

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

December 30, 1997

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 97A00043
FORTUNE EAST FASHION, INC.,)	
Respondent.)	

ORDER GRANTING PARTIAL DISMISSAL AND
MEMORANDUM OF CASE MANAGEMENT CONFERENCE

On December 30, 1997 at 10 a.m. Eastern Standard Time, a telephonic case management conference was held in this matter. Appearing on behalf of the complainant was Ms. Mimi Tsankov, and on behalf of the respondent, Mr. Jeffrey Eng. The status of complainant's recent Motion to Dismiss and a schedule for future submissions were discussed.

On November 4, 1997, I issued an Order Granting in Part and Denying in Part Complainant's Motion for Summary Decision as to Liability, wherein I granted summary decision as to liability for the respondent for all but two of the individuals named in the complaint, Nga Huang Su in Count I and Sandy Lau Fong in Count III. On December 19, 1997, Complainant filed a Motion to Dismiss in regards to those individuals. At the telephonic conference, the respondent indicated it would not oppose the dismissals. Count I as it pertains to Nga Huang Su and Count III as it relates to Sandy Lau Fong are therefore dismissed.

Since Summary Decision has been granted for the complainant as to liability in all other aspects of the complaint, the only issue remaining is the amount of penalty. The relevant statutory section provides that:

With respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection shall require the person or entity to pay a civil money penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the

violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

8 U.S.C. § 1324a(e)(5). See also 8 C.F.R. § 274a.10(b)(2). While consideration of the statutory factors is obligatory, neither the statute nor the regulation precludes the consideration of other factors in addition to those enumerated. United States v. Reyes, 4 OCAHO 592, at 10 (1994).¹

Both parties have agreed, in regards to the first statutory factor, that the respondent is a small business. Complainant shall have two weeks from the telephonic conference or until January 13, 1997, to address in writing other appropriate factors. Respondent shall have an additional two weeks following its receipt of complainant's submission to file its own statement addressing the relevant factors.

SO ORDERED.

Dated and entered this 30th day of December, 1997.

Ellen K. Thomas
Administrative Law Judge

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 5, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to Volumes 1 through 5 are to the specific pages, seriatim, of the specific entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 5, however, are to pages within the original issuances.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 1997, I have served copies of the foregoing Order Granting Partial Dismissal and Memorandum of Case Management Conference on the following persons at the addresses indicated:

Dea Carpenter, Esq.
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, N.W., Room 6100
Washington, D.C. 20536-9999

Mimi Tsankov, Esq.
Immigration and Naturalization Service
P.O. Box 2669
New York, NY 10008-2669

Mao Sen Lin
Fortune East Fashion, Inc.
5921 20th Avenue
Brooklyn, NY 11024
and
29 Brighton 4 Terrace
Brooklyn, NY 11235

Jeffery Eng, Accountant
Fortune East Fashions, Inc.
185 Canal Street, Suite 301
New York, NY 10013

Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041

Cynthia A. Castañeda
Legal Technician to
Ellen K. Thomas
Administrative Law Judge
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, Virginia 22041
(703) 305-1742