Not for Publication in West's Federal Reporter
Citation Limited Pursuant to lst Cir. Loc. R. 32.3

United States Court of Appeals
For the First Circuit

No. 03-1981

SYED M.A. HASAN,

Petitioner,

v.

SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR,

Respondent.

APPEAL FROM THE UNITED STATES DEPARTMENT OF LABOR

Before

Torruella, Circuit Judge,
Cyr and Stahl, Senior Circuit Judges.

Syed M.A. Hasan, on brief pro se.
Mary J. Rieser, Attorney, Office of the Solicitor, Division of Fair Labor Standards, Howard M. Radzely, Acting Solicitor of Labor, Steven J. Mandel, Associate Solicitor and Paul L. Frieden, Counsel for Appellate Litigation, on brief for respondent.

March 24, 2004

Per Curiam. After carefully considering the briefs and record on appeal, we affirm.

The appellant argues that his complaint should not have been dismissed because it contained the short, plain statement of his claim required by Swierkiewicz v. Sorema, 534 U.S. 506 (2002). However, Swierkiewicz is inapposite. First, the appellant's case was not dismissed solely on the basis of the allegations of his complaint. Secondly, the Energy Reorganization Act, unlike the statutes at issue in Swierkiewicz, includes a gatekeeping restriction. *See* 42 U.S.C. § 5851(b)(3)(A); 29 C.F.R. § 24.5(b); Trimmer v. Department of Labor, 174 F.3d 1098 (10th Cir. 1999).

Appellant's argument that he was entitled to additional discovery is unavailing, as are his remaining arguments. The requested discovery would not have tended to rectify the defect in his case.

Affirmed. Loc. R. 27(c).