

Spouse of Undocumented Alien Fails to State Discrimination Claim

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The federal Court of Appeals in Chicago recently ruled that an employer did not violate Title VII when it terminated the employment an employee for being the spouse of an “illegal” alien. See *Cortezano v. Salin Bank & Trust Company*, 2012 WL 1814258 (7th Cir. May 21, 2012).

In 2007, Salin Bank & Trust Co. hired Kristi Cortezano. At that time, Kristi had been married to Javier Cortezano, an illegal alien from Mexico, for six years. While employed at Salin Bank, Kristi named Javier joint owner of her bank account, and helped him open two bank accounts under his individual tax identification number.

Kristi eventually revealed Javier’s unauthorized status to her supervisor; who then notified the bank’s security officer. Concerned about the legality of Javier being on the various bank accounts, the security officer called a meeting with Kristi and her supervisor. At the meeting, Kristi admitted that Javier had illegally entered the U.S., but reported that that he was currently in Mexico trying to obtain U.S. citizenship. The security officer emphasized his concern that Javier was an “illegal alien from Mexico,” and that the accounts must have been opened using fraudulent documentation. That first meeting became heated and ended poorly.

Kristi and her attorney then attempted to schedule a follow-up meeting with the bank. The bank refused, however, to conduct the meeting with Kristi’s attorney present, and she in turn refused to attend without her attorney. She walked out, and shortly thereafter the bank sent her a letter terminating her employment for refusing to participate in the meeting. The next day, the bank reported its findings to federal immigration authorities.

Kristi filed suit against the bank alleging national-origin discrimination under Title VII and several state-law claims. The trial court granted the bank’s motion for summary judgment and Kristi appealed.

On appeal, the court first examined whether discrimination based on the national origin of a person’s spouse falls within the protections of Title VII. It noted that while its sister courts have ruled that Title VII’s protections apply in such cases, it did not need to decide that issue here as it was immaterial to Kristi’s case. The court agreed with the bank that it had proven it terminated Kristi’s employment because of her husband’s status as an illegal alien, not because he was from Mexico.

Having found that the bank’s actions were predicated on Javier’s (illegal) alienage, the court then examined whether Title VII guards against alienage-based discrimination. The court expressed plainly, “it does not,”

finding that “national origin” under Title VII means merely the country from which you or your forbears came. Accordingly, the court held that Title VII encompasses discrimination based on one’s ancestry, but not on one’s citizenship or immigration status. As to citizenship/immigration discrimination, the court noted that Kristi had not brought a claim under the Immigration Reform and Control Act (IRCA), a statute that does prohibit discrimination based upon national origin or citizenship status. It noted, however, that such a claim would have been pointless anyway as IRCA’s protections do not extend to “unauthorized aliens.”

Accordingly, the court upheld the district court’s grant of summary judgment to the bank, finding that any discrimination suffered by Kristi was not the result of her marriage to a Mexican, but rather the result of her marriage to an unauthorized alien.

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