

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

KRZYSZTOF ZARAZINSKI,)
Complainant,)
)
v.) 8 U.S.C. § 1324b Proceeding
) CASE NO. 92B00152
ANGLO FABRICS CO., INC.)
Respondent.)
_____)

ORDER DIRECTING COMPLAINANT TO SUBMIT EVIDENCE
REGARDING HIS CLAIM OF THREAT IN VIOLATION OF IRCA

I have made preliminary findings in this case to sua sponte dismiss Complainant's national origin discrimination claim for lack of jurisdiction and to dismiss Complainant's citizenship status discrimination claim for failure to establish a prima facie case. A hearing on the issue of threat has been tentatively scheduled for Thursday, May 12, 1994 in Worcester, Massachusetts at 9:00 a.m. In order for Complainant to be entitled to that evidentiary hearing, however, Complainant will have to submit evidence to support his allegation that Anglo Fabrics Co., Inc. threatened Complainant because he intended to file an OSC charge.¹ Complainant's initial burden is to establish a prima facie case of retaliation, showing that (1) he was engaged in a protected activity or intended to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an

¹ Although prior to this order the case caption has read "Anglo-Fabrics," I hereby change the case caption to indicate Respondent's appropriate name "Anglo-Fabrics Co., Inc." as Respondent clarified for my office staff last week.

investigation, proceeding, or hearing under § 1324b, (2) that the respondent intimidated, threatened, coerced, or retaliated against the complainant, and (3) that there was a causal connection between the two.

The fact that Complainant has not prevailed on his national origin and citizenship status discrimination claims is not fatal to his prima facie case of retaliation. Mesnick v. General Elec. Co., 950 F.2d 816, 827 (1st Cir. 1991). Complainant may only prevail on his retaliation claim, however, if (1) he had a reasonable, good-faith belief that an IRCA violation occurred; (2) he intended to act or acted on it; (3) Respondent knew of Complainant's intent or act and (4) Respondent lashed out in consequence of it. See id. (setting forth a similar rule under Title VII) (citing Petiti v. New England Tel. & Tel. Co., 909 F.2d 28, 31 (1st Cir. 1990); Manoharan v. Columbia Univ. College of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988)).² Thus, Complainant needs to establish that he filed his OSC charge based on a reasonable, good faith belief that he was not rehired for discriminatory reasons. If Complainant is unable to do so, the scheduled hearing will no longer be necessary and therefore will be canceled. Complainant is therefore directed to file with this office by Monday, April 25, 1994, any evidence to corroborate his assertions that Anglo Fabrics, Co., Inc. was hiring illegal aliens. Complainant shall provide the basis for his belief and should submit written statements of any individual who informed Complainant that Anglo Fabrics was engaged in such activity.

SO ORDERED on this 18th day of April, 1994.

ROBERT B. SCHNEIDER
Administrative Law Judge

² The rationale for this rule is that "making the protected nature of an employee's opposition to alleged discrimination depend on the ultimate resolution of his claim would be inconsistent with the remedial purposes of Title VII." Parker v. Baltimore & Ohio Railroad Co., 652 F.2d 1012, 1019 (D.C. Cir. 1981).