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

April 12, 1994

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding
	)	OCAHO Case No. 93B00182
ROSARIO STRANO & VITO STRANO, D/B/A STRANO FARMS, Respondents.	)	

ORDER DENYING RESPONDENTS' DEMAND FOR JURY TRIAL

On March 3, 1994, respondents filed a Demand for Jury Trial, requesting therein a "jury trial of all issues in this case consequent on paragraph B.6 of the prayer for relief."

This Office is tasked with adjudicating all charges and claims asserted under 8 U.S.C. §§1324a and 1324b and no jury trials are provided. Instead, as provided for in 8 U.S.C. §1324a(e)(3)(B) and 8 U.S.C. §1324b(e)(2), hearings are to be conducted by administrative law judges in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551, et seq.

Furthermore, implicit in the unfair immigration-related employment practices provisions of IRCA, 8 U.S.C. § 1324b, is the proposition that the administrative law judge has sole jurisdiction to determine all questions of law and fact. In particular, 8 U.S.C. § 1324b(g)(2)(A) provides:

> If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in oris engaging in any such unfair employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires

> such person or entity to cease and desist from such unfair immigration-related employment practice.

The procedural regulations, however, do expressly state: "The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law." 28 C.F.R. § 68.39(b).

Respondents contend, that notwithstanding these provisions, paragraph B.6 of the prayer for relief entitles them to a jury trial because in that paragraph, complainant requests that the undersigned "(o)rder respondent to pay the injured parties full back pay with interest."

The Seventh Amendment provides:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S. Const. amend. VII.

In Atlas Roofing Co. v. Occupational Safety Comm'n, 430 U.S. 442 (1976), however, the Court held that when Congress creates new statutory "public rights," it may assign the adjudication of those rights to an administrative agency with which a jury trial would be incompatible without violating the Seventh Amendment's injunction that jury trial is to be "preserved" in "suits at common law." Id., 430 U.S. at 455. See also Connors v. Ryan's Coal Co., Inc. 923 F.2d 1461, 1465 (11th Cir. 1991) ('when Congress creates a new cause of action and remedies unknown to the common law, it may vest fact-finding in a tribunal other than a jury, free from the strictures of the Seventh Amendment'); Paul v. Office of Thrift Supervision, 763 F. Supp. 568, 573-74 (S.D. Fla. 1990) ('Congress may delegate fact finding powers to an administrative agency in actions to enforce public rights').

Congress does not, however, have the power to strip parties contesting matters of "private right" of their constitutional rights to jury trial by devising novel causes of action involving those traditional private rights and assigning their adjudication to tribunal without statutory authority to employ juries as fact finders. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 51-52, 109 S. Ct. 2782, 2795 (1989). A "private right" involves the liability of one individual to another under the law as defined. See Joy Technologies, Inc. v. Manbeck, 959 F.2d

226, 228 (Fed. Cir. 1992) (quoting Crowell v. Benson, 285 U.S. 22, 51 (1932)).

Thus, in order for Congress to have permissibly assigned the adjudication of actions under 8 U.S.C. § 1324b to the administrative law judges in this Office, those rights must be "public rights" as that term is defined in Atlas and in subsequent caselaw.

In Atlas, the Court defined the term "public right" as a situation in which "the Government is involved in its sovereign capacity under an otherwise valid statute creating enforceable public rights." Atlas, 430 U.S. at 458.

Because paragraph B.6 in the prayer for relief does not implicate the government but rather solely deals with the entitlement of the charging parties to relief, respondents apparently believe that those claims involve "private rights," entitling them to a jury trial.

The proposition that the Federal Government (here, OSC) is not a party to that part of this action involving the charging parties' entitlement to backpay is questionable; because respondents failed to expound on why they believed a jury trial to be in order, it can only be assumed that that is the basis of respondents' objections.

Assuming, however, that OSC is not a party to that portion of the Complaint seeking backpay for the charging parties, respondents are still not entitled to a jury trial, because caselaw subsequent to Atlas indicates that the Federal Government need not be a party to an action for a case to implicate "public rights." Granfinanciera, 492 U.S. at 55, 109 S. Ct. at 2797.

Where the Federal Government is not involved as a party, adjudication by a non-Article III tribunal is still appropriate where "Congress, acting for a valid legislative purpose pursuant to its Constitutional powers under Article I, has created a seemingly 'private right' that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary." Id. That is clearly the case here, and in all private actions under 8 U.S.C. § 1324b.

Congress passed the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b, and its subsequent amendments in the Immigration Act of 1990 (IMMACT 1990), pursuant to its power to regulate immigration.

The authority to order that individuals who have been subjected to unfair immigration-related employment practices under 8 U.S.C. § 1324b be hired and, if appropriate, receive backpay, is granted by Congress to the administrative law judges in this Office in 8 U.S.C. § 1324(g)(2)(B)(iii).

In their "Demand for Jury Trial," respondents also contest OCAHO's authority to conduct the hearing in this matter.

OCAHO derives its authority to conduct hearings under 8 U.S.C. § 1324b from two separate sources.

First, in Attorney General's Order Number 1243-87 (12/17/87), the Attorney General delegated his authority under IRCA, 8 U.S.C. § 1324b(e)(2), to determine what constitutes special training respecting employment discrimination and to designate those administrative law judges who have received that training to the CAHO.

Second, the CAHO is ordered under the regulations specifying the organization of the Department of Justice to provide general supervision to the administrative law judges in this Office in performance of their duties in accordance with IRCA, 8 U.S.C. §§ 1324a and 1324b.

Accordingly, the CAHO has been granted the authority to designate administrative law judges in actions under 8 U.S.C. § 1324b, and has been granted the authority to supervise those administrative law judges in the performance of their duties under that section.

Under 8 U.S.C. §1324b, the administrative law judges in this Office are responsible for hearing cases in actions involving unfair immigration-related employment practices (8 U.S.C. § 1324b(e)(2)) and for issuing orders in those actions (8 U.S.C. § 1324b(g)(1)).

For the foregoing reasons, respondents' Demand for Jury Trial is denied.

JOSEPH E. MCGUIRE
Administrative Law Judge