Immigration Requirements No Excuse for Firing an Employee Without Good Cause

A sales manager for a high-end designer store began working in 1990 in the store's Rome location. Six months later, the store transferred him to its New York location, arranging to obtain a visa on behalf of the manager. Because the store chain was based in Italy, the manager qualified for an E 1 visa, which is available to nationals from certain countries which have trade treaties with the Unites States.

The manager worked at the New York location for the next decade, and the store renewed his E-1 visa several times. The manager always received favorable reviews, and the head of the store assured him that his job would be secure as long as he performed well. Other members of the store's management made the same assurances to the manager.

In 2000, the store promoted the manager and transferred him to its Beverly Hills location. There, friction developed between him and his supervisor. The supervisor apparently did not like the manager and wished to see him replaced.

Corporate buy-out leads to visa troubles

After the store was purchased by French nationals in 2002, the E-1 visa category was no longer available to the manager. In order for him to continue working legally in the United States, he had to apply for another type of visa. Another store employee from Italy faced the same visa problem. The store's attorney advised that the store could apply for H1-B visas for the two affected employees. The company did this for the other person (who was in fact granted H1-B status), but not for the manager.

Instead, the supervisor terminated the manager. In doing so, the supervisor falsely told the manager nothing could be done about his visa situation. The manager had an American fiancée and said he would be able to obtain a work permit once he got married. The manager requested an unpaid leave of absence to sort out his visa situation, but the supervisor refused. The supervisor hired a non-Italian to replace the manager as the manager of the Beverly Hills store.

The manager sued the store, alleging he was wrongfully terminated in violation of an implied contract with the store as well as in violation of California's Fair Employment and Housing Act. The store argued it had to terminate the manager under the Immigration Reform and Contract Act ("IRCA"). Generally, the IRCA prohibits an employer from knowingly hiring or continuing to employ an alien who is unauthorized to work in the United States. The store asserted it had good cause to terminate the manager because he lost his E-1 visa status and was thus no longer authorized to work in the United States.

Termination was too drastic a response

The U.S. Court of Appeals in San Francisco, Ca. ruled for the manager, explaining the store could have taken a less drastic course of action than termination. For instance, the store could have applied for H1-B status for the manager, as it successfully did with another person. Also, it could have granted the manager the requested unpaid leave of absence in order to apply for another work visa; the IRCA does not prohibit an employer from placing its employee on an unpaid leave of absence under such circumstances. Instead, the IRCA is more relevant in situations where there is no possibility that the alien would be able to obtain any type of work authorization, such as when the alien entered the United States unlawfully. Because the store could have complied with the IRCA without terminating the manager, the store's decision to terminate him based upon IRCA appeared to be pre-textual.