

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & ADAM APACHE,

Complainant

v.

DOCKET NO. 08-SPA-02127

CITY OF SPRINGFIELD
POLICE DEPARTMENT,
Respondent

Appearances:

Ronald E. Gregson, Esquire for Adam Apache
William G. Cullinan, Esquire for City of Springfield Police Department

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On July 15, 2008, Complainant Adam Apache filed a complaint with this Commission charging Respondent with discrimination in a place of public accommodation on the basis of his national origin, Palestinian. Specifically, Complainant alleges that Respondent City of Springfield Police Department denied him a taxi driver's license because he was not a permanent legal resident of the United States, as required by Respondent's Taxi and Livery ordinance. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on December 14, 2011. After careful consideration of the record in this matter and the post-

hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Adam Apache identifies as a Palestinian. He was born and raised in the United Arab Emirates and came to the United States in 1999. Complainant currently lives in Lowell, MA. In 2000, Complainant obtained a valid “Employment Authorization Card,” (also referred to as a “work permit”) issued by the U.S. Citizenship and Immigration Services, that allows him to work in the U.S. Complainant renews the card on a yearly basis. Complainant possesses a valid Massachusetts driver’s license and a social security card. Complainant is not a permanent legal resident of the United States nor is he a United States citizen.

2. Respondent City of Springfield Police Department issues taxi driver’s licenses in the city. Lisa Placanica has been the Chair of the Springfield Taxi and Livery Commission for 12 years and she is in charge of issuing taxi driver’s licenses. There is no limit on the number of taxi driver’s licenses that the Respondent can issue to qualified applicants.

3. The City of Springfield Ordinance regarding the Taxi and Livery Commission, chapter 5.28.090, states that all applicants for a taxi driver’s license must have a valid Massachusetts driver’s license, a social security card and must present proof of U.S. citizenship or legal residency in the United States. (Ex. J-1) The ordinance does not define legal residency. However, the application for a taxi driver’s license contains the question, “Are you a Permanent Resident of The United States? (Possess a green card)” (Ex. J-3) I find that the Springfield Police Department interprets the term legal residency in the ordinance to mean being a legal permanent resident, i.e.: an individual who possesses a “green card.”

4. In June 2008, Complainant lived in Chicopee, MA and worked full-time as a machinist for Refco Manufacturing in Manchester, CT. He also worked part-time on weekends as a taxi driver in Manchester, where he obtained a taxi driver's license with no problem. Complainant began looking for machinist jobs¹ and taxi driver positions closer to home to avoid the time and expense involved in commuting to Manchester, CT. He inquired about a full-time taxi driver job at the Yellow Cab Company in Springfield, where he was told that there was an opening for a taxi driver, but as a pre-requisite to obtaining employment, he would need to obtain a taxi driver's license through the Springfield Police Department. Yellow Cab provided him with a Springfield taxi license application, a check list and a medical certification form and directed him to the Springfield Police Department.

5. On July 2, 2008, Complainant went to the Springfield Police Department to apply for a taxi driver's license. Complainant testified that he presented the completed application to Lisa Placanica, along with the form stating he was medically fit to safely operate a taxi cab and his current Massachusetts driver's license. (Ex. J-3) On the application for a taxi driver's license Complainant answered "No" to the question, "Are you a Permanent Resident of The United States? (Possess a green card)." The application provides a space for the applicant's place of birth. In that space, Complainant wrote "U.A.E."

6. Complainant stated that Placanica informed him that he needed a "green card" and he said he did not have one. Placanica asked him why he believed he was eligible to work as a taxi driver and he presented his Employment Authorization card. She then went to the computer and ran his name and asked him where he was born. He responded United Arab Emirates and she

¹ In August 2008, Complainant obtained employment as a machinist at Johnson Controls in Springfield, MA. He worked there full-time until November 2008 when he injured his back, and thereafter settled a worker's compensation claim.

wrote “United Arab Emirates” in the upper right hand corner of his application. I credit Complainant’s testimony that he presented his Employment Authorization Card to Placanica.

7. Placanica testified that Complainant did not produce adequate proof of residency, that is, a green card, as required by the ordinance. She denied that Complainant showed her his employment authorization card, a document with which she is not familiar. Placanica stated that if he had done so, she would have sought guidance from her sergeant or other superior in order to determine its adequacy as proof of residence, as she does whenever an applicant produces an unfamiliar document, such as a passport, as proof of residency. Notwithstanding such inquiries, Placanica testified that whenever she presented her superiors with documents other than green cards, the applicant’s license application was not processed for lack of documentation of permanent residency or naturalization. Placanica testified that she knew of no occasion wherein a non-citizen applicant who did not possess a green card was granted a taxi license. I do not credit Placanica’s denial that Complainant presented his employment authorization card, but find that she did not deem this document as acceptable proof of permanent residency in compliance with the ordinance. As a result, Placanica told Complainant to return when he had the proper documentation.

8. Placanica did not process Complainant’s application because she knew he would not qualify for a license given his immigration status and she did not want him have to pay the non-refundable \$25.00 registration fee. She stated that once she accepts a fee and submits data from the application to the computer, the police department begins a verification process whereby the applicant is fingerprinted and an arrest warrant check, an RMV driving record check and a criminal records check are performed. Respondent also conducts a search to determine whether the applicant owes excise or property taxes. Once these checks are successfully completed,

Placanica issues the license, which is valid for two years, and collects an additional \$25.00 fee. Placanica testified that she issues approximately 150 taxi licenses per year, a significant portion of which are granted to permanent residents and naturalized citizens from all over the world, including Russia and Egypt. I credit her testimony.

9. Complainant testified that in 2010, he again attempted to apply for a taxi driver's license at the Springfield Police Department and Placanica once again refused to process his application, telling him "we went through this before; you need a green card. The outcome will be the same." She copied Complainant's work permit but did not process his application. Placanica did not recall Complainant coming to the Police Department a second time to request an application.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 272 § 92A and 98 prohibit discrimination in a place of place of public accommodation, based on nationality or national origin. Complainant asserts that denial of the opportunity to apply for a taxi driver's license by a municipal police department is covered by the public accommodations law. While Respondent does not dispute that access to public buildings is guaranteed by the public accommodations law, Respondent contends that the decisions of the Springfield Police Department with respect to issuing licenses fall outside the purview of the Commission's jurisdiction and it contests the Commission's authority to adjudicate the decision of the Police Department in this case.²

It is a violation of M.G.L. c. 272 § 98 to make any distinction, to discriminate, or to restrict a person's access to a place of public accommodation based on national origin. The

² Other than its statement that the Commission has no jurisdiction over its licensing process, Respondent offers no argument in support of its position.

protections of M.G.L. c. 272 § 98 have been held to include the provision of certain services or benefits such as insurance, and the Commission has interpreted the statute broadly to extend beyond access to physical structures. Samartin v. Metropolitan Life Insurance, 27 MDLR 210, 213-214 (2005). I conclude that the offering of public services, advantages or privileges, such as a municipal taxi driver's license, which Respondent issues to all qualified applicants, falls within the activity contemplated by the public accommodations law, which includes admission to and treatment in a place of public accommodation.³ M.G.L.c. 272 §98.

Complainant asserts that he was subjected to disparate treatment on the basis of his national origin, Palestinian.⁴ Chapter 151B, s. 5 authorizes the Commission to investigate and adjudicate complaints of violations of the public accommodations law. Ekhaton v. Stop & Shop Supermarket Co., 24 MDLR 147, 149 (2002). The Commission employs the method of proof used in employment discrimination cases to analyze claims of discrimination brought under G.L. c. 272 s. 98. See Wheelock v. MCAD, 371 Mass. 130, 134-136 (1976); Lipchitz v. Raytheon Company, 434 Mass. 493, 495 (2001); Poliwczak v. Mitch's Marina and Campground, et al, MDLR (2011); Reese v. May Dept. Store, 24 MDLR 395, 399 (2002). In order to establish a prima facie claim of discrimination in public accommodation, Complainant must prove that (1) he is a member of a protected class; (2) he was denied access to or restricted in the use of (3) a place of public accommodation. Sandiford v. Roadrunner Auto Services, Inc., 29 MDLR 105 (2007) I conclude that Complainant has established a prima facie case of discrimination, in that he is a member of a protected class by virtue of his national origin, Palestinian of middle

³ For instance, Respondent could not arbitrarily deny a license to an applicant solely because he is a member of a protected class.

⁴ There was no evidence whatsoever that Respondent knew Complainant to be Palestinian. His application stated his national origin was the U.A.E., which Complainant told Respondent was United Arab Emirates. Nonetheless, there was no evidence that Complainant was denied a taxi driver's license because his national origin was Middle Eastern.

eastern origin, and he was denied a public benefit or privilege, the application for a taxi driver's license in a place of public accommodation.

Once Complainant has established a prima facie case of discrimination, Respondent must articulate and produce credible evidence to support a legitimate, non-discriminatory reason for its actions. Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). Here, Respondent's witness, Placanica, testified credibly that Complainant's application was rejected only because he was not a permanent resident or a naturalized citizen of the United States, and that this was a requirement of the Taxi Livery Ordinance, as interpreted by Respondent in a consistent and neutral manner, irrespective of an applicant's national origin, for at least the 12 years that Placanica had worked for Respondent. I conclude that because Complainant's application was denied pursuant to a neutral policy and because lack of U.S. citizenship or legal residency is not a protected class under the public accommodations law, Respondent has met its burden of articulating a legitimate, non-discriminatory reason for denying Complainant a taxi driver's license.

If Respondent meets this burden, then Complainant must show by a preponderance of evidence that Respondent's proffered reason is a pretext for discrimination. Id. Complainant contends that Respondent's adherence to stricter standards than the language set forth in its Taxi and Livery Commission ordinance and its failure to submit Complainant's application to a review by a supervisor, establish pretext. I do not agree.

While the wording of Respondent's ordinance ("legal residence") differs from the application ["permanent residence" (green card)] the evidence showed that Respondent had consistently interpreted the ordinance to require permanent legal residence in the U.S and its practice was to require all applicants to produce evidence of permanent residence, i.e. a green

card, or naturalization. (See discussion *infra*.) Complainant acknowledged that he was not a legal permanent resident in possession of a green card; nor was he a citizen. There was no evidence that Complainant was treated differently based on his national origin, or because he was foreign-born. His application for a license was denied solely because of his immigration status. Respondent does not single out individuals who are foreign-born, but only those individuals whose immigration status does not comply with the ordinance. Immigration status is not a protected class under G.L. c. 272 s. 98. Respondent's witness testified credibly that Respondent does not deny applications for licenses because of an applicant's national origin, or because the applicant is foreign-born, and it has issued numerous taxi driver's licenses to foreign-born applicants who presented evidence of permanent residence or were naturalized citizens. Moreover, Placanica testified credibly that Respondent consistently adhered to the policy of requiring a proof of citizenship or a green card, and that she had never witnessed any other documentation approved. Thus, it would have been futile for her to submit Complainant's documentation for further review. I do not find her failure to do so to be evidence of discriminatory intent. I conclude that Respondent's adherence to and application of this policy did not constitute disparate treatment of Complainant. Thus, Complainant has failed to prove that Respondent's reason for denying his application for a license was a pretext for unlawful discrimination on the basis of national origin. The evidence demonstrated that Complainant was denied the application solely because of his immigration status, which is not a protected category under c. 272 §98.

Complainant also alleges that Respondent's policy of refusing to accept any identification other than a green card or naturalization as proof of legal residency constitutes unlawful discrimination on the basis of foreign national origin in violation of G.L. c. 272 s. 98. He claims

that the policy, which on its face is neutral, has a "disparate impact" on applicants not of U.S. national origin who are not naturalized citizens or permanent residents.

Where Complainant claims that a policy has a discriminatory disparate impact, he must show that the practice complained of has a substantial adverse impact on a legally protected class of which he is a member. Bresnahan v. Route 114 Liquors, Inc., 17 MDLR 21 (1995) McAuliffe v. Pechilis, 13 MDLR 1039, 1052 (1991) (citing Albemarle Co. v. Moody, 422 U.S. 405, (1975); Griggs v. Duke Power, 401 U.S. 424 (1971); Freeman v. World Travelogue Co., 6 MDLR 1783, 1880 (1984). In establishing adverse impact, Complainant may rely on statistical data, and the precise impact of the policy need not be proved to a mathematical certainty. Id. (citing Griggs, 401 U.S. 424; Detroit Police Officers Assoc. v. Young, 608 F.C 671, 687 (5th cir. 1979) In this matter, Complainant provided no statistical or other evidence to support such a conclusion, while Respondent asserted by credible testimony that it issues a significant number of licenses to foreign-born individuals. Thus I conclude that Complainant has failed to establish a prima facie case that Respondent's policy has a discriminatory disparate impact on individuals of non-U.S. origin. Therefore, I need not reach the issue of whether Respondent's policy was unduly restrictive or based upon a legitimate business reason.

I conclude that the Respondent did not engage in unlawful discrimination and I hereby order that this matter be dismissed.

IV. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that this matter be dismissed.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 3rd day of April, 2012

JUDITH E. KAPLAN,
Hearing Officer