

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 STATEMENT
REGARDING WAIVER OF HIS ATTORNEY/CLIENT PRIVILEGE

On May 4, 1994, I issued a subpoena to the Volunteer Lawyers Service of Legal Assistance Corporation of Central Massachusetts ("Legal Assistance Corp.") for purpose of obtaining information that I believed was relevant to this case.

It should be recalled that during the course of the proceedings in this case, I introduced into evidence a letter from Legal Assistance Corp. to Complainant, dated June 9, 1992, stating that Legal Assistance Corp. would not be able to provide pro bono representation to Complainant because he was currently over-income for the program.

On May 23, 1994, Hugh D. Heisler, Executive Director and Custodian of Records for Legal Assistance Corp., filed a Petition to Revoke Subpoena because of its failure to locate Complainant to determine if he would waive the attorney/client privilege. The certificate of service attached to the petition indicates it was sent only to this office and to Complainant.

In view of Legal Assistance Corp.'s failure to locate Complainant, prior to ruling on this petition, I am directing Complainant to state, in writing by a pleading, whether he would be willing to waive his attorney/client privilege with regard to any information he has provided to Legal Assistance Corp. and any information provided to

him by Legal Assistance Corp. If Complainant waives his attorney/client privilege, Legal Assistance Corp. shall comply with the subpoena within ten (10) days after receipt of the waiver. If there is a waiver, any information received will be admitted into evidence and will be considered for purposes of a final decision in this case.

If Complainant does not waive his attorney/client privilege, I will grant the petition to revoke the subpoena and consider taking adverse inferences therefrom. cf. Baxter v. Palmigiano, 425 U.S. 308, 318-320, 96 S.Ct. 1551, 1558, 47 L.Ed.2d 810 (1976) (In Baxter, the Court permitted an inference to be drawn in a civil case from a party's refusal to testify, where the respondent's silence was one of a number of factors to be considered by the finder of fact in assessing a penalty, and was given no more probative value than the facts of the case warranted). In Lefkowitz v. Cunningham, 431 U.S. 801, 97 S.Ct. 2132, 53 L.Ed.2d 1 (1977), the Court indicated that the rule in Baxter applies to all civil cases.

Accordingly, Complainant shall, on or before, June 10, 1994, submit to this office his statement regarding the waiver of his attorney/client privilege as described above and shall mail copies thereof to Respondent and Legal Assistance Corp. In view of the fact that Respondent did not receive a copy of the Petition to Revoke Subpoena, this office will attach a copy of the petition and the subpoena to this order.

SO ORDERED on this 26th day of May, 1994.

ROBERT B. SCHNEIDER
Administrative Law Judge