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Judge clears way for age bias lawsuit

By Patricia Manson
Law Bulletin staff writer

An entity established by Taiwan's government to promote good relations with the United States must face an age discrimination lawsuit filed by three former employees, a federal judge has held.

U.S. District Judge [Blanche M. Manning](#) on Thursday cleared the way for the three employees to pursue claims brought under the Age Discrimination in Employment Act against the Taipei Economic and Cultural Representative Office.

The three worked for TECRO in clerical positions — one in Chicago and two in Westmont — and claim they were harassed and then fired or forced to quit because of their age.

The three allege that the termination of their employment stemmed from a purported policy setting the age range for people filling their positions at 18 to 45.

In her opinion, Manning rejected the argument that courts in the United States lacked subject matter jurisdiction to hear the suit.

Manning conceded that foreign states in most circumstances are immune from suit under the Foreign Sovereign Immunities Act (FSIA).

She noted that all the parties in the suit agreed that TECRO should be treated as a foreign state for purposes of the statute.

But Manning held that the FSIA's "commercial activity" exception to immunity gave the courts jurisdiction over the plaintiffs' age discrimination

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claims.

That exception applies to such legal claims as those "based upon a commercial activity carried on in the United States by the foreign state," she said, quoting the act.

Again quoting the statute, Manning said "commercial activity" is defined as "either a regular course of commercial conduct or a particular commercial transaction or act."

Whether an activity is "commercial" is determined by its nature rather than by the purpose behind its performance, Manning said.

Citing *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993), and *Republic of Argentina v. Weltover Inc.*, 504 U.S. 607 (1992), Manning said the U.S. Supreme Court has held that a foreign states engages in commercial activity when it acts as a private party in the marketplace.

She held that TECRO was engaging in commercial activity with such alleged actions as forcing one employee to work overtime without pay, denying another a promotion and cutting the hours of a third.

"Making decisions about what tasks employees perform, how much they are paid or how they are treated in the workplace does not implicate concerns 'peculiar to sovereigns,'" Manning wrote, quoting *Nelson*. "These are decisions that parties in the private sector make every day."

The case is *Hsiao E. Shih, et al. v. Taipei Economic and Cultural Representative Office*, No. 07 C 6786.

The lead attorney for plaintiff Hsiao E. Shih is [Anne I. Shaw](#) of Shaw & Associates in Chicago. The lead attorney for plaintiffs Carol Yao and Kuang-Tao Hu is [Sharon Finegan Patterson](#) of Sharon Finegan Patterson P.C. in Chicago.

The lead attorney for TECRO is [Jeremy J. Glenn](#) of Meckler, Bulger, Tilson, Marick & Pearson LLP in Chicago.

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