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

FLORINDA KATTAN,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	CASE NO. 93B00096
UNION LEAGUE CLUB	)	
OF CHICAGO,	)	
Respondent.	)	
	)	

FINAL ORDER GRANTING SUMMARY DECISION

I. *Introduction*

On December 14, 1993, I issued an Order to Show Cause Why Summary Decision Should Not Be Granted after Pro Se Complainant did not file a response to Respondent's Motion for Summary Decision. In said Order, I set out the procedural history of this case, the legal standard for summary decision, a discussion of the arguments presented, and I gave the Complainant fifteen (15) days from the receipt of the Order to respond to Respondent's Motion for Summary Decision. As of this date, the Complainant has not responded.

II. *Legal Standards for Summary Decisions*

The relevant 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. 68.38.

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-noticed matters. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 1555 (1986). A material fact is one which controls the outcome of the litigation. See Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2510 (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).

A summary decision may be based on a matter deemed admitted. See, e.g., Home Idem. Co. v. Famularo, 539 F. Supp. 797 (D. Colo. 1982). See also Morrison v. Walker, 404 F.2d 1046, 1048-49 (9th Cir. 1968) ("If facts stated in the affidavit of the moving party for summary judgment are not contradicted by facts in the affidavit of the party opposing the motion, they are admitted."); and U.S. v. One Heckler-Koch Rifle, 629 F.2d 1250 (7th Cir. 1980) (summary judgments are functionally equivalent to admissions on file and, as such, may be used in determining presence of a genuine issue)

Thus after careful consideration of all the evidence of record, I find that the Complainant has not shown by a preponderance of the evidence that a discriminatory act took place under 8 U.S.C. § 1324b; that Complainant has not responded to my order of December 14, 1993, pursuant to 68.37(b)(1); and, that Respondent is entitled to granting its Motion for Summary Decision.

III. *Finding of Fact and Conclusions of Law*

Based on the relevant law and the record before me, I find:

1. That Florinda Kattan is a citizen of the Country of Honduras, and obtained permanent residency status in the United States on December 19, 1988, and is a protected individual as defined by 8 U.S.C. § 1324b(a)(3)(B);

2. That Complainant was employed by Respondent, Union League Club of Chicago, from June 1, 1989 until September 26, 1992, when she was discharged;

3. That Complainant filed a timely charge with the Office of Special Council for Immigration Related Employment Practices on December 12, 1992, as authorized by 8 U.S.C. § 1324b(d)(2).

Complainant filed her Complaint with the Office of the Chief Administrative Hearing Officer on May 10, 1993, alleging that she was discriminated against based on her national origin in violation of 8 U.S.C. § 1324b(a)(1) and that she was intimitaded, threatened, coerced and/or retaliated against by the Respondent in violation of 8 U.S.C. § 1324b(a)(5);

4. That the Respondent employed over fourteen (14) employees and, thus, I lack jurisdiction to hear the national origin claim of discrimination pursuant to 8 U.S.C. § 1324b(a)(2)(B);

5. That Complainant has not responded to Respondent's Motion for Summary Decision nor the Court's Order to Show Cause;

6. That Complainant has presented no material facts to show that she was intimidated or retaliated against by the Respondent based on her intention to file, or the filing of, her charge or Complaint, as prohibited by 8 U.S.C. § 1324b(a)(5);

7. That there is no genuine issue as to any material fact, as shown by the pleadings, affidavits, discovery or administratively noticed matter offered by Complainant, that requires an evidentiary hearing; and,

8. That pursuant to 28 C.F.R. § 68.38 the Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

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. § 68.53(b), any person aggrieved by this final Order may, within sixty (60) days after entry of the Order, seek its review in the United States Court of Appeal for the circuit in which the violation is alleged to have occurred, or in which the Respondent transacts business.

IT IS SO ORDERED this 21st day of January, 1994, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge