

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 **SUMMARY ORDER**  
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6 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL**  
7 **REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS**  
8 **OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS**  
9 **OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A**  
10 **RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL**  
11 **OR RES JUDICATA.**  
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13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the  
14 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the  
15 17th day of September, two thousand and four.  
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17 PRESENT:

18  
19 HON. JOSEPH M. McLAUGHLIN  
20 HON. GUIDO CALABRESI,  
21 HON. PETER W. HALL,  
22

23 *Circuit Judges.*  
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27 WILLIAM REYES,

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29 *Plaintiff-Appellant,*  
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31 v.

No. 03-7857

32  
33 NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES,  
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35 *Defendant-Appellee.*  
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40 For Plaintiff-Appellant:

RACHEL S. ROTHSCHILD, Ballon Stoll Bader & Nadler,  
P.C. (Marshall B. Bellovin, Robert Schwartz, *on the brief*),  
New York, NY.

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44 For Defendant-Appellee:

MARION R. BUCHBINDER, Senior Assistant Solicitor

1 General, for Eliot Spitzer, Attorney General of the State of  
2 New York (Carol Fischer, *on the brief*), New York, NY.

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4 Appeal from the United States District Court for the Southern District of New York  
5 (Stein, *J.*).  
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9 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**  
10 **DECREED that the judgment of the district court be and it hereby is AFFIRMED.**  
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14 Plaintiff-Appellant William Reyes brought a discrimination suit against the New York  
15 State Office of Children and Family Services (“OCFS”). Reyes alleged that he had been denied a  
16 religious accommodation on the basis of religious and national-origin discrimination, and he also  
17 made two claims of retaliation, one involving OCFS’s failure to promote him and the other  
18 involving his involuntary (though lateral) transfer. The district court (Stein, *J.*) granted OCFS’s  
19 motion for summary judgment. Reyes appeals.

20 With respect to the discrimination claim, even assuming *arguendo* that Reyes made a  
21 *prima facie* case and assuming even more *arguendo* that the explanations provided by OCFS  
22 could be deemed by a jury to be pretextual, Reyes still has not submitted enough evidence for a  
23 reasonable jury to find that OCFS discriminated against him. The only significant evidence  
24 Reyes introduced involved a woman, of a different race and religion than his, whom OCFS  
25 accommodated, but who had a totally different job and a totally different set of responsibilities  
26 than he had. *See, e.g., Cosme v. Henderson*, 287 F.3d 152, 154-55 (2d Cir. 2002) (religious  
27 discrimination); *Bickerstaff v. Vassar College*, 196 F.3d 435, 445-46 (2d Cir. 1999) (racial,  
28 national-origin discrimination).

29 And, with regard to his failure-to-promote claim, again assuming *arguendo* that Reyes

1 presented a *prima facie* case of retaliation, he provided no evidence that could persuade a  
2 reasonable jury that OCFS’s explanation – that it awarded the job to someone more qualified and  
3 for whom it was a lateral transfer – was pretextual. *See Gallagher v. Delaney*, 139 F.3d 338, 349  
4 (2d Cir. 1998). Finally, as to his involuntary transfer, assuming, once more, *arguendo* that Reyes  
5 made a *prima facie* case of retaliation either in response to his discrimination complaints or to his  
6 request for religious accommodation, there is no evidence under *Galabya v. New York City Bd. of*  
7 *Educ.*, 202 F.3d 636, 640-41 (2d Cir. 2000), that the lateral transfer constituted an adverse job  
8 action; that is, none of the special circumstances that existed in *De la Cruz v. New York City*  
9 *Human Res. Admin. Dep’t of Soc. Servs.*, 82 F.3d 16 (2d Cir. 1996), or in *Rodriguez v. Bd. of*  
10 *Educ. of Eastchester Union Free Sch. Dist.*, 620 F.2d 362 (2d Cir. 1980), were present in this  
11 case.

12 We have considered all of Plaintiff’s claims and find them to be without merit. The  
13 district court’s judgment is therefore AFFIRMED.

14 For the Court,  
15 ROSEANN B. MACKECHNIE,  
16 Clerk of Court

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18 by: \_\_\_\_\_