

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

ROBERT Y. CHU,)
Complainant,)
)
v.) 8 U.S.C. §1324b Proceeding
) Case No. 94B00036
FUJITSU NETWORK)
TRANSMISSION)
SYSTEM, INC.,)
Respondent.)
_____)

ORDER

(August 23, 1994)

On July 20, 1994, Respondent served its First Request for Admissions on Complainant. On the same date, Respondent served a Motion to Dismiss, premised on the claim that I lack jurisdiction over the national origin discrimination portion of the complaint. The premise of the motion is that because Respondent employs more than 15 individuals, any national origin claim is within Title VII of the Civil Rights Act of 1964, as amended, jurisdiction for which is in the Equal Employment Opportunity Commission and not that of an administrative law judge. Respondent's claim is supported by an attached affidavit.

On August 22, 1994, by letter/pleading, referring to cumulative pendency of the Request for Admissions and the Motion to Dismiss as a "confused situation" Complainant requests abatement of the Request "until the confused situation is clear." I reject Complainant's proposal because nothing contained in the Rules of practice and procedure (Rules) of this Office, 28 C.F.R. pt. 68 (1993), as amended by 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. §68.2(i), (k)), prohibits concurrent discovery and motion practice.

It is logical that in order to efficiently advance the despatch of litigation, a party may be obliged to plead to a motion to dismiss simultaneously with responding to a request for admissions. In the

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case at hand, Complainant alleges discrimination arising both out of his Chinese national origin and his United States citizenship. Since solely national origin is implicated by the undisputed claim that Respondent employs more than fifteen individuals, Respondent's motion reaches only the national origin portion of Complainant's cause of action. Accordingly, the discovery is relevant to Respondent's citizenship status discrimination claim even if the national origin claim is dismissed.

Complainant's pleading is overruled. Complainant will be expected to adhere to service and filing deadlines set forth in the Rules.

As previously scheduled, the second telephonic prehearing conference will be held at 11:00 a.m., EDT, 10:00 a.m., CDT, 8:00 a.m., PDT, on August 30, 1994.

SO ORDERED.

Dated and entered this 23rd day of August, 1994.

MARVIN H. MORSE
Administrative Law Judge