notified Respondent of her need for a leave of absence. Kim conditioned his grant of leave. He required:

(1) that Monjaras provide a temporary replacement to do her work during her absence and

(2) that Monjaras return from her leave by March 2, 1992.

Monjaras testified that she complied with such terms.

Complainant recruited Lillian Sanchez (Sanchez) as her replacement. Monjaras brought Sanchez to Blue Ribbon for one day to teach her the work routine and to meet Kim.

On February 28, 1992 after her return from El Salvador, Monjaras went to Blue Ribbon to arrange for her return to work. Monjaras discovered that her employment at Blue Ribbon had been terminated and that her job had been taken over by Mr. Park, a Korean national. Complainant testifies that at that time Respondent did not offer her current or future employment.

(2) Respondent's Account

Respondent agrees that Complainant requested a leave of absence and that the leave was conditionally granted. However, Respondent claims that Complainant's compliance with those conditions was defective.

Respondent's Answer to the Complaint claims that Monjaras did not report for work as scheduled after her leave of absence. In its motion for summary decision, Respondent claims that Monjaras did not comply with its requirement that she provide a temporary replacement during her absence.

At hearing, Kim acknowledged that Monjaras brought Sanchez to Blue Ribbon before Monjaras took leave. Sanchez came for a one-day training session, instead of the two-week training session which Kim required. Absent more than one day's training, Sanchez lacked the skill to substitute for Monjaras during her absence. In sum, Complainant provided Respondent with an unsatisfactory replacement and therefore did not comply with the terms of her leave.

Initially, Respondent shuffled its staff to meet requirements created by Monjaras' absence and her failure to provide an effective replacement. This arrangement did not satisfy the Respondent's business needs. Therefore, Respondent decided to hire a replacement. When its best efforts failed to recruit a two-week employee, Respondent hired a Korean individual, identified at hearing as Mr. Park (Park), on a permanent basis. Implicit in Park's hire is Monjaras' discharge.

Having hired a permanent replacement, the pants presser position was not available to Monjaras upon her return from El Salvador. However via intermediaries, Respondent notified Complainant, that vacancies were anticipated during subsequent months and that Complainant would be rehired at that time. She responded that she was working elsewhere.

IV. *Discussion*

A. Threshold Issues

(1) Jurisdiction

Complainant alleges both national origin and citizenship status discrimination. National origin discrimination jurisdiction is limited under 8 U.S.C. §1324b. As has been held in a number of cases

> jurisdiction of administrative law judges over claims of national origin discrimination in violation of 8 U.S.C. §1324b(a)(1)(A) is necessarily limited to claims against employers employing between four (4) and fourteen (14) employees.

Williamson v. Autorama, 1 OCAHO 174 (5/16/90) at 4 quoting U.S. v. Marcel Watch Co., 1 OCAHO 143 (3/22/90) at 11.

See also U.S. v. Huang, 1 OCAHO 288 (4/4/91), aff'd, Huang v. U.S. Dept. of Justice, 962 F.2d 1 (list) (2d Cir. 1992); Parkin-Forrest v. Veterans Administration, 4 OCAHO 516 (4/30/93) at 3-4 (Additional precedent cited therein).

At hearing, Kim testified that Respondent normally employs ten individuals. Accordingly, Respondent is within IRCA's national origin jurisdiction. 8 U.S.C. §1324b(a)(2)(B). I hold that I have national origin and citizenship discrimination jurisdiction in the case at bar.

(2) Complainant's Standing

Only a "protected individual" has standing to maintain a citizenship discrimination claim. 8 U.S.C. §1324b(a)(3). Complainant represents that she is authorized to work in the United States. This representation is undisputed. Lacking any reason to question Complainant's representation, I hold that Complainant is a protected individual entitled to pursue this discrimination claim.

B. Parameters of Discrimination Cases

The central question in an IRCA discharge case is whether or not an employer fired a protected person because of his/her national origin or citizenship status. 8 U.S.C. §1324b(a)(1). The reality is that there is an infinite variety of workplace unfairness. This forum is empowered to remedy only that unfairness which implicates national origin or citizenship status discrimination. To prevail, a complainant must show particularized discrimination; a showing of generic unfairness is insufficient. Nugent v. ADT Engineering, 4 OCAHO 489 (2/18/93) citing Sahadi v. Reynolds Chemical, 636 F.2d 1116, 1117 (6th Cir. 1980). The conclusion that an employer discharged an employee unfairly and the conclusion that an employer discharged an employee discriminatorily are not necessarily the same.

By the same token, the kindness an employer extends during the course of an employment does not per se exonerate that employer from discrimination liability. A recitation of employer kindness toward an individual employee is not necessarily inconsistent with proof of a discriminatory discharge.

C. Complainant's Burden

Discrimination can be subtle. It is extraordinarily rare that an employer will bluntly state, "I do not want Salvadorans working here." But see U.S. v. Mesa Airlines, 1 OCAHO 74 (7/24/89), appeal dismissed, 951 F.2d 1186 (10th Cir. 1991). However, proof of discrimination does not turn on a complainant's ability to produce "a smoking gun." Resare v. Raytheon Co., 981 F.2d 32 (1st Cir. 1992); Oxman v. WLS-TV, 846 F.2d 448, 455-56 (7th Cir. 1988).

IRCA case law, often relies on Title VII and the Age Discrimination in Employment Act (ADEA). Title VII and ADEA case law make clear that circumstantial evidence can be sufficient to establish discrimination. The seminal cases, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (construing Title VII), Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) (construing Title VII) and their progeny, provide the framework for proof of discrimination by indirect evidence.

(1) The McDonnell Douglas/Burdine Test

As first applied in Mesa Airlines, 1 OCAHO 74 at 41, the disparate treatment analysis of Title VII of the Civil Rights Act, 42 U.S.C. §2000e-5(k)(1964) underpins IRCA §102 discrimination analysis. See

also Akinwande v. Erol's, Inc., 1 OCAHO 144 (3/23/90); Marcel Watch, 1 OCAHO at 143.

McDonnell Douglas, 411 U.S. at 792 and Burdine, 450 U.S. at 248 allocated the burden of proof among the parties in discrimination cases. Even though the burden of production can shift from complainant to respondent and back to complainant again, the burden of persuasion remains at all times with the complainant/applicant. Burdine, 450 U.S. at 792. The Burdine court summarized the basic allocation of burdens and orders of presentation of proof as originally set out in McDonnell Douglas.

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." [McDonnell Douglas Corp. v. Green, 411 U.S.] at 802. . . . Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Id., at 804.

Burdine, 450 U.S. at 248.

The McDonnell Douglas Court enumerated the elements of a com-plainant's first probative hurdle, i.e., "proving by a preponderance of the evidence a prima facie case of discrimination." To meet the initial burden, a complainant must show:

> (i) that he belongs to a protected class, (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. . . . .

McDonnell Douglas, 411 U.S. at 802.

(2) The McDonnell Douglas/Burdine Prima Facie Test Applied to Discharges.

The McDonnell Douglas prima facie paradigm was established in context of an alleged discriminatory failure to hire. That model has been judicially modified to apply in other contexts, including alleged discriminatory discharges.

The Fourth Circuit and other circuits have adopted modifications in applying McDonnell Douglas/Burdine principles to discharges under Title VII and the ADEA.

> For a plaintiff to prevail on a discrimination claim, she must first establish a four-part prima facie case:
>
> (1) that she is a member of a protected class;
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> (2) that she was qualified for her job and her job performance was satisfactory;
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> (3) that, in spite of her qualifications and performance, she was fired; and
>
> (4) that the position remained open to similarly qualified applicants after her dismissal.

Williams v. Cerberonics, Inc., 871 F.2d 452, 455 (4th Cir. 1989); Tuck v. Henkel Corp., 973 F.2d 371, 375 (4th Circuit 1992); E.E.O.C. v. Western Electric Co., Inc., 713 F.2d 1011, 1014 (4th Circuit 1983); Shah v. General Electric Co., 816 F.2d 264, 268 (6th Cir. 1987).

This forum has adopted similar modifications under IRCA in applying McDonnell Douglas/Burdine to discharges. Nugent, 4 OCAHO 489.

The Seventh Circuit has developed an instructive second branch of the prima facie formulation for ADEA cases. That variation of a discriminatory discharge formulation is, in effect, that "they were doing their jobs well enough to meet their employer's legitimate expectations." Fisher v. Transco Services-Milwaukee, Inc., 979 F.2d 1239, 1243 (7th Cir. 1992).

An employer has broad discretion in defining expectations of employ-ees' performance. Absent an illegality, an employee must acquiesce in those expectations, rather than misperceive them as discriminatory.

> The employee doesn't get to write his own job description. An employer can set whatever performance standards he wants, provided they are not a mask for discrimination on forbidden grounds such as race or age.

Palucki v. Sears, Roebuck & Co., 879 F.2d 1568 (7th Cir. 1989).

It is not the judge's role to second guess employer decisions. IRCA precedent has adopted the Seventh's Circuit view that,

> [t]he business of business, and the sole concern of business is profit. And the law does not judge the wisdom of a company's business decision, unless a forbidden motive is present . . [C]ourts do not sit as a super-personnel department that re-examines [employer] decisions. [Cite omitted.] No matter how medieval an employer's practices, no matter how highhanded its decisional process, no matter how mistaken its managers. . . .

Nugent, 4 OCAHO 489 at 12 quoting Oxman v. WLS-TV, No. 84 C 4699 (N.D. Ill. Jan. 21, 1993), adopting decision of magistrate, 60 EPD Paragraph 41,946 (Nov. 19, 1992); E.E.O.C. v. Clay Printing Co., 955 F.2d 936, 946 (4th Cir. 1992) ("It is not the purpose of the EEOC nor the function of this court to second guess the wisdom of business decisions.")

(3) Monjaras' Prima Facie Burden

(a) Protected class member

Monjaras survives the first prima facie prong, as a member of the protected class.

(b) Discharge despite adequate job performance

The validity of Monjaras' discharge in this case does not hinge on her job performance per se. Respondent does not contend that Monjaras executed her duties as a pants presser other than competently. Instead, the employer claims it discharged Complainant because she did not comply with the conditions of her leave of absence.

Complainant claims, in effect, that she complied with the conditions of her leave of absence and that Respondent's claim to the contrary is a pretext for its discriminatory discharge of her.

The leave of absence issues are:

> (1) Whether Blue Ribbon adequately communicated to Monjaras the conditions of her leave of absence and
>
> (2) If so, whether Monjaras complied with the identified conditions.

I conclude that the leave of absence conundrum occurred in the first place, because communication between Monjaras and Kim is inherently hampered by a language barrier. The case is laced with evidence of language difficulty. Because of its language handicap, Respondent did not understand the significance of the Complaint and failed to

answer in a timely manner. All conversation in this case between the judge's office and Complainant took place in Spanish. Respondent concedes that,

> Plaintiff is a Spanish speaker who is unable to communicate in English. Respondent is a Korean speaker who is unable to communicate in English. Thus, no common language for effective communication was available.

Respondent Motion for Summary Judgment, 3/4/93 at 1.

The evidentiary hearing was conducted with the assistance of Korean and Spanish interpreters. As the record makes clear, Kim's English language skills are significantly superior to Monjaras' skills. An employer must exercise a reasonable standard of care to insure adequate workplace communication. Where neither the employer nor the employee are in substantial command of the English language and the employer has superior language skills, the employer bears a high duty of care to clearly communicate its expectations to its employees.[3]
The hearing record is devoid of any implication that Respondent employed such a standard of care. All discussion between Kim and Monjaras was in English but there is no basis for concluding that Kim made an effort to achieve a common understanding of the words exchanged.

The leave of absence misunderstanding resulted also from Respondent's lack of clarity regarding the terms of the leave. Lack of clarity is evidenced by Respondent's shifting defense regarding its discharge of Complainant, i.e., Complainant did not return from leave as scheduled; Complainant failed to provide a temporary replacement; Complainant provided inadequate temporary replacement for her leave of absence. I infer from Respondent's vacillation that it does not have a clear leave of absence policy for its employees. Putting aside any linguistic problem, Blue Ribbon does not give employees clear notice as to its leave of absence expectations.

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[3] There is case law regarding the issue of discrimination where the employee has diffi-culties speaking English. Gutierrez v. Mun. Ct. of S.E. Judicial Dist., 861 F.2d 1187 (9th Cir. 1988); Garcia v. Loor, 618 F.2d 264 (5th Cir. 1980); Bell v. Home Life Ins. Co., 596 F. Supp. 1549 (MD NC 1984). The combination of employer and employee lan-guage-impairment appears to be a novel issue. See also 29 C.F.R. §1606.7 (1990) ("Speak-English-only rules. (a) When applied at all times. A rule requiring employees to speak only English at all times in the workplace is a burdensome condition of employment. The primary language of an individual is often an essential national origin characteristic. . . . [T]he Commission [EEOC] will presume that such a rule violates Title VII and will closely scrutinize it.")

I find Complainant's recitation of her understanding of the terms of her leave to be consistent and credible. I accept Monjaras' testimony. She was not given to understand that she was obliged to find a replacement who would either submit to a two-week training period or be already fully qualified as a pants presser. I conclude from the record that Complainant made a good faith effort to comply with Blue Ribbon's leave of absence expectations as she understood them. This conclusion does not censure an employer's right to condition its leave of absence policy. However, the terms an employer chooses to impose need to be clearly communicated to employees.

I hold that the employer did not make a reasonable effort to communicate or define its expectations. On this dual basis, i.e., the employer's failure to adequately communicate with Complainant in light of the language barrier and employer's failure to articulate clear leave of absence terms, I hold that Respondent's discharge was unfair. Complainant has satisfied the second and third McDonnell Douglas prima facie prongs, as modified by the Fourth Circuit for discharges.

(c) Employer solicitation to fill vacancy

As Kim testified, Respondent solicited to fill the vacancy left by Monjaras. Having satisfied all the prongs of the prima facie model, I hold that Complainant has succeeded in making out a prima facie case.

(4) Respondent's Business Reason for Discharge and Complainant's Response

> Once th[e] prima facie case is established, an inference of discrimination arises that may be rebutted by an employer on a showing of legitimate, non-discriminatory reasons for the dismissal.

Cerberonics, Inc., 871 F.2d at 455-56.

The employer can satisfy its burden by articulating legitimate, non- discriminatory reasons for its actions. Burdine, 450 U.S. at 257; Turner v. Texas Instruments, Inc., 555 F.2d 1251, 1255 (5th Cir. 1977).

When Monjaras departed on her leave of absence, Blue Ribbon found itself in a business crisis. Respondent took expedient measures to resolve its business need. It hired for permanent employment an indi-vidual of Korean national origin, the same nationality as that of the Respondent's principals.

Complainant perceives discriminatory animus, in this sequence of events. I do not share Complainant's perception. I find that Respondent's explanation rebuts the inferences drawn from the prima facie case. This explanation is particularly convincing absent more evidence and in light of the fact that Respondent continues to employ Salvado-rans. Respondent's replacement of a Salvadoran employee with a Korean employee is not per se probative of discrimination.

A recent case held that no inference of discrimination arose simply because an employer's staff was of an identical national origin, i.e., exclusively Korean. Where a word of mouth recruitment network had resulted in an ethnically homogenous staff, the Seventh Circuit concluded,

> [i]f the most efficient method of hiring, . . . just happens to produce a work force whose racial or religious or ethnic or national-origin or gender composition pleases the employer, this is not intentional discrimination. [cite omitted] The motive is not a discriminatory one.

E.E.O.C. v. Consolidated Service Systems, 989 F.2d 233 (7th Cir. 1993).

Even though Respondent's discharge of Complainant was not fair, I do not find a scintilla of evidence of national origin or citizenship status discrimination. Akinwande, 1 OCAHO 144 at 6; Adatsi v. Citizen & Southern National Bank of Georgia, 1 OCAHO 203 (7/23/90) at 5. Complainant has failed to show that Respondent's proffered reasons were pretextual. It is not sufficient that Complainant is of a different origin and citizenship than the employer's principal or that she was replaced by an individual whose national origin coincided with that of the employer's principals. I am not persuaded that she was discriminatorily discharged or discriminatorily denied reemployment upon her return from El Salvador.

I conclude that Respondent rebutted Complainant's prima facie case by producing a legitimate non-discriminatory explanation for its failure to keep the job open pending her return from El Salvador. The uncertainty as to the conditions for Complainant's return to work was not discriminatorily motivated. The leave of absence arrangement did not oblige Respondent under 8 U.S.C. §1324b to keep the job available for Monjaras. Therefore, Complainant has not sustained her burden of proof and has not shown that she suffered national origin or citizenship status discrimination.

V. *Ultimate Findings, Conclusions and Order*

I have considered the pleadings, testimony, evidence, motions and arguments submitted by the parties. All motions and all requests not previously disposed of are denied. Accordingly, and in addition to the findings and conclusions already stated, I find and conclude that Complainant has failed to prove discrimination based on her national origin or citizenship status. Upon the basis of the whole record, consisting of the evidentiary record and the pleadings of the parties, I am unable to conclude that a state of facts has been demonstrated by Complainant sufficient to satisfy the preponderance of the evidence standard of 8 U.S.C. §1324b(g)(2)(A). I find and conclude that Respondent has not engaged and is not engaging in the unfair immigration-related employment practices alleged. Accordingly, the Complaint is dismissed. 8 U.S.C. §1324b(g)(3).

Pursuant to 8 U.S.C. §21324b(g)(1), this Final Decision and Order is the final administrative order in this proceeding and "shall be final unless appealed" within 60 days to a United States court of appeals in accordance with 8 U.S.C. § 1324b(i).

SO ORDERED.

Dated and entered this 15th day of June, 1993.

MARVIN H. MORSE
Administrative Law Judge