

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CF2984</b>
	)	EEOC NO.: <b>21BA21487</b>
<b>LORENZO OCHOA,</b>	)	ALS NO.: <b>13-0150</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Change, and Steve Kim presiding, to correct a typographical error in the Commission's October 2, 2018 Order in this matter.

IT IS SO ORDERED:

- 1) The following language is stricken from the October 2, 2018 Order: "This Order is not yet final and appealable."
- 2) The stricken language is replaced with the following language: "This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Winston Brands, Inc. as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order."
- 3) All other provisions in the October 2, 2018 Order remain in full force and effect.

<b>STATE OF ILLINOIS</b>	)	
	)	<b>Entered this 3rd day of October 2018.</b>
<b>HUMAN RIGHTS COMMISSION</b>	)	

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

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**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon Lorenzo Ochoa’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Respondent of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CF2984; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that:

*The Respondent’s dismissal of the Petitioner’s charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

In support of which determination, the Commission states the following:

**A. PROCEDURAL HISTORY**

1. On April 17, 2012, Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Employer, Winston Brands, Inc., discharged him due to his national origin, Mexico (Count A), ancestry, Hispanic (Count B), and immigration related status (Count C), in violation of Sections 2-102(A) and 2-102(G)(2) of the Illinois Human Rights Act (“Act”).
2. In his charge, the Petitioner alleges that Employer discharged him on January 13, 2012, because of his national origin, ancestry, and immigration related status. Petitioner further alleges that Employer did not discharge similarly situated non-Mexico, non-Hispanic employees, who were not legally authorized to work in the United States.
3. On December 18, 2012, the Respondent dismissed Counts A, B, and C for Lack of Substantial Evidence.
4. On March 18, 2013, Petitioner filed this timely Request.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Respondent of Human Rights is the “Respondent.”

5. On May 21, 2013, the Respondent filed its Response to the Request.

**B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. Employer is a multilevel marketing and distribution center for giftware.
2. Petitioner was hired by Employer on 2000 as a loader/unloader.
3. Petitioner was discharged on January 13, 2012, for lack of proper authorization to work in the United States.
4. Petitioner stated that on January 4, 2012, he went to work and was told by Larres that there would be a meeting in Employer's cafeteria that he would have to attend at 11:00 am. Petitioner stated that he noticed that there were employees going to the cafeteria, and others going to a different location. Petitioner stated that in the cafeteria there were armed security guards, Nancy A. Agajeenian, Director of Human Resources, and Selene Diaz, Associate Director of Human Resources. Petitioner stated that a security guard went around the room collecting property that belonged to Employer, such as work cutters and identification badges.
5. Petitioner stated that Agajeenian spoke, and Diaz translated what she said from English to Spanish. Petitioner stated that Diaz informed them that Employer did an audit of the I-9 forms of employees, and found many technical errors. Petitioner stated that Diaz told them that each employee would receive a letter that would indicate instructions on what that employee should do next. Petitioner stated that the letters were handed out at the back of the room and the employees were told not to read the letters at Employer, but to wait until they left the facility to read their letter.
6. Petitioner stated that he received a letter from Employer dated January 4, 2012, indicating that as a result of the I-9 audit, his form had been identified as deficient and required his assistance to rectify. The letter indicated that his documentation appeared to be fraudulent on its face and Employer was requiring that he provide valid documentation which verified his identity and authorizes him to lawfully work in the U.S. The letter indicated that he would be held out of service pending submission of original documentation.
7. The letter indicated that upon proper verification, Petitioner would return to work and be provided with full back pay for all hours lost between January 4, 2012, and the date his employment authorization was verified.
8. Petitioner stated that he did not contact Employer's human resource Respondent, provide documentation indicating that he was authorized to work in the U.S., or return to Employer after January 4, 2012.

9. Petitioner stated that he did not think that Employer should have had armed security guards at the meeting, because he felt threatened by them. Petitioner stated that having the security guards at the meeting gave him the impression that he was being treated unfairly, as if he was a threat.
10. Petitioner stated that he was unauthorized to work in the United States, and did not want to cause trouble for himself. Petitioner stated that he did not feel that Employer had the right to request that type of information from him, since he had already given his documentation to Employer upon hire.
11. Petitioner stated that he felt it was discriminatory and illegal for Employer to request new documentation from him to indicate that he was authorized to work in the U.S. after he had already worked for Employer for so many years.
12. Agajeenian stated that Employer performed a companywide I-9 audit beginning on or about August 2011. Agajeenian stated that on February 7, 2011, Reyna Roman ("Roman"), an employee at Employer, came to Employer's human resource Respondent requesting a day off of work. Agajeenian stated that this employee indicated to human resources that her son was going to help her apply for citizenship. Agajeenian stated that Roman was discharged from Employer on February 8, 2011, for indicating that she was not legally authorized to work in the United States.
13. Agajeenian stated that another incident occurred on April 8, 2011, when Maximo Galvan ("Galvan"), an employee for Employer, filed for bankruptcy using an ITIN number instead of a social security number. Agajeenian stated that she was aware that it was an ITIN number because the last four numbers listed under SSN/ITIN did not match the social security number that Employer had on file for Galvan.
14. Agajeenian stated that Employer hired an outside attorney to train Employer's human resource staff from all three of Employer's facilities on how to conduct I-9 audits. Agajeenian stated that the human resource staff checked a total of 680 I-9 forms and supporting documentation for all of its employees in both Illinois and Kansas. Agajeenian stated that as a result of the audit, there were a tremendous amount of errors at Employer's Melrose Park facility where Petitioner was employed. Agajeenian stated that she and Diaz decided to have a group meeting with all employees who had discrepancies with their 1-9 documentation because there were so many of them.
15. Agajeenian stated that the results of the 1-9 audit for Petitioner indicated that Petitioner's permanent resident card did not appear to be authentic. The audit report indicated that Petitioner's resident alien card had eight numbers when it should have had 9. The audit report

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indicated that the card's font and character spacing did not seem accurate. The audit report indicated that the fingerprint on the card appeared to be cut off.

16. Agajeenian stated that Employer discharged over forty employees for the same reason as Petitioner.
17. Agajeenian stated that Employer reviewed the 1-9 forms for all of its employees at all three of its facilities, and addressed the errors found with each individual via letters requesting information from them.
18. Agajeenian stated that at no time did Employer use E-verify to check social security numbers. Agajeenian stated that Employer does not, and has not had access to the E-verify program. Agajeenian stated that the only checking of documentation that was done to verify authenticity was done visually as Employer's human resource Respondent had been trained to do.
19. In his Request, the Petitioner argues that the Respondent's investigator did not show him respect and that the Respondent's behavior was not neutral. The Petitioner further argues that the Respondent's investigator asked him whether he was legal in this country, asked to see his social security card, and also asked to see his legal residence card. The Petitioner asserts that he felt intimidated and offended by the Respondent's investigator's questioning.
20. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues that its investigation did not reveal, and Complainant did not establish, substantial evidence that Respondent discharged him due to his national origin, ancestry, or immigration related status. The Respondent further argues that its investigation revealed that Respondent's Immigration Control and Reform Act policy ("IRCA policy") states that Respondent employs only those persons who are legally eligible to work in the United States.

### **C. DISCUSSION & DETERMINATION**

The Commission sustains the dismissal of the Charge for Lack of Substantial Evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

As to Counts A, B and C, the Commission finds that the evidence was insufficient to establish a case of national origin, ancestry, or immigration related status discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an

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adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See *Marinelli v. Human Rights Commission*, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In the present case, the Petitioner failed to establish the fourth element. Petitioner did not identify any similarly situated non-Mexico, non-Hispanic employees who lacked proper authorization to work in the United States, but were not discharged. Respondent's documentation indicates that similarly situated employees Diana Stevenson (non-Mexico, non-Hispanic), Quality Assurance, Jayan Seethabai (non-Mexico, non-Hispanic), Senior NET Software Developer, and Maria Delgado (Mexico, Hispanic), Picker/Packer, were also asked to provide documentation to indicate that they were legally authorized to work in the United States. Those who did not provide the proper authorization was sent the same letter as the Petitioner indicating that without documentation, Employer would assume that authorization was lacking. Therefore, there is no evidence that the Petitioner was treated less favorably than a similarly situated employee.

Therefore, the Commission finds no substantial evidence of discrimination or retaliation, and the dismissal of the Petitioner's charge is **SUSTAINED**.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

*The Respondent's dismissal of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

*This Order is not yet final and appealable.*

**Entered this 2<sup>nd</sup> day of October 2018**

**STATE OF ILLINOIS**                    )  
  )  
**HUMAN RIGHTS COMMISSION**    )

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim