STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
EDGAR L. ARRIAZA,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2006CN2541
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	07-317
	)		
FLEXAN CORPORATION,	)		
	)		
	)		
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

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and	)**Charge No: 2006CN2541**
	)**EEOC No:N/A**
FLEXAN CORPORATION,	)**ALS No: 07-317**
	)
Respondent.	)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion for Summary Decision filed February 27, 2008. Respondent filed a written motion along with exhibits. Complainant did not file a response to the motion, although allowed time to do so.

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. The record indicates the motion has been properly served upon the Illinois Department of Human Rights.

CONTENTIONS OF THE PARTIES

Respondent contends summary decision must be granted because the undisputed facts indicate Complainant cannot make out a *prima facie* case of citizenship discrimination based on unequal treatment.

Complainant's position is unknown since Complainant did not file a response to the motion and failed to appear for scheduled hearing on the motion.

CONCLUSIONS OF LAW

1 The Commission has jurisdiction over the Parties and subject matter of this action.

2 Complainant is an "aggrieved party" as defined by Section 1-103(B) of the Act.

3 Respondent is an "employer" as defined by Section 2-101(B) of the Act.

4. Complainant has presented no competent evidence establishing the existence of a genuine issue of material fact as to whether Respondent discriminated against him on the basis of citizenship status by failing to re-call him to work after a layoff.

DETERMINATION

Respondent is entitled to summary decision as a matter of law because Complainant has submitted no evidence from which a reasonable fact finder might draw an inference of discrimination based on citizenship status.

DISCUSSION

The following discussion includes facts that were derived from uncontested pleadings, affidavits and other documentation in the record in accordance with standards applicable to motions for summary decision, which require that all factual conflicts in the record be viewed in the light most favorable to the non-moving party. *Purdy Company of Illinois v Transportation Insurance Company, Inc.*, 209 Ill App 3d 519, 568 NE2d 318 (1st Dist 1991).

Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on March 30, 2006. Complainant, on his own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) on April 27, 2007, alleging that Respondent discriminated against him on the basis of his citizenship status in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Respondent filed a verified answer to the Complaint on July 25, 2007.

In the Complaint, Complainant alleges that he is a legal resident of the United States; Respondent was aware of his citizenship status at the time he was hired on February 17, 2004; his work performance as a machine operator met Respondent's expectations; he was not re-called to his former position on or about March 18, 2006;

Respondent's practice has been to re-call employees in the order of seniority; and instead of re-calling him, Respondent re-called a machine operator who was an illegal alien and who was a less senior employee. Complainant identifies the comparable as "Lionel (last name unknown)."

Respondent maintains that Complainant cannot make out a *prima facie* case of discrimination based on citizenship status. To prove a *prima facie* case of disparate treatment in the terms and conditions of his employment, Complainant has to prove three elements: 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.

Respondent contends that Complainant cannot establish that he was treated less favorably than his identified comparable, because the comparable was never re-called to work by Respondent. Respondent states and Complainant agrees (in his response #14 to *Respondent Flexan Corporation's First Set of Requests for Admission of Facts*) that the comparable identified by Complainant as *Lionel* is an employee whose actual name is Leonel Alverez (Alverez). Respondent further contends that the citizenship status of Complainant and Alverez are similar in that neither Complainant nor Alverez is a U.S. citizen and that both are legally authorized to work in the United States.

Respondent presents the affidavit of Maria Colon (Colon), Human Resources Manager for Respondent throughout 2006. Colon identifies Alverez as one of five employees – including Complainant – designated for layoff as part of a company restructuring in early 2006. Colon states that, at the time this Charge was filed (March 30, 2006), no employee designated for lay off in early 2006 had been re-called to his or her former position or to any other position with Respondent.

Colon says that, although Alverez was not re-called to work for Respondent, he was interviewed for and offered a position at Respondent's independent subsidiary, FMI, located in Elk Grove Village, Illinois, and was hired by FMI on March 27, 2006.

Colon further avers that the I-9 immigration employment form for Alverez states that he is a "resident alien," and that Complainant's I-9 immigration employment form indicates him to be a "permanent resident." Colon's affidavit establishes appropriate foundation that both I-9 forms were kept by her in the ordinary course of business for Respondent. Respondent presents copies of both forms as Respondent's exhibits #14 and #15 to its motion. Complainant submits nothing to refute these averments or the exhibits.

When facts contained in an affidavit in support of a motion for summary decision are not contradicted by counter affidavit, such facts are admitted and must be taken as true. *Prather v Decatur Memorial Hospital*, 95 Ill App 3d 470, 472, 51 Ill Dec 396, 420 NE2d 810 (1981). In the absence of competent evidence from Complainant, Respondent's evidence stands unrebutted and must be accepted. *Koukoulomatis v Disco Wheels*, 127 Ill App 3d 95, at 101, 468 NE2d 477 (1st Dist 1984).

The undisputed facts here show that Complainant's *prima facie* case of discrimination based on citizenship status cannot be proved. Respondent's unrebutted sworn statements support that Complainant's identified comparable, Alverez, was not re-called to work for Respondent as alleged, but was hired by an independent subsidiary of Respondent.

Moreover, the undisputed facts further show that Alverez was not a U.S. citizen nor was he an "illegal alien"; therefore, he was not in a different class of protected persons as Complainant. The Act at Section 5/2-101(K) defines citizenship status as "the status of being: (1) a born U.S. citizen; (2) a naturalized U.S. citizen; (3) a U.S.

national; or (4) a person born outside the United States and not a U.S. citizen who is not an unauthorized alien . . . . . ".

Respondent's undisputed evidence shows that both Complainant and Alverez are persons born outside the U.S. who are not U.S. citizens and who are not unauthorized aliens. Thus, Complainant's allegations that Alverez is an *illegal alien* and outside of Complainant's protected class, stands adequately rebutted.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. *Strunin and Marshall Field & Co.*, 8 Ill. HRC Rep. 199 (1983). The movant's right to summary decision must be clear and free from doubt. *Bennett v. Ragg*, 103 Ill.App.3d 321, 431 N.E.2d 48 (2nd Dist. 1982).

When taking the undisputed facts in the light most favorable to Complainant, there remain no material issues of fact as to whether Alverez was re-called to work for Respondent or as to whether Alverez's citizenship status is any different than Complainant's.

Due to this decision, all previously scheduled status dates are stricken.

RECOMMENDATION

Based on the foregoing, I recommend that this matter be dismissed, with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: June 17, 2008

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