Reyes-Gaona v. North Carolina Growers Ass'n

United States District Court for the Middle District of North Carolina

June 22, 2000, Decided ; June 22, 2000, FILED, ENTERED

1:00CV00093

Reporter
2000 U.S. Dist. LEXIS 14701 *; 83 Fair Empl. Prac. Cas. (BNA) 891

LUIS REYES-GAONA, Plaintiff, v. NORTH CAROLINA GROWERS ASSOCIATION and DEL-AL ASSOCIATES, INC., Defendants.

Disposition: **[*1]** Defendants' motions to dismiss under *Rule 12(b)(6) of the Federal Rules of Civil Procedure* GRANTED; case DISMISSED.

LexisNexis® Headnotes

Immigration Law > Admission of Immigrants & Nonimmigrants > Visa Eligibility & Issuance > Issuance of Visas

HN1[] **Visa Eligibility & Issuance, Issuance of Visas**

The H-2A program establishes a means for American employers, who anticipate a shortage of domestic agricultural labor, to apply for permission to recruit and employ foreign workers to perform agricultural labor or services of a temporary or seasonal nature in the United States. Before the Immigration and Naturalization Service will approve an employer's application for such workers, the employer must certify that there are not sufficient domestic workers who are able, willing, qualified, and available. The employer must also certify that the employment of the foreign workers will not adversely affect the wages and working conditions of similarly employed American workers.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

HN2[] **Motions to Dismiss, Failure to State Claim**

In ruling on a *Fed. R. Civ. P. 12(b)(6)* motion, the allegations in the complaint are assumed to be true, and the facts and reasonable inferences derived therefrom are construed in the light most favorable to the plaintiff. Viewing the complaint in the light most favorable to the plaintiff, the court should not dismiss the case unless it appears certain that the plaintiff can prove no set of facts that would entitle him to relief.

Labor & Employment Law > ... > Age Discrimination > Defenses > General Overview

Labor & Employment Law > ... > Age Discrimination > Scope & Definitions > General Overview

HN3[] **Age Discrimination, Defenses**

Within the context of the Age Discrimination in Employment Act, *29 U.S.C.S. § 621 et seq.*, when the applicant is a foreign national, the United States Court of Appeals for the Fourth Circuit has held that being qualified for the position is not determined by the applicant's capacity to perform the job; rather, it is determined by whether the

applicant was an alien authorized for employment in the United States at the time in question.

Labor & Employment Law > ... > Age Discrimination > Evidence > Burdens of Proof

Labor & Employment Law > Discrimination > General Overview

Labor & Employment Law > ... > Age Discrimination > Scope & Definitions > General Overview

HN4[] Evidence, Burdens of Proof

Under the Age Discrimination in Employment Act, 29 U.S.C.S. § 621 et seq., to establish a prima facie case of age discrimination, a plaintiff must prove that (1) he is a member of the protected class, that is, he is at least forty years old; (2) he was qualified for a job for which the employer was seeking applicants; (3) he was rejected despite his qualifications; and (4) the position remained open and the employer continued to seek or accept applications from persons with his qualifications outside the protected class.

Immigration Law > Admission of Immigrants & Nonimmigrants > Visa Eligibility & Issuance > Issuance of Visas

HN5[] Visa Eligibility & Issuance, Issuance of Visas

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition or such previous admission. 8 U.S.C.S. § 1188(f).

Immigration Law > Admission of Immigrants & Nonimmigrants > Visa Eligibility & Issuance > Issuance of Visas

Immigration Law > Types of Nonimmigrant Status > Temporary Workers (H Visas)

HN6[] Visa Eligibility & Issuance, Issuance of Visas

An alien may not be accorded H-2A status who the Immigration and Naturalization Service finds to have violated the conditions of H-2A status within the prior five years. H-2A status is violated by remaining beyond the specific period of authorized stay or by engaging in unauthorized employment. 8 C.F.R. § 214.2(h)(5)(viii)(A).

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Judges: N. Carlton Tilley, Jr., United States District Judge.

Opinion by: N. Carlton Tilley

Opinion

MEMORANDUM OPINION

TILLEY, Chief Judge.

Plaintiff Luis Reyes-Gaona filed this action against Defendants North Carolina Growers Association ("NCGA") and Del-Al Associates, Inc. ("Del-Al")

alleging violations of the Age Discrimination in Employment Act ("ADEA"), as amended, 29 U.S.C. § 621 et seq. This case is before the Court on Defendant Del-Al's Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, (Def. Del-Al's Mot. to Dismiss [Doc. # 7]), and on Defendant NCGA's **[*2]** Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, (Def. NCGA's Mot. to Dismiss [Doc. # 9]). For the reasons stated below, Defendants' motions are GRANTED. As there are no remaining claims, the case is DISMISSED.

I.

The facts, stated in the light most favorable to the Plaintiff, are as follows. Mr. Reyes-Gaona is a fifty-five-year-old man, a Mexican national, and a resident of Michoacan, Mexico. Defendant NCGA is a corporation that provides various services to its members, who are owners and operators of agricultural businesses in North Carolina. One of these services is assistance in securing foreign agricultural labor through the federal H-2A agricultural worker program. [1] Defendant Del-Al is a corporation that recruits this foreign labor for Defendant NCGA and its members.

[*3] In May 1998, Mr. Reyes-Gaona went to the office of Cipriano Molina, an employee of Defendant Del-Al who is located in Mexico. Mr. Reyes-Gaona asked to be placed on the list of workers seeking employment in North Carolina under the H-2A program. According to Mr. Reyes-Gaona, Mr. Molina told him that NCGA would not accept an application from a worker who is over forty years old, unless the person had worked for NCGA before.

II.

Mr. Reyes-Gaona then filed this lawsuit alleging that the Defendants had violated the ADEA. Defendants have moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

HN2[↑] In ruling on a Rule 12(b)(6) motion, the allegations in the complaint are assumed to be true, and "the facts and reasonable inferences derived therefrom" are construed in the light most favorable to the plaintiff. Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). Viewing the complaint in the light most favorable to the plaintiff, the court should not dismiss the case unless it appears certain that the plaintiff can prove no set of facts that would entitle him to relief. *See* Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). **[*4]**

A.

The Defendants first argue that Mr. Reyes-Gaona cannot establish a prima facie case of discrimination under ADEA because he was not qualified for employment. [2] HN3[↑] When the applicant is a foreign national, the Fourth Circuit has held that "being 'qualified' for the position is not determined by the applicant's capacity to perform the job -- rather, it is determined by whether the applicant was an alien authorized for employment in the United States at the time in question." Egbuna v. Time-Life Libraries, Inc., 153 F.3d 184, 187 (4th Cir. 1998) (en banc) (per curiam). *See also* Chaudhry v. Mobil Oil Corp., 186 F.3d 502, 504 (4th Cir. 1999).

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[1] HN1[↑] The H-2A program establishes a means for American employers, who anticipate a shortage of domestic agricultural labor, to apply for permission to recruit and employ foreign workers to perform agricultural labor or services of a temporary or seasonal nature in the United States. Before the Immigration and Naturalization Service ("INS") will approve an employer's application for such workers, the employer must certify that there are not sufficient domestic workers who are able, willing, qualified, and available. The employer must also certify that the employment of the foreign workers will not adversely affect the wages and working conditions of similarly employed American workers.

[2] HN4[↑] To establish a prima facie case of age discrimination, a plaintiff must prove that (1) he is a member of the protected class, that is, he is at least forty years old; (2) he was qualified for a job for which the employer was seeking applicants; (3) he was rejected despite his qualifications; and (4) the position remained open and the employer continued to seek or accept applications from persons with his qualifications outside the protected class. *See* Henson v. Liggett Group, Inc., 61 F.3d 270, 274 (4th Cir. 1995).

[*5] The plaintiff in *Egbuna*, a Nigerian national, sued his former employer under Title VII, alleging that the employer had refused to rehire him in retaliation for his having participated in another employee's discrimination suit. *See* Egbuna, 153 F.3d at 185. Because his visa had expired, the plaintiff was not authorized to work in the United States at the time that he approached his former employer about being rehired. *See id.* The Fourth Circuit found that the plaintiff had no cause of action against his employer because "his undocumented status rendered him ineligible both for the remedies he s[ought] and for employment within the United States." *Id. at 186*. The Fourth Circuit held that it could not allow a cause of action because

> to do so would sanction the formation of a statutorily declared illegal relationship, expose [the employer] to civil and criminal penalties, and illogically create an entitlement simply because [the Nigerian national] applied for a job despite his illegal presence in this country and despite his having been statutorily disqualified from employment in the United States. In this instance, to rule [the **[*6]** Nigerian national] was entitled to the position he sought and to order [the employer] to hire an undocumented alien would nullify [the Immigration Reform and Control Act of 1986], which declares it illegal to hire or to continue to employ unauthorized aliens.

Id. at 188. [3]

Similarly, at the time that Mr. Reyes-Gaona applied for the job with NCGA, Mr. Reyes-Gaona was not authorized to work in the United States. Had he been offered the job, he would have had to obtain an H-2A visa. Obtaining such a visa is not a foregone conclusion after the application is made. Among other things, the applicant for the visa must not have violated any conditions of entry into the United States within the past five years. *See* 8 U.S.C. § 1188(f) [4]; 8 C.F.R. § 214.2(h)(5)(viii)(A) [5]. If the **[*7]** applicant has held H-2A status for three years without interruption, then the applicant must remain outside of the United States for an uninterrupted period of six months before he or she may obtain a visa. *See* 8 C.F.R. § 214.2(h)(5)(viii)(C). The applicant must fully and truthfully disclose any information requested by the INS. *See* 8 C.F.R. § 214.1(f). The applicant must not have been convicted within the United States of a crime of violence for which a sentence of more than one year imprisonment may have been imposed, without regard to the length of sentence that was actually imposed. *See* 8 C.F.R. § 214.1(g). Thus, it cannot be said with certainty that Mr. Reyes-Gaona would have received an H-2A visa.

[*8] Even if Mr. Reyes-Gaona were to show that he met the requirements for an H-2A visa, *Egbuna* still requires that this claim be dismissed. In *Egbuna*, at the time of the court's decision, the plaintiff had temporary work authorization. *See* 153 F.3d at 186 n.4. Nevertheless, the court focused on whether the plaintiff was authorized for employment in the United States at the time of the alleged discriminatory action. Because Mr. Reyes-Gaona was not authorized to work in the United States at the time he met with Mr. Molina, Mr. Reyes-Gaona cannot show that he was qualified for employment.

Further, Mr. Reyes-Gaona, like the plaintiff in *Egbuna*, seeks an order compelling NCGA to hire

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[3] The Fourth Circuit then applied this rule in Chaudhry v. Mobil Oil Corp., 186 F.3d 502, 504 (4th Cir. 1999), where the plaintiff brought an action under ADEA.

[4] This section provides that "HN5[↑] an alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition or such previous admission." 8 U.S.C. § 1188(f).

[5] This section provides that "HN6[↑] an alien may not be accorded H-2A status who the Service finds to have violated the conditions of H-2A status within the prior five years. H-2A status is violated by remaining beyond the specific period of authorized stay or by engaging in unauthorized employment." 8 C.F.R. § 214.2(h)(5)(viii)(A).

him and to provide him with back pay and benefits. For this Court to find that Mr. Reyes-Gaona is entitled to equitable or legal relief would be sanctioning an illegal relationship because Mr. Reyes-Gaona was not authorized to work in the United States at the time that he applied for the job. The Fourth Circuit refused to sanction such a relationship in *Egbuna*. Accordingly, because Mr. Reyes-Gaona cannot show that he was qualified for employment in the United States, Mr. Reyes-Gaona cannot state **[*9]** a claim under the ADEA.

B.

The Defendants also argue that they are not subject to suit by a foreign national who resides outside of the United States for alleged violations of the ADEA relating to an application for employment within the United States. The Defendants argue that the plain language of the ADEA bars Mr. Reyes-Gaona's suit and cite *EEOC v. Arabian American Oil Co., 499 U.S. 244, 248, 113 L. Ed. 2d 274, 111 S. Ct. 1227 (1991)* (superseded by statute), for the principle that unless there is a clear statement by Congress to the contrary, there exists a strong presumption against extraterritorial application of United States laws. (Br. Supp. Def. NCGA's Mot. Dismiss [Doc. # 10] at 7 (citing *Arabian Am. Oil, 499 U.S. at 253*); Def. Del-Al's Br. Supp. Mot. Dismiss [Doc. # 8] at 3 (citing *Arabian Am. Oil, 499 U.S. at 249*).) Because of the Court's holding that the Plaintiff is not "qualified" for the position, this argument will not be addressed.

III.

For the reasons stated, Defendants' motions to dismiss under *Rule 12(b)(6) of the Federal Rules of Civil Procedure* are GRANTED. As no further claims remain, it is ORDERED that **[*10]** this case be, and the same hereby is, DISMISSED.

This the *22nd* day of June, 2000.

N. Carlton Tilley, Jr.

United States District Judge

JUDGMENT

For the reasons set forth in the Memorandum Opinion filed contemporaneously with this Judgment, Defendant Del-Al Associates, Inc.'s Motion to Dismiss under *Rule 12(b)(6) of the Federal Rules of Civil Procedure* [Doc. # 7] and Defendant North Carolina Growers Association's Motion to Dismiss under *Rule 12(b)(6) of the Federal Rules of Civil Procedure* [Doc. # 9] are GRANTED. As no further claims remain, it is ORDERED that this case be, and the same hereby is, DISMISSED.

This the *22nd* day of June, 2000.

N. Carlton Tilley, Jr.

United States District Judge

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