

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

June 30, 2015

BRIAN EMILIO GONZALEZ-HERNANDEZ,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 14B00085
)	
ARIZONA FAMILY HEALTH PARTNERSHIP,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

Brian Emilio Gonzalez-Hernandez filed a complaint in which he alleged that Arizona Family Health Partnership (AZ Family Health or AFHP) discriminated against him on the basis of his citizenship status and national origin, and engaged in document abuse. AZ Family Health filed an answer denying the material allegations of the complaint and raising affirmative defenses. The matter arises under the provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b (2012).

AZ Family Health filed an early motion to dismiss the complaint for failure to state a claim upon which relief may be granted. Because that motion was accompanied by materials outside the pleadings, it was converted to one for summary decision to permit consideration of other evidence. *See United States v. Frank’s Meat Co.*, 3 OCAHO no. 513, 1094, 1096 (1993).¹ The parties were so advised. Briefing and consideration of this motion were stayed pending a fuller

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO” or in the LexisNexis database “OCAHO,” or on the website at <http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

development of the factual record. Discovery is now closed and prehearing procedures have been completed. AFHP filed a new motion for summary decision to which Gonzalez-Hernandez filed a response. Both parties have made a number of additional filings as well, and the underlying matter is ripe for resolution.

II. BACKGROUND INFORMATION

Arizona Family Health Partnership describes itself as a private, not-for-profit organization dedicated to making reproductive healthcare and education available and accessible to women, men, and teens in Arizona. Brian Emilio Gonzalez-Hernandez is an alien whose complaint reflects that he possessed an Employment Authorization Document (EAD) permitting him to work in the United States from May 14, 2013 to May 13, 2015.

AFHP scheduled a job interview with Brian Emilio Gonzalez-Hernandez to take place on September 19, 2013. An email from program manager Susan Podshadley dated September 18, 2013 provided Gonzalez-Hernandez with directions to AFHP's office, together with the job description for the position of healthcare navigator. A "navigator" is an individual who assists consumers in purchasing health insurance from state and federal healthcare exchanges under the Patient Protection and Affordable Care Act (ACA). *See* 42 U.S.C. § 18031(i) (2010). The particular job at issue involved providing education, outreach, enrollment assistance, and retention services for the Arizona federally facilitated healthcare exchange. The job description reflects that the position required up to 75% of the individual's time to be dedicated to in-state travel, mostly in Maricopa, Pima, and Pinal counties, but with some travel to Yuma, Coconino, Yavapai, and Mohave as well. Because the ability to travel to different work sites was among the qualifications listed in the job description, the description also states that the candidate must have a valid Arizona State driver's license, automobile liability insurance, and a clean DMV report.

Shortly after the interview, Lisa Schamus, director of Program and Evaluation at AFHP, offered the navigator job to Gonzalez-Hernandez on September 26, 2013, and he accepted the offer. Manuel Ferreiro, who is director of Finance and Administration and responsible for HR, then emailed Gonzalez-Hernandez telling him to bring proof of automobile insurance and a copy of his DMV driving record with him on his first day, which was to be Monday, September 30, 2013. Gonzalez-Hernandez told Ferreiro at that point that he did not actually have a driver's license, but that he had a California permit and was scheduled to take the California driving test on October 8, 2013.

On September 28, 2013, Ferreiro and Schamus met with Brenda Thomas, the CEO at AFHP, and they decided collectively to rescind the offer Schamus had made to Gonzalez-Hernandez. Schamus emailed Gonzalez-Hernandez that same day and advised him that without a currently valid driver's license, he was ineligible for the navigator position and that AFHP was rescinding

its job offer. The email pointed out that the job description Susan Podshadley sent to Gonzalez-Hernandez before the interview clearly stated that a valid Arizona driver's license was a requirement for the navigator position. Gonzalez-Hernandez said he had not read the job description before reporting for his interview.

Schamus advised Gonzalez-Hernandez further that once he obtained a driver's license, he would become eligible for the position and they could revisit the possibility of an offer. A follow-up email dated October 4, 2013 to Gonzalez-Hernandez clarified that an Arizona driver's license would be required, and that a California license was not acceptable to AFHP. There were subsequent interactions between the parties about whether or not Gonzalez-Hernandez could qualify for the job with a California driver's license. On October 9, 2013, Ferreiro sent Gonzalez-Hernandez a printout from the Arizona Department of Transportation (ADOT) explaining that state law requires that anyone who works in Arizona, other than for seasonal agricultural work, or anyone who remains in Arizona for a total of seven months in a calendar year, must obtain an Arizona driver's license and registration.

That same day Gonzalez-Hernandez notified Ferreiro that he was a recipient of Deferred Action for Childhood Arrivals (DACA), and was unable to obtain an Arizona driver's license.² He pointed out that the state law provided an exception for out-of-state students enrolled for seven or more semester hours in an Arizona college or university, and that based on this exception, he could enroll for seven or more credits as an out-of-state student and lawfully use his California driver's license in Arizona.

After AZ Family Health hired a different candidate for the position, Gonzalez-Hernandez filed a charge of document abuse with the Office of Special Counsel for Immigration-Related Unfair Employment Practices asserting that AFHP engaged in document abuse by rescinding its offer of employment and refusing to accept his EAD and California driver's license. OSC accepted the charge as complete on November 12, 2013, and subsequently sent Gonzalez-Hernandez a letter dated March 12, 2014, advising him that he had the right to file a complaint within ninety days of his receipt of the letter. Gonzalez-Hernandez' complaint, filed on June 16, 2014, reflects that he received the letter on March 17, 2014. All conditions precedent to the institution of a complaint have been satisfied.

III. THE POSITIONS OF THE PARTIES

² Arizona's law prohibiting DACA recipients from obtaining driver's licenses was subsequently invalidated by the Ninth Circuit. *See Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). On remand, a permanent injunction was entered directing the Arizona DMV to issue licenses to such individuals. *See Ariz. Dream Act Coal. v. Brewer*, _ F. Supp.3d _, No. CV12-02546 PHX DGC, 2015 WL 300376 (D. Ariz. Jan. 22, 2015), appeal filed February 20, 2015.

A. AZ Family Health

AFHP's motion asserts that the company did not treat Gonzalez-Hernandez any differently than it did any other applicant and that an Arizona driver's license is job-related because it is required by state law if the navigator is going to be able to perform the duties of the position. AFHP says further that it learned in discovery that Gonzalez-Hernandez did not have a clean Arizona driving record, another requirement of the job, and that he actually had several citations for driving without a license in Arizona, as well as citations for multiple traffic violations.

AZ Family Health says it was unaware of Gonzalez-Hernandez' citizenship and national origin when it rescinded its job offer, and that it was unwilling to reconsider its decision after that because of concerns that Gonzalez-Hernandez had not been honest with AFHP at the outset. AFHP says in addition that it did not refuse to accept Gonzalez-Hernandez' documents, and that Gonzalez-Hernandez admitted in his deposition that he was never asked to complete an I-9 form or to present proof of his authorization to work in the United States. AFHP says Gonzalez-Hernandez simply did not qualify for the navigator job.

AZ Family Health's motion was accompanied by exhibits 1) Lisa Anne Schamus' affidavit with attachments A-D) (41 pp.); 2) Manuel E. Ferreiro's affidavit with attachments A-E (32 pp.); 3) excerpts from Brian Emilio Gonzalez-Hernandez' affidavit dated January 20, 2015 with attachments (94 pp.); 4) Susan Podshadley's affidavit with attachment (7 pp.); and 5) excerpts from Brian Emilio Gonzalez-Hernandez' affidavit dated February 17, 2015 with attachment (25 pp.).

B. Gonzalez-Hernandez' Response

Gonzalez-Hernandez' response says he was treated in a derisive and discriminatory manner during the interview process itself, and that AFHP refused to hire him because he could not get the Arizona license AFHP claimed was required by its liability insurance policy. He says the reason given was patently false, and was a pretext for discrimination. He also says that AZ Family Health's insistence on an Arizona license to prove employment eligibility is a form of document abuse. Gonzalez-Hernandez states in addition that neither AFHP's funding grant for the navigator position nor its automobile insurance policy required the navigator to have an Arizona driver's license, and that he was not even asked in the interview if he had a driver's license. Gonzalez-Hernandez also protests the use of after-acquired evidence about his record of Arizona driving citations that AFHP obtained in a background check.

Gonzalez-Hernandez argues that he can show both a prima facie case and that AFHP's explanation is a pretext for discrimination. First, he says the Ninth Circuit has recognized DACA recipients to be part of a protected class. Second, he says he clearly qualified for the position because it was actually offered to him. Third, he says he suffered adverse actions when he was treated in a derisive manner at the job interview; when he was lied to about the reason for

withdrawing the offer; and when AFHP refused to honor the offer. Finally, he says the circumstances give rise to an inference of discrimination because the other people hired for the position were more favorably treated than he was. Gonzalez-Hernandez says the reason given to him for rescinding the offer, that AFHP's liability insurance policy required an Arizona driver's license, is patently false.

Gonzalez-Hernandez says, moreover, that the affidavits from Susan Podshadley, Manuel Ferreiro, and Lisa Anne Schamus falsely state that his national origin was not discussed in the interview. He says Schamus and Ferreiro are backtracking about their explanation because they said first that AFHP's automobile insurance policy required an Arizona license, but later they both testified in their depositions only that they believed this to be true at the time. He contends in addition that refusing to hire DACA aliens with employment authorization constitutes discrimination in violation of 42 U.S.C. § 1981, *citing Juarez v. Northwestern Mutual Life Insurance Co.*, _ F.Supp.3d_, 2014 WL 6363919 (S.D.N.Y. Nov. 12, 2014).

Gonzalez-Hernandez' response was accompanied by C-1) emails dated September 27 through October 8, 2013 (3 pp.) ; C-2) email dated October 9, 2013; C-3) employment application (3 pp.); C-4) Daniel Andrade's resume (2 pp.); C-5) employment application (3 pp.); C-6) Jacob Wilson's resume; C-7) endorsement to commercial general liability policy of insurance (4 pp.); C-8) excerpt from Brian Emilio Gonzalez-Hernandez' deposition dated January 20, 2015 (2 pp.); C-9) letter dated September 26, 2013; C-10) excerpt from David Aguirre's deposition (2pp.); C-11) forwarded message (2 pp.); C-12) disclosure and authorization form (11 pp.); C-13) email dated September 28, 2013; C-14) California driver's license; C-15) ADOT printout; C-16) ARS 28-2001; C-17) Brian Emilio Gonzalez-Hernandez' affidavit dated March 19, 2015 (3 pp.); C-18) excerpts from Brian Emilio Gonzalez-Hernandez' deposition dated January 20, 2015 (7 pp.); C-19) excerpts from AFHP's response to Gonzalez-Hernandez' motion to compel (3 pp.); C-20) excerpts from David Aguirre's deposition; C-21) excerpts from David Aguirre's deposition (5 pp.); C-22) excerpts from David Aguirre's deposition (3 pp.); C-23) excerpts from David Aguirre's deposition (2 pp.); C-24) redacted resume (2 pp.); C-25) redacted resume; C-26) AFHP's EEO Policy; and C-27) forwarded emails (2 pp.).

C. The Supplement to AFHP's Motion

AZ Family Health filed a supplement to its motion pointing out that Gonzalez-Hernandez should have been aware of the driver's license requirement at the time of the interview because the travel requirements were actually discussed at the interview, and because he was provided with a copy of the job description beforehand. AFHP reiterates its position that Gonzalez-Hernandez did not disclose his citizenship or national origin at the interview, and says it is obvious in any case that neither of these factors had any effect on the employment decision because AFHP actually offered him the position shortly after the interview. What Gonzalez-Hernandez should have disclosed at the interview, but did not, was the fact that he didn't have a valid driver's license.

AZ Family Health says Gonzalez-Hernandez is unable to make out a prima facie case as to any claim because he did not qualify for the job, and the offer was rescinded for a legitimate, nondiscriminatory reason. AFHP in addition says Gonzalez-Hernandez should not be permitted to raise new claims not previously raised in his OSC charge, and the issues must be limited to the claims actually alleged in the charge. AFHP also seeks dismissal of any claims based on 42 U.S.C. § 1981 as beyond the jurisdiction of this forum.

AZ Family Health also filed a concurrent motion to strike Gonzalez-Hernandez' affidavit, exhibit C-17, on the grounds that the affidavit fails to satisfy evidentiary requirements. AFHP says the affidavit is not based on personal knowledge, improperly proffers opinion testimony and legal conclusions, and contradicts Gonzalez-Hernandez' deposition testimony, in part. The supplement to AFHP's motion was accompanied by exhibit 1) excerpts from David Aguirre's deposition (5 pp.).

IV. THE APPROPRIATE SCOPE OF GONZALEZ-HERNANDEZ' COMPLAINT

Gonzalez-Hernandez' complaint alleges that AFHP discriminated against him by intentionally not hiring him and/or firing him on the basis of his national origin and citizenship status, and by engaging in document abuse. Gonzalez-Hernandez' complaint alleges further that "I was 'not hired' because I am a DACA beneficiary," and that AFHP refused to accept his EAD, California driver's license, and Social Security card. The charge Gonzalez-Hernandez filed with OSC, in contrast, reflects that the only box he checked on the charge form was the one for document abuse, and that he did not check the boxes for citizenship or national origin based discrimination.

Gonzalez-Hernandez acknowledged in his OSC charge that Arizona Family Health has more than fifteen employees. As a threshold matter, 8 U.S.C. § 1324b(a)(2)(B) specifically exempts an employer from coverage from a complaint of national origin discrimination in this forum "if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e-2]" (Title VII). Generally speaking, and with limited exceptions, a person or entity is an employer covered by Title VII if it is "engaged in an industry affecting commerce [and] has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U.S.C. § 2000e(b). Title VII thus covers most claims of national origin discrimination against employers who employ fifteen or more employees. Claims of national origin discrimination against such employers are accordingly not within the scope of § 1324b, and must be directed to EEOC. *See Lima v. N.Y.C. Dep't of Educ.*, 10 OCAHO no. 1128, 8 (2009). The INA specifically bars any overlap between charges filed under the two statutes. 8 U.S.C. § 1324b(b)(2). Gonzalez-Hernandez' claim of national origin discrimination in hiring or firing accordingly must be dismissed.

In addition, case law makes clear that an action under § 1324b for citizenship status discrimination may be maintained only by a protected individual as defined in the governing statute. 8 U.S.C. § 1324b(a)(3); *see Omoyosi v. Leb. Corr. Inst.*, 9 OCAHO no. 1119, 3 (2005); *Mengarpuan v. Asbury Methodist Vill.*, 4 OCAHO no. 612, 236, 243 (1994). The statute defines a protected individual as a citizen or national of the United States; an alien who is lawfully admitted for permanent residence,³ or for temporary residence under section 1160(a) or 1255a(a)(1) of [that] title; or an alien who is admitted as a refugee under section 1157, or granted asylum under section 1158. Although Gonzalez-Hernandez asserts that he is a protected individual, he offered no evidence that would bring him within any of the categories included in the statutory definition. While Gonzalez-Hernandez points to the decision of the Ninth Circuit in *Arizona Dream Act Coalition* in support of his assertion that DACA recipients constitute a protected class,⁴ that decision did not purport to change the statutory definitions in § 1324b(a)(3). Gonzalez-Hernandez accordingly lacks standing to pursue a claim of citizenship status discrimination in hiring or firing in this forum, and this claim must be dismissed.

Finally, this office lacks jurisdiction to consider claims made pursuant to 42 U.S.C. § 1981, and these allegations must be dismissed as well. Consideration of Gonzalez-Hernandez' claim in this case must therefore be limited to the allegations of document abuse he made in his OSC charge. The weight of OCAHO case law holds that an action for document abuse under § 1324b(a)(6) can be maintained by any work-authorized individual. *See, e.g., United States v. Hyatt Regency Lake Tahoe*, 6 OCAHO no. 879, 604, 615 (1996); *United States v. Zabala Vineyards*, 6 OCAHO no. 830, 72, 86 (1995).⁵

V. DISCUSSION AND ANALYSIS

³ The definition, however, excludes a lawful permanent resident alien who fails to apply for naturalization within six months of becoming eligible to do so, as well as an alien who has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless a certain exception applies.

⁴ *Arizona Dream Act Coalition* held that Arizona's policy of denying driver's licenses to DACA recipients had no rational relationship to any legitimate state interest and that the plaintiffs were likely to succeed on the merits of an equal protection claim. The court's analysis did not speak in terms of protected classes, but questioned whether similarly situated groups of aliens whose presence was federally authorized were being differentially treated by the state.

⁵ *But see Ondina-Mendez v. Sugar Creek Packing Co.*, 9 OCAHO no. 1085, 15-16 (2002) (stating in dicta that the 1996 amendment "compels a contrary conclusion"). No subsequent case has followed *Ondina-Mendez*.

Document abuse occurs when a person or entity requests more or different documents, or refuses documents that reasonably appear to be genuine and to relate to the individual, for the purposes of satisfying the requirements of the employment eligibility verification system described in 8 U.S.C. § 1324a(b). See *Eze v. W. Cnty. Transp. Agency*, 10 OCAHO no. 1140, 8 (2011). The relative burdens of proof and production in a document abuse case are allocated in the same manner as in any other discrimination case using the traditional burden-shifting analysis originally set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973). See *Guth v. Kaiser Permanente*, 10 OCAHO no. 1190, 4 (2013). First, the complainant must establish a prima facie case; second, the respondent must articulate some legitimate, nondiscriminatory reason for the challenged employment action; and third, if the respondent does so, the inference of discrimination raised by the prima facie case disappears.

Once the employer satisfies its burden of production by setting forth a facially valid reason for the employment decision, the burden reverts to the employee to show that the employer's reason is pretextual. *McDonnell Douglas*, 411 U.S. at 804-05; cf. *Simon v. Ingram Micro Inc.*, 9 OCAHO no. 1088, 16 (2003). The employer will ordinarily be entitled to summary resolution unless the complainant can demonstrate that there is a genuine issue of fact with respect to pretext.

As an initial matter, it does not appear that Gonzalez-Hernandez can establish a prima facie case of document abuse. Ordinarily the I-9 process is not begun until the new employee's first day of work. Here, AFHP rescinded its offer of employment before the I-9 process was ever engaged. Notwithstanding the allegations in his complaint, Gonzalez-Hernandez acknowledged in his deposition that AFHP never asked him to complete an I-9 form or to present any documents to satisfy the requirements of the employment eligibility verification process. As the record makes clear, AFHP did ask Gonzalez-Hernandez to present an Arizona driver's license, but this was not for the purpose of verifying his identity to complete an I-9 for him. AFHP made that request because the navigator job Gonzalez-Hernandez was offered required him to spend 75% of his time driving to various work sites in seven counties in Arizona, and state law requires an individual doing this to have an Arizona license. A.R.S. § 28-2001 states that for purposes of registering and operating motor vehicles in the State, a "resident" is defined as, inter alia,

(a) A person who, regardless of domicile, remains in the state for an aggregate period of seven months or more during a calendar year.

(b) A person who engages in a trade, profession or occupation in this state or who accepts employment in other than either:

(i) Seasonal agricultural work.

- (ii) Temporary seasonal work for a period of not more than three months [under certain conditions].

Assuming arguendo that Gonzalez-Hernandez could establish a prima facie case, AFHP set out a legitimate, nondiscriminatory reason for requiring an Arizona license. Gonzalez-Hernandez contends that AFHP's explanation is pretextual for two reasons. First, he points out that Lisa Schamus and Manuel Ferreiro both said AZ Family Health's insurance policy required an Arizona license, but this explanation turned out to be false, and nothing in the insurance policy addresses the question. Second, Gonzalez-Hernandez points out that there is an exception in A.R.S. 28-2001(A)(2)(b) for an out-of-state student enrolled in seven or more semester hours at an Arizona college or university. He says that he could qualify for this exception if he were to enroll for the requisite number of hours.

The affidavits of Lisa Schamus and Manuel Ferreiro both state that it was the affiants' belief or understanding at the time of the events in question that the source of the requirement for an Arizona driver's license was AFHP's automobile liability insurance policy. As Ferreiro explained, he later learned from researching the DMV website that it was state law, not the insurance policy, that requires an Arizona employee working in Arizona to have an Arizona license. A misunderstanding as to the source of the requirement is not sufficient to establish pretext. Neither is the fact that Gonzalez-Hernandez might in the future hypothetically be able to drive lawfully in Arizona with a California license if he were to become an out-of-state student enrolled in seven credit hours.⁶ It is undisputed that at the time of the events in question, he had no license at all.

An employee seeking to establish pretext must "put forth *specific* and *substantial* evidence" that the employer's explanation is really a pretext for discrimination. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 661 (9th Cir. 2002). Because no such evidence has been presented, AZ Family Health's motion for summary decision will be granted. All other pending motions or requests will be denied.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

⁶ The record reflects that Gonzalez-Hernandez had already completed the course requirements for his undergraduate degree at University of Arizona. There is no suggestion that he attended as an out-of-state student, and the address Gonzalez-Hernandez provided at all times relevant to this proceeding was in Glendale, Arizona.

1. Arizona Family Health Partnership is a private, not-for-profit organization dedicated to making reproductive healthcare and education available and accessible to women, men, and teens in Arizona.
2. Brian Emilio Gonzalez-Hernandez is an alien whose complaint says that at all pertinent times he possessed an Employment Authorization Document (EAD) permitting him to work in the United States from May 14, 2013 to May 13, 2015.
3. On September 19, 2013, Arizona Family Health Partnership interviewed Brian Emilio Gonzalez-Hernandez for a position as a healthcare navigator.
4. The job of a healthcare navigator at Arizona Family Health Partnership required up to 75% of the individual's time to be dedicated to traveling to worksites in Maricopa, Pima, and Pinal counties, with less travel to Yuma, Coconino, Yavapai, and Mohave counties.
5. The job description for a healthcare navigator at Arizona Family Health Partnership says that the candidate must have a valid Arizona State driver's license, automobile liability insurance, and a clean DMV report.
6. Lisa Schamus, director of Program and Evaluation at Arizona Family Health Partnership, offered the navigator job to Brian Emilio Gonzalez-Hernandez on September 26, 2013, and he accepted.
7. Manuel Ferreiro, who is director of Finance and Administration at Arizona Family Health Partnership and responsible for HR, emailed Gonzalez-Hernandez telling him to bring proof of automobile insurance and a copy of his DMV driving record with him on his first day, which was to be Monday, September 30, 2013.
8. Brian Emilio Gonzalez-Hernandez told Manuel Ferreiro that he did not actually have a driver's license, but that he did have a California permit and was scheduled to take the California driving test on October 8, 2013.
9. On September 28, 2013, Lisa Schamus met with CEO Brenda Thomas and Manuel Ferreiro, and they decided collectively to rescind the job offer Arizona Family Health Partnership had made to Gonzalez-Hernandez.
10. On September 28, 2013, Lisa Schamus emailed Gonzalez-Hernandez advising him that without a currently valid driver's license, he was ineligible for the navigator position and that Arizona Family Health Partnership was rescinding its job offer.

11. On October 9, 2013, Brian Emilio Gonzalez-Hernandez notified Manuel Ferreiro that he was a recipient of Deferred Action for Childhood Arrivals (DACA), and was unable to obtain an Arizona driver's license.

12. Arizona Family Health Partnership offered the navigator position to a different candidate.

13. On November 5, 2013, Brian Emilio Gonzalez-Hernandez filed a charge of document abuse with the Office of Special Counsel for Immigration-Related Unfair Employment Practices in which he alleged that Arizona Family Health Partnership engaged in document abuse by rescinding its offer of employment and refusing to accept his Employment Authorization Document and California driver's license.

14. On March 17, 2014, Brian Emilio Gonzalez-Hernandez received a letter from the Office of Special Counsel for Immigration-Related Unfair Employment Practices advising him that he had the right to file a complaint within ninety days of his receipt of the letter.

B. Conclusions of Law

1. Arizona Family Health Partnership is an entity within the meaning of 8 U.S.C. § 1324b(a)(1).

2. Brian Emilio Gonzalez-Hernandez is not a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3).

3. An employer is exempt from coverage from a complaint of national origin discrimination in this forum "if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e-2]" (Title VII). 8 U.S.C. § 1324b(a)(2)(B).

4. A person or entity is an employer covered by Title VII if it is "engaged in an industry affecting commerce [and] has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U.S.C. § 2000e(b).

5. An action for citizenship status discrimination may be maintained only by a protected individual as defined in 8 U.S.C. § 1324b(a)(3). *O moyosi v. Lebanon Corr. Inst.*, 9 OCAHO no. 1119, 3, (2005); *Mengarpuan v. Asbury Methodist Vill.*, 4 OCAHO no. 612, 236, 243 (1994).

6. A protected individual is defined in 8 U.S.C. § 1324b(a)(3) as a citizen or national of the United States; an alien who is lawfully admitted for permanent residence, or for temporary residence under section 1160(a) or 1255a(a)(1) of [that] title; or an alien who is admitted as a refugee under section 1157, or who is granted asylum under section 1158.

7. This office is without authority to adjudicate claims arising under 42 U.S.C. § 1981.

8. For purposes of registering and operating motor vehicles in the State of Arizona, a “resident” is defined as, inter alia, a person who, regardless of domicile, remains in the State for an aggregate period of seven months or more during a calendar year, or a person who engages in a trade, profession, or occupation or accepts employment in Arizona (other than certain agricultural workers). A.R.S. § 28-2001(a)–(b).

9. A valid Arizona driver’s license was legally required for an individual to perform the core duties of the navigator position at Arizona Family Health Partnership.

10. Brian Emilio Gonzalez-Hernandez failed to establish a prima facie case of document abuse pursuant to 8 U.S.C. § 1324b(a)(6).

11. Assuming arguendo that Brian Emilio Gonzalez-Hernandez established a prima facie case of document abuse, Arizona Family Health Partnership proffered a legitimate, nondiscriminatory explanation for requiring a candidate for the navigator position to have a valid Arizona driver’s license.

12. Brian Emilio Gonzalez-Hernandez did not present specific or substantial evidence that Arizona Family Health Partnership’s explanation for requiring an Arizona driver’s license was a pretext for discrimination.

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

Arizona Family Health Partnership’s motion for summary decision is granted, and the complaint is dismissed. All other pending motions and requests are denied.

SO ORDERED.

Dated and entered this 30th day of June, 2015.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.

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

July 8, 2015

BRIAN EMILIO GONZALEZ-HERNANDEZ,)	
Complainant,)	
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v.)	8 U.S.C. § 1324b Proceeding
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ARIZONA FAMILY HEALTH PARTNERSHIP,)	
Respondent.)	
_____)	

ERRATA

In the Final Decision and Order issued on June 30, 2015:

1. In the first sentence of paragraph 3 on page 7, the text is hereby corrected to read, “Document abuse occurs where an employer makes a request, for the purposes of satisfying the requirements of the employment eligibility verification system described in 8 U.S.C. § 1324a(b), for more or different documents, or refuses documents that reasonably appear to be genuine and to relate to the individual, and does so with the intent to discriminate against the individual. 8 U.S.C. § 1324b(a)(6); see *Eze v. W. Cnty. Transp. Agency*, 10 OCAHO no. 1140, 9 (2011).”
2. In paragraph 3 on page 11, the text is hereby corrected to read, “A protected individual is defined in 8 U.S.C. § 1324b(a)(3) as a citizen or national of the United States; an alien who is lawfully admitted for permanent residence and has met certain requirements; an alien who is granted the status of an alien lawfully admitted for temporary residence under section 1160(a) or 1255a(a)(1) of [that] title; and an alien who is admitted as a refugee under section 1157, or who is granted asylum under section 1158.”

Published 7/10/15

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SO ORDERED.

Dated and entered this 8th day of July, 2015.

Ellen K. Thomas
Administrative Law Judge