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The Changing Face of the American Worker

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INTRODUCTION

In February of 2010, Hani Khan was an upbeat nineteen year old who had spent the prior four months working as an “impact associate”¹ at the Hollister² store in the Hillsdale mall. She took the job to supplement her income while she attended a local college. As a long-time Bay Area resident who played softball in junior high school and participated in her local religious youth groups, Hani thought of herself as a “typical American girl.”³ Raised in California, it would seem that Hani fit perfectly with the Hollister brand, which bills itself as “inspired” by California beaches and style.⁴ As an employee, she maintained good relationships with the store’s managers and worked well with co-workers. She served customers without complaint, and she did her work with enthusiasm and competence. However, in spite of her otherwise exemplary performance on the job, Hani was suspended.⁵ A district manager visiting the store had spotted Hani on the sales floor, contacted the company’s corporate human resources department, and raised an objection to her wearing a *hijab*, a religiously-mandated Islamic headscarf, because it did not conform to the

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1. “Impact team members maintain merchandise flow, filling, and presentation standards throughout the store and the stockroom.” *Store Opportunities—Impact*, ANFCAREERS.COM, http://www.anfcareers.com/page/part_time (last visited Mar. 20, 2014).

2. Hollister is a brand of Abercrombie & Fitch Co. Abercrombie & Fitch Co., Annual Report (Form 10-K), at 3 (Feb. 2, 2013).

3. Hani Khan, *Hani Khan*, in PATRIOT ACTS: NARRATIVES OF POST-9/11 INJUSTICE 165 (Alia Malek ed., 2011).

4. See Annual Report, *supra* note 2, at 3.

5. See EEOC v. Abercrombie & Fitch Stores, Inc. (*Khan*), No. 11-CV-03162-YGR, 2013 WL 4726137, at *3 (N.D. Cal. Sept. 3, 2013).

store's Look Policy.⁶ The all-American Hani is a devout Muslim, and she has worn a *hijab* since kindergarten.⁷ When Hani refused her employer's later demand to remove her *hijab*, she was terminated.⁸

Our organization, the Council on American Islamic Relations ("CAIR"), was founded in 1994 and is the largest civil rights organization defending Muslim victims of discrimination in the United States.⁹ When Hani was told the *hijab* was a problem for her employer, she called CAIR first, as do many Muslims seeking legal advice about employment discrimination. Although our small San Francisco Bay Area office ("CAIR-SFBA") is the oldest of CAIR's regional offices, at the time Hani called, CAIR-SFBA only had one attorney. In addition, the office was only sixteen years old at the time, a tender age compared to other civil rights organizations such as the American Civil Liberties Union ("ACLU") and the National Association for the Advancement of Colored People ("NAACP").¹⁰

Although we viewed Hani's complaint as an unusually egregious example of discrimination, it is very common for our office to receive complaints from Muslim community members about issues of employment discrimination, such as religious accommodation in the workplace, retaliation for failure to accommodate religious practices, hostile work environment for Muslim employees, wrongful termination, and other issues.¹¹ These issues continue to persist in the complaints we receive from community members.¹² The U.S. Equal Employment Opportunity Commission ("EEOC") has likewise reported a significant increase in complaints about the workplace from Muslim employees. In the initial months following the attacks of September 11, 2001, the EEOC reported a 250% increase in religious discrimination complaints involving Muslims.¹³ In the decade that followed, the EEOC reported 1,040 charges of discrimination in which the allegations involved September 11th and the

6. *Id.* "Abercrombie maintains a "Look Policy" which was effective at all times relevant to this case. The Look Policy is a grooming policy that gives employees guidelines regarding their appearance and the clothing they are expected to wear while at work." *Id.* at *2.

7. Khan, *supra* note 3, at 166.

8. See Khan, 2013 WL 4726137, at *3.

9. CAIR at a Glance, CAIR.COM, <http://cair.com/about-us/cair-at-a-glance.html> (last updated Oct. 19, 2012).

10. The ACLU was founded in 1920. *ACLU History*, ACLU.ORG, <https://www.aclu.org/aclu-history> (last visited Feb. 7, 2014). "Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization." *Homepage*, NAACP.ORG, <http://www.naacp.org/> (last visited Feb. 7, 2014).

11. CAIR CALIFORNIA, STANDING UP FOR OUR RIGHTS, PRESERVING OUR FREEDOM: THE STATUS OF MUSLIM CIVIL RIGHTS IN CALIFORNIA 2013 11 (2013), available at <http://www.cair.com/images/pdf/CAIR-Northern-CA-Civil-Rights-Report-2013.pdf>.

12. *Id.*

13. *What You Should Know about the EEOC and Religious and National Origin Discrimination Involving the Muslim, Sikh, Arab, Middle Eastern and South Asian Communities*, EEOC.GOV, http://www.eeoc.gov/eeoc/newsroom/wysk/religion_national_origin_9-11.cfm (last visited Feb. 7, 2014).

complainant was or was perceived to be Muslim.¹⁴

Religious accommodation issues regarding clothing, such as the one Hani faced, present many difficulties for those who choose to pursue them. First, there is no decisive case law on whether a private employer must accommodate an employee's religious clothing.¹⁵ Second, there is also the very public backlash against Islam and Muslims. The EEOC's internal findings¹⁶ and polling data¹⁷ gathered around the time of Hani's firing indicated that many Americans held an unfavorable view of Islam and Muslims. Indeed, our office received threatening, ugly messages directed at Hani when she chose to come forward and share her story with the public.¹⁸ However, the crux of the conflict was the extent to which the *hijab*, a clear signifier of Muslim identity, could be deemed acceptable in a context that purported to portray an all-American lifestyle. The case was as much about the overall acceptance afforded to Muslim women, who are often portrayed as passive, voiceless foreigners in the American public sphere, as it was about religious accommodation in the American workplace.

We would be remiss in not mentioning that the treatment Hani received from her employer vis-à-vis her *hijab* is not dissimilar from the kind of resistance many American women of color who wear dress or hairstyles in keeping with their cultural norms have received historically at jobs involving customer interface.¹⁹ Several courts have upheld the right of employers to bar certain headwear and hairstyles, even when those adornments are strongly and typically associated with a particular ethnic, racial, or cultural group.²⁰ These precedents have allowed for a subtle implication that the grooming and sartorial habits of certain groups, and by

14. *Id.* (counting charges between Sept. 11, 2001 and Mar. 11, 2012).

15. *Compare* EEOC v. Abercrombie & Fitch Stores, Inc. (*Khan*), No. 11-CV-03162-YGR, 2013 WL 4726137, at *8-*9 (N.D. Cal. Sept. 3, 2013) (holding the employer failed to show that the employee's *hijab* caused the employer undue hardship) with EEOC v. Abercrombie & Fitch Stores, Inc. (*Elauf*), 731 F.3d 1106 (10th Cir. 2013) (holding the employer did not fail to give the employee a religious accommodation because the employer was not on notice that the employee needed a religious accommodation, despite the fact the employee wore a *hijab* to her interview).

16. See EEOC.GOV, *supra* note 13.

17. *Public Remains Conflicted Over Islam*, PEW RESEARCH CENTER 1 (Aug. 24, 2010), <http://www.pewforum.org/files/2010/08/Islam-mosque-full-report.pdf> (finding that favorable opinions of Islam have declined since 2005, and in August of 2010, 38% of those polled had an unfavorable view of Islam).

18. See E-mail from Dennis to Zahra Billoo, then CAIR-SFBA's Programs and Outreach Director (Feb. 24, 2010, 13:45 PST) (on file with author); E-mail from "Polaris370@aol.com" to Zahra Billoo (Feb. 24, 2010, 19:11 PST) (on file with author); E-mail from Jim Stetson to Zahra Billoo (Feb. 24, 2010, 13:05 PST) (on file with author); E-mail from Rob Fischer to Zahra Billoo (Feb. 24, 2010, 12:18 PST) (on file with author); E-mail from John Dendy to Zahra Billoo (Feb. 25, 2010, 04:50 PST) (on file with author); and E-mail from "levant marvin" to Zahra Billoo (Mar. 4, 2010, 14:26 PST) (on file with author).

19. See D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355 (2008); *Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981).

20. See Greene, *supra* note 19.

extension, the people who practice them, are unsuitable for professional environments and the opportunities those environments might afford.²¹ It is only because of the high level of respect the U.S. Constitution affords the free exercise of religion that Muslim women, like Hani, are in a position to fight the assumption that they do not belong in certain workplaces.

This recent development piece discusses the case of *EEOC v. Abercrombie & Fitch Stores* from the perspective of our organization. Through this retelling, we seek to illuminate the impact of the case for Muslims in the United States and for the American workplace more generally.

I. HANI'S STORY

Hani applied for her position at Hollister in October of 2009.²² When Hani interviewed with store personnel, she was wearing her *hijab*.²³ The interviewer did not ask her to remove the *hijab* while in the workplace, but rather, asked her if she was comfortable wearing a *hijab* in the company colors.²⁴ Hani answered that she would be comfortable doing that and was ultimately hired for the open position of impact associate.²⁵

Her position required her to work mainly in the stockroom, but she would occasionally go out onto the sales floor to replenish stacks of clothing items.²⁶ During her four-month tenure at Hollister, the store did not receive a single customer complaint about Hani.²⁷ Her problems began on February 9, 2010, when a visiting district manager noticed her stacking clothes on the sales floor.²⁸ On February 15, 2010, that same district manager approached Hani about having a conversation with the Abercrombie & Fitch ("Abercrombie") human resources department.²⁹ During a telephone meeting with a human resources manager at Abercrombie's headquarters in Ohio and the district manager, Hani was told that her *hijab* violated Abercrombie's Look Policy, a strict set of guidelines to which all employees were bound to adhere.³⁰ The Look Policy determined an employee's appearance from head to toe and forbade certain hairstyles, jewelry, accessories, and all headwear.³¹ Abercrombie claims

21. *See id.*; *see also Rogers*, 527 F. Supp. at 229.

22. *EEOC v. Abercrombie & Fitch Stores, Inc. (Khan)*, No. 11-CV-03162-YGR, 2013 WL 4726137, at *2 (N.D. Cal. Sept. 3, 2013).

23. *Id.*

24. *Id.* at *3; Khan, *supra* note 3, at 166.

25. Khan, *supra* note 3, at 166.

26. Khan, 2013 WL 4726137, at *2.

27. *Id.* at *10 ("Abercrombie failed to proffer any evidence from those four months showing . . . customer complaints or confusion . . . linked to Khan's wearing of a hijab.").

28. *Id.* at *5; Khan, *supra* note 3, at 166.

29. Khan, *supra* note 3, at 166.

30. Khan, 2013 WL 4726137, at *2-3.

31. *Id.* at *2, n.7.

that its Look Policy matters because sales personnel are expected to serve as “living advertisements” for the brand.³² As each Abercrombie subsidiary has its own individual branding,³³ the company required its workers to wear clothes similar to those that are sold by each subsidiary.³⁴ At the time of Hani’s employment at Hollister, there was no clear exemption for religious clothing in the Look Policy, effectively barring many members of religious minority groups, such as Jews, Sikhs, and Muslims, who wear mandated clothing as part of their faith, from employment at Abercrombie stores.³⁵ Rather, decisions about whether an employee was entitled to an exemption from the policy, including for a religious accommodation, were left to Abercrombie’s human resources department to determine on a case-by-case basis.³⁶

During the phone meeting with Hani, the two managers insisted she take her *hijab* off while she was at work.³⁷ She refused to take it off.³⁸ The two managers immediately suspended her employment because, according to them, she had refused to comply with Abercrombie’s Look Policy.³⁹ It was at this time she contacted CAIR-SFBA. Zahra Billoo, then a newly licensed attorney, took Hani’s complaint and prepared to write a letter on Hani’s behalf to challenge the treatment she had received at the hands of Abercrombie’s personnel.⁴⁰

Four days later, on February 19, 2010, Hani was instructed to return to work the following Monday for another meeting. Zahra sent Hani to her Monday meeting with a demand letter.⁴¹ The letter stated plainly that the company’s conduct violated Title VII of the Civil Rights Act⁴² and that CAIR looked forward “to hearing from Ms. Khan that she has been returned to her regular work schedule.”⁴³ At this second meeting, on February 22, 2010, the managers again demanded that Hani remove her *hijab* at work, and again she calmly said no, citing her right to religious accommodation.⁴⁴ Accordingly, she was terminated from her job at

32. *Id.* at *2.

33. See Annual Report, *supra* note 2, at 3.

34. *Khan*, 2013 WL 4726137, at *2.

35. Kim Basin and Caroline Fairchild, *Abercrombie Dress Code Enables Discrimination, Insiders Say*, THE HUFFINGTON POST (Sept. 18, 2013, 8:49AM), http://www.huffingtonpost.com/2013/09/18/abercrombie-dress-code_n_3943131.html.

36. *Id.*

37. *Khan*, 2013 WL 4726137, at *3.

38. *Id.*

39. *Id.*

40. *Khan*, *supra* note 3, at 167.

41. *Id.*

42. See generally Title VII of Civil Rights Act of 1964, 42 U.S.C. § 2000e (2011).

43. Letter from Zahra Billoo, then CAIR-SFBA Programs and Outreach Director (Feb. 19, 2010) (on file with the author).

44. *Khan*, 2013 WL 4726137, at *3.; *Khan*, *supra* note 3, at 167.

Hollister.⁴⁵ She was told the reason for her termination was failure to comply with the company's Look Policy.⁴⁶ Hani would later tell a reporter she left the store feeling ashamed, angry, and confused.⁴⁷ She wrote later that after she clocked out: "I was crying, because I had never had a negative experience with my hijab before, even after 9/11."⁴⁸

About a day after Hani's termination, Hani and CAIR-SFBA decided that the company's decision warranted an immediate filing of a charge with EEOC and a press release to local media, as the decision came from Abercrombie's corporate headquarters.⁴⁹ The press strategy resulted in a surge of media attention. Hani's case was featured on numerous local and national news outlets, including, among others, CBS, KTVU, ABC, and FOX News.⁵⁰

Following the outpouring of supportive local, national, and international media attention, Hani received an offer of reinstatement from Abercrombie, which she declined.⁵¹ A few days later, the EEOC responded to Hani's charge of discrimination and agreed to investigate the issue.⁵² At this point, CAIR-SFBA enlisted the help of the Legal Aid Society-Employment Law Center ("ELC"), which Hani retained to co-counsel the case.

On September 24, 2010, the EEOC issued Abercrombie a determination letter finding there was reasonable cause to believe Abercrombie violated Hani's rights under Title VII.⁵³ The EEOC then attempted to conciliate the issue by inviting both parties into the process of resolving the matter.⁵⁴ Conciliation failed for the first time in January of 2011.⁵⁵ Nonetheless, the parties continued to attempt to resolve the complaint prior to pursuing litigation.⁵⁶ Conciliation failed again in May of 2011.⁵⁷ Six months later, in June of 2011, the EEOC filed suit against Abercrombie in the Northern District of California for violations under Title VII of the Civil Rights Act of 1964 and under the California Fair Employment and Housing Act⁵⁸ on the basis of Hani's claims.⁵⁹

45. *Khan*, 2013 WL 4726137, at *3.

46. *Id.*

47. See Basin and Fairchild, *supra* note 35.

48. *Khan*, *supra* note 3, at 167.

49. *Id.* at 167-68.

50. *Id.* at 168; see also *California Woman Says Abercrombie Fired Her Over Headscarf*, ASSOCIATED PRESS, Feb. 24, 2010, available at <http://www.foxnews.com/us/2010/02/24/california-woman-says-abercrombie-fired-headscarf/>.

51. *Khan*, 2013 WL 4726137, at *3.

52. *Id.* at *3.

53. *Id.* at *4.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at *5.

58. CAL. GOV'T CODE § 12900 (West 2011).

Represented by CAIR-SFBA and ELC, Hani joined the suit as a Plaintiff-Intervenor.⁶⁰ More than two years of litigation would pass before the judge ruled in Hani's favor on summary judgment and the parties reached a settlement.⁶¹

II. RELEVANT CASES BEFORE HANI'S FIRING

At the time Hani was fired, the EEOC had two pending lawsuits against Abercrombie for discrimination against Muslim women who wore the *hijab*.⁶² Both of those lawsuits involved a refusal to hire.⁶³ One plaintiff, Samantha Elauf, was denied a "model" position at an Abercrombie Kids store in Tulsa, Oklahoma.⁶⁴ The "model" position, in contrast to Hani's "impact" position, requires ample time on the sales floor and significant interaction with the customers.⁶⁵ Although initially rated by her interviewing store manager as a potential hire, she was eventually turned down for the position based on her "appearance" and discovered later that the district manager disapproved of her *hijab*.⁶⁶ The other plaintiff, Halla Banafa, was denied a "model" position at an Abercrombie store in Milpitas, California, a town close to where Hani's issue arose.⁶⁷ During Ms. Banafa's job interview, she was asked whether she was Muslim and whether she was required to wear a *hijab*.⁶⁸ Ms. Banafa asked her interviewer if the *hijab* would pose a problem for the company.⁶⁹ The interviewer replied that she did not believe it would be a problem but needed to check. Despite receiving a high interview score, she, like Ms. Elauf, was denied a position because of her *hijab*.⁷⁰

Prior to these cases against Abercrombie, federal courts around the country had issued several conflicting rulings regarding a Muslim woman's right to wear the *hijab* in the workplace.⁷¹ When religious discrimination is evaluated under Title VII, an employer can refuse to accommodate an

59. *Khan*, 2013 WL 4726137, at *1.

60. *Id.*

61. *Id.*

62. *Id.* at *3.

63. *Id.*

64. EEOC v. Abercrombie & Fitch Stores, Inc. (*Elauf*), 731 F.3d 1106 (10th Cir. 2013).

65. *Khan*, 2013 WL 4726137, at *12.

66. *Elauf*, 731 F.3d. at 1114.

67. See EEOC v. Abercrombie & Fitch Stores, Inc. (*Banafa*), No. 10-CV-03911-EJD, 2013 WL 1435290, at *1 (N.D. Cal. Apr. 9, 2013).

68. *Id.* at *4.

69. *Id.*

70. *Id.*

71. Compare EEOC v. Alamo Rent-A-Car LLC, 432 F. Supp. 2d 1006 (D. Ariz. 2006) (holding the employer failed to show it could not reasonably accommodate employee's religious practice without undue hardship) with EEOC v. Kelly Servs., Inc., 598 F.3d 1022 (8th Cir. 2010) (holding the EEOC failed to establish a prima facie case of religious discrimination and the employer provided a legitimate reason to not refer the employee).

employee's religious practices that conflict with a job requirement if accommodating that practice would cause the employer an undue hardship.⁷² Courts have determined this to mean that the employer must demonstrate that accommodating the request would present more than a "de minimis cost" to its business.⁷³ For example, in *EEOC v. Kelly Services, Inc.*, the Eighth Circuit ruled that an employment service could not be compelled to accommodate a group of Muslim women who wore the *hijab*, at a job site where employer safety requirements prohibited all headwear, even when the employer could not present clear evidence to show that the *hijab* presented a safety hazard.⁷⁴ In addition, the Third Circuit, in *EEOC v. The Geo Group, Inc.*, held that a private corporation that runs prisons was not required to accommodate women who wore the *hijab* by making an exception to its uniform requirement.⁷⁵ Once again, safety was cited as the undue hardship, even though the Muslim women requesting the accommodation were not corrections officers, but nurses and administrative personnel performing less hazardous tasks.⁷⁶

Courts have also ruled in favor of plaintiffs seeking accommodation for the *hijab* in the workplace. In *EEOC v. Alamo Rent-A-Car LLC*, the District Court of Arizona ruled that the employer did violate the rights of a Muslim employee under Title VII when it refused to allow her to wear the *hijab* at work.⁷⁷ Although Alamo claimed that allowing the plaintiff an exemption from the company's uniform policy by wearing her *hijab* would "open the floodgates" to other similar employee requests, the court found that this was pure speculation because Alamo could not show that it had received such requests.⁷⁸

III. HANI'S SUMMARY JUDGMENT VICTORY

On September 3, 2013, Judge Yvonne Gonzalez Rogers, of the Northern District of California, ruled in favor of the EEOC and Hani's partial motion for summary judgment.⁷⁹ The court rejected Abercrombie's assertion that the EEOC failed to conciliate the matter in good faith.⁸⁰ The court then went on, after noting that the plaintiffs had established a *prima facie* case, to examine whether Hani's wearing of the *hijab* presented an

72. Title VII of Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) (2011).

73. See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977); Sadia Aslam, *Hijab in the Workplace: Why Title VII Does Not Adequately Protect Employees from Discrimination on the Basis of Religious Dress and Appearance*, 80 UMKC L. REV. 221, 228–38 (2011).

74. See *Kelly Servs., Inc.*, 598 F.3d at 1032–33.

75. See *EEOC v. The Geo Group, Inc.*, 616 F.3d 265 (3rd Cir. 2010).

76. *Id.*

77. See *EEOC v. Alamo Rent-A-Car LLC*, 432 F. Supp. 2d 1006, 1017 (D. Ariz. 2006).

78. See *id.* at 1016.

79. *EEOC v. Abercrombie & Fitch Stores, Inc. (Khan)*, No. 11-CV-03162-YGR, 2013 WL 4726137, at *1 (N.D. Cal. Sept. 3, 2013).

80. *Id.* at *7.

undue hardship to Abercrombie.⁸¹

The court stated that the Ninth Circuit requires “heightened proof” for what constitutes an undue burden to an employer.⁸² It makes clear that establishing an undue burden cannot be based on hypothetical facts or speculation, but rather “requires proof of actual imposition or disruption.”⁸³ In response to Abercrombie’s claim that accommodating Hani’s *hijab* would threaten its business model, the court stated:

To the extent that Abercrombie argues more broadly that an accommodation for Khan would have threatened the core of its business model and the company’s overall success, the Court is not persuaded. Each Abercrombie witness testified that they believe deviations from the Look Policy harm sales and/or customers’ experiences in the store. None were able to provide a more concrete basis than that it was their “belief” based on “personal experience” that such harms result.⁸⁴

The court went on to rule that although Abercrombie insists that it had made numerous reforms to its Look Policy since February of 2010 when Hani was terminated, a jury might find that injunctive relief is necessary to prevent Abercrombie from reverting to its old ways once the threat of litigation has passed.⁸⁵

Once the judge’s ruling came down in favor of EEOC and Hani, and with less than one month before scheduled trial, the parties agreed to settle the dispute. The judgment and decree also led to a settlement in Ms. Banafa’s case, in which EEOC had earlier obtained summary judgment and for which a trial was also upcoming. The judgment and decree required Abercrombie to create an appeals process for denials of religious accommodation requests, revise the Look Policy to expressly acknowledge that Abercrombie is legally mandated to allow exceptions in certain circumstances, inform applicants during interviews that accommodations to the Look Policy may be available, provide employees with information about how to make religious accommodation requests, incorporate information regarding requests for headscarf accommodations into all manager training sessions, institute, at a minimum, quarterly reviews of all religious accommodation requests and decisions, post notices of the settlement and notifications of employees’ right to request Look Policy accommodations, and provide biannual reports to the EEOC and Hani for three years regarding implementation of these policy changes.

81. *Id.* at *9.

82. *Id.*

83. *Id.*

84. *Id.* at *10.

85. *Id.* at *14.

CONCLUSION: MOVING FORWARD

By the time Judge Gonzalez Rogers of the Northern District of California granted summary judgment for Hani, a different judge in the same District had also ruled in favor of summary judgment for Ms. Banafa.⁸⁶ A third judge in the District Court for the Northern District of Oklahoma likewise granted the motion for summary judgment for Ms. Elauf.⁸⁷

Upon the news of the ruling in Hani's case, it appeared hopeful that several different courts were moving in the direction of insisting that private employers must accommodate the *hijab*. However, a few weeks later, a ruling came down from the Tenth Circuit, reversing the decision in favor of summary judgment for Ms. Elauf.⁸⁸ The Tenth Circuit held that even though Ms. Elauf wore a *hijab* to her interview, because she did not specifically request an accommodation, the store did not have notice that Ms. Elauf wore her scarf for religious reasons.⁸⁹ Therefore, according to the court, Abercrombie could not have denied a religious accommodation request.⁹⁰ Although the interviewing manager admitted she understood that Ms. Elauf wore her *hijab* for religious reasons and admitted that the scarf was a factor in the decision not to hire her, the court still determined that Ms. Elauf was not entitled to summary judgment.⁹¹

Although Hani's case represents an important step forward for the American Muslim workforce and for any worker who seeks religious accommodation, employers and courts still retain a certain reticence about whether this type of religious clothing can truly fit within the American workplace. The Tenth Circuit's decision brings this reticence into razor-sharp focus when it reasons that strong religious beliefs are "not the only reasons that Muslim women wear hijabs; for example, some do so for cultural reasons or in order to demonstrate a personal rejection of certain aspects of Western-style dress."⁹² In downplaying the significance of the *hijab* to a Muslim woman's most sacred beliefs, the Tenth Circuit relegates it to a marginal place of foreignness and characterizes it as something an employer might justifiably object to and exclude.

Fortunately, California legislators committed to equal opportunity in the workplace have taken note of cases like Hani's. In September of 2012, the Workplace Religious Freedom Act was signed into law.⁹³ This law

86. EEOC v. Abercrombie & Fitch Stores, Inc. (*Banafa*), No. 10-CV-03911-EJD, 2013 WL 1435290, at *1 (N.D. Cal. Apr. 9, 2013).

87. EEOC v. Abercrombie & Fitch Stores, Inc. (*Elauf*), 798 F. Supp. 2d 1272 (N.D. Okl. 2011).

88. EEOC v. Abercrombie & Fitch Stores, Inc. (*Elauf*), 731 F.3d 1106, 1111 (10th Cir. 2013).

89. *Id.* at 1127.

90. *Id.* at 1127-28.

91. *Id.* at 1116, 1127-39.

92. *Id.* at 1112 (citing to the EEOC's expert).

93. See Patrick McGreevy, *Bill Protects Religious Garb, Grooming in the Workplace*, L.A.

affords protection to workers like Hani by stating plainly that employers must accommodate the religious clothing of employees unless doing so would cause “significant difficulty or expense.”⁹⁴ The law further prohibits employers from segregating employees who wear religious clothing in back rooms, mandating those who do business in California to create inclusive and integrated workplaces.⁹⁵

Hani’s bravery in coming forward has opened many doors for both American Muslims and anyone who seeks religious accommodation. Her story has not only helped to shift perceptions of Muslims in American society, but has also changed the way Muslims view their ability to fight discrimination. Ultimately, this case about a college student and her part-time job has had unexpectedly far-reaching and deep implications. We believe that its positive resolution can only bring about a more complete picture of what an American worker looks like.

TIMES, Sept. 9, 2012, <http://articles.latimes.com/2012/sep/09/local/la-me-workplace-discrimination-20120909>.

94. Workplace Religious Freedom Act, 2012 Cal. Legis. Serv. Ch. 287 (A.B. 1964) (West), available at: http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1964.

95. *Id.*

