STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
LEOPOLDO ARISTOY,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2005CN2266
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	06-254
	)		
JIM BEAM BRANDS CO.,	)		
	)		
	)		
Respondent.	)		

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)
LEOPOLDO ARISTOY,	)
Complainant,	)
and	)**Charge No: 2005CN2266**
	)**EEOC No: N/A**
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JIM BEAM BRANDS CO.,	)
Respondent.	)

RECOMMENDED ORDER AND DECISION

On August 18, 2006, the Illinois Department of Human Rights filed a Complaint on behalf of Complainant alleging that Respondent discriminated against Complainant on the basis of his citizenship status. A public hearing on the merits of the Complaint was held on December 6, 2007. Respondent was represented by counsel, Complainant was represented *pro se*.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Complainant contends that he was aggrieved by practices of harassment based on his citizenship status in violation of the Illinois Human Rights Act, (Act) 775 ILCS 5/1-101 *et seq*. Respondent denies that it illegally harassed Complainant.

FINDINGS OF FACT

The following facts were determined to have been proven by a preponderance of the evidence or by admissions in the pleadings. Assertions made at the public hearing which are not addressed herein were determined to be unproven or immaterial to this decision.

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on February 1, 2005. The Department filed a Complaint, on

behalf of Complainant, with the Illinois Human Rights Commission on August 18, 2006.

2. Respondent is a marketer and distributor of beverage alcohol brands, such as *Jim Beam* and *Maker's Mark*.

3. Respondent hired Complainant as an Associate Marketing Manager on April 1, 2004. At the time Complainant was employed by Respondent, Complainant's citizenship status was H1B Visa.

4. Although Complainant was discharged on January 3, 2005, Complainant's discharge is not at issue in this matter.

5. Complainant's direct supervisor was Kevin Howard (Howard), Respondent's Director of International Marketing. Howard's direct supervisor was David Racicot (Racicot), Respondent's Senior Director of Global Marketing.

6. Racicot began working for Respondent in January, 2003 as Director of Brand Development. Racicot was Senior Director of Global Marketing from 2003 until 2005; then Racicot assumed the position of Vice-President of Global Marketing. Racicot made the decision to hire Complainant, approved Complainant's visa status and worked to get Complainant's visa status approved so that Complainant could work for Respondent.

7. In 2004, two employees with H1B Visa status reported directly or indirectly to Racicot: Catherine Hu, a Chinese national, who held the position of Marketing Manager for International; and Complainant, who held the position of Associate Brand Manager for International. Hu still works for Respondent and has been promoted several times.

8. Racicot was in charge of a Jim Beam brand development workshop held in Louisville, Kentucky in 2004 in September or October. Racicot did not invite Complainant to the meeting because it was a meeting involving a higher order of

strategic discussion and was not appropriate for associate brand managers. Racicot did not invite any associate brand managers to attend that meeting. Catherine Hu was invited and attended the meeting in her position as Marketing Manager.

9 Mary Jill Forbes (Forbes) was Recruiting Administrator for Respondent at the relevant time period. As Recruiting Administrator, Forbes' duties included trial arrangements for incoming candidates, working with the candidates, scheduling with the various departments for candidates to come in, EEOC reporting, and keeping reports that were needed by management for meetings. Forbes is still employed with Respondent as a Human Resources Generalist.

10. Complainant engaged in three or four conversations with Forbes regarding his work situation and concerns from June, 2004 until October, 2004. During these conversations, Complainant discussed his concerns about Howard and voiced his opinion that he lacked respect for Howard, and that he believed Howard lacked organization skills and professionalism. Complainant also expressed interest in transferring to another marketing department within Respondent.

11. In September, 2004, Complainant complained to Racicot that Howard was disorganized.

12. Michael Goldberg (Goldberg) has worked for Respondent for approximately fifteen years and has been the head of the human resources department for twelve of the past fifteen years. At the relevant time, Goldberg was Senior Vice-President of Human Resources.

13. Respondent has had a harassment policy in place for the past twelve years and had one in place in 2004. A summary of the policy, at page 14 of *Jim Beam Brands Worldwide, Inc. Code of Conduct* (Respondent's Exhibit 7), states in pertinent part, "If any employee believes they are being harassed, immediately notify any member of Jim Beam Brands management or the Compliance Committee, the General

Counsel, the Human Resources Department or any manager. Such complaints will be promptly investigated, and efforts will be made to keep such complaints and investigations confidential "

14. Respondent disseminates its harassment policy to employees in their new hire packet when they are hired and the policy is discussed with them by the human resources representative during their new hire orientation.

15. On April 1, 2004, Complainant signed an acknowledgment that he received a copy of the harassment policy, read it, understood it and agreed to follow the established rules.

16. Complainant never made any complaints of harassment to Goldberg, Racicot, or Forbes at any time during his employment with Respondent.

17. Complainant was discharged by Respondent on January 3, 2005 and Racicot hired a Peruvian national, who also required an H1B Visa, to replace Complainant.

CONCLUSIONS OF LAW

1. Complainant is an "employee" and Respondent is an "employer" as defined by the Act.
2. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this action.
3. Complainant has not established a *prima face* case of discrimination based on citizenship status.

DETERMINATION

Complainant has not established, by a preponderance of the evidence, that Respondent unlawfully discriminated against him based on his H1B citizenship status.

DISCUSSION

A complainant bears the burden of proving discrimination by a preponderance of the evidence, in accordance with the Act at section 8A-102(I). Typically, the complainant

may prove discrimination through indirect means by establishing a *prima facie* case of unlawful discrimination pursuant to the three part analysis set out in *McDonnell Douglas Corp. v. Green,* 411 U.S. 793, 93 S.Ct. 1817 (1973) and *Texas Dept of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in *Zaderaka v. Illinois Human Rights Commission*,131 Ill.2d 172, 545 N.E.2d 674 (1989). Once the complainant has demonstrated a *prima facie* case, the employer must then articulate a legitimate, non-discriminatory reason for the adverse employment action. For complainant to prevail, he must then prove that Respondent's articulated reason is pretextual.

Complainant's claim falls within the category of *disparate treatment in the terms and conditions of employment*. The Act provides that an employer has a duty to afford all employees equal terms and conditions of employment. *Smith and Cook County Sheriff's Office,* IHRC 1077(RRP), October 31, 2005. In order to prove a *prima facie* case of disparate treatment in the terms and conditions of employment, Complainant has to prove (1) that he is in a protected class; (2) that he was treated in a particular adverse manner by Respondent; and (3) that similarly situated employees outside his protected class were treated more favorably. *Hu and Allstate Insurance Co.*, IHRC, 6082, June 16, 1995.

The record provides proof of Complainant's first element of his *prima facie* case. In its verified answer to the Complaint, Respondent admits that during the time Complainant was employed by Respondent, his citizenship status was H1B Visa. There are problems, though, with Complainant's proof on the other two elements.

Respondent, a marketer and distributor of beverage alcohol brands, such as *Jim Beam* and *Maker's Mark*, hired Complainant in April, 2004, as an Associate Marketing Manager. Complainant alleges that he was subjected to adverse treatment in the form of three main incidents of harassment perpetrated by two of his supervisors, Kevin

Howard (Howard), Respondent's Director of International Marketing, and Dave Racicot (Racicot), Respondent's Senior Director of Global Marketing. Complainant reported directly to Howard and Howard reported to Racicot.

Specifically, Complainant complains that from September, 2004 through November, 2004, Howard and Racicot: (a) removed him from several projects; (b) intentionally excluded him from several meetings; and (c) warned him not to go to Human Resources raising complaints about management staff and threatened to discharge him by telling him that he should remember that "he is here on a Visa."

Complainant's evidence that he was removed from *several* projects and intentionally excluded from *several* meetings was profoundly lacking. During his direct examination, Complainant made only vague references to meetings and projects he was alleged to have been excluded from. Complainant established no foundation and merely asserted that he was excluded from several meetings that took place from September, 2004 to December, 2004.

Complainant did, however, present proper foundation as to one specific meeting held in Kentucky in 2004 in September or October that he alleges he was excluded from based on his H1B Visa status. Complainant testified that he should have been invited to the Kentucky meeting because it was a follow-up to a previous meeting held in London that he had been invited to participate in. Although Complainant failed to identify any such persons, Complainant stated that colleagues on his level were invited to the Kentucky meeting.

Racicot testified that he was in charge of the Jim Beam brand development workshop held in September or October of 2004 in Louisville, Kentucky referenced in Complainant's testimony. Racicot said that he made the decision not to invite Complainant to the meeting because it was a meeting involving a "higher order of strategic discussion in terms of our overall global performance" that was not appropriate

for associate brand managers. Racicot testified that he did not invite any associate brand managers to attend that meeting. Racicot said that Catherine Hu was invited because her title was Marketing Manager. Racicot explained that Complainant was invited to the previous London meeting in August or September of 2004 because that meeting involved the global travel retail side of Respondent's business and Complainant was intimately involved in that specific side of the business.

I find Racicot's testimony credible on this issue. Racicot's testimony supports that Complainant's exclusion from the Kentucky meeting was a legitimate business decision that had nothing to do with his H1B Visa status. Further, Racicot's testimony that no one on Complainant's level was invited to the meeting has to be given more credibility in light of Complainant's failure to identify any colleagues on his level that were invited to the Kentucky meeting.

Next, Complainant alleges that he was harassed based on his citizenship status when Howard and Racicot warned him not to go to the Human Resources Department raising complaints about management staff and threatened to discharge him by telling him that he should remember that "he is here on a Visa."

I find Complainant's presentation on this issue severely lacking in credibility. First, weighing against Complainant's credibility is Complainant's admission in the record that he incorrectly identified Racicot on two occasions as having made threatening comments about his citizenship status. On cross examination of his own testimony, Complainant admitted that, after he was discharged from Respondent's employ, he wrote a letter to Respondent's CFO Donard Gaynor, dated January 6, 2005, in which he erroneously identified Racicot as having made threatening statements about his Visa status. (I note that Complainant's discharge from Respondent is not at issue in this Complaint.) Complainant also admitted that he erroneously named Racicot in his response to Interrogatory #11 as a person who made threatening statements to him

about his Visa status. Complainant's admissions that he erroneously accused Racicot in prior statements operate to undermine his credibility on this issue.

While admitting Racicot made no such statement, Complainant maintains that Howard indeed made the alleged threatening statement showing animus based on his citizenship status However, evidence of the alleged statement fails to convince. Complainant testified that sometime at the end of November, 2004, he met with Howard to review his performance evaluation. Complainant presented this testimony as to the alleged harassing statement made by Howard (Tr. p 124, 8-15):

> With Kevin Howard, we reviewed the evaluation step by step, his overall comments, you know, his praise or—or evidence of opportunity, the whole deal, and overall his—his—his called out to be—you know, to keep it within the team, to not speak to anybody else, not go to HR. And as he got worked up, he ended with, "Just remember that you are here with a visa."

Complainant failed to present sufficient foundation of the circumstances surrounding this alleged statement and/or its meaning to support any reasonable conclusion that such a one-time statement could constitute actionable harassment. Assuming that the statement alone could connote some level of harassment, Complainant would have to prove that the statement was severe and pervasive enough to create an abusive working environment and Complainant failed to provide such proof. See, *Harris v Forklift Systems, Inc.*, 510 U.S. 17, 114 S.Ct. 367 (1993), and *Booker v Able Detective Agency*, IHRC, 9141 (S), April 23, 1999.

Moreover, Complainant's failure to report this statement supports the inference that Complainant did not find the statement to constitute an act of harassment. Complainant presented no evidence supporting that, during the time he was employed at Respondent, he complained to anyone in management that Howard threatened him regarding his H1B Visa status. Complainant admitted that he read Respondent's harassment policy that required him to report any harassing conduct; however, the record is void of any attempt of Complainant to do so.

Complainant fails to establish that he was subjected to any adverse employment action or harassing conduct by Respondent.

Finally, Complainant puts forth no similarly–situated employees outside of his protected class that were treated more favorably than he.

Based on the foregoing analyses, the record supports that Complainant has failed to establish a *prima facie* case of harassment based on citizenship status.

RECOMMENDATION

Accordingly, it is recommended that the Complaint in this matter and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By:_____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: January 28, 2009