



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-0378)

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 denied his request for a replacement social security card based partly on the fact that he was not born in the United States.

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. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

Sometime prior to August 8, 2012, the Complainant, who was born outside of the United States and is a United States citizen as documented in a Consular Report of Birth Abroad, 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 August 8, 2012, the NDOC sent the Complainant a Social Security Card Rejection Notification Form, indicating that the Social Security Administration (SSA) has not processed the Complainant's social security card, and that applications for replacement social security cards may only be processed from inmates who are United States Citizens, who already have a social security number, who have never used different social security

numbers, and whose applications match the information in the SAA's records. The NDOC sent the Complainant another Social Security Card Rejection Notification Form on December 21, 2012, stating that his application for a replacement social security card was rejected for one of the following reasons: according to NDOC records, he has used multiple social security numbers; he will not be released within 120 days; the information provided does not match the standard of the Memorandum of Understanding; the information provided does not match the social security record; or his birthplace was not in the United States or a territory of the United States. On June 13, 2013, the Complainant again submitted a request to the NDOC for an application for a replacement social security card, and on June 18, 2013, the NDOC said that it cannot process the request because the Complainant was not born in the United States and because he has multiple social security numbers.

On July 2, 2013, the Complainant submitted a grievance to the NDOC regarding its denial of his request to apply for a replacement social security card. On August 28, 2013, the NDOC replied by stating that the NDOC was following Operating Procedure (OP) 506 when it denied his request, and that the OP has recently changed to allow the NDOC to send the request for a replacement social security card. The NDOC noted that, "[h]owever, there are no guarantees that Social Security Administration will provide you with a duplicate social security card. It is at their discretion to do so."

The Complainant alleges that the NDOC's initial denial of his request for a replacement social security card constitutes discrimination based upon national origin. The Complainant asserts that he only has one social security number. The Complainant requests that the NDOC monetarily compensate him for this denial and provide him with a job in the Prison Industries.

As you are aware, prior to the present Complaint, the OCR received a complaint from another NDOC inmate containing similar allegations and we notified the NDOC of that complaint on May 28, 2013. In the DOC's June 27, 2013, Position Statement regarding the other complaint, 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 the complaint 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 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 to the OCR dated October 15, 2013, concerning the complaints from both the other inmate and the Complainant, 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. In regard to the NDOC's rejections of the Complainant's requests for a replacement social security card, the NDOC stated that its records indicate that the NDOC rejected the Complainant's application on August 8, 2012, because he had used multiple social security numbers, and rejected his application on December 21, 2012, because he had multiple social security numbers and dates of birth. The NDOC said that

in April 2013 it received a copy of the Complainant's Report of Birth Abroad issued by the State Department, and that with receipt of this birth certificate on September 6, 2013, the NDOC processed the Complainant's request for a replacement social security card and mailed it to the SSA. The NDOC stated that the SSA will have to determine whether or not to issue the replacement card in light of the Complainant's use of multiple social security numbers.

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 August 2012, in its October 15 letter, the NDOC said that it has not taken any steps, as the Complainant "would not have been and will not be employed by Prison Industries, even if he receives a social security card, because he has an escape history that disqualifies him from Prison Industries." 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.

Policies and Procedures Relevant to the Allegations

The NDOC provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. In its June 27, 2013, Position Statement in regard to the complaint filed with the OCR by the other NDOC inmate, the NDOC had 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 SAA's website, http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/2282/session/L2F2LzEvdGltZS8xMzgzODQ0ODU3L3NpZC9nTmtEc01FbA%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 the then-current 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.*

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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 that the NDOC is currently discriminating against the Complainant. The NDOC's OP 506 that was in effect and applied to the Complainant from August 2012 through June 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. While the record before the OCR is unclear why the NDOC initially inserted the requirement into OP 506 that an inmate 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. Moreover, it appears that there are additional factors other than the Complainant's place of birth that led the NDOC to deny the Complainant's requests for a replacement social security card, such as the NDOC's belief that the Complainant used multiple social security numbers and dates of birth. While the Complainant asserts that he has only used one social security number, there is no evidence in the record that the NDOC's stated belief is fabricated or pretextual. Since revising OP 506, the NDOC has allowed the Complainant to submit an application to the SSA for a replacement social security card, and is leaving it up to the SSA to determine whether the Complainant has used multiple social security numbers which would preclude him from obtaining a social security card.

Additionally, while the Complainant alleges that the NDOC should compensate him for its initial denials of his requests for replacement social security card and provide him with a job in the Prison Industries, the NDOC has indicated that the Complainant would not be eligible for a job with the Prison Industries, even if he receives a social security card. Accordingly, there is insufficient evidence that the Complainant has experienced a monetary loss as a result of the NDOC's actions.

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 against the Complainant. 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