



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

November 13, 2013

Beth Hickman
Senior Deputy Attorney General
Bureau of Litigation
State of Nevada Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Re: Notice of Findings
[REDACTED] v. Nevada Dep't of Corr. (13-OCR-0256)

Dear Ms. Hickman:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Nevada Department of Corrections (NDOC), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the NDOC. In his Complaint, the Complainant alleges that the NDOC discriminated against him based on national origin when it initially denied his request for a replacement social security card. The Complainant also alleges that the NDOC retaliated against him for filing a Complaint with the OCR.

The OCR has completed our review of the documentation provided by both the NDOC and the Complainant and has determined that the NDOC has taken steps to come into compliance with the laws that the OCR enforces, and that there is insufficient evidence of a current violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On October 5, 2012, the Complainant, who was born outside of the United States but is a naturalized citizen of the United States as of November 20, 1985, submitted a request to the NDOC's Re-Entry Program to obtain a replacement social security card so that he may be eligible to work in the NDOC's Prison Industries. On October 10, 2012, the NDOC denied the Complainant's request, stating that the NDOC is unable to process the Complainant's request because he was not born in the United States. The Complainant submitted a grievance regarding the NDOC's action, and on November 15, 2012, and

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January 13, 2013, the NDOC denied the Complainant's grievance, stating that pursuant to Operating Procedure (OP) 506.02(4), staff completing social security card applications must ensure that an inmate is a citizen born in the United States or a United States Territory. The NDOC's January 13 response further states that "[t]he agreement between NDOC and Social Security Administration require you to have been born in the United States in order to request a duplicate Social Security Card."

The Complainant asserts that the NDOC's denial of his request for a replacement social security card constitutes discrimination based upon national origin. The Complainant requests to be compensated for wages he would have earned by working in the Prison Industries had the NDOC granted his request for a replacement social security card in October 2012. Additionally, the Complainant alleges that the NDOC retaliated against him for filing his Complaint with the OCR when it subsequently falsely accused him of stealing food and terminated his employment as a cook at High Desert State Prison (HDSP).

In the NDOC's June 27, 2013, Position Statement regarding the Complaint filed with the OCR, the NDOC noted that it is committed to complying with all state and federal laws and regulations prohibiting discrimination. However, the NDOC stated that a review of this issue has revealed a discrepancy between the citizenship requirement and procedures set forth in OP 506.02(4) and the Memorandum of Understanding (MOU) that it has with the Social Security Administration (SSA), and that it is taking steps to amend OP 506.02(4). According to the NDOC's Position Statement, "[h]ow this discrepancy arose is unclear." In a letter dated October 15, 2013, to the OCR, the NDOC indicated that it revised OP 506 on July 15, 2013, and provided a copy of the revised policy, which omits the previous requirement that an inmate must be born in the United States in order to qualify for a replacement social security card. The NDOC further stated that the Complainant's request for a replacement social security card was sent to the SSA on July 2, 2013 and that the NDOC received the replacement social security card on July 22, 2013, and notified the Complainant of this receipt. As for the Complainant's allegation of retaliation, the NDOC stated that the Complainant was working in the Culinary at the HDSP and that the sergeant overseeing the Culinary believed the Complainant to be responsible for the kosher food area during a time when food was found hidden in that area, and the Sergeant issued charges against the Complainant for taking food. The NDOC said that upon discovering other inmates had access to this area as well during the relevant timeframe, the NDOC dismissed the charge against the Complainant.

In regard to the OCR's inquiry regarding whether the NDOC has taken any steps to compensate the Complainant for wages he would have earned through the Prison Industries had the NDOC granted his request for a replacement social security card in October 2012, the NDOC said in its October 15 letter that it has not taken any steps, as the Complainant would not have been guaranteed employment with the Prison Industries even if he had a social security card. The NDOC said that there are many other factors that are relevant to an inmate becoming eligible for a Prison Industries position, such as maintaining a job at the NDOC for six months, having no escape history, having no

guilty disciplinary actions for at least six months, and possessing a GED. The NDOC stated that a full classification committee must then evaluate the inmate's fitness for a Prison Industries work assignment, and if they approve the inmate's fitness, the inmate is placed on a wait list and must be approved by the Prison Industries supervisor before being assigned. The NDOC noted that the Complainant has had paying jobs at the HDSP outside of the Prison Industries, as he previously worked in the Culinary and now works in the Law Library as of August 8, 2013.

Policies and Procedures Relevant to the Allegations

The NDOC provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. Attached to its June 27, 2013, Position Statement, the NDOC provided the OCR with a copy of its MOU with the SSA, which provides the NDOC with authority to accept applications from eligible inmates for replacement social security cards and forward the applications to the SSA for processing. The MOU states that it only authorizes the processing of applications for replacement social security cards from inmates who are United States citizens, and that inmates who apply for a replacement social security card must already have a social security number, must have never used different social security numbers, and all information on their application must exactly match information in the SAA's records. The MOU does not explicitly state who qualifies as a "United States citizen;" however, in the Frequently Asked Questions section of the SSA's website, http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/2282/session/L2F2LzEvdGltZS8xMzgzODO4ODU3L3NpZC9nTmtEc01FbA%3D%3D (last visited Nov. 7, 2013), the SAA states that evidence of citizenship includes a United States birth certificate, a United States passport, a Consular Report of Birth, a Certificate of Citizenship, or a Certificate of Naturalization. On June 27, the NDOC also provided the OCR with then-current version of OP 506, "Replacement Social Security Cards" (effective Oct. 29, 2012), which stated at Section 506.02(4) that when processing an inmate's request for a replacement social security card, authorized staff must ensure that the inmate has previously received a social security card and that the inmate is "a citizen born in the United States or U.S. Territory." This section further stated that staff may not accept applications from inmates whose social security records include use of more than one social security number or identity, or indicate previous fraud or misuse of a social security card.

As discussed in the previous section of this Notice of Findings, the NDOC revised OP 506 effective July 15, 2013. The revised Section 506.02(4) now states that "[i]nmate must be a citizen of the United States" and no longer requires that the inmate be born in the United States or a U.S. Territory. The rest of Section 506.02(4) remains the same.

The OCR also located on the Administrative Regulations section of the NDOC's website, <http://www.doc.nv.gov/?q=node/172> (last visited Nov. 7, 2013), a posting of its administrative regulations, including Administrative Regulation (AR) 525, "Prison Industry Classification" (effective Aug. 13, 2010). According to AR 525, in order to be assigned to Prison Industries, an inmate must have a valid social security number, must

have a high school diploma or a GED, must have no major disciplinary violations in the previous six months, must be functioning at an educational level equal to literacy, and must have a minimum of twelve months remaining on their sentence until eligible for minimum custody. The AR 525 further states that a full classification committee must review and approve in person all inmates prior to being placed on the approved Prison Industries assignment list and that placement on this list does not guarantee an inmate an assignment, and that the supervisor of the Prison Industries shop where the inmate will be working must approve any assignments.

Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that “[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the NDOC receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). The prohibition against national origin discrimination includes discriminating against individuals based on place of origin or birth. *See Coghlan v. Am. Seafoods Co. LLC*, 413 F.3d 1090, 1094 (9th Cir. 2005); *Klimas v. U.S. Dept. of Treasury*, No. 92-70264, 1994 WL 41245, at *2 (9th Cir. Feb. 11, 1994). To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. *Id.* The DOJ’s regulations implementing Title VI also prohibit recipients from retaliating against individuals for filing a complaint of discrimination. 28 C.F.R. § 42.107(e).

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the NDOC, and finds that the NDOC has taken steps to come into compliance with Title VI and the Safe Streets Act and their prohibitions against national origin discrimination, and the evidence is insufficient to demonstrate that the NDOC is currently discriminating or retaliating against the Complainant. The NDOC’s OP 506 that was in effect and applied to the Complainant up until July 2013 did provide for disparate treatment of inmates who are citizens born outside of the United States; however, the NDOC immediately took steps to correct and revise the policy once the OCR brought the unlawful treatment to its attention and allowed the Complainant to apply for a replacement social security card. While the record before the OCR is unclear why the NDOC initially inserted the requirement that inmates be born in the United States, and the NDOC has stated that the NDOC itself is unclear how this occurred, there is no evidence of malicious intent or an intent to discriminate based on national origin.

Beth Hickman, Senior Deputy Attorney General

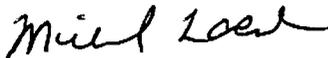
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The Complainant has alleged that he experienced lost wages due to the NDOC's initial failure to allow him to apply for a replacement social security card and his resulting ineligibility for the Prison Industries. However, based on the procedures set forth in AR 525, it is not guaranteed that the Complainant would have received a Prison Industries assignment even if he received a replacement social security card. Furthermore, the Complainant was able to earn wages in positions at the HDSP that are not associated with the Prison Industries. Accordingly, there is insufficient evidence that the Complainant has experienced a monetary loss as a result of the NDOC's actions. In regard to the Complainant's allegation of retaliation in connection with his termination from employment in the HDSP Culinary, the evidence is insufficient that the NDOC terminated his employment due to his filing his Complaint with the OCR, and not due to the NDOC's belief that the Complainant stole food.

Based on all of the information discussed above, the OCR finds that the NDOC has taken steps to come into compliance with Title VI and the Safe Streets Act and that there is insufficient evidence of a current violation of national origin discrimination or retaliation. We appreciate the prompt action that the NDOC took to resolve this issue. At this time, the OCR is closing the administrative Complaint filed by the Complainant.

Sincerely,



Michael L. Alston

Director