

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NITA JEAN-PIERRE,)
)
 Petitioner,)
)
 vs.) Case No. 07-4430
)
 NEIMAN MARCUS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 29, 2007, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: G. William Allen, Jr., Esquire
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Fort Lauderdale, Florida 33316

For Respondent: Angelique Groza Lyons, Esquire
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STATEMENT OF THE ISSUE

Whether the Respondent committed an unlawful employment practice by discriminating against the Petitioner on the basis of national origin,¹ in violation of the Florida Civil Rights Act

of 1992, as amended, Section 760.10 et seq., Florida Statutes (2005).²

PRELIMINARY STATEMENT

In a Petition for Relief from an Unlawful Employment Practice filed with the Florida Commission on Human Relations ("FCHR") on September 25, 2007, Nita Jean-Pierre charged that Neiman Marcus had discriminated against her on the basis of national origin: "I was told since I am Haitian I need more documents than an American and I was illegal in this country." Ms. Jean-Pierre alleged that she was prevented from providing "original acceptable documents that establish employment eligibility as per I.N.S. Form I-9 List C" because "Neiman Marcus insisted only Green Card [w]as acceptable." The FCHR transmitted the petition to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on November 29, 2007.

At the hearing, Ms. Jean-Pierre testified in her own behalf, and Petitioner's Exhibits 1 through 3 and 5 through 9 were offered and received into evidence. Petitioner's Exhibit 4, the affidavit of Susan Moye, was offered into evidence, but ruling was withheld on this exhibit to allow the parties the opportunity to submit written argument in their proposed recommended orders on the admissibility of the

document. Ms. Jean-Pierre did not address this evidentiary issue in her proposal, and, based on the arguments presented at the hearing, the exhibit is rejected. Neiman Marcus presented the testimony of Donna Bennett and Susan Moye, and Respondent's Exhibits 7 and 14 were offered and received into evidence. In addition, the parties offered Joint Exhibits 2 through 5 and 8, which were received into evidence.

The two-volume transcript of the proceedings was filed with the Division of Administrative Hearings on December 21, 2007. Neiman Marcus timely filed its proposed findings of fact and conclusions of law; Ms. Jean-Pierre was granted an extension until January 25, 2008, for filing her proposed findings of fact and conclusions of law, which she filed on January 28, 2008, together with Petitioner's Summary of Argument. The post-hearing submittals of the parties have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Neiman Marcus Group, Inc., owns and operates specialty retail stores. Its headquarters are located in Dallas, Texas.

2. In the summer of 2005, Neiman Marcus began hiring personnel to work in a new store that would open in the fall of 2005 in the Town Centre mall in Boca Raton, Florida.

3. Ms. Jean-Pierre is a permanent resident alien in the United States. She was born in Haiti in 1970 and entered the United States in 1983.

4. In September 2005, Ms. Jean-Pierre was employed as a sales associate in the accessories section of the Nordstrom department store in the Town Centre mall when she was approached by two women who inquired about Chanel sunglasses. They requested her business card and later called to tell her that they were very impressed with her sales skills. They asked if she was interested in working as a sales associate at the new Neiman Marcus store.

5. Ms. Jean-Pierre applied for a position with Neiman Marcus, went through an interview and a drug test, and was hired to begin work on October 24, 2004.

6. Hurricane Wilma hit South Florida on October 24, 2005, and the Neiman Marcus employees were not able to go to the hiring site during the week following the hurricane. As a result, the newly-hired employees who were to begin work on October 24, 2005, including Ms. Jean-Pierre, were told to report to work on November 1, 2005.

7. Ms. Jean-Pierre's group of newly-hired employees joined the group of newly-hired employees that were to report to work on October 31, 2005. Because there were a large number of people, they were split in two groups. Ms. Jean-Pierre's group went to the store site to begin training on the first day they reported for work, while the other group reported to the hiring center to receive training and to complete the paperwork required of newly-hired employees. Ms. Jean-Pierre's group went to the hiring center on November 3, 2005, for training and to complete their paperwork.

8. All newly-hired employees of Neiman Marcus are required to complete an Immigration and Naturalization Service Employment Eligibility Verification form, known as the "I-9 Form." The I-9 Form consists of three pages. The first page is divided into three sections, two of which must be completed for newly-hired employees. The second page consists of the instructions for completing the I-9 Form, and these instructions "must be available during completion of this form." The third page is headed "Lists of Acceptable Documents" and consists of List A, List B, and List C.

9. Section 1 on the front of the I-9 Form, Employee Information and Verification, must be completed and signed by the employee. The employee must include his or her name, address, maiden name (if applicable), date of birth, social

security number, and an attestation, given "under penalty of perjury," that the employee is either a "citizen or national" of the United States, a "Lawful Permanent Resident," or an "Alien authorized to work" in the United States.

10. Section 2 of the I-9 Form, Employer Review and Verification, must be completed and signed by the employer. The employer is required to examine one document from List A ("Documents that Establish Both Identity and Employment Eligibility"), or one document from List B ("Documents that Establish Identity") and one document from List C ("Documents that Establish Employment Eligibility"). The document or documents provided by the employee must be listed in Section 2, and the employer or a representative of the employer must sign the form, attesting, "under penalty of perjury," that he or she has "examined the document(s) presented by the above-named employee, that the above listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment of (*month/day/year*) ___ and that to the best of my knowledge the employee is eligible to work in the United States."

11. The "Instructions" sheet that must be available during completion of the I-9 Form directs the employee to complete Section 1 of the form "at the time of hire, which is the actual

beginning of employment." The instructions direct the employer, in pertinent part, to

complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. . . . **Employers must record** 1) document title; 2) issuing authority; 3) document number; 4) expiration date, if any; and 5) the date employment begins. Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9.

(Emphasis in original.)

12. When newly-hired employees report to the hiring site for training, they are placed at a computer to type in the information required in Section 1 of the I-9 Form. It is Neiman Marcus's policy to provide all newly-hired employees, at the time they are completing Section 1 at the computer, a copy of the page setting forth the "Lists of Acceptable Documents," with a copy of the "Instructions" page stapled to that document. When the information required in Section 1 is complete, the I-9 Form prints out of the computer with the employee's information included. The employee signs the form, and the

Neiman Marcus representative examines the documents presented by the employee and completes and signs Section 2 of the I-9 Form.

13. Neiman Marcus requires all newly-hired employees to present original documents from List A or List B and List C for verification within 72 hours of the beginning of employment. If an employee fails to provide the necessary original documents or a receipt for the application of the documents within the 72-hour timeframe, it is Neiman Marcus's policy to suspend the employee's employment with Neiman Marcus and to allow them a week to provide documents required for identification and employment verification. If the newly-hired employee is unable to produce the necessary documents, the employee is terminated, but the employee is advised that they are welcome to re-apply for a job when they are able to produce the original documents that satisfy the requirements on the I-9 Form.

14. It is not Neiman Marcus's policy to specify the documents a newly-hired employee must present to verify his or her identity and employment eligibility. Rather, Human Resource Managers at the various Neiman Marcus stores have been told not to specify any document that must be produced to satisfy the identification and employment verification requirements on the I-9 Form.

15. Donna Bennett is, and was at the times pertinent to this proceeding, the Human Resource Manager for the Neiman

Marcus store in Boca Raton. Amy Wertz was the Human Resources Coordinator and worked for Ms. Bennett at the times pertinent to this proceeding.

16. When Ms. Jean-Pierre reported to the hiring center on November 3, 2005, she completed Section 1 of the I-9 Form on the computer provided by Neiman Marcus and, to verify her identity, presented her Florida driver's license to Ms. Wertz, who was the Neiman Marcus representative verifying employment eligibility for the newly-hired Neiman Marcus employees in Ms. Jean-Pierre's group. Ms. Jean-Pierre advised Ms. Wertz that her "Green Card"³ and her Social Security card had been in her car, which was stolen from the parking lot of her condominium building after the Hurricane Wilma.

17. Ms. Jean-Pierre did not provide Ms. Wertz an original document from either List A or List C to verify her employment eligibility on November 3, 2005. She did give Ms. Wertz her Social Security number and a copy of her Permanent Resident Card, income tax return, and pay stub from her previous employment. Ms. Wertz would not accept these documents for purposes of satisfying the I-9 Form requirement of verification of employment eligibility.

18. On November 3, 2005, Ms. Wertz advised Ms. Bennett that Ms. Jean-Pierre had failed to produce the original document from List A or List C required to verify her employment

eligibility. Ms. Bennett directed Ms. Wertz to send Ms. Jean-Pierre home to look for an original document that would satisfy the requirements for establishing her employment eligibility.

19. Ms. Jean-Pierre reported for work on November 4, 2005, without an original document from List A or List C. Ms. Bennett went to the official website of the United States Citizenship and Immigration Services to verify the government policy on the production of documentation to establish employment eligibility.

20. After reviewing the information on the website, Ms. Bennett advised Ms. Jean-Pierre that, if she produced a receipt showing she had applied for a replacement document among those on List A or List C, she could have an additional 90 days in which to produce the original document. Ms. Bennett did not contact Neiman Marcus's corporate legal department with regard to this information before she passed it on to Ms. Jean-Pierre.

21. On November 5, 2005, Ms. Jean-Pierre provided either Ms. Wertz or Ms. Bennett a document printed from the United States Citizenship and Immigration Services website entitled "I-90 Form: Application to Replace Permanent Resident Card" and told them that she had an appointment with the Immigration and Naturalization Service at the end of November 2005.⁴

22. Ms. Bennett believed that this document was an acceptable receipt for an application for a replacement document, and she advised Ms. Jean-Pierre that she had 90 days

from November 5, 2005, in which to produce the original document. A notation was made on the I-90 Form that "[y]ou have 90 days from today."

23. Ms. Bennett did not consult with anyone at Neiman Marcus corporate headquarters regarding the sufficiency of the document provided by Ms. Jean-Pierre or receive authorization to allow Ms. Jean-Pierre an additional 90 days in which to produce the original document.

24. In late November 2005, Ms. Wertz told Ms. Bennett that Ms. Jean-Pierre had missed her appointment with the Immigration and Naturalization Service because of a death in her family. Ms. Bennett became concerned that Ms. Jean-Pierre did not take seriously the requirement that she provide original documents to establish her employment eligibility within the 90-day grace period, which, according to Ms. Bennett's understanding, began to run on November 5, 2005. Ms. Bennett called Ms. Jean-Pierre into her office and spoke with her about the importance of providing the necessary original documentation. Ms. Jean-Pierre told her that she would take care of the matter.

25. On or about December 15, 2005, Ms. Jean-Pierre produced to Ms. Bennett a document identified as a Citizens and Immigration Services form I-797C, Notice of Action. The "Case Type" specified on the document was "I-90 Application to Replace Alien Registration Card"; the "Receipt Number" noted on the

document was "MSC-06-800-46861" the date on which the application was received was noted as December 14, 2005; the applicant was identified as "A37 888 854 Jean-Pierre, Nita"; and the "Notice Type" specified on the document was "Receipt Notice."

26. When she gave Ms. Bennett this document, Ms. Jean-Pierre told Ms. Bennett that it would take between six months and one year to receive the replacement card because of September 11, 2001. Ms. Bennett became concerned that Ms. Jean-Pierre would not be able to provide the required original document within the 90-day grace period. At this time, she contacted Susan Moyer, a manager in Associate Relations at Neiman Marcus's corporate headquarters in Dallas, Texas, and arranged to have the I-797C form faxed to Ms. Moyer.

27. Ms. Moyer consulted with Neiman Marcus's legal department about the sufficiency of the I-797C Form Ms. Jean-Pierre had provided on December 15, 2005. Ms. Moyer was advised that this document was not sufficient to meet the I-9 Form requirement that the employer examine the original of one of the documents included on List A or List C to verify employment eligibility.

28. Ms. Bennett was absent from work for a period of time due to the illness and death of her father. During her absence, Ms. Wertz was in communication with Ms. Moyer regarding Ms. Jean-

Pierre's employment status. Ms. Moyer directed Ms. Wertz to notify Ms. Jean-Pierre that the I-797C form she had provided was not sufficient to verify her employment eligibility and that she was suspended from employment for one week to give her the opportunity to obtain an acceptable original document.

29. Ms. Jean-Pierre did not provide the required documentation by the end of the one-week period of her suspension.

30. Ms. Bennett returned to work on December 27, 2005. Ms. Bennett spoke with Ms. Moyer about the matter on December 27, 2005, and Ms. Moyer told her that Ms. Jean-Pierre needed to provide an original document in order to establish her eligibility for employment and that the document Ms. Jean-Pierre had provided on December 15, 2005, was not an acceptable original document. Ms. Moyer advised Ms. Bennett that she would need to terminate Ms. Jean-Pierre.

31. At the time she directed Ms. Bennett to terminate Ms. Jean-Pierre, Ms. Moyer was not aware of Ms. Jean-Pierre's race or national origin.⁵

32. Ms. Bennett called Ms. Jean-Pierre into her office and explained to her that it was Neiman Marcus's policy to require original documentation of identification and employment eligibility within three days of beginning employment; that the

document she provided on December 15, 2005, was unacceptable; and that she was terminated.

33. During this meeting, Ms. Jean-Pierre argued that the document she had provided on December 15, 2005, was acceptable. Ms. Bennett explained to Ms. Jean-Pierre that, in accordance with Neiman Marcus's policy, she needed to produce the original document, not the receipt for an application for a replacement document.

34. When she terminated Ms. Jean-Pierre, Ms. Bennett told her that she was welcome to re-apply for a job when she was able to produce the appropriate documents to establish her employment eligibility.

35. Ms. Bennett did not tell Ms. Jean-Pierre that a "Green Card" was the only acceptable document to establish her employment eligibility. Nor did she tell Ms. Jean-Pierre that she needed to provide more documentation than others because she was Haitian.

36. In January 2006, Ms. Jean-Pierre returned to the Neiman Marcus Boca Raton store and provided Ms. Bennett with a receipt showing that she had applied for a Social Security card on January 10, 2006. Ms. Bennett faxed this document to Ms. Moye, who responded that the receipt was insufficient and that Ms. Jean-Pierre needed to produce an original document.

37. On January 5, 2006, Ms. Jean-Pierre obtained a stamp on her passport indicating that employment was authorized for her, which authorization would expire on January 4, 2007.

38. Ms. Jean-Pierre received her replacement Social Security card on January 16, 2006.

39. Ms. Jean-Pierre did not present an original Social Security card to Neiman Marcus or her stamped passport to Neiman Marcus as verification of her employment eligibility.

40. Ms. Bennett has previously terminated newly-hired employees who failed to timely provide the documents required to establish employment eligibility. Those employees were invited to re-apply when they received their original documents. Several re-applied, provided their original documents, and were re-hired.

41. Of the more than 59 newly-hired employees reporting to work on or about November 1, 2005, Ms. Jean-Pierre was the only employee who failed to produce to Neiman Marcus the required original documentation verifying her employment eligibility.

Summary

42. The direct evidence presented by Ms. Jean-Pierre is not sufficient to establish that Neiman Marcus discriminated against her on the basis of her national origin. Ms. Wertz and Ms. Bennett were aware that Ms. Jean-Pierre was from Haiti residing in the United States, but the evidence establishes that

both Ms. Wertz and Ms. Bennett were concerned about her failure to produce any original documents as required for verification of employment eligibility and that Ms. Bennett talked to her about the seriousness of the issue and urged her to get the necessary document. Ms. Jean-Pierre's testimony that Ms. Bennett told her she needed more documentation because she was a Haitian is unsupported by any other testimony or documentary evidence. Finally, Ms. Moye, the person who directed Ms. Bennett to terminate Ms. Jean-Pierre, was not aware that she was born in Haiti.

43. Ms. Jean-Pierre's testimony that both Ms. Wertz and Ms. Bennett insisted she must provide a "Green Card" to verify her permanent residence is, likewise, unsupported by any other testimony or documentary evidence. In any event, this evidence would not, of itself, establish that either Ms. Wertz or Ms. Bennett was motivated by the intent to discriminate against Ms. Jean-Pierre because she is Haitian. The evidence presented is sufficient, however, to support an inference that Ms. Jean-Pierre misunderstood the information she received from Ms. Wertz and Ms. Bennett and assumed that they were referring to an original Permanent Resident Card rather than an original document included on the "Lists of Acceptable Documents."⁶ Ms. Jean-Pierre acknowledged in her testimony that, when Ms. Wertz told her she needed to verify her permanent residence,

she interpreted this to mean that she needed to get a replacement copy of her Permanent Resident Card. Similarly, Ms. Jean-Pierre may have interpreted Ms. Bennett's statements that she needed to produce an original document as requiring that she produce a Permanent Resident Card.

44. The evidence presented by Ms. Jean-Pierre is sufficient to establish that Ms. Jean-Pierre is entitled to protection from employment discrimination on the basis of her national origin; that she was qualified for the position of sales associate with Neiman Marcus; and that she was subjected to an adverse employment action because she was terminated from her employment. Ms. Jean-Pierre stated unequivocally in her testimony, however, that she did not know of any other person who failed to verify their employment eligibility that was allowed to work at Neiman Marcus. She has, therefore, failed to establish a prima facie case of employment discrimination.

CONCLUSIONS OF LAW

45. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2005).

46. Section 760.10, Florida Statutes, part of the Florida Civil Rights Act of 1992, as amended, provides in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges or employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

47. Florida courts routinely rely on decisions of the federal courts construing Title VII of the Civil Rights Act of 1964, codified at Title 42, Section 2000e et seq., United States Code, ("Title VII"), when construing the Florida Civil Rights Act of 1992, "because the Florida act was patterned after Title VII." Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir. 1998), citing, inter alia, Ranger Insurance Co. v. Bal Harbor Club, Inc., 549 So. 2d 1005, 1009 (Fla. 1989), and Florida State University v. Sondel, 685 So. 2d 923, 925, n. 1 (Fla. 1st DCA 1996).

48. Ms. Jean-Pierre has the burden of proving by a preponderance of the evidence that she was the victim of employment discrimination, and she can establish discrimination either through direct evidence of discrimination or through circumstantial evidence, which is evaluated within the framework of the burden-shifting analysis first articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). See Logan v. Denny's Inc., 259 F.3d 558, 566-67 (11th Cir. 2001).

49. "Direct evidence of discrimination is 'evidence which, if believed, would prove the existence of a fact [in issue] without inference or presumption.' . . . 'Only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of [national origin] constitute direct evidence of discrimination.' . . . 'For statements of discriminatory intent to constitute direct evidence of discrimination, they must be made by a person involved in the challenged decision.' . . . 'Remarks by non-decision makers or remarks unrelated to the decision-making process itself are not direct evidence of discrimination.'" Bass v. Board of County Comm'rs, Orange County, Florida, 256 F.3d 1095, 1105 (11th Cir. 2001)(citations omitted).

50. Based on the findings of fact herein, Ms. Jean-Pierre has presented no persuasive direct evidence that she was discriminated against because of her national origin. Ms. Moye was the person who directed Ms. Bennett to terminate Ms. Jean-Pierre, and there is no evidence whatsoever that Ms. Moye was aware of Ms. Jean-Pierre's national origin. Ms. Jean-Pierre's testimony that Ms. Bennett told her that she needed "more" documentation because she was Haitian is not persuasive. Finally, even if Ms. Bennett had told Ms. Jean-Pierre that the only document she could use to verify her employment eligibility was a Permanent Resident Card, such a statement may be contrary

to the information provided on the I-9 Form and the "Lists of Acceptable Documents," but it is not evidence that Ms. Bennett intended to discriminate against Ms. Jean-Pierre on the basis of her national origin.

51. In the absence of direct evidence of discrimination, Ms. Jean-Pierre must rely on the presumption set forth in McDonnell Douglas to establish a prima facie case of discrimination on the basis of national origin by showing that (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was qualified to do the job; and (4) she was treated differently than other, similarly situated Neiman Marcus employees. See Haas v. Kelly Servs. Inc., 409 F.3d 1030, 1035 (8th Cir. 2005); Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000). If Ms. Jean-Pierre satisfies her burden of proving a prima facie case of discrimination on the basis of national origin, the burden of producing evidence then shifts to Neiman Marcus to produce evidence articulating "a legitimate, non-discriminatory reason" for terminating Ms. Jean-Pierre. Id. If Neiman Marcus, establishes a legitimate, non-discriminatory reason for terminating Ms. Jean-Pierre, Ms. Jean-Pierre must produce evidence to prove that the non-discriminatory reason offered by Neiman Marcus is pretext. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999).

52. Based on the findings of fact herein, there is no dispute that Ms. Jean-Pierre is a member of a class of persons protected by Section 760.10, Florida Statutes; that she was qualified to work as a sales associate for Neiman Marcus; and that she was terminated from this position. The first three elements of a prima facie case of employment discrimination have been satisfied. Nonetheless, Ms. Jean-Pierre has failed to meet her burden of establishing a prima facie case of discrimination on the basis of national origin because she has presented no evidence that she was treated differently by Neiman Marcus than any other newly-hired employee.

53. Because Ms. Jean-Pierre has failed to establish a prima facie case of discrimination on the basis of national origin, Neiman Marcus is not required to produce evidence of a legitimate, non-discriminatory reason for terminating Ms. Jean-Pierre.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Commission on Human Relations enter a final order dismissing the Petition for Relief from an Unlawful Employment Practice filed by Nita Jean-Pierre on September 20, 2007.

DONE AND ENTERED this 29th day of February, 2008, in
Tallahassee, Leon County, Florida.



PATRICIA M. HART
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of February, 2008.

ENDNOTES

^{1/} It is noted that, in her Employment Complaint of Discrimination, Ms. Jean-Pierre identified both race and national origin as the bases for her complaint. As set forth in the Preliminary Statement, Ms. Jean-Pierre did not include a claim of discrimination on the basis of race in her Petition for Relief from an Unlawful Employment Practice.

^{2/} All citations to the Florida Statutes herein are to the 2005 edition unless otherwise indicated.

^{3/} This is synonymous with the Permanent Resident Card.

^{4/} Ms. Bennett's testimony that she reviewed the application and mistakenly believed that Ms. Jean-Pierre was applying for a replacement Social Security card is not credited. The document clear states at the top that it is an "Application to Replace Permanent Resident Card."

^{5/} Ms. Jean-Pierre argued in her post-hearing submittal that Ms. Moye was aware of Ms. Jean-Pierre's national origin because

Ms. Bennett faxed Ms. Moye a copy of the I-90 Application to Replace Permanent Resident Card that Ms. Jean-Pierre had provided Ms. Bennett on November 5, 2005, and that this document indicated that she was born in Haiti. The evidence establishes, however, that Ms. Bennett faxed Ms. Moye the I797C form, which does not include the country of Ms. Jean-Pierre's birth.

^{6/} Ms. Jean-Pierre testified that she did not receive a copy of the "Lists of Acceptable Documents" or a copy of the I-9 Form "Instructions" when she was completing the I-9 Form. She did, however, find a copy of the "Lists of Acceptable Documents" in a pile of papers she reviewed after her termination, and she conceded that she received the "Lists of Acceptable Documents" from Neiman Marcus "two or three weeks" after she began work. As a result, even if she were initially unaware that documents other than a Permanent Resident Card were acceptable to establish her employment eligibility, she knew or should have known that other original documents were also acceptable.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.