Emerging Issues: National Origin Discrimination in Employment

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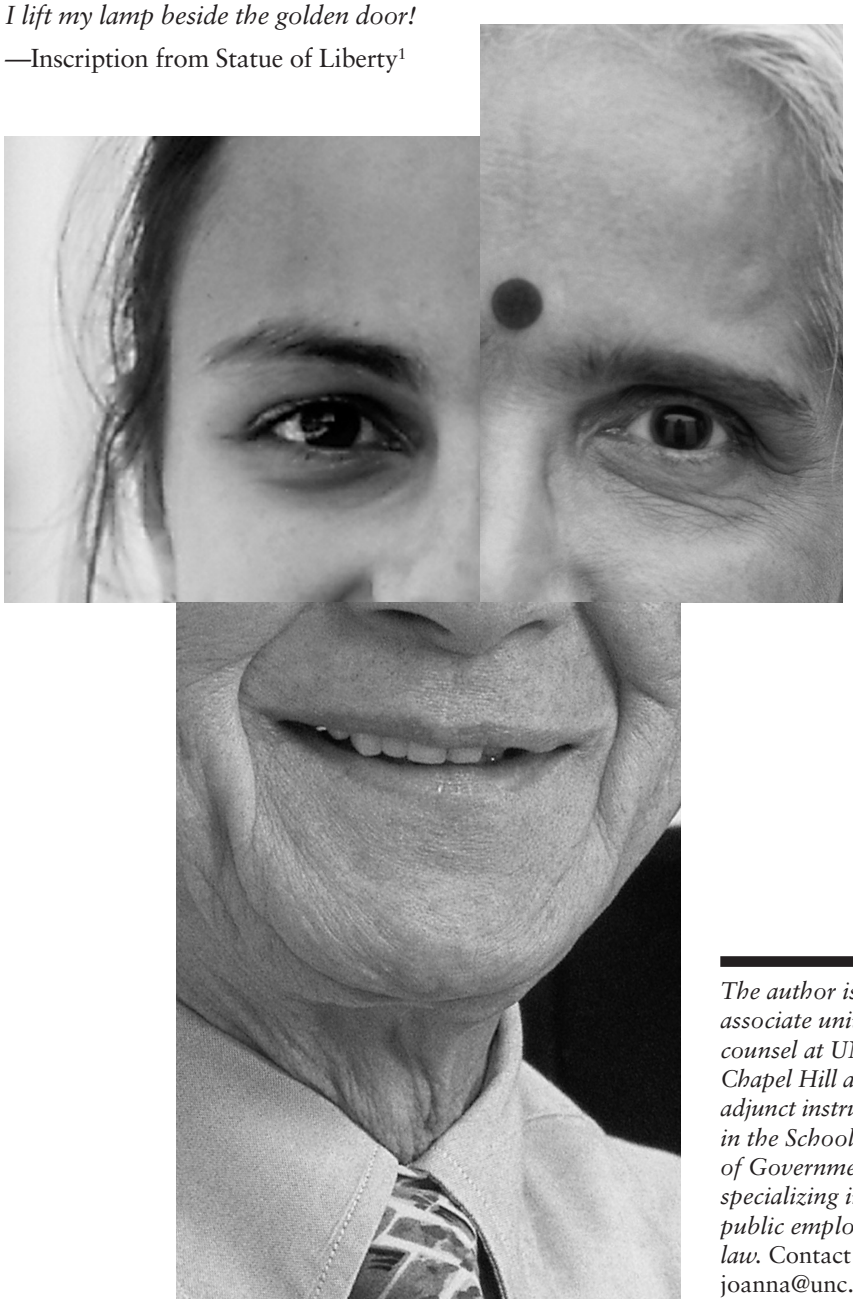
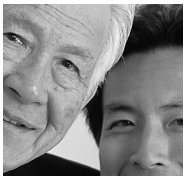
Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!
—Inscription from Statue of Liberty[1]





Over the past decade, the United States of America has welcomed more than 9 million legal immigrants.[2] In the year 2000, nearly 51 million temporary visitors came to the United States as tourists, business people, students, exchange visitors, specialized workers, and others.[3] Further, the Immigration and Naturalization Service estimates that in 1996 there were more than 5 million illegal immigrants in the country.[4]

This information underscores the special history of the United States. Almost all Americans can cite foreign countries as the homelands of their ancestors, who traveled to the land of opportunity. Such immigration has resulted in the much-used descriptions of America as a "melting pot" and "tossed salad." This shared history of starting anew has given America a national character unlike any other country. Accepting people from other places is ingrained in the national psyche.

North Carolina also is undergoing a shift in population demographics due to immigration. Within the state, Latinos are the fastest-growing population group.[5] North Carolina ranks fifth in the nation in the number of migrant and seasonal farm workers.

Despite the country's long history of welcoming immigrants, the terrorist attacks on September 11, 2001, have affected each American individually and all Americans collectively. Many are more suspicious of "strangers"—anyone who does not seem American—even as heterogeneous as Americans

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are. More telling, Americans have witnessed a retraction of their personal liberties in response to the tragedy. They must submit to increased security checks as they travel, and many are more suspicious of those traveling with them.[6]

At the federal level, Congress has enacted the USA PATRIOT Act, which gives broad authority to law enforcement officers to monitor and arrest people allegedly linked to terrorist activities, restricts the ability of some people to work in certain environments or with certain material, and allows disclosure of students' and employees' records to federal law enforcement officers without their consent.[7]

At the state level, North Carolina has been implementing a multifaceted response to potential bioterrorism attacks since 1999. Through its Division of Public Health, the state has dedicated resources to developing a statewide response plan, has conducted bioterrorism training for local governments, and has provided technical assistance to local governments developing their own response plans. The state also has authorized funds for forming regional teams to conduct public health surveillance, for purchasing information technology linking every local health department to the federal Centers for Disease Control and Prevention's Health Alert Network, for expanding the state's public health laboratory, and for creating a state bioterrorism team composed of experts in law enforcement, health, natural resources, environment, agriculture, transportation, research, and information technology.[8]

Additionally, North Carolina has enacted a law creating a statewide registry of laboratories that keep biological and chemical agents.[9] The law establishes civil penalties for those who violate the registry requirements.[10]

Most recently the state has received federal funds that will be used to implement a hospital bioterrorism preparedness program, to continue to develop and expand critical public health infrastructure, to review state laws to determine whether they provide for an adequate public health response to bioterrorism, and to conduct planning and training efforts.[11]

With this background it is not surprising that questions related to discrimination based on national origin have arisen. This article addresses the laws prohibiting national origin discrimination in employment, surveys relevant cases, and suggests steps that public-sector employers can take to demonstrate their commitment to diversity and tolerance in the workplace.

Federal Laws and Regulations on National Origin Discrimination

Title VII of the Civil Rights Act

The comprehensive federal law prohibiting discrimination in employment is Title VII of the Civil Rights Act.[12] It applies to all public and private employers with more than fifteen employees. Section 2000e-2 of Title VII makes it unlawful for employers to fail to hire, refuse to hire, discharge, or discriminate against people because of their race, color, religion, sex, or national origin. Further, employers may not "limit, segregate, or classify" employees or job applicants in any way that would deprive them of employment opportunities or adversely affect their status as an employee, because of their race, color, religion, sex, or national origin.

"National origin" is not defined in the statute. However, the Equal Employment Opportunity Commission (EEOC), the agency that enforces Title VII, has issued detailed regulations interpreting the statute, which give more substance to the term. The EEOC defines "national origin discrimination" as denial of equal employment opportunity because of a person's, or his or her ancestor's, place of origin; or because a person has the physical, cultural, or linguistic characteristics of a national origin group.[13] Through this definition one can infer that national origin encompasses accent, affiliation, "alienage" (alien status), ancestry, and appearance.

There are some exceptions to this broad prohibition on discrimination. For one, an employer may refuse to hire or promote a person, regardless of his or her national origin, when performance of the duties of the position, or access to the premises where any of the duties are to be performed, is subject to any federal requirement imposed in the interest of U.S. national security, and the person in question does not fulfill that requirement.[14] Note that this national security exception is not limited to national origin but includes any restriction imposed by the applicable federal statute or executive order.

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An employer also may refuse to hire or promote a person because he or she fails to meet a bona fide occupational qualification (BFOQ). A "BFOQ" is a requirement reasonably necessary to the normal operation of a particular business or enterprise. For example, a restaurant may impose certain hairstyle restrictions to ensure compliance with state health codes, and such restrictions may affect certain ethnic or religious groups.[15] The EEOC narrowly interprets the BFOQ exception, however. If an employer adopted a policy restricting employment of people of a particular national origin, the employer would have to demonstrate how the policy was necessary to the normal operation of its business. There are few positions or services in which a particular national origin will interfere with the normal operations of an employer, including a government agency or a public school or university.[16]

The EEOC also has defined the types of characteristics protected by Title VII. The EEOC closely examines charges

alleging that individuals have been denied equal employment opportunity because of such national origin considerations as the following:

- Marriage to or association with people of a national origin group
- Membership in, or association with, an organization identified with or seeking to promote the interest of national origin groups
- Attendance at or participation in schools, churches, temples, or mosques generally used by persons of a national origin group
- A person's name or his or her spouse's name being associated with a national origin group[17]

Additionally, EEOC regulations prohibit harassment based on national origin, using the same standards as those applied to sexual and racial harassment.[18] Further, EEOC regulations presume that requiring employees to speak only English in the workplace, if applied to all employees all the time, is a burdensome term of employment, and prejudices a person's employment opportunities on the basis of national origin.[19] English-only requirements are discussed further on page 21.

Immigration Reform and Control Act

The Immigration Reform and Control Act (IRCA) not only prohibits national origin discrimination[20] but also prohibits discrimination on the basis of citizenship against citizens or nationals of the United States and "intending citizens."[21] To claim protection under the act, a noncitizen must be an alien who (1) has been lawfully admitted as a permanent resident, (2) has been lawfully admitted as a temporary resident, (3) has been admitted as a refugee, or (4) has been granted asylum.[22] The protections granted by IRCA do not apply to aliens who do not seek naturalization within certain time limits.[23]

IRCA applies to all public and private employers with three or more employees. However, IRCA specifically addresses any potential overlap with EEOC complaints, providing that an employer facing a charge of discrimination under Title VII will not face a charge of an unfair, immigration-related employment practice under IRCA.[24] Further, IRCA permits an employer to discriminate on the basis of citizenship if it is "otherwise required to comply with law, regulation, or executive order, or required by Federal, State, or local government contract." Likewise, an employer may discriminate on the basis of citizenship when "the Attorney General determines [it] to be essential for an employer to do business with an agency or department of the Federal, State, or local government."[25] IRCA also expressly allows an employer to give preference to citizens over noncitizens in hiring, recruitment, or fee-based referral for employment if two applicants are equally qualified.[26]

Section 1981 of the U.S. Code

Section 1981 of the U.S. Code, which was enacted to implement the Thirteenth Amendment to the U.S. Constitution, prohibits race discrimination in employment contracts.[27] This law originated in the Civil Rights Act of 1866 and the Voting Rights Act of 1870.[28] It provides in part that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens. . . ."[29] "Make and enforce contracts" is defined to include "making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."[30] In other words, any involvement in a contractual relationship is protected.

Section 1981 applies to all public or private employers; no minimum number of employees is required.[31] Although the text of the law appears to prohibit only race discrimination, the Supreme Court has concluded that Congress also intended to protect those "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics."[32] A person therefore may be able to state a claim under Section 1981 on the basis of national origin discrimination.

The Supreme Court also has held that Section 1981 prohibits discrimination against aliens by public entities.[33] Further, the Fourth Circuit Court of Appeals, the federal appeals court with jurisdiction over North Carolina, has examined whether Section 1981 prohibits private discrimination on the basis of alienage.[34] The court concluded that the Voting Rights Act of 1870 barred such discrimination.[35] The court reasoned that "it would be strange indeed to hold . . . that this same grant of rights to 'all persons within the jurisdiction of the United States' does not also

confer on aliens protection against private discrimination in the making of contracts—under the plain language of the provision, 'all persons,' blacks and aliens, receive the same protections against discrimination."[36] In other words, a person may state a viable claim under Section 1981 against a public or private employer if he or she can demonstrate that he or she was prohibited from entering into an employment contract solely on the basis of alienage.

USA PATRIOT Act

Congress enacted the USA PATRIOT Act "to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes."[37] Most of the act is not relevant to employment discrimination based on national origin. However, one provision concerning biological weapons prohibits some people, including certain aliens, from working with "select agents" (substances such as certain viruses, bacteria, rickettsiae, fungi, toxins, and recombinant organisms).[38] First, the act prohibits any "alien illegally or unlawfully in the United States" from working with such agents.[39] Second, it prohibits a national of a country designated by the secretary of state as a supporter of international terrorism from working with select agents.[40] The term "alien" as used in the USA PATRIOT Act has the same meaning as in the Immigration and Nationality Act[41]—that is, "any person not a citizen or national of the United States."[42]

The USA PATRIOT Act further bars any person, regardless of alienage, from working with select agents if the person

- is under indictment for a crime punishable by imprisonment for a term exceeding one year;
- has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- is a fugitive from justice;
- is an unlawful user of any controlled substance (as defined in Section 102 of the Controlled Substances Act);[43]
- has been adjudicated as a "mental defective" or has been committed to any mental institution; or
- has been discharged from the Armed Services of the United States under dishonorable conditions.[44]

If a government agency performs research using select agents, it should adopt a policy or procedure to ensure that the foregoing restrictions are in place and monitored so that no person is hired in violation of the USA PATRIOT Act provisions.[45] Violations of the restrictions may result in a fine or imprisonment.[46]

State Laws and Regulations on National Origin Discrimination

North Carolina likewise prohibits discrimination based on national origin. The state constitution states that "no person shall be denied the equal protection of the law; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."[47] In the employment context, the state has enacted the State Personnel Act (SPA)[48] and the Equal Employment Practices Act (EEPA),[49] both of which prohibit discrimination based on national origin. The SPA governs conditions of employment for most state employees, including classification of positions, compensation ranges, leave earnings and retention, and eligibility to file grievances. The SPA also has provisions applicable to all state employees, such as those pertaining to the privacy of personnel records. An employee subject to the grievance and dispute resolution procedures established by the SPA must bring a national origin complaint under it.[50]

Also for employees subject to the SPA, the Office of State Personnel has implemented an Unlawful Workplace Harassment Policy that covers national origin harassment and provides a mechanism for resolution of complaints.[51]

Any other North Carolina employee of a private or public employer can allege that his or her discharge violated the public policy against national origin discrimination stated in the EEPA.[52] To bring a complaint of wrongful discharge in violation of public policy, a person must show that he or she was performing his or her job competently and was discharged in violation of an express policy in the North Carolina Constitution or General Statutes.[53] The EEPA contains such a statement. However, the EEPA does not describe any remedies.[54] A court addressing a complaint of wrongful discharge therefore will look to Title VII cases in analyzing whether the discharge was discriminatory and in fashioning an appropriate remedy. As yet, though, there have been no reported North Carolina cases on wrongful discharge based on national origin.

Cases on National Origin Discrimination

Many cases in both the private and the public employment context have further analyzed (and occasionally clarified) the definition of national origin discrimination under Title VII.

Courts have recognized two general kinds of claims under Title VII: disparate treatment and disparate impact. Claims of "disparate treatment" based on national origin arise when an employer treats an individual or a group differently from others because of national origin. These claims often are referred to as "intentional discrimination" claims. To state a claim of disparate treatment, a plaintiff must initially show that he or she is a member of the protected class, that he or she was qualified for the position in question, that he or she suffered an adverse employment action, and that there is a connection between his or her protected status and the action taken (or that he or she was replaced by someone not in the protected class). Claims of "disparate impact" based on national origin arise when a facially neutral policy or practice that is applied uniformly nevertheless affects a group negatively. To state a claim of disparate impact, a person must allege that he or she is a member of a protected class and that an employer's policy or practice has negatively affected that class.

In either case a person must make more than a conclusory allegation of discrimination. The person may not merely state that he or she is of a certain national origin and has suffered an adverse employment action. The person must provide information that supports a connection between the two facts.[55]

There have been no reported cases

interpreting North Carolina law in this area. However, the federal Title VII cases are informative because North Carolina courts are likely to use federal case law in analyzing state-based claims.

Always Speaking English

As noted earlier, EEOC regulations state that requirements that employees speak only English in the workplace all the time, in the absence of a BFOQ, will be presumed to violate Title VII.[56] For example, one federal district court held that dismissal of an employee for speaking two words of Spanish violated Title VII because the employer could provide no business justification for so rigidly restricting the use of Spanish.[57] Other courts have supported the EEOC's interpretation.[58]

EEOC regulations allow an employer to require that employees speak only English at certain times if the employer shows that a "business necessity" justifies such a requirement."[59] Courts have repeatedly found a sufficient business necessity to justify English-only rules. *Garcia v. Gloor* was the first case to address the issue substantively.[60] In this case the employer prohibited employees from speaking Spanish on the job unless they were communicating with Spanish-speaking customers. The employer gave several business reasons for the prohibition: making all employee communications understandable to English-speaking customers; helping train Spanish-speaking employees in the use of English; and permitting non-Spanish-speaking supervisors to understand and oversee the work of their subordinates better. The plaintiff in the case was a bilingual employee who was eventually fired for continuing to speak Spanish at work. The Fifth Circuit Court held that Title VII did not protect language preferences and that the employer's restriction did not amount to national origin discrimination.

In *Garcia v. Spun Steak Co.*, the Ninth Circuit Court of Appeals also upheld an employer rule that employees speak English while on the job.[61] The rule was established to promote racial harmony and enhance worker safety. The court stated that Congress enacted Title VII with the expectation that management prerogatives would be left undisturbed to the greatest extent possible. The court then reasoned that Title VII does not confer substantive privileges and that an employer is not required to allow employees to express their cultural identity. The court held that the bilingual employee was not denied a privilege of employment by the English-only policy because it did not have a significant impact on a protected group of employees.[62] The court extended its reasoning from an earlier case in which it had held that a bilingual Hispanic radio host could not sue for being discharged because he refused to speak only English on his program.[63]

A district court in the Fourth Circuit accepted similar reasoning in a case brought by bilingual employees who challenged the employer-bank's English-only requirement.[64] The employees were permitted to speak Spanish only to assist Spanish-speaking customers; they were otherwise required to speak English. The court held that the policy did not constitute national origin discrimination. It accepted the reasoning from *Garcia v. Spun Steak Co.*, stating that an employer has a right to define the parameters of the privilege of employment, defining when and where employees may converse while on the job, and prohibiting some manners of speech. The court also stated, "[D]enying bilingual employees the opportunity to speak Spanish on the job is not a violation of Title VII. There is nothing in Title VII which protects or

provides that an employee has a right to speak his or her native tongue while on the job."[65]

The *Garcia v. Spun Steak Co.* analysis also was applied in a Pennsylvania case in which a district court held that the employer-church's English-only rule did not constitute national origin discrimination when applied to a bilingual Polish-American employee.[66] According to the court, the church had a valid business justification for the rule: it was trying to improve interpersonal relations at the church and prevent alienation of church employees from church members.[67]

In light of these cases, an employer's English-only rule may be upheld if the employer has a legitimate work-related basis for the rule. For example:

- Promoting harmony among racial or national origin groups
- Enhancing workers' safety
- Enhancing product quality
- Preventing employees from using language to isolate or intimidate members of other ethnic groups
- Alleviating tension in the workplace[68]

Accent

Allegations of discrimination based on accent fall within the EEOC's protection of the linguistic characteristics of a national origin group.[69] Clearly a person's accent is immediate information that he or she is not a native of America, and allegations that an employment decision was taken on the basis of an employee's or an applicant's accent will be closely reviewed by the EEOC and the courts.

Accent cases have arisen in a variety of employment contexts. In a case involving denial of a promotion, the Ninth Circuit Court of Appeals held that a Pakistani-born auditor could introduce into evidence an administrator's comment, made in a demeaning tone, that he could not understand the auditor's accent and could not see how the auditor expected to be a supervisor if the auditor could not communicate with people.[70] In another case involving denial of a promotion, the Sixth Circuit Court of Appeals affirmed a district court decision that there was national origin discrimination when the employer did not know the employee's national origin but did know that the employee had a foreign accent.[71] The employee was a native of Poland who had earned a master's degree in communications and whose knowledge of English exceeded that of the average adult American, even though she retained a pronounced accent. The district court found that she had been denied two promotions because of her accent, "which flowed from her national origin."[72]

In a demotion case, the Tenth Circuit Court of Appeals held that an employee of Filipino origin was improperly demoted from laboratory supervisor to laboratory technician with less responsibility because of opinions held by some faculty members that his national origin and accent made him unsuitable as a supervisor.[73]

In a termination case, the Eighth Circuit Court of Appeals held that there was an inference that a supervisor's ill will played a role in the decision to discharge an Iranian ultrasound technologist and that the former employee could therefore proceed with her claim of national origin discrimination.[74] The supervisor had ridiculed the employee's accent and had made comments about foreigners taking jobs from Americans. Further, on note cards at home, the supervisor had compiled a list of allegedly substandard ultrasound exams performed by the employee, but she had kept no such lists on other employees.

However, although an employee may establish an initial claim of national origin discrimination based on accent, an employer may offer legitimate reasons for the action. For example, when an employee's accent interferes with his or her job performance, an employer may legitimately consider this effect in making employment decisions. The Ninth Circuit Court of Appeals recognized this possibility in a case holding that an adverse employment decision may be predicated on a person's accent when—but only when—the accent materially interferes with job performance.[75] The position in question in the case was clerk for Honolulu's motor vehicle department. It required constant public contact, in which speaking clearly was an important skill.

Similarly, employers may legitimately consider communication skills in deciding which customer service representatives to terminate in a workforce reduction, because customer service positions necessarily require communication with the public.[76] Also, employers may examine an employee's history of insubordination and interpersonal difficulties with co-workers when considering whether or not to take disciplinary action. A person's speaking with an accent does not shield him or her from the reasonable work expectations of the employer.[77]

A federal district court in North Carolina held that an insurance salesman who spoke with a strong accent was discharged for reasons other than his accent.[78] Although the employee had been a successful insurance agent before and after employment with the defendant insurance company, the court found that he was terminated for not selling enough insurance. The court further found that he had failed to comply with the company's training requirements and had violated company policy by airing grievances in the work environment.

In an educational setting, courts have affirmed that the ability to communicate clearly can be a job requirement for teachers. The Ninth Circuit Court of Appeals upheld a decision that found no national origin discrimination when a community college did not hire a woman of Indian national origin as an instructor because of her difficulty communicating in the English language.[79] Other courts have held that denying a promotion or tenure to a faculty member who had difficulty speaking English did not violate Title VII.[80]

The EEOC and the courts will closely examine any job-related decision allegedly based on accent to ensure that the employer's decision is justified and not a proxy for national origin discrimination.[81]

Affiliations

As noted earlier, the EEOC also protects people from national origin discrimination based on their affiliations, such as marriage to a member of a national origin group or participation in schools, churches, temples, or mosques generally used by people of a national origin

group.[82] This interpretation may go beyond the original intent of the statute and is not a common basis of complaint. However, it has been accepted by some courts.

In one case a female employee brought a complaint alleging that she was discharged, was refused reemployment, and was then barred from other employment because of her former employer's persistent release of false and derogatory references.[83] The District of Columbia Circuit Court of Appeals held that if the employee's discharge was based on her sex or her spouse's Arabic ancestry, the action constituted discrimination in violation of Title VII. In another case a district court held that the plaintiff's allegation of discrimination based in part on his parents' national origin was sufficiently associated with a charge of discrimination based on his own national origin.[84]

Employers should use these cases as reinforcement that an employment decision must be based on the employee's job-related qualifications or performance, rather than on his or her outside affiliations or associations. This is particularly true in the public sector, where the government should be especially attentive to an employee's right to freedom of association and should ensure that the employee's constitutional rights are honored.

Alienage or Citizenship

The EEOC does not consider an employment decision based on citizenship to violate Title VII unless it has the purpose or effect of discriminating against a person on the basis of national origin.[85]

The leading case under Title VII is *Espinoza v. Farah Manufacturing Company*.[86] In this case the Supreme Court held that Title VII protects aliens from illegal discrimination but does not make discrimination based on citizenship or alienage illegal. In *Espinoza* the employer refused to hire the plaintiff because of its long-standing policy of not hiring aliens. The plaintiff alleged that the refusal to hire her because of her alienage constituted national origin discrimination. The Court rejected this argument, finding no indication that the employer's policy against employment of aliens had the purpose or effect of discriminating against people of Mexican national origin. The Court noted that U.S. citizenship was required for federal employment and that interpreting "national origin" to encompass citizenship would result in a determination that Congress flouted its own declaration of policy. The Court found no reason to believe that "national origin" should be broader in scope for private employers than for the federal government.[87]

The line between citizenship and national origin is not always clear. For example, a Mississippi court heard the claim of an American who alleged that, after a Canadian consulting group began managing the defendant corporation, he was terminated in favor of a Canadian citizen who was less experienced and less qualified. The Canadian employer tried to have the case dismissed because the plaintiff stated his American citizenship as the basis of the complaint. The employer argued that Title VII does not protect citizenship. However, the court held that the American employee had intended to state a claim of national origin discrimination and that he could proceed with his case.[88]

An applicant, an employee, or a former employee therefore cannot succeed in a Title VII claim of national origin discrimination by alleging solely that his or her citizenship was the basis for the adverse employment decision. Other indicators of national origin discrimination must be involved to form the basis of the claim, and an applicant, an employee, or a former employee should not rely on the court to recraft a citizenship complaint into a national origin complaint. Employers should remember, however, that IRCA protects "intending citizens"[89] and that Section 1981 of the U.S. Code has been held to prohibit discrimination by public and private entities on the basis of alienage. So an applicant's, employee's, or former employee's claim based on citizenship alone may be actionable under other federal statutes.[90]

"American" National Origin

Courts have considered actions taken on the basis of an employee's *American* national origin to be a violation of Title VII. For example, the Seventh Circuit

Court of Appeals has stated, "[W]e may assume that just as Title VII protects whites from discrimination in favor of blacks as well as blacks from discrimination in favor of whites, so it protects Americans of non-Japanese origin from discrimination in favor of persons of Japanese origin."[91] Similarly a federal district court has held that "employment discrimination against American citizens *based merely on country of birth*, whether that birthplace is the United States or elsewhere, contradicts the purpose and intent of Title VII, as well as notions of fairness and equality."[92] These holdings are analogous to "reverse" race discrimination decisions.

One important consideration in these types of claims is whether the employer is an American company or a foreign one. Many countries have treaties with the United States that permit employment decisions to be made on the basis of citizenship.[93] So, for example, the Seventh Circuit Court of Appeals held that a Japanese company's preference for hiring Japanese citizens in executive positions did not constitute national origin discrimination against American citizens, in large part because of the express terms of a treaty of friendship between the two countries.[94] A treaty supersedes Title VII, and these holdings are an important reminder that national origin and citizenship are not interchangeable in alleging discrimination.

Given America's history of immigration, it is not surprising that someone may consider himself or herself to be an American, yet maintain ties to another country or heritage. Such a self-image was at issue in a case in which an Italian-American former employee of an Italian international airline alleged that his failure to be promoted to personnel manager for employees in the United States, Mexico, and Canada was discrimination on the basis of his American national origin.[95] The court framed the issue as "whether the plaintiff's national origin is American, because he was born in this country, or Italian, because his ancestors were born in Italy."[96] The employee contended that he had two national origins, but the court concluded that his national origin was Italian since his ancestors were Italian, and it held that he failed to state a claim when he was replaced by an Italian.[97] The court noted that "perhaps only American Indians can claim to be of American national origin for purposes of Title VII."[98] This reasoning was rejected in a later case. The court stated, "Under that rationale, then no one born in the United States, not even an American Indian (whose ancestry is actually Asian), could ever sue under Title VII for national origin discrimination. This would be an absurd result and is clearly foreclosed by the explicit holding in *Espinoza*."[99]

A better approach may be to analyze such claims on a case-by-case basis, determining how removed a person is from his or her ancestors' country (or countries) of origin or whether the person retains the physical, cultural, and linguistic characteristics of his ancestors' country (or countries) of origin as described by the EEOC. For example, a sixth-generation Italian-American who speaks fluent, accent-free English, dresses in American fashion, and maintains no connection to Italy might be considered to be of American national origin whereas a first-generation Italian-American might not.

Ancestry

Ancestry is the original and undisputed basis of coverage for national origin discrimination.[100] As one court has stated, "[N]ational origin on its face refers to the country where a person was born, or more broadly, the country from which his or her ancestors came."[101] Ancestry can apply to natives of the United States of America as well as to those of other countries.

Current geographical boundaries and divisions are not necessary to state a claim of national origin discrimination based on ancestry. Ancestry is covered even if the country of origin no longer exists. For example, the Ninth Circuit Court of Appeals ruled that a native of Serbia might be protected under Title VII even though Serbia was not a country at the time of the case.[102] Further, in another case that court ruled that a member of an Indian tribe might state a claim for national origin discrimination when he was not hired for a position because of his tribal membership.[103] The court held that a claim of national origin discrimination arises when discriminatory practices are based on the place in which one's ancestors lived. This definition does not require identification of a country. As the court stated, "[T]he different Indian tribes are generally treated as domestic dependent nations that retain limited powers of sovereignty."[104]

A person's ethnic background—not tied to a particular country or region—also may be the basis for a claim of national origin discrimination. For example, one court has found a native-born American of Acadian descent (Acadians are French people who settled in Louisiana) to be protected by Title VII.[105] Another court has held that being a Gypsy (one of a group that migrated from India to Europe in the fourteenth or fifteenth century and today maintains a migratory way of life) falls within Title VII's protection, making it an unlawful employment practice for an employer to discriminate against a person on the basis of that ancestry.[106]

Employers should ensure that ancestry is not used as a basis for employment decisions. More important, they should reinforce to all employees that ancestry is broader than a person's country of origin and can encompass heritages such as tribal status and ethnicity.

Appearance

A person's appearance, when related to his or her national origin, generally should not be a basis of consideration in a job-related decision. In a Louisiana case, two employees (one of Filipino ancestry and one of African-American ancestry) brought a complaint of national origin discrimination following their terminations.[107] The district court held that supervisors' comments about the plaintiffs' looks and skin complexion provided enough evidence of such discrimination.

Another district court has stated that having the appearance of a particular national origin group, without having the corresponding ancestry, is a sufficient basis for a claim of national origin discrimination. In a case involving a denial of a promotion and a hostile work environment based on the plaintiff-employee's alleged American Indian ancestry,[108] the employee had no discernible

Indian ancestry based on genealogical and census data. Additional information, however, demonstrated that the employee reasonably believed himself to be of Indian ancestry and that the employer treated him as being of Indian descent. The court stated, "[T]he employer's reasonable belief that a given employee is a member of a protected class . . . controls this issue." The court held that "objective appearance and employer perception are the basis for discrimination and . . . the key factors relevant to enforcing rights granted members of a protected class."[109]

These cases teach that appearance is not a valid basis for an employment decision. Employers should carefully evaluate an applicant's or employee's knowledge, skills, and abilities and use the resulting information to reach a decision. Employers should never make presumptions about national origin based on the way an applicant or an employee looks or dresses.

Conclusion

National origin discrimination has not been as pervasive a public problem in the workplace as race and sex discrimination have been. In fiscal year 2000, the EEOC received 7,800 national origin complaints.[110] For that same period, it received more than 59,000 Title VII complaints (race, sex, national origin, and religion).[111] However, national origin complaints may rise in the next few years. Both the increase in the number of immigrants to the United States and the focused world efforts against terrorism may cause some Americans to reconsider their ideas about national origin and the country's character. As national change and international unrest continue, managers must take care not to base employment decisions on factors unrelated to a person's ability to perform a particular job.

An employer can demonstrate its commitment to diversity and tolerance in the workplace in several ways. First, it can publicize its policies affirming commitment to and support of equal employment opportunity. Second, it can offer supervisors and managers training on national origin discrimination, defining permissible and impermissible factors to consider in making employment decisions, identifying harassing behaviors in the workplace among coworkers, and demonstrating how to minimize the potential for an unwelcome work environment for any employee. Third, it can periodically inform employees of processes available to address concerns across the organization about national origin harassment or discrimination, and promptly address any concerns brought forward.

Moreover, in times of uncertainty and crisis, public employers have a broad responsibility to ensure that minority opinions are heard and respected. Public employees and citizens must trust that the government will not squelch their opinions.[112] To preserve governmental integrity, public employers should actively provide employees, clients, and community members with access to opinions, ideas, and perspectives that cut across nationalities.

Notes

1. From the poem entitled *The New Colossus*, by Emma Lazarus.

2. *See* www.ins.gov for statistics related to immigration to the United States. From 1991 to 2000, the United States averaged 900,000 legal immigrants per year.

3. *See* information available from the United States Dep't of Commerce, Office of Travel and Tourism Industries, online at www.tinet.ita.doc.gov/view/q-2000-1st-001/index.html?ti_cart_cookie=20020411.190624.06599. This number is a marked increase from fiscal year 1999, in which 31 million temporary visitors came to the United States. *See* THE 1999 STATISTICAL YEARBOOK tbl. 35, available online at www.ins.gov/graphics/aboutins/statistics/Temp99tables.pdf.

4. IMMIGRATION AND NATURALIZATION SERV., THE TRIENNIAL COMPREHENSIVE REPORT ON IMMIGRATION 56 (Washington, D.C.: INS, May 1999), available online at www.ins.gov/graphics/aboutins/repsstudies/report.pdf.

5. *See* North Carolina Office of Minority Affairs, Hispanic/Latino Office, at http://minority affairs.state.nc.us/hispaniclatino/hislatfacts.htm.

6. The American-Arab Anti-Discrimination Committee cites knowledge of more than sixty cases in which people perceived to be Arab have been expelled from aircraft during or after boarding on the grounds that passengers or crew do not like the way they look. For more information about reports of discrimination against Arab-Americans following the September 11 attacks, see the American-Arab Anti-Discrimination Committee fact sheet available online at www.adc.org/index.php?id=282.

7. The formal name for this law is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Pub. L. No. 107-56, 115 Stat. 271 (2001).

8. *See* www.ncgov.com/asp/subpages/task_force_summary.asp.

9. H. 1472: An Act Directing the Department of Health and Human Services to Establish a Biological Agents Registry, and Imposing Civil Penalties for Violation of Registry Requirements. It became effective on January 1, 2002, and is codified at Section 130A-149 of the NORTH CAROLINA GENERAL STATUTES (hereinafter G.S.).

10. The civil penalty for a willful or knowing violation of the law can be up to $1,000 per instance, and each day of a continuing violation is a separate offense. j27
G.S. 130A-149(f).

11. For a more thorough discussion of the state's actions related to bioterrorism preparedness, *see* Jill D. Moore's article entitled "Unnatural Disasters: Bioterrorism and the Role of Government," in POPULAR GOVERNMENT, Summer 2002, at 4. North Carolina also has established an official Web site with comprehensive information related to the state's efforts to improve safety and security in the state: www.ncgov.com/asp/subpages/safety_security.asp.

12. 42 U.S.C. §§ 2000e through 2000e-17.

13. 29 C.F.R. § 1606.1.

14. 29 C.F.R. § 1606.3. *See also* 42 U.S.C. § 2000e-2(g).

15. 29 C.F.R. § 1606.4. *See also* 42 U.S.C. § 2000e-2(e).

16. A discussion of certain employment restrictions relevant to some public-sector positions appears in the section on the USA PATRIOT Act later in this article.

17. 29 C.F.R. § 1606.1.

18. 29 C.F.R. § 1606.8. Courts, including the Fourth Circuit Court of Appeals (whose decisions affect North Carolina), have accepted national origin harassment claims as well. *See* Amirmokri v. Baltimore Gas & Electric Co., 60 F.3d 1126 (4th Cir. 1995); Boutros v. Canton Regional Transit Auth., 997 F.2d 198 (6th Cir. 1993).

19. 29 C.F.R. § 1607(a).

20. 8 U.S.C. § 1324b(a)(1)(A).

21. 8 U.S.C. § 1324b(a)(1)(B).

22. 8 U.S.C. § 1324b(a)(3)(B).

23. *Id.*

24. 8 U.S.C. §§ 1324b(a)(2)(B), 1324b(b)(2). Section 1324b(b)(2) states, in part, "[N]o charge may be filed respecting an unfair immigration-related employment practice . . . if a charge with respect to that practice based on the same set of facts has been filed with the EEOC under Title VII of the Civil Rights Act

of 1964, unless the charge is dismissed as being outside the scope of such title."

25. 8 U.S.C. § 1324b(a)(2)(C).

26. 8 U.S.C. § 1324b(a)(4).

27. The Thirteenth Amendment (Slavery and Involuntary Servitude) to the Constitution reads in its entirety:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

28. *See* Civil Rights Act of 1866 ch. 31, § 1, 14 Stat. 27 (1866); Voting Rights Act of 1870 ch. 114, § 18, 16 Stat. 140 (1870). *See also* Runyon v. McCrary, 427 U.S. 160, 168–70 (1976).

29. 42 U.S.C. § 1981(a). Before the 1991 amendments, this section constituted the entire text of Section 1981.

30. 42 U.S.C. § 1981(b).

31. 42 U.S.C. § 1981(c). There was some discussion before the 1991 amendments about whether Section 1981 covered discrimination by private entities. However, the discussion was rendered moot by the addition of this section, which reads in its entirety, "The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law." *See* Pub. L. No. 102-166, § 101, 105 Stat. 1071 (1991).

32. St. Francis College v. Al-Khazraji, 481 U.S. 604, 613 (1987). *See also* Alizadeh v. Safeway Stores, 802 F.2d 111, 114 (5th Cir. 1986) (holding that white woman married to man of Iranian national origin established claim under Section 1981 by alleging that her employer discriminated against her because her husband was of "a race other than white"); Ortiz v. Bank of America, 547 F. Supp. 550, 568 (E.D. Ca. 1982) (holding that plaintiff of Puerto Rican descent and accent who was denied promotions and eventually terminated had cause of action under Civil Rights Act).

33. *See* Graham v. Richardson, 403 U.S. 365, 377 (1971).

34. *See* Duane v. GEICO, 37 F.3d 1036 (4th Cir. 1994).

35. *Id.* at 1041. *See also* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 426 (1968); Runyon v. McCrary, 427 U.S. 160, 170–71 (1976).

36. *Duane*, 37 F.3d at 1043. This reasoning was later adopted by the Second Circuit Court of Appeals in Anderson v. Conboy, 156 F.2d 167 (2nd Cir. 1998) (holding that Section 1981 proscribes alienage discrimination by private entities with respect to right to make and enforce contracts).

37. Pub. L. No. 107-56, 115 Stat. 272 (2001).

38. Pub. L. No. 107-56, § 817, 115 Stat. 272, 385 (2001). The biological weapons provisions are found at 18 U.S.C. §§ 175–178. Select agents are defined in 42 C.F.R. § 72.6(j) and specified in 42 C.F.R. pt. 72, app. A. They do not include biological agents or toxins exempted in 42 C.F.R. § 72.6(h) and 42 C.F.R. pt. 72, app. A.

39. Pub. L. No. 107-56, § 817, 115 Stat. 272, 386 (2001), *amending* 18 U.S.C. §§ 175–178 (Biological Weapons).

40. *Id.* Currently the secretary of state has determined that Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria are banned countries for this purpose.

41. Pub. L. No. 107-56, § 817, 115 Stat. 272, 386 (2001), *citing* the Immigration and Nationality Act at 8 U.S.C. § 1101(a)(3).

42. 8 U.S.C. § 1101(a)(3).

43. 21 U.S.C. § 802.

44. Pub. L. No. 107-56, § 817, 115 Stat. 272, 386 (2001).

45. The Bioterrorism Act recently enacted by Congress to strengthen the nation's preparedness for bioterrorism and other public health emergencies also requires background checks and registration of people working with select agents. Pub. L. No. 107-188, § 201, 116 Stat. 594, 637–646 (2002). Also, if an employer uses an outside company to perform any criminal record (or other background) check on applicants for these positions, it must comply with the notice and use provisions of the Fair Credit Reporting Act. A detailed discussion of the requirements of that act is beyond the scope of this paper. It can be found at 15 U.S.C. §§ 1681–1681u.

46. Pub. L. No. 107-56, § 817, 115 Stat. 272, 386 (2001).

47. N.C. CONST. art. I, § 19.

48. G.S. 126-16. This section reads as follows: "All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to . . . national origin, to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications [BFOQ] necessary to proper and efficient administration." Note that the BFOQ exception does not include national origin.

49. G.S. 143-422.1 through -422.3. The EEPA states, "[I]t is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of . . . national origin." G.S. 143-422.2.

50. Current and former state employees must bring their complaints of national origin discrimination under G.S. 126-34.1(a)(2) and -34.1(a)(10). Applicants for state employment must bring their complaints under G.S. 126-34.1(b). These statutes provide for a hearing before the Office of Administrative Hearings.

51. 25 N.C.A.C. § 1C.0214.

52. One of the fundamental principles of employment in North Carolina is employment at will. *See* Sides v. Duke Univ., 74 N.C. App. 331, *disc. review denied*, 314 N.C. 331 (1985). *See also* Kurtzman v. Applied Analytical Indus., 347 N.C. 329 (1997). "Employment at will" means that either the employer or the employee may terminate the relationship at any time for any reason or for no reason, but an employee may not be discharged for an illegal reason. There is a court-made, or common law, exception to this doctrine: an employer may not discharge an employee if doing so would contravene public policy.

53. *See* Considine v. Compass Group, USA, 145 N.C. App. 314, 320–21 (2001).

54. An employee may bring a claim under Title VII and a concurrent wrongful discharge claim based on a violation of North Carolina public policy. *See* Hughes v. Bedsole, 913 F. Supp. 420, 429 (E.D.N.C. 1995), *aff'd*, 48 F.3d 1376 (4th Cir. 1995). However, in enacting the EEPA, "the North Carolina legislature chose not to provide any remedies beyond those available under federal discrimination statutes. It is unlikely that the North Carolina courts would disturb this legislative decision by providing a common law remedy for wrongful discharge beyond the procedure envisioned by Title VII." Percell v. IBM, 765 F. Supp. 297, 302 (E.D.N.C. 1991), *aff'd*, 23 F.3d 402 (4th Cir. 1994). *See also* Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979). There is no legislative history to explain why the legislature chose not to establish a separate remedial scheme. Note, though, that a tort claim, such as wrongful discharge in violation of public policy, may be heard in a state court instead of a federal court. In that circumstance a discharged employee has a longer period in which to file a complaint.

55. *See, e.g.,* Bender v. Suburban Hosp., 159 F.3d 186 (4th Cir. 1998); Simpson v. Welch, 900 F.2d 33 (4th Cir. 1990).

56. 29 C.F.R. § 1606.7(a).

57. Saucedo v. Brothers Well Serv., 464 F. Supp. 919 (S.D. Tex. 1979).

58. EEOC v. Premier Operator Servs., 113 F. Supp. 2d 1066, 1073 (N.D. Tex. 2000) ("[A] blanket policy or practice prohibiting the speaking of a language other than English on an employer's premises at all times, except when speaking to non-English speaking customers, violates Title VII's prohibition against discrimination based on national origin"); EEOC v. Synchro-Start Prods., 29 F. Supp. 2d 911 (N.D. Ill. 1999) (holding that employer's English-only rule supported national origin claim under Title VII). Some courts have rejected the EEOC presumption against English-only policies, however. *See, e.g.,* Garcia v. Spun Steak Co., 998 F.2d 1480, 1490 (9th Cir. 1993) ("[W]e are not aware of

. . . anything in the legislative history to Title VII that indicates that English-only policies are to be presumed discriminatory"); Long v. First Union Corp. of Va., 894 F. Supp. 933, 940 (E.D. Va. 1995) ("The EEOC's determination that the mere existence of an English-only policy satisfies the plaintiff's burden of proof is not consistent with the drafting of the statute but is rather agency-created policy. The plaintiff still bears the burden of showing a *prima facie* case of discrimination"); Kania v. Archdiocese of Philadelphia, 14 F. Supp. 2d 730, 735–36 (E.D. Pa. 1999) ("Despite the deference ordinarily due to official administrative guidelines and regulations, such guidelines and regulations may not exceed the authority of the statute they purport to interpret. . . . Therefore, the Court shall disregard the EEOC Guidelines in determining whether the Defendants have engaged in national origin discrimination"). All these cases are discussed in more detail within this section.

59. 29 C.F.R. § 1606.7(b).

60. Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980).

61. *Garcia v. Spun Steak Co.*, 998 F.2d 1480. *See also* Tran v. Standard Motor Prods., 10 F. Supp. 2d 1199, 1210 (D. Kan. 1998) (holding that policy requiring employees to speak English during meetings and while working did not constitute hostile work environment in violation of Title VII when there was legitimate business reason for enacting policy, no evidence that policy was strictly enforced or any employee was ever disciplined for violating policy, and no adverse action or effect on employee-complainant).

62. *Id.* at 1487–88.

63. Jurado v. Eleven-Fifty Corp., 813 F.3d 1406 (9th Cir. 1987).

64. Long v. First Union Corp. of Va., 894 F. Supp. 933 (E.D. Va. 1995). The Fourth Circuit Court of Appeals affirmed this opinion in *Long*, an unpublished decision at 86 F.3d 1151, 1996 WL 281954 (4th Cir. 1996). With an "unpublished" decision, the text of the case is available for review, but the case cannot be cited as precedent for future claims.

65. *Long*, 894 F. Supp. at 941.

66. Kania v. Archdiocese of Philadelphia, 14 F. Supp. 2d 730 (E.D. Pa. 1999).

67. Although Title VII contains an exemption for religious organizations with respect to employment discrimination based on religion, the exemption does not extend to a religious employer's alleged discrimination based on other protected characteristics. 42 U.S.C. § 2000e-1(a).

68. *See also* Garcia v. Gloor, 628 F.2d 264, 267 (5th Cir. 1980).

69. 29 C.F.R. § 1606.1.

70. Hashem v. California State Bd. of Equalization, 200 F.3d 1035 (7th Cir. 2000).

71. Berke v. Ohio Dep't of Pub. Welfare, 628 F.2d. 980 (6th Cir. 1980).

72. *Id.* at 981.

73. Carino v. University of Okla. Bd. of Regents, 750 F.2d 815 (10th Cir. 1984).

74. Hossaini v. Western Mo. Medical Ctr., 97 F.3d 1085 (8th Cir. 1996).

75. Fragante v. Honolulu, 888 F.2d 591, 596 (9th Cir. 1989).

76. Meng v. Ipanema Shoe Corp., 73 F. Supp.2d 392 (S.D.N.Y. 1999).

77. Bozicevich v. American Airlines, 17 BNA Fair Empl. Prac. Cas. 247 (S.D.N.Y. 1977).

78. Bell v. Home Life Ins. Co., 596 F. Supp. 1549 (M.D.N.C. 1984).

79. Gideon v. Riverside Community College Dist., 43 BNA Fair Empl. Prac. Cas. 910 (C.D. Cal. 1985), *aff'd,* 800 F.2d 1145 (9th Cir. 1986).

80. *See* Kureshy v. City Univ. of N.Y., 561 F. Supp. 1098 (E.D.N.Y. 1983) (holding that associate professor of geology, a native of India who was denied promotion to full professor on four occasions and ultimately denied tenure, could not show that he was exceptional teacher as required by university); Hou v. Pennsylvania, Dep't of Educ., Slippery Rock State College, 573 F. Supp. 1539 (W.D. Pa. 1983) [holding that associate professor of mathematics of Chinese origin who was denied promotion to full professor six years in a row made *prima facie* case of national origin discrimination but that college offered legitimate and nondiscriminatory reasons for decision (average teaching and inadequate committee work)].

81. 45 Fed. Reg. 85,632 (Dec. 29, 1980).

82. 29 C.F.R. § 1606.1.

83. Shehadeh v. Chesapeake & Potomac Tel. Co. of Md., 595 F.2d 711 (D.C. Cir. 1978).

84. Fix v. Swinerton and Walberg Co., 320 F. Supp. 58 (D. Colo. 1970).

85. 29 C.F.R. § 1606.5.

86. Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973).

87. *Id.* at 91.

88. McMillan v. Delta Pride Catfish, 1998 WL 911775 (N.D. Miss. 1998).

89. 8 U.S.C. § 1324b(a)(1)(B).

90. *See* Graham v. Richardson, 403 U.S. 365, 377 (1971); Duane v. GEICO, 37 F.3d 1036 (4th Cir. 1994).

91. Fortino v. Quasar Co., a Div. of Matsushita Elec. Corp. of America, 950 F.2d 389, 392 (7th Cir. 1991).

92. Thomas v. Rohner-Gehrig Co., 582 F. Supp. 669, 675 (N.D. Ill. 1984) (emphasis added).

93. *Id. See also* MacNamara v. Korean Air Lines, 862 F.2d 1135, 1144 (3d Cir. 1988) (holding that Korean company had right to choose citizens of its own nation as executives); Wickes v. Olympic Airways, 745 F.2d 363, 368 (6th Cir. 1984) (holding that 1951 treaty between United States and Greece afforded Greek corporations only a narrow right to discriminate in favor of Greek citizens in filling managerial and technical positions in Greek airline's American-based offices and did not give Greek airline license to discriminate against or among non-Greek citizens hired for positions not covered by treaty on basis of race, sex, national origin, or any other factors prohibited by Michigan law).

94. *Fortino* at 393–94. The court found that the company treated Japanese-American employees the same as other American employees. This finding supported the company's defense that it was making decisions on the basis of citizenship, not national origin.

95. Vicedomini v. Alitalia Airlines, 1983 WL 616 (S.D.N.Y. 1983).

96. *Id.* at *4.

97. *Id.*

98. *Id.*

99. *McMillan*, 1998 WL 911775, at *2.

100. *See* 42 U.S.C. § 2000e(b).

101. Thomas v. Rohner-Gehrig Co., 582 F. Supp. 669 (N.D. Ill. 1984).

102. Pejic v. Hughes Helicopters, 840 F.2d 667 (9th Cir. 1988). At the time, Serbia was a part of Yugoslavia.

103. Dawavendewa v. Salt River Project Agric. Improvement and Power Dist., 154 F.3d 1117, 1119 (9th Cir. 1998).

104. *Id.* at 1120. The EEOC has provided guidance in this area through a Policy Statement on Indian Preference under Title VII (1998). It states that the exemption for Indian preferences found at 42 U.S.C. § 2000e(i), which permits businesses near an Indian reservation to announce publicly an employment practice of preferential treatment for any person who is an Indian living on or near a reservation, does not allow discrimination based on tribal affiliation.

105. Roach v. Dresser Indus. Valve Instrument Div., 494 F. Supp. 215 (W.D. La. 1980).

106. Janko v. Illinois State Toll Highway Auth., 704 F. Supp. 1531 (N.D. Ill. 1989).

107. Johnson v. Fleet Mortgage Corp., 878 F. Supp. 71 (E.D. La. 1995).

108. Perkins v. Lake County Dep't of Utils., 860 F. Supp. 1262 (N.D. Ohio 1994).

109. *Id.* at 1277–78.

110. *See* www.eeoc.gov/stats/origin.html.

111. *See* www.eeoc.gov/stats/vii.html.

112. In THE LOGIC AND LIMITS OF TRUST, Bernard Barber argues that trust is fundamentally about expectations. Citizens expect technically competent role performance from their government, which may involve "expert knowledge, technical facility, or everyday routine performance." Additionally, public employees must have cognitive and moral expectations for themselves, other employees, and the governmental system. BARBER, THE LOGIC AND LIMITS OF TRUST 9 (New Brunswick, N.J.: Rutgers Univ. Press, 1983).