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

March 18, 1999

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 94A00154
AID MAINTENANCE COMPANY, INC., a/k/a Aid Janitor Service, Aid Window Cleaning, Aid Floor Cleaning, Aid Cleaning Service, Respondent.	)	

NOTIFICATION OF FINAL AGENCY ORDER

On February 12, 1999, the Honorable Joseph E. McGuire, the Administrative Law Judge (ALJ) in the above-styled proceeding, issued a Final Decision. On March 12, 1999, Respondent filed a "Request for Review and Modification of Administrative Law Judge's Order."

The Chief Administrative Hearing Officer has reviewed the Administrative Law Judge's Final Decision and Order and has determined not to modify or vacate that order. Pursuant to 28 C.F.R. § 68.53(a)(2), the ALJ's Final Decision and Order became the final agency order on March 15, 1999.

Respondent may file, within forty-five (45) days of the final agency order, a petition in the Court of Appeals for the appropriate circuit for review of the final decision and order, pursuant to 28 C.F.R. § 68.53(a)(3).

Ronald J. Vincoli
Acting Chief Administrative Hearing Officer

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FINAL DECISION

Appearances: William F. McCullough, Esq., Immigration and Naturalization Service for complainant

Walter C. Hunter, Esq., Kimberley A. O'Connell, Esq., Edwards & Angell for respondent

Before: Honorable Joseph E. McGuire

I. Procedural History

On August 18, 1994, the United States Department of Justice, Immigration and Naturalization Service (complainant or INS), filed a seven-count Complaint in which it alleged that Aid Maintenance Company, Inc. (respondent or Aid Maintenance) had committed some 139 alleged violations of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a, for which civil money penalties totaling $67,250 were assessed. The 139 alleged infractions consisted of 15 illegal hire/continue to employ charges and 124 record keeping, or paperwork, violations.

In Count I, INS alleged that Aid Maintenance knowingly hired and/or knowingly hired through a labor contract and/or continued to employ the 15 individuals named therein for employment in the United States and did so after November 6, 1986, knowing that those individuals were aliens not authorized for employment in the United States, in violation of IRCA,

8 U.S.C. § 1324a(a)(1)(A). Civil money penalties of $1,010 were levied for each of those 15 alleged violations, for a total of $15,150.

INS alleged in Count II that Aid Maintenance employed the 10 individuals named therein for employment in the United States after November 6, 1986, and that it had failed to make available for inspection and/or failed to prepare the required Employment Eligibility Verification Forms (Forms I-9) for each of those individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). Civil money penalties of $420 were levied for each of six of those alleged violations and $580 for each of the remaining four infractions, for a total of $4,840.

In the third Count, INS charged that Aid Maintenance also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to ensure proper completion of Section 1 of the Forms I-9 for each of the 36 individuals named therein, all of whom were hired by Aid Maintenance for employment in the United States after November 6, 1986. Civil money penalties of $410 were levied for each of 34 of those alleged violations and $520 for each of the remaining two alleged violations, for a total of $14,980.

In Count IV, INS alleged that Aid Maintenance also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) because it failed to properly complete Section 2 of the Forms I-9 for each of the 21 individuals named therein, all of whom were hired by that firm for employment in the United States after November 6, 1986. Civil money penalties of $400 were levied for each of those 21 alleged infractions, for a total of $8,400.

In Count V, INS alleged that Aid Maintenance failed to ensure proper completion of Section 1 of the Forms I-9 by some 52 employees and that Aid Maintenance had failed to properly complete Section 2 of those same 52 Forms I-9 for the 52 individuals named therein, all of whom were hired by Aid Maintenance for employment in the United States after November 6, 1986, in violation of 8 U.S.C. § 1324a(a)(1)(B), also. Civil money penalties of $410 were levied for each of 49 of those alleged violations and $570 for each of the remaining three violations, for a total of $21,800.

In Count VI, INS charged that Aid Maintenance employed the three individuals named therein for employment in the United States after November 6, 1986, and that it had accepted documents from those individuals which did not reasonably appear to be genuine and/or relate to those individuals, again in violation of 8 U.S.C. § 1324a(a)(1)(B). Civil money penalties of $420 were levied for each of those three alleged violations, for a total of $1,260.

In the seventh and final count, INS alleged that Aid Maintenance had failed to complete new Forms I-9 and/or failed to update the Forms I-9 for each of the two individuals named therein, both of whom were hired by Aid Maintenance for employment in the United States after November 6, 1986, in violation of 8 U.S.C. § 1324a(a)(1)(B), also. Civil money penalties of $410 were levied for each of those two alleged violations, for a total of $820.

On January 12, 1995, INS amended the Complaint by requesting that four of the alleged paperwork violations be stricken, two in Count II, one in Count III and one in Count V, involving Messrs. Luis Castano and Josef Czerwonk, Guillermo Ochoa, and Franciso Chacon, respectively. Resultingly, some 135 alleged violations, consisting of 15 alleged illegal hire/continue to employ and 120 paperwork charges, involving proposed civil money penalties totaling $65,590 then remained at issue.

On July 3, 1996, INS filed a Motion for Summary Decision requesting that summary decision be entered in its favor on all facts of violation alleged in the then remaining 120 paperwork violations in Counts II through VII, together with civil money penalties in the total sum of $49,870 for those 120 alleged infractions.

On September 25, 1996, an order was entered granting INS' Motion for Summary Decision on the facts of violation in 116 of those 120 paperwork violations. More specifically, the request for summary decision on the facts of violation concerning the 64 violations alleged in Counts II, III and IV was granted since INS had shown that no genuine issues of material fact remained on any of those alleged charges. Similarly, INS' dispositive motion was also granted on the alleged facts of violation in 50 of the 51 remaining paperwork violations alleged in Count V for the same reason. In the remaining alleged violation in that count, involving one Haber Alvarez, INS' motion was denied since it had failed to furnish prima facie evidence of a violation of that type since no supporting Form I-9 copy had been furnished for that individual, as INS had done in the case of the remaining 50 individuals in that count, as well as the 64 persons named in Counts II, III, and IV.

That portion of INS' Motion for Summary Decision which addressed the pertinent facts of violation alleged in the three violations in Count VI was also denied since INS had failed to show that Aid Maintenance had accepted documents from the three individuals named therein which did not reasonably appear to be genuine and/or to relate to those persons.

Concerning the two alleged paperwork violations in Count VII to the effect that Aid Maintenance had failed to complete new Forms I-9 and/or failed to update the pertinent Forms I-9 for the two individuals named therein, it was held that INS had also presented a prima facie case in support of those charges and summary decision was accordingly also granted on the facts of those two allegations.

Resultingly, only the alleged facts of violation in 19 charges, consisting of four paperwork allegations i.e. one paperwork charge in Count V and three paperwork allegations in Count VI, as well as the alleged facts of violation in the 15 illegal hire/continue to employ charges in Count I, as well as the appropriate civil money penalties to be assessed for the then proven 116 paperwork infractions, then remained at issue.

On February 24, 1997, INS filed a Second Motion for Summary Decision, requesting that the facts of violation in 14 of the original 15 illegal hire/continue to employ charges in Count I,

except the alleged facts of violation pertaining to one Gustavo Cadavid, be resolved in its favor.

In support of those 14 illegal hire/continue to employ charges, INS relied upon Aid Maintenance's Answer, in which it admitted that it had, as INS alleged, hired the 15 individuals described as illegal aliens in Count I but denied that it had knowledge that any or all of those 14 persons were not authorized to work in the United States. INS also furnished the sworn declaration of INS Supervisory Special Agent Mark J. Furtado, who attested to the fact that those 15 individuals had been apprehended as illegal aliens in the greater Providence, Rhode Island area and that all stated that they had been employed by Aid Maintenance at various job sites. That fact was further established by INS' having also provided records of the Rhode Island Department of Employment Security Wage Record System which confirmed that all had been employed by Aid Maintenance during the alleged periods.

On July 18, 1997, an order was entered granting in part and denying in part INS' Second Motion for Summary Decision. It was found that INS had demonstrated that there were no genuine issues of fact surrounding the illegal hire/continue to employ charges relating to 12 of the 15 individuals named in Count I, that is all but Gustavo Cadavid, Martha Escobar and Denis E. Florenz. Accordingly, summary decision in INS' favor on the facts of violation concerning the remaining 12 employees named in Count I was granted.

On the charges involving the remaining three previously identified individuals in that count, summary decision on the alleged facts of violation concerning Gustavo Cadavid was denied because INS had not sought such relief in his case and summary decision was also denied in those allegations pertaining to Martha Escobar and Denise E. Florenz because INS had failed to show that the status of each at the time of their having been hired was that of an unauthorized alien, and further that INS had not shown that at the time those two persons had been hired Aid Maintenance had actual or constructive knowledge of that fact.

Following that ruling on INS' Second Motion for Summary Decision, the facts of violation in only seven of the original 139 alleged violations in the Complaint remained at issue, the three illegal hire/continue to employ charges in Count I, the one remaining paperwork allegation in Count V, and the three remaining paperwork violations in Count VI, as well as the possible appropriate civil money penalty sums to be assessed on any or all of those seven matters, as well as the appropriate civil money penalty amounts on the 12 proven illegal hire/continue to employ violations in Count I and the 116 proven paperwork infractions in Counts II, III, IV, V, and VII.

Towards that end, a hearing was conducted by the undersigned in Providence, Rhode Island. At the outset of that hearing, INS dismissed the remaining seven alleged violations namely, three of the 15 illegal hire/continue to employ charges in Count I, one of the 51 paperwork violations in Count V, and all three of the paperwork infractions in Count VI.

As a result of those dismissals, the only issue addressed in that hearing consisted of the

appropriateness of the civil money penalties totalling $60,990 which INS had assessed for the 128 violations proven in motion practice namely, the 12 illegal hire/continue to employ charges in Count I and the 116 paperwork infractions, as follows: Count II - 8; Count III - 35; Count IV - 21; Count V - 50; and Count VII - 2.

Summary of Evidence

The hearing evidence of INS was comprised of the testimony of INS Supervisory Special Agent Mark J. Furtado and INS Special Agent Maria Hurley, as well as the documentary evidence contained in 16 documentary exhibits identified and admitted into evidence as Complainant's Exhibits A through P.

Aid Maintenance's hearing evidence consisted of the testimony of Sylvia Baril, its former payroll clerk, and Kenneth R. Loiselle, its president, and the information provided in two documentary exhibits marked and entered into evidence as Respondent's Exhibits 1 and 2.

INS Supervisory Special Agent Mark J. Furtado testified that he began his employment at INS in July, 1987. After completing training activities in October, 1987 his assignments included employer sanction cases, such as the one at issue, and he has handled some 150 such matters over the past 11 years. He served in the INS office in Providence, Rhode Island until July, 1997, when he was reassigned to that agency's Manchester, New Hampshire office, his current duty station.

In the course of his duties in the Providence INS Office he reviewed office files and found two leads regarding Aid Maintenance, one which had been received in 1988 and the other in 1990 concerning its reported employment of persons who were not authorized to work in the United States, as well as its reported acceptance of fraudulent employment eligibility verification documents.

He also testified that in early 1991 he began a worksite enforcement investigation of Aid Maintenance's headquarters located at 300 Roosevelt Avenue, in Pawtucket, Rhode Island, a building which also housed the offices of a firm known as Cerca, Inc., although the only name which appeared on the building was that of Aid Maintenance. He stated that anyone going onto the premises would not have been aware that Cerca, Inc. also had offices at that location (T. 57, 58).

That investigation was begun on April 17, 1991, between 5:00 and 5:20 p.m. He conducted a surveillance of the parking lot at Aid Maintenance's headquarters and secured the license plate numbers of some 17 of the many vehicles which he had observed entering and leaving that area. He then submitted those license plate numbers to the Rhode Island Department of Motor Vehicles and was furnished the names and dates of birth of the registered owners of those vehicles (T. 50-52, Complainant's Exh. A at 1,2).

After securing that information, he processed the names and birth dates of those registered owners through INS' computer database and learned that one of the registered vehicle owners, Julio Rossalez, had been denied work authorization by INS. He interviewed some of the other registered owners on the Rhode Island DMV list and after having interviewed one Antonieta Berrum, then an employee of Aid Maintenance, he prepared a Record of Deportable Alien, Form I-213 (Complainant's Exh. B) concerning her and also secured a signed and sworn affidavit from her, both dated April 24, 1991. He also obtained from Ms. Berrum three of her paycheck stubs from Cerca, Inc. Those documents revealed that Ms. Berrum had been employed in 1990 and 1991 by Cerca, Inc., the corporation which shares offices with Aid Maintenance. It was also determined that the corporate entities Aid Maintenance and Cerca, Inc. were commonly owned and further that Aid Maintenance had contracted with Cerca, Inc. to provide its janitorial workforce.

In her April 24, 1991 interview, which had been conducted in Spanish, Ms. Berrum told Furtado that she was a Mexican national and that she had entered the United States illegally near San Ysidro, California in November, 1988. She further attested in her sworn affidavit that on the date of that interview she was employed by Aid Maintenance in Pawtucket, Rhode Island and had been so employed since January, 1990 at an hourly wage rate of $4.50. Upon having been shown a blank Form I-9, she further attested that she filled out such a form and had been told by an employee of Aid Maintenance, whose name she could not recall, to use the uppermost box in Section 1 of that form in order to provide the information that she was a citizen of the United States. She did so and was also told to show her social security card and her Rhode Island driver's license, presumably to provide acceptable documentation concerning her employment eligibility and identity, respectively. Her boss at Aid Maintenance was Hugo Gabriez, a Guatemalan national (Complainant's Exh. B, at 2,3).

Supervisory Special Agent Furtado also testified that in addition to interviewing Ms. Antonieta Berrum he interviewed some 10 or 15 other Aid Maintenance Employees who provided the same information which he had secured from Ms. Berrum. In that manner, it was determined that all of those persons were also unauthorized aliens, none of whom had any knowledge of Cerca, Inc., either, and all of whom believed that they were employed by Aid Maintenance (T. 58-60).

He also testified more fully that INS had received leads from various sources, one in September, 1988 from a woman who was then working for Aid Maintenance and who then possessed a fraudulent social security card, as well as an oral report in April, 1990 concerning fraudulent social security documentation among Aid Maintenance employees.

A third document in the pertinent INS exhibit reveals that an INS special agent visited Aid Maintenance at 300 Roosevelt Avenue, in Pawtucket on September 18, 1989 and conducted an educational visit concerning the preparation of Forms I-9, which are to be completed in order to verify the identity and work eligibility of all employees hired after November 6, 1986. INS Special Agent Bjorn noted that he had met with Sylvia Baril, of Aid Maintenance's payroll

department in order to explain that process and he also noted that he had provided her with a supply of Forms I-9 and had also given her an INS Handbook for Employers for her employer's use (Complainant's Exh. C, at 3).

INS Supervisory Special Agent Furtado also testified that after apprehending those illegal aliens then employed at Aid Maintenance whose identities were determined through earlier surveillance efforts, he arranged to inspect that firm's Forms I-9. This was accomplished by serving a Notice of Inspection on Ms. Sylvia Baril, the payroll clerk at Aid Maintenance. That inspection was scheduled to be conducted at Aid Maintenance on Thursday, June 13, 1991, but Ms. Baril requested that it be rescheduled two days earlier on Tuesday, June 11, 1991, because the firm's employees came to her office each Thursday to pick up their salary checks. Furtado stated that the Notice of Inspection instructed Aid Maintenance to produce all Forms I-9 in its possession for inspection by INS and that he did not limit the Forms I-9 to be produced only to those persons then employed at that firm (T. 66).

On Tuesday, June 11, 1991, Ms. Baril turned over some 269 Forms I-9 to Furtado, who inquired of her whether she had provided all of the Forms I-9 then in the possession of Aid Maintenance and Ms. Baril replied that she had done so (T. 67).

After reviewing those 269 Forms I-9 which Ms. Baril had provided to him, Furtado compiled a five-page list of the names of those 269 employees, as well as the documents that, according to Aid Maintenance, each had provided in order to establish their employment eligibility. The facesheet of that list contains the signatures of Ms. Baril and Furtado (Complainant's Exh. D).

Those 269 names and the accompanying alien registration document numbers which they reportedly furnished were then checked against the INS database and 102 of those 269 numbers, or some 38-percent, were shown to have been fraudulent. In 63 instances the alien registration numbers which Aid Maintenance had furnished on the Forms I-9 had been issued to individuals other than those employees who had, according to Aid Maintenance, presented those documents. The document numbers of the remaining 39 Aid Maintenance employees, contrary to Aid Maintenance's representations on their 39 completed Forms I-9, could not have been correct since INS had never issued alien registration cards bearing those numbers.

As a result of those 102 document anomalies, he prepared a four-page letter dated April, 16, 1992 and served it upon Cerca, Inc., at 300 Roosevelt Avenue, in Pawtucket, Rhode Island (Complainant's Exh. E). That correspondence listed the names of all of those 102 employees, together with the pertinent alien registration numbers that each had reportedly presented to obtain employment and the list was further broken out to show which of the workers had provided numbers which had been issued by INS to persons other than those employees, as opposed to those employees who had reportedly presented documents containing numbers that had never been issued by INS. In the concluding paragraph, Cerca, Inc. was instructed to reverify the employment eligibility of those 102 employees, and to have done so within 30 days of its receipt

of that correspondence. That letter also curiously informed Cerca, Inc., perhaps because only 38-percent of the Forms I-9 contained fraudulent alien registration numbers, that it appeared that the 269 Forms I-9 which Ms. Baril had turned over to Furtado on June 11, 1991 appeared, for the most part, to have been prepared properly.

Furtado also testified that after he served the April 16, 1992 letter upon Cerca, Inc. he received a telephone call from the Naval Investigative Service at the Newport, Rhode Island Navy Base. He was told that an investigation by that service had disclosed that 17 illegal aliens, all of whom were Aid Maintenance employees, were then working at the Naval Education and Training Center at that naval facility, which is a 45-minute drive from Pawtucket/Providence, Rhode Island. On September 22, 1992, INS promptly arrested and detained those 17 persons, all of whom had in their possession I.D. cards which disclosed that they were then working for Aid Maintenance.

Furtado stated that all of those 17 illegal aliens were included in the list of 102 Aid Maintenance Employees who had supplied false alien registration numbers to Aid Maintenance and about whom that firm had been fully advised by INS, just five months earlier, in its April 16, 1992, letter to Cerca, Inc. (T. 77).

On September 24, 1992, according to Furtado, INS sent a single-page letter jointly addressed to Aid Maintenance Company and Cerca, Inc. in which those 17 employees were identified and both firms were advised that none of those 17 employees was eligible to be employed in the United States (Complainant's Exh. F).

On that date, also, he served another Notice of Inspection upon Dan Noury, a vice president at Aid Maintenance, which called for the production of all of that firm's Forms I-9 to be made available to INS for inspection on September 30, 1992. On the latter date, both firms produced approximately 1,700 additional Forms I-9 for inspection (T. 77,78). Furtado spent two days inventorying those forms in the presence of Dan Noury. In November, 1992, Furtado subpoenaed and obtained the employment records of Cerca, Inc. and Aid Maintenance from the Rhode Island Department of Employment Security, which disclosed the names of those firms' employees who had been paid wages for work performed in Rhode Island in the years 1991 and 1992.

Furtado identified Complainant's Exh. G as a 16-page document prepared in late December, 1992 summarizing INS' investigation of Cerca, Inc., which INS described as "a notorious employer of illegal aliens since the early 1980's". INS proposed that Cerca, Inc. be assessed total civil money penalties of $139,050 for some 25 alleged illegal hire/continue to employee violations, as well as some 209 alleged paperwork infractions, which its investigation reportedly disclosed.

INS Special Agent Maria A. Hurley, complainant's other witness, currently assigned to the INS office in Boston, testified that she previously served in the Providence INS office but did

not participate in the investigation of Aid Maintenance. She stated that the case had been reassigned to her following Furtado's transfer to the INS office in Manchester, New Hampshire.

She identified Complainant's Exh. I as being the records of the Rhode Island Department of Employer Tax, which revealed that Aid Maintenance had paid wages in that state totalling $1,496,023 in 1996. Special Agent Hurley also stated that Aid Maintenance had paid wages in the first three quarters of 1997 in Rhode Island which totalled $1,056,840 (Complainant's Exhs J and K). She also stated that Aid Maintenance had paid wages in Connecticut for the entire year 1996 and for the first two quarters of 1997 (Complainant's Exh. L), as well as in Pennsylvania and that that commonwealth's records revealed that Aid Maintenance had provided janitorial services to a U.S. Post Office and a Federal Courthouse in that jurisdiction (Complainant's Exh. M, at 2). Although she was aware that Aid Maintenance had also performed work in Massachusetts, she stated that that state does not make available information of that nature (T. 143).

Sylvia Baril, the first of Aid Maintenance's two witnesses, testified that she had been employed by that firm as its sole payroll clerk for six years, or until June, 1992, when she and her husband moved to Florida. Three other ladies also worked in the offices of Aid Maintenance, one was a receptionist, another handled accounts receivable, and the third performed bookkeeping duties.

She testified that her job responsibilities consisted of preparing the firm's payroll data for delivery to New England Data for processing, as well as maintaining personnel files, which contained job applications, Forms I-9 and copies of social security and I.D. cards (T. 147). Ms. Baril also stated that she was solely responsible for maintaining the Forms I-9 and kept track of the document numbers on those forms by checking the alien registration cards, or "green cards", which the employees had presented, along with their drivers' licenses and social security cards, although she did not maintain a log of those numbers (T. 149).

Ms. Baril further stated that during her six-year employment period at Aid Maintenance the average janitorial workforce numbered between 300 and 350, was 70-percent male and consisted essentially of entry level workers, 70-percent of whom could not speak English.

She further testified that in June, 1991, after Aid Maintenance received a letter from INS, Furtado visited Aid Maintenance and told her that he wanted to inspect the firm's Forms I-9. She also testified that Furtado volunteered the statement that he was then fairly new at his job of inspector, having then done that job for about a year (T. 150). In response to Furtado's request, she gathered all of the Forms I-9 for the then current employees and gave them to him. She testified, in opposition to Furtado's prior testimony, that he did not ask to see all of the firm's Forms I-9, nor did he ask whether Aid Maintenance was then providing all of its Forms I-9. Ms. Baril also testified that she had given Furtado only the Forms I-9 for the then current workers because she assumed that those were the only Forms I-9 that he wished to examine (T. 151).

She stated that Furtado spent one and one-half days at her office examining some of the Forms I-9 and then completed his inspection of the remaining forms at his office. She also testified that Furtado returned the Forms I-9 in April, 1992 and that he had "said that they seemed like they were in good order and everything was filed correctly." (T. 153). She recalled receiving a letter dated April 16, 1992 from INS which contained a list of employees whose "alien registration numbers presented some problems," but she could not recall whether Furtado had told her that the documentation for those employees had to be rechecked.

After reading the INS letter of April 16, 1992, she removed the Forms I-9 for the listed employees and placed them in a folder for followup activity, which consisted of contacting their supervisors, or by placing notes on their paychecks, or simply not delivering their paychecks to them until she checked their "green cards," or by requesting other satisfactory documentation from them (T. 154).

She also stated that she ended her employment at Aid Maintenance in June, 1992 and trained her replacement prior to leaving, but that training did not include any instructions concerning the preparation of Forms I-9 (T. 157,158). Prior to leaving, she gave a final report to Ken Loiselle, the president, and to Dan Noury, whose title she thought was that of vice-president. She told them that there were still six or seven employees whose names were on the INS ineligible list and Mr. Loiselle stated that those employees "should be let go" (T. 160).

Ms. Baril also testified that no one at Aid Maintenance told her to conceal Forms I-9 to prevent Furtado from inspecting them and no one instructed her to tell employees to check that box in Section 1 on their Forms I-9 which had the effect of declaring themselves to be United States citizens when, in fact, they were not and that she, as the person at Aid Maintenance who filled out and was responsible for maintaining the Forms I-9, never knew of anyone at the firm who instructed employees to fill in that box on their Forms I-9 (T. 160,161).

She stated that Aid Maintenance placed employment ads in Providence and Pawtucket, Rhode Island newspapers to interest those without any prior experience to apply for the firm's entry level custodial openings. Ms. Baril testified that she was unaware of the wording in those ads since she had never read any of those ads during her six-year tenure at Aid Maintenance (T. 162,163).

During her employment at Aid Maintenance she did not interview any job applicants, nor did any of the other ladies in the office. Job interviews were conducted by one of the supervisors or by one of the two corporate officers, Ken Loiselle or Dan Noury. She could not estimate the percentage of job applicants who had been interviewed by those two corporate officers between 1986 and 1992, but she placed the average number of job applicants each month during that period to have been 50 to 70 and the yearly total at 600 to 850. Ms. Baril did not know whether Messrs. Loiselle or Noury spoke any language other than English but stated that she never heard either speak Spanish, the only language spoken by some 70-percent of the job applicants.

On cross examination, Ms. Baril testified that she did not know how many contracts Aid Maintenance had entered into in Massachusetts in the year 1992, but she thought that Aid Maintenance had maintained the Internal Revenue Service Office in Andover, Massachusetts during that year, since she forwarded payroll checks to that office for Aid Maintenance supervisors to distribute. She followed the same procedure for delivering paychecks to the firm's employees working in Pennsylvania, most of whom came from the Pawtucket area.

Also on cross-examination, she stated that most of the work on the Forms I-9 was done at the job sites and the documentation was then sent to her in Pawtucket. Ms Baril testified that Chet Duclos, who worked nights answering the telephone at the company's Pawtucket office, also reviewed documents and one of the Aid Maintenance supervisors, Manuel Teixera, may also have filled out Forms I-9. She testified that Eileen Freniere, one of her three office associates, whose desk was next to hers, did not examine Form I-9 documents. She could not recall whether John LaPointe, another of the supervisors, also filled out Forms I-9 and examined documents. She also testified that Carlos Valencia examined documentation in Pennsylvania and Jamie Ariza, another supervisor, also gathered documentation for her and occasionally signed Forms I-9, attesting that he had seen the employees' documentation. She could not recall Ivan Ariza and stated that another Aid Maintenance person, Dave Gagan, had no Form I-9 responsibilities (T. 172-176).

As her cross-examination continued she was shown Complainant's Exhibit N, which contains copies of some 25 Forms I-9 which had been signed by those same four Aid Maintenance supervisors and other Aid Maintenance employees mentioned in the preceding paragraph. Upon examining those 25 Forms I-9 copies, Ms. Baril conceded that it would be fair to say that many Forms I-9 at Aid Maintenance were being prepared and signed by others in the organization without her knowledge. And she also testified on cross-examination that the officers of Aid Maintenance were aware of those practices (T. 174-176).

Ms. Baril's cross-examination also involved her having been shown the 10-page document entered into evidence as Complainant's Exhibit O, which contained the names of some 131 persons employed by Aid Maintenance at the time that the Forms I-9 were inspected by INS Supervisory Special Agent Furtado in June, 1991. Upon further questioning, she also conceded that Forms I-9 for several of those employees had not been given to Furtado at that time, despite her earlier testimony that all of the Forms I-9 for the then current 269 employees had been included in the 269 Forms I-9 given to Furtado on that date.

In further cross-examination, Ms. Baril also testified that she was surprised to learn that in September, 1992 some 12 Aid Maintenance employees whose names appeared on the list in the April 12, 1992 INS letter as having presented "documents with problems" were still employed by the firm at the Newport, Rhode Island navy base. She found it all the more surprising since upon making her report to Mr. Loiselle when leaving Aid Maintenance in June, 1992, some three months earlier, he had stated that those same employees should be terminated (T. 185,186).

Kenneth R. Loiselle, Aid Maintenance's other witness, testified that he is the president of that firm and that he is also the "owner" of another corporation known as Cerca, Inc. (T. 194, 195). He stated that because of increases in workmen's compensation insurance premiums in the early 1980's those two commonly-owned business entities had been incorporated separately (T. 222).

Concerning his operational role at Aid Maintenance, he testified that he does not interview job applicants for entry level custodial positions, contrary to Ms. Baril's testimony on that point. He also stated that he speaks only English (T. 210) and that he infrequently interviews persons for the position of building foreman, a position performed by persons who speak Spanish as well as English. He estimated that he conducts 12 or so such interviews each year (T.204,205).

He noted that Dan Noury, a vice president at Aid Maintenance, does not conduct job interviews, either, since his three areas of responsibility involved the firm's bookkeeping activities, his supervision of the four-lady office force, and his being responsible for the performance of the firm's sales force.

The majority of interviews concerning applicants for entry level janitorial positions took place at the firm's central office in Pawtucket, Rhode Island, according to Loiselle, and many were conducted at the firm's various job sites, presumably by the bilingual Aid Maintenance supervisors/foremen (T. 211, 215).

Loiselle also testified that in the year 1992 his firm employed some 285 persons on average and about 600 employees in total. There were five supervisors to oversee that 285-person workforce (T. 200). He estimated the workforce turnover rate in that year to have been between 200 and 400-percent. He partially attributes the high turnover rate to the fact that most of his firm's employees are paid slightly more than the minimum wage rate (T. 221).

He stated that personnel of the U.S. Department of Labor had audited the firm's Forms I-9 in August, 1992, and that it was his understanding that some 75 to 100 Forms I-9 were checked and found to have been in order (T. 202).

He recalled having been in Dan Noury's office on an unspecified date and that Sylvia Baril had walked in and advised that "there were still problems with their papers, and my, my thoughts at that time was that we should get rid of them" (T. 203).

Loiselle also testified that at the time of that incident he was coming to the office only three days each month, on average. That because he was then experiencing marital difficulties which culminated in his wife's filing for divorce in early September, 1992. In addition, he had then just completed a two-month regimen of hospital outpatient visits for an unidentified heart condition, for which he subsequently underwent remedial surgery at Rhode Island Hospital in late May, 1992 to relieve an arterial infarction condition (T. 203,204).

He also stated that he was not aware of INS Supervisory Special Agent Furtado's June 11, 1991 worksite enforcement visit to the offices of Aid Maintenance for the purpose of examining the firm's Forms I-9 and that he did not learn of Furtado's visit until receiving INS' letter of April 16, 1992, some 10 months later.

He further testified that that INS correspondence, with its list of the 102 Aid Maintenance employees who had presented employment eligibility documents containing fraudulent registration numbers, among other shortcomings, did not register with him as having involved matters which he considered to be urgent (T. 206,207).

With respect to those six employees whose document irregularities had been invited to his attention by Ms. Baril, he simply had no explanation why those six persons had not been terminated, in accordance with his instructions.

Loiselle further testified that he had just assumed that Dan Noury or Ms. Baril would have fired those six employees since "it was no big thing to get rid of them" and that "it was just an oversight, I guess, on my part." He also felt that "there is no answer to that" and that he simply "dropped the ball, I guess" (T. 206,207). He noted that those same six employees were eventually terminated in 1993 after INS sent a written notice that it was assessing civil money penalties as a result of Aid Maintenance having hired those six persons (T. 208).

On cross-examination, he testified that Aid Maintenance is a small business, despite its 1996 gross revenues of $6-million or so. When asked to estimate his firm's revenues for 1998, he replied that "I have no idea what the future brings" and that he did not know the number of his firm's accounts, but that it was "probably about a hundred" (T. 216,217). He acknowledged that the IRS Service Center in Andover, Massachusetts is Aid Maintenance's largest account.

Loiselle also stated on cross-examination that personnel of the U.S. Department of Labor frequently visit his firm's headquarters in order to investigate employee complaints concerning alleged violations of that Department's Wage and Hour Division's regulations, as well as performing audits for federal contractors. He also testified that Aid Maintenance has been fined for wage and hour violations, most recently in a case involving the hourly wage paid to one of the dozen or so of the firm's van drivers (T. 219,220).

When asked whether the representation in his firm's advertising letter/brochure (Complainant's Exh. P) which is mailed to prospective clients/customers to the effect that Aid Maintenance has been cleaning over 12-million square feet of space daily since 1975 is in fact a true statement, Loiselle replied "I think its close to true, yes" (T. 223).

In another area of cross-examination, Loiselle stated that Aid Maintenance's cleaning of 12-million square feet of commercial and/or governmental office space on a daily basis is "not

that much space" since "it's more than most people clean, but less than many people clean", and moreover would not warrant categorizing Aid Maintenance as a "good size operation" (T.223,224).

Discussion, Findings and Conclusions

As noted earlier, the sole issue for consideration is that of determining the appropriate civil money penalty sums to be assessed against Aid Maintenance for the 128 proven violations - the 12 illegal hire/continue to employ charges in Count I and the 116 paperwork infractions contained in Counts II through V, as well as those set forth in Count VII.

By way of background, immigration reform legislation, which eventually was enacted as IRCA, was jointly introduced in Congress on March 17, 1982. The sponsors of those bills, aware of the then swelling national sentiment, recognized that employment opportunities, together with the appreciably higher wage rates being paid in the United States, constituted the principal attraction, or "magnet", which accounted for the unprecedented numbers of illegal aliens then entering the country.

Some of the precedent setting features of those bills, which would eventually be enacted as provisions of IRCA, prohibited employers of four or more persons, with limited, inapplicable exceptions, from knowingly hiring unauthorized, or undocumented, aliens. In addition, and for the first time, also, those employers were held responsible for verifying both the employment eligibility and the identity of all employees hired after November 6, 1986. The key document in the mandated employment eligibility verification system is the Employment Eligibility Verification Form, better known as the Form I-9.

The employers' areas of responsibility under IRCA's employment eligibility verification system may broadly be described as two-fold, they are not permitted to knowingly hire persons who lack employment authorization, as provided for in the illegal hire/continue to employ provisions found at 8 U.S.C. § 1324a(a)(1)(A) and § 1324a(a)(2), and all covered employers must observe the requirements of that system, including the proper preparation and retention of Forms I-9 for all employees hired after November 6, 1986. 8 U.S.C. § 1324a(b).

Since the employers' employment eligibility verification obligations under IRCA have been outlined, it might be well to describe, as fully as this hearing record will permit, the business operations of Aid Maintenance Company, Inc., as well as its Form I-9 procedures, at all times relevant to these 128 proven violations.

Aid Maintenance was incorporated in Rhode Island on an undetermined date and that firm has three corporate officers, Kenneth R. Loiselle, its president, Daniel Noury, a vice-president, and the firm's attorney, John D. Biafore, Esq., Goldman & Biafore, Providence, Rhode Island, and predecessor counsel of record in this proceeding, serves as its corporate secretary (T. 24).

Aid Maintenance Company, Inc., according to its current advertisement letter/brochure (Complainant's Exh. P), is headquartered at 300 Roosevelt Avenue, Pawtucket, Rhode Island and offers 24-hour professional industrial and commercial cleaning services. The firm was founded in 1968 by its sole owner, founder, and president, Kenneth R. Loiselle, and it advertises that since 1975 it has provided cleaning services on a daily basis for areas measuring on average some 12-million square feet for client firms and government agencies located in Massachusetts, Connecticut, Rhode Island, and Southern New Hampshire. Prior to 1992, Aid Maintenance also did business in Pennsylvania (T. 200), as well as in Maryland (T. 214). In the year 1996, the firm's gross revenues were approximately $6-million.

That advertisement letter/brochure further informs potential customers that the management team of Aid Maintenance has grown with the company, that it is committed to providing long term, dependable, and quality managed cleaning services to meet all of its customers' housekeeping needs, that its continually refined management system is unique to its industry since 1988, that it is staffed predominantly by full time cleaning employees in order to diminish janitorial employee turnover and to increase motivation, and that since 1975 the firm has been providing daily professional building cleaning services for commercial spaces which exceed 12-million square feet. Its services are available to a wide range of clientele, including office buildings, banks, corporate headquarters, healthcare facilities, department stores, colleges, government agencies, and mixed use buildings, among other settings. Mr. Loiselle testified that the Internal Revenue Service Center, in Andover, Massachusetts, is the firm's largest account.

The firm's advertising literature also advises that Aid Maintenance has a strong commitment to customer satisfaction and that since 1968 it has maintained constant cost controls over all aspects of its commercial cleaning business, resulting in its being a very competitive company. That in turn, it advertises, ensures that the efficient practices of Aid Maintenance will allow its customer firms to remain competitive in their industries, also.

We now examine the hearing testimony, as well as the documentary evidence, in order to learn what Form I-9 procedures Aid Maintenance may have put in place in order to comply with IRCA's requirements that it verify the identity and employment eligibility of all employees hired after November 6, 1986.

On September 18, 1989, INS Special Agent Bjorn visited the offices of Aid Maintenance to conduct an educational visit, one dealing with the preparation of Forms I-9 for IRCA purposes. He met with Ms. Sylvia Baril, of the payroll department, who advised him that she was aware of IRCA and that Aid Maintenance intended to cooperate in preparing the required Forms I-9. INS Special Agent Bjorn's written report further discloses that on that date he provided Ms. Baril with a supply of Forms I-9, as well as an INS Handbook for Employers, for her employer's use in properly preparing those forms (Complainant's Exh. C, at 3).

Ms. Baril's principal job duties were those of processing pay roll data. She also maintained the employees' personnel files, which contained their job applications and their

Forms I-9, and she testified that most of the Forms I-9 were routinely completed at the firm's various job sites, presumably by the four or five bilingual supervisors since some 70-percent of all job applicants spoke only Spanish. She stated that all job applicants were interviewed by the onsite supervisors or by one of the two corporate officers, Ken Loiselle and Dan Noury.

But Loiselle testified that he only interviewed applicants for the position of supervisor, all of whom were bilingual, presumably in order to interview the unilingual, Spanish speaking entry level janitorial job applicants and to supervise them in the event they were hired. Noury's testimony on that point did not become available since he did not testify, despite having been seated next to Loiselle at counsel table throughout the hearing.

Without particularizing Ms. Baril's testimony, and as reflected in the earlier summary of her direct and cross-examination testimony, one can reasonably conclude that the preparation of the Forms I-9 at Aid Maintenance was entrusted to several supervisors namely, Manuel Teixera, John La Pointe, Carlos Valencia, Jamie Ariza, and Ivan Ariza, as well as others.

And even cursory readings of the summary of the hearing testimony, as well as the information made available in the INS documentary exhibits, clearly establishes that Aid Maintenance simply had no Form I-9 directives or policies and further that it did not regard the preparation of Forms I-9 as a high priority item, to say the least. Indicative of that managerial mindset is the fact that Ms. Baril testified that upon leaving Aid Maintenance in June, 1992, she had trained her successor, presumably in all facets of her assigned job duties, but that training did not include any instructions on preparing the Forms I-9.

The attitude of Aid Maintenance concerning its Form I-9 responsibilities was most tellingly demonstrated by three incidents which occurred within a 15-month period between June 11, 1991 and September 22, 1992. On the earlier date, INS Supervisory Special Agent Furtado, following the previous service of a Notice to Inspect upon Aid Maintenance, visited that firm's office and was given 269 Forms I-9, covering only the then current workforce, of which 102, or 38-percent, contained fraudulent alien registration numbers. On April 16, 1992, INS notified Aid Maintenance of that fact by letter and provided a list of those 102 employees whose employment eligibility documents contained fraudulent numbers. That correspondence directed Aid Maintenance to reverify the employment eligibility of those 102 employees within 30 days.

Aid Maintenance failed to reverify the work eligibility of those employees as INS had requested and moreover, in an act of almost unbridled contempt for its relatively uncomplicated statutory employment eligibility verification responsibilities under IRCA, it continued to almost tauntingly employ at least 17 of that 102-employee group as custodial employees at the U.S. Navy Base located in Newport, Rhode Island, until September 22, 1992, when they were arrested there by INS while working as employees of Aid Maintenance at that military installation and detained as illegal aliens.

There is yet another revealing example of the pervasively cavalier attitude which the management at Aid Maintenance, notably that which Kenneth R. Loiselle, its president, had assumed in regard to its Form I-9 responsibilities. Mr. Loiselle, whose role in Aid Maintenance's management has been clearly depicted in this hearing record as having been dominatingly authoritative, testified that as the president of the respondent firm he was not aware of Furtado's June 21, 1991 inspection of his firm's Form I-9 until the receipt of the INS letter dated April 16, 1992, some 10 months later. And even then, upon learning that some 38-percent of his firm's workforce on June 21, 1991, had used documents containing fraudulent numbers in order to obtain their entry level custodial jobs he did not, according to his sworn testimony, view those documentation irregularities with any measure of urgency.

Mr. Loiselle's testimony also provided a rather revealing example of his management style. He testified upon learning from Ms. Baril on an unspecified date that some six employees of the 102-employee group whose document numbers were shown to have been fraudulent had not been fired, he felt those six employees should have been fired, or in his words, that "we should get rid of them." But he inexplicably did not then order that they be terminated. And his testimony discloses that he has no explanation for their having remained on the payroll, except that he just assumed that his firm's payroll clerk, Ms. Baril, or the firm's vice president, Dan Noury, would have fired those six persons since it was "no big thing to get rid of them." Yet elsewhere in his testimony, Loiselle detailed the job duties and areas of responsibilities of Ms Baril, as the payroll clerk, and Noury, as the sole vice president, and neither seemingly had the authority nor the responsibility to terminate any employee at Aid Maintenance. Upon further reflection, he testified that "it was just an oversight, I guess, on my part."

Returning to the employers' comparatively simple employment eligibility verification responsibilities under IRCA, Congress chose to assign relatively substantial civil money penalty sums to illegal hire/continue to employ violations, such as the 12 proven charges in Count I. First violations of that type result in a minimum civil money penalty assessment of $250 and a maximum levy of $2,000 for each violation. For second such violations employers face assessments ranging from a minimum sum of $2,000 to a maximum of $5,000 and levies for further such violations range from $3,000 to $10,000 for each infraction. 8 U.S.C. § 1324a(e)(4)(a).

In addition to those tiered civil money penalties for illegal hire/continue to employ violations, Congress also provided for criminal penalties for such practices. Any person found to have engaged in a pattern or practice of hiring illegal aliens may be imprisoned for not more than six months for the entire pattern or practice, or both. 8 U.S.C. § 1324a(f)(1). The Attorney General may also seek injunctive relief, including a permanent or temporary injunction, restraining order, or other order for such proscribed conduct. 8 U.S.C. § 1324a(f)(2).

The provisions of IRCA also call for civil money penalty sums to be levied against employers who fail to comply with the paperwork requirements of the employment eligibility verification system, such as those 116 proven paperwork infractions for which Aid Maintenance

has been cited in Counts II, III, IV, V, and VII. Those sanction sums range from a statutorily mandated minimum of $100 to a maximum sum of $1,000 for each such infraction. See 8 U.S.C. § 1324a(e)(5). Unlike the civil money penalties levied for illegal hire violations, the sums assessed for paperwork violations are not progressively tiered, based upon prior violations of that type. However, in assessing the civil money penalty sums for paperwork violations, unlike arriving at appropriate civil money penalty assessments for illegal hire/continue to employ violations, due consideration must be given to five criteria: (1) the size of the business of the employer being charged; (2) the good faith of the employer; (3) the seriousness of the violation; (4) whether or not the individual was an unauthorized alien; and (5) the history of previous violations. 8 U.S.C. § 1324(e)(5). See also 8 C.F.R. § 274a.10(b)(2).

INS has been given broad discretion in assessing civil penalties for violations of sections 1324a(a)(1)(A) and 1324a(a)(1)(B). United States v. Ricardo Calderon, Inc., 6 OCAHO 832, at 109 (1996).[1] This flexibility allows INS to consider the site specific facts of each case in assessing appropriate civil money penalties against offending employers. And INS' assessments of civil money penalties also serves the purpose of deterring repeat offenses of IRCA by a cited employer, as well as encouraging compliance by other employers. United States v. Ulysses, Inc., 3 OCAHO 449, at 552 (1992).

In reviewing these proposed civil money penalties, I am not restricted to those assessments which INS previously proposed in its Notice of Intent to Fine or in the Complaint. The Chief Administrative Hearing Officer (CAHO) has ruled that the administrative law judges (ALJ's) assigned to OCAHO have the authority to increase or decrease the fine amounts proposed by INS and they may, in the course of exercising their de novo standard of review of INS proposed assessment sums, substitute their judgment for that of INS in establishing assessment levels so long as the methodology employed is not arbitrary or capricious and, in the case of civil money penalty assessments involving paperwork infractions, as long as the previously-mentioned five statutorily mandated criteria found at 8 U.S.C. § 1324a(e)(5) are granted the required due consideration. U.S. v. Banafsheha, 3 OCAHO 525 (1993).

In an earlier ruling by the CAHO, it was held that the OCAHO ALJ's are not constrained in their choice of several acceptable formulae or methods of assessing appropriate civil money penalty sums for paperwork violations, so long as due consideration is given to the five (5) statutory criteria listed at 8 U.S.C. § 1324a(e)(5). U.S. v. Felipe, Inc., 1 OCAHO 108 (1989).

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[1] Citations to OCAHO precedents reprinted in the bound Volumes 1 and 2, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States, and Volumes 3 through 7, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to Volumes 1-7 are to be specific pages, seriatim, of the entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 7, however, are to pages within the original issuances.

As previously noted, in the absence of a showing that Aid Maintenance had previously violated the illegal hire/continue to employ provisions of IRCA and had been subject to a cease and desist order for that violative practice, the civil money penalty sums for each of the 12 proven 8 U.S.C. § 1324a(a)(1)(A) infractions in Count I range from the minimum amount of $250 to the maximum sum of $2,000 for each proven violation.

It can be seen that INS was required to assess civil money penalties totalling at least $3,000, or the minimum amount of $250 for each of those 12 established illegal hire/continue to employ violations and could have sought fines totalling $24,000, or the maximum amount of $2,000 for each. The discretionary midpoint between the statutory mandated minimum of $3,000 and the maximum allowable sum of $24,000 was $13,500, or $1,125 for each offense and INS assessed penalties of $1,010 for each of those 12 proven Count I violations, or a total of $12,120 on that count.

INS maintains that it properly assessed $1,010 civil money penalties for each of those 12 demonstrated violations. Although aware that establishing appropriate civil money penalties for the 12 illegal hire/continuing to employ violations in Count I does not require that due consideration be given to the five previously-mentioned criteria set forth at 8 U.S.C. § 1324a(e)(5), as it is obliged to do in arriving at the civil money penalty sums for the 116 paperwork violations in Counts II through V and Count VII, INS has chosen to utilize four of those parameters in arriving at assessment amounts for the Count I violations. INS has explained that it did not consider the fifth criterion, whether any named individual was an unauthorized alien, since that element is definitially inclusive in the Count I illegal hire/continue to employ charges.

In dealing with the first criterion, that of determining the size of the business of the employer being charged, INS properly urges that Aid Maintenance, given the fact that it had at all times relevant employed some 289 persons on average and had gross receipts of approximately $6-million in 1996, should be regarded as a large business. It relies upon the ruling in U.S. v. Continental Sports Corp., 5 OCAHO 799 (1995), in which the ALJ found that a firm with $3.5 million in gross annual revenue, and employing some 200 persons, was viewed as a large business which was presumably administratively capable of properly completing Forms I-9.

In discussing the second criterion, the good faith of the employer, INS correctly maintains that it has generally been held that in order to demonstrate bad faith on the part of the person or firm cited, it is necessary that INS adduce some evidence of culpable behavior on the respondent's part beyond mere ignorance of the law. U.S. v. Continental Sports Corp., 5 OCAHO 799; U.S. v. Primera Enters, Inc., 4 OCAHO 692 (1994); U.S. v. Honeybake Farms, Inc., 2 OCAHO 311 (1991).

INS also urges that these facts demonstrate the required show of culpable behavior on the part of Aid Maintenance since it was grossly negligent in preparing its Forms I-9 even following an educational visit by an INS Special Agent to that firm for that purpose on September 18, 1989,

as well as its receipt of an INS Handbook for Employers in the course of that visit. U.S. v. American Terrazzo Corp. d/b/a John Delallo Foods, 6 OCAHO 877 (1996).

INS has also furnished controlling OCAHO rulings in support of the propositions that good faith cannot be demonstrated in the event of a showing, as here, that illegal aliens have been hired, U.S. v. Chacon, 3 OCAHO 578 (1993), and also that the mere showing that an unauthorized alien has been knowingly hired must be viewed as a patently serious violation and one that lends itself to a finding of bad faith, U.S. v. Taco Plus, Inc., 5 OCAHO 775 (1995).

Concerning the third standard which INS applied, the seriousness of the violations at issue, INS persuasively argues that the illegal hire/continue to employ charges should be considered to be truly serious transgressions, especially since it has been clearly established that Aid Maintenance continued to employ at least 12 unauthorized aliens for some five months after having been advised by INS in its letter of April 16, 1992 that those employees had furnished fraudulent documentation numbers and therefore were not eligible for employment in the United States.

In addressing the fourth and final criterion which INS has chosen to apply to the proven Count I illegal hire/continue to employ charges, the history of previous violations of the employer being charged, INS advises that in having arrived at its proposed civil money penalties of $1,010 for each of those 12 established infractions, it has taken into account the fact that no prior illegal hire/continue to employ notices of intent to fine had been issued to Aid Maintenance. Because of that fact, INS did not also apply that factor in having increased the assessed amounts beyond the statutory minimum sum of $250 it was required to have assessed for all of the violations in that count.

In summary, INS argues that this record is devoid of any fact or circumstance which would warrant any reduction of the assessed civil money penalties sum of $12,120, or $1,010 for each of the 12 proven illegal hire/continue to employ infractions in Count I.

Meanwhile, Aid Maintenance urges that the minimum allowable civil money penalty amount of $250 be assessed for each of those proven violations, or a total of $3,000 in Count I.

Aid Maintenance initially submits that in arriving at a reasonable assessment for each of these proven violations, the only range of options are those positioned between the statutory minimum sum of $250 and the $1,010 amount previously assessed by INS for each of the Count I proven violations. U.S. v. Great Bend Packing Co., Inc., 6 OCAHO 835 (1996); U.S. v. Tom & Yu, Inc., 3 OCAHO 445 (1992).

The facts in U.S. v. Great Bend Packing Co., Inc. are not analogous to those before us. In that matter, the respondent firm had been charged with only one illegal hire/continue to employ charge, as opposed to 12 such charges in our factual scenario, and INS had assessed the maximum sum of $2,000 for that single illegal hire/continue to employ violation. In addition,

INS had initially cited that respondent for seven paperwork violations and assessed civil money penalties of $600 for each, or a total of $4,200 for those seven paperwork infractions. In the course of motion practice, INS dismissed three of the paperwork violations. Since no evidentiary hearing was conducted, the ALJ resolved the facts of violation in ruling upon INS' factually dispositive motion by finding that Great Bend Packing had hired an illegal alien as charged and had also committed the remaining four paperwork violations as alleged.

The ALJ in that case assessed civil money penalties totalling $3,200, or $1,200 for the single illegal hire/continue to employ violation and $2,200, or $550 for each of the remaining four proven paperwork infractions. It is to be noted that Great Bend Packing was assessed a civil money penalty of $1,200 for its illegal hire/continue to employ violation, a sum in excess of the $1,010 levies which INS has assessed for each of the identical violations under our facts. And similarly, the ALJ in that proceeding assessed $550 civil money penalties sums for each of the four paperwork violations, whereas INS seeks total civil money penalties totalling $48,870, or an average of $421 for each of the 116 proven paperwork charges in this proceeding.

And finally, the facts in that case are further distinguishable from those at issue since there was no adjudicatory hearing in that proceeding. Rather, those liability findings and civil money penalty assessments were determined in the course of motion practice and all five civil money penalty sums were assessed by the ALJ following the submission of written briefs by the parties which addressed only the appropriate civil money penalty sums to have been assessed for those five violations which had been proven in motion practice.

Aid Maintenance, in advancing its argumentation in support of its contention that the proper civil money penalty assessments should be the minimum assessment sum of $250 for each of the 12 proven illegal hire/continue to employ charges in Count I, as well as inferring that the undersigned is foreclosed from assessing civil money penalty assessments in excess of the $1,010 sum which INS has proposed for each of these 12 proven charges, has misplaced a considerable measure of reliance on those two rulings.

In determining the reasonableness of the proposed INS civil money penalty assessments in illegal hire/continue to employ charges, OCAHO ALJs are not obliged to give due consideration to those five criteria which apply only to paperwork assessments, those set forth at 8 U.S.C. § 1324a(e)(5), except for determining whether the cited person or party has a history of previous illegal hire/continue to employ violations and the entry of accompanying cease and desist orders. That because, as noted earlier, the civil money penalty sums for those violations are tiered and become progressively higher in the event of a showing that the respondent committed and was cited for prior offenses of that nature and that a cease and desist order had been entered.

It should also be noted that persons or firms cited for illegal hire/continue to employ infractions, as well as paperwork violations under IRCA, err in either relying upon or construing as favorable to their position in filing a request for hearing before an OCAHO ALJ, those

OCAHO decisions which seemingly limit the monetary exposure of the person or firm seeking a hearing in this Office to those civil money penalty sum assessments contained in the Notice of Intent to Fine or in the related complaint.

That because the CAHO, in the 1993 ruling in Banafsheha, 3 OCAHO 525, quite clearly ruled that OCAHO ALJs, in the exercise of their de novo standard of review on those INS proposed civil money sums appealed to this Office, are free to substitute their judgment for that of INS in determining proper civil money penalty sum levels so long as the method employed in doing so is neither arbitrary nor capricious and, in the case of civil money penalty assessments levied in paperwork violations, so long as the five statutorily mandated criteria are given the required due consideration.

Even in the absence of that plainly worded and well reasoned decision by the CAHO, there is a compelling reason to allow the OCAHO ALJs to substitute their judgment for that of INS in arriving at appropriate civil money penalty assessment sums in those cases, as here, in which evidentiary hearings have been conducted. Such hearings allow the ALJ to place all witnesses under oath, listen to their testimonial accounts of the disputed facts, and observe and assess their demeanor and in the course of doing so the ALJ gains a measure of understanding of the parties' dispute that simply cannot be replicated in any other manner, and especially if the ALJ's written record is limited to the written documents submitted in the request for hearing, as well as the written submissions of the parties in the event that they agreed to submit the matter to the ALJ by way of written briefs or memoranda, in lieu of an evidentiary hearing.

In moving that it be assessed the minimum civil money penalty of $250 for each of the 12 illegal hire/continue to employ violations, rather than the $1,010 fines that INS proposes for each of those 12 proven charges, Aid Maintenance urges that such a course would be fair and just. It bases that argumentation upon the fact that Aid Maintenance had not been charged previously with having hired illegal aliens and also because Aid Maintenance demonstrated good faith in attempting to comply with INS' written request of April 16, 1992 that it redetermine the employment eligibility of those 102 employees, or some 38-percent of its then 269-person workforce on June 11, 1991, whose Form I-9 alien registration document numbers were proven to have been fraudulent.

The undersigned joins Aid Maintenance in its stated desire that fair and just civil money penalty assessment sums be levied for these 12 proven illegal hire/continue to employ violations. That is precisely the role of the OCAHO ALJs in exercising the de novo standard of review which Aid Maintenance requested in the course of filing its request for hearing.

It is difficult, however, to find even a trace of good faith on the part of Aid Maintenance in view of the following established facts. This hearing record unequivocally demonstrates that on June 11, 1991 INS Supervisory Special Agent Furtado visited the offices of Aid Maintenance in order to inspect all of its Forms I-9, pursuant to a written Notice of Inspection which he had previously served upon that firm. He informed Ms. Sylvia Baril, the payroll clerk, that he wished

to see all of the firm's Forms I-9 and did not limit that request by having requested Ms. Baril to furnish only the Forms I-9 pertaining to the then current 269-person workforce (T.66).

Ms. Baril's testimony disputes Furtado's testimony on that point. She testified variously that Furtado had told her on that inspection date that he had then been an INS inspector for about one year, or presumably since mid 1990, that Furtado had requested to be provided only those Forms I-9 covering the then current employees, that Furtado had not requested the Forms I-9 concerning former employees, that Furtado had not asked her whether she was then providing all of the firm's Forms I-9, and that she gave Furtado only those Forms I-9 which involved the then current employees, because she assumed that Furtado was only interested in inspecting those forms (T. 150,151).

Furtado almost certainly would not, as Ms. Baril has testified, have requested that she make available to him only the Forms I-9 of the then current 269 employees, given the fact that he was then aware that INS had received leads in 1988 and in 1990 that Aid Maintenance was reportedly hiring illegal immigrants and accepting fraudulent documents. And he would not likely have told Ms. Baril on the Tuesday, June 11, 1991, inspection date that he was then "fairly new at the job" and that he had been with INS "about a year", or presumably since June of 1990 or so, according to her sworn testimony (T. 150). In point of fact, his INS service began some three years earlier, in July of 1987. Furtado completed his academy training activities in October, 1987 and his routine INS assignments between that date and the June 11, 1991 inspection at Aid Maintenance, spanning a period of some three years and eight months, included employer sanction cases, some 150 of which he has handled over the past 11 years, or some 13 to 14 such cases each year, on average, or some 47 to 51 cases in total that he likely had been assigned and handled between completing the INS training syllabus in October, 1987 and conducting his June 11, 1991 Forms I-9 inspection at Aid Maintenance.

In resolving that testimonial disharmony one may reasonably assume that Furtado has carried out his assigned tasks at INS in a most satisfactory manner since he has been promoted to the position of Supervisory Special Agent. I credit the testimony of Furtado over that of Ms. Baril on these points and find that he had requested to see all of the Forms I-9 which Aid Maintenance possessed on June 11, 1991. I also find that Furtado was not an inexperienced INS Supervisory Special Agent on that date, as Ms. Baril's testimony might lead one to believe, or that inferentially he had simply conducted a botched worksite enforcement inspection at the Aid Maintenance office on that date. Such an assumption of clumsy or careless work effort on his part finds no support in this hearing record, nor does it appear to be in any manner probable given his intervening promotion. And finally, that remote inference simply does not square with the favorable impression which that witness made in the course of testifying both on direct examination, as well as on cross-examination.

There is another and more compelling reason to reject the claim of Aid Maintenance that it has demonstrated good faith in connection with its having cooperated with INS in its request that the employment eligibility of those 102 employees be redetermined. Aid Maintenance's lack

of good faith, or more accurately its disdain for its Form I-9 preparation responsibilities under IRCA, is best demonstrated by the fact, as noted earlier, that on September 22, 1992, some five months after Aid Maintenance had been given a list of 102 of its employees whose alien registration cards contained fraudulent numbers, INS arrested and took into custody 17 of the same employees on that list of 102 employees, who were then still working for Aid Maintenance at the Naval Education and Training Center at the Newport, Rhode Island Navy Base, a naval facility located only 45 minutes or so from the offices of Aid Maintenance in Pawtucket, Rhode Island.

In view of that circumstance, I find that the assertion by Aid Maintenance that it demonstrated good faith at any time relevant to these 12 illegal hire/continue to employ violations, and/or to the 116 proven paperwork violations at issue, has an easily discernible hollow ring and is hereby being rejected.

It is further found that the proposed 12 civil money penalty sums of $1,010 for each of those proven infractions, or $12,120 in total, are inadequate under these facts.

Accordingly, and in the interest of arriving at civil money penalty sums which are appropriate, fair, and just under these facts, each of the civil money penalties in Count I is hereby increased to $1,500, rather than the previously assessed amount of $1,010, for a total of $18,000 for those 12 proven illegal hire/continue to employ violations, as opposed to the previously assessed total sum of $12,120.

We now direct our attention to determining appropriate, fair, and just civil money penalty assessment amounts for the following 116 proven paperwork violations: Count II-8; Count III-35; Count IV-21; Count V-50; and Count VII-2.

As mentioned previously, the enactment of IRCA represents a concerted Congressional effort to preserve jobs in the American economy for U.S. citizens and those alien workers lawfully authorized to work in this country.

After November 6, 1986, all employers of four or more persons, with limited, inapplicable exceptions, have been required to have all employees establish their identity and employment eligibility by tendering specific, listed documents for those purposes. The INS document utilized in that screening process is the previously-mentioned Employment Eligibility Verification Form, or Form I-9, a single page, two-sided document. And detailed instructions for its completion, as well as easy-to-follow preparation examples, are contained in the INS Handbook for Employers, a copy of which had been given to Ms. Baril as part of the INS educational visit to Aid Maintenance on September 18, 1989, some 21 months prior to Furtado's worksite enforcement inspection on June 21, 1991.

The face sheet of the Form I-9 is comprised of three sections. In Section 1, that part of the form which is completed by the employee, he/she supplies identifying information, including

his/her full name, address, date of birth, and social security number, and by the use of boxes for that purpose, his/her status, i.e. a citizen or national of the United States, a lawful permanent resident alien, or an alien authorized to work until a date certain. Alien or admission registration numbers, if applicable, are to be listed. The employee also attests, under penalty of perjury, that he/she is eligible for employment in the United States and affixes his/her dated signature. In the event that the employee needs assistance in preparing the Form I-9, or requires the services of a translator, the preparer and/or the translator attests to his/her certification and affixes his/her dated signature, also.

In Section 2, that portion of the Form I-9 prepared by the employer, a description(s) of the document(s) presented by the employee to establish identity and employment eligibility are listed, together with expiration date(s), if applicable. The employer also attests, under penalty of perjury, that the combination identity/employment eligibility document or the separate identity and employment documents presented by the employee reasonably appeared to be genuine and that it/they related to that employee. Similarly, the employer, or its representative, affixes his/her dated signature, also.

Section 3 of the Form I-9 is to be completed by the employer only in updating and reverifying an employee's work authorization and as in Section 2, requires that the employer, or its representative, attest to the employee's employment eligibility and/or his/her documentation and affix his/her dated signature.

After the Form I-9 has been properly completed, the employer is required to retain the form for a period of at least three years after the date of hire or one year following the date of an employee's termination, whichever is later, and make that form available for inspection by INS officers in the course of worksite enforcement inspections, 8 U.S.C. § 1324a(b)(3), such as the one INS Supervisory Special Agent conducted at Aid Maintenance on June 21, 1991.

From the foregoing, it is readily apparent that the timely and proper completion of a Form I-9 for each employee hired after November 6, 1986 by any covered employer, together with the requirement that it be retained for reference in INS workplace enforcement inspections, as here, serves as an effective screening measure to ensure that jobs in the United States will be offered only to those persons who are legally entitled to fill them.

It is equally obvious that any failure by the employer in obtaining all of the required information and documentation on the Forms I-9, as well as retaining those fully completed forms for use in worksite enforcement inspections, defeats that very purpose of IRCA and renders impossible its enforcement, thus frustrating the stated intent of Congress in having enacted this remedial legislation.

We will now review the proven paperwork violations in Counts II, III, IV, V, and VII, give due consideration to the five criteria listed at 8 U.S.C. § 1324a(e)(5), and assign appropriate, fair, and just civil money penalty sums for those 116 established violations. For purposes of

levying those 116 civil money penalty assessment sums, and in accordance with my previous findings in connection with the civil money penalty sums assessed for the 12 proven illegal hire/continue to employ violations in Count I, it is found that the size of Aid Maintenance is properly categorized as that of a large business, that it has failed to demonstrate good faith, and that it has no history of previous violations.

Accordingly, our continuing discussion will address the two remaining criteria, the seriousness of these 116 proven paperwork violations, and finally, whether any unauthorized aliens named in the 12 Count I illegal hire/continue to employ charges were also named in any of the other five counts of the Complaint which allege the 116 proven paperwork violations, Counts II, III, IV, V, and VII.

Of assistance in determining whether any or all of these 116 proven violations are serious, OCAHO decisions clearly instruct that although there are degrees of seriousness relating to paperwork violations, United States v. Felipe, Inc., 1 OCAHO 93 (1989); United States v. Hanna, 1 OCAHO 200 (1990), "[t]he principal purpose of the [Form I-9] is to allow an employer to ensure that it is not hiring anyone who is not authorized to [work] in the United States," United States v. Eagles Groups, Inc., 2 OCAHO 340, (1991), and that paperwork violations are always potentially serious. See United States v. Mathis, 4 OCAHO 717, at 1116 (1995) (as modified); United States v. Reyes, 4 OCAHO 592, at 592 (1994); United States v. Minaco Fashions Inc., 3 OCAHO 587, at 1908 (1993); Felipe, 1 OCAHO 93.

In Count II, INS has proven that Aid Maintenance failed to prepare and/or failed to make available for inspection any Forms I-9 for eight employees, thus very obviously rendering it impossible to determine whether those employees were in fact authorized to work in the United States. For those patently serious infractions, INS seeks civil money penalties of $420 for each of five persons and $580 for each of the remaining three, or a total civil money penalty sum of $3,840 on that count, or an average civil money penalty sum of $480 for each of the eight proven violations.

In Count III, it has been established by INS that Aid Maintenance failed to furnish the Section 1 identifying information concerning some 35 employees, or that their status was not given and/or attested to, or that their Forms I-9 had not been signed and/or dated by the employees. For those 35 proven violations, INS assessed 33 civil penalties of $410 each and $520 on each of the remaining two, for a total of $14,570 or an average civil money penalty sum of $416 for each established infraction. Similarly, the identity and employment eligibility of those 35 employees had not been determined by Aid Maintenance and those oversights constitute serious paperwork violations, also.

In Count IV, INS has demonstrated that Aid Maintenance had failed to complete Section 2 of the Forms I-9 for 21 of its employees. By leaving that portion of those Forms I-9 blank, the respondent firm impliedly failed to review identity and employment eligibility documents concerning those 21 workers and it also failed to furnish the required attestation, nor did it sign

and date any of the forms, as required. For those proven and serious 21 paperwork offenses, INS has recommended civil money penalties totalling $8,400, or $400 for each.

In Count V, it has been convincingly shown by INS that Aid Maintenance failed to ensure that 50 of its employees properly completed Section I of their Forms I-9 and that Aid Maintenance had also failed to properly complete Section 2 of those forms, as it was required to have done. Given the manifestly incomplete preparation of the 50 Forms I-9 pertaining to those 50 employees, it is readily evident that those totally unacceptable Form I-9 preparation practices also constitute serious, if not egregious, paperwork violations. INS has assessed civil money penalty sums of $410 for each of 48 of those employees and has levied civil money penalties of $570 for each of the other two employees, or 50 civil money penalties totalling $20,820 or an average civil money penalty sum of $416 for each.

In Count VII, it was also proven by INS that Aid Maintenance had failed to complete new Forms I-9 and/or that it had failed to update the Forms I-9 for two of its employees, as required. For those serious paperwork infractions INS assessed the total civil money penalties sum of $820, or $410 for each of those violations. By having failed to complete new or updated Forms I-9 for those two employees, Aid Maintenance further demonstrated near total disregard of its record keeping responsibilities under IRCA's pertinent provisions.

In having assessed those civil money penalty sums as it has been tasked, INS maintains that it did so fairly and that it did not act arbitrarily or capriciously, and also that it did not abuse its discretionary assessment authority in having done so.

Aid Maintenance disagreed and exercised its right to file a request for hearing with this Office in order to have an OCAHO ALJ review the proposed civil money penalty sums, either by way of motion practice or by way of an evidentiary hearing or, as here, by a combination of those adjudicatory formats. In filing its request for hearing, Aid Maintenance stood to benefit in the event that any or all the proposed civil money penalty sums were reduced by the ALJ in the appeals process, and concomitantly, risked incurring further expense in the event that the proposed civil money penalties sums were either ruled to have been appropriately assessed by INS or that any or all of the proposed civil money penalty assessment amounts were found to be inadequate, and were resultingly increased by the ALJ in light of additional relevant facts obtained in the course of obtaining deposition testimony, affidavits or documentary materials generated in the course of discovery requests or by having information of that nature become available, as here, in the form of sworn testimony and documentary evidence adduced in the evidentiary hearing which Aid Maintenance had requested.

After listening to the sworn testimony and observing the demeanor of the three principal witnesses in this proceeding, in the order in which they testified, INS Supervisory Special Agent Furtado, Ms. Sylvia Baril, the former payroll clerk at Aid Maintenance, and Kenneth L. Loiselle, the founder, sole owner, and president of Aid Maintenance, and assigning to each of their testimonial versions that measure of credibility to which each is entitled, as well as having drawn

those reasonable inferences to which each of their individual sworn accounts is entitled, I find that INS' proposed civil money penalty sums for these 116 proven paperwork violations, which total $60,570, or the sum of $522 for each, on average, to be inadequate, also.

As noted previously, in assessing appropriate, just, and fair civil money penalty sums for the 12 proven illegal hire/continue to employ violations in Count I, due consideration was given to three of the five statutory criteria, the size of the business of the employer being charged, the good faith of the employer, and the history of previous violations.

And in having analyzed and commented earlier, also, upon the 116 proven paperwork violations contained in Counts II, III, IV, V, and VII in the Complaint, it has established that all of these proven infractions must be categorized as serious.

We now must address the fifth and final criterion to be granted due consideration, that of determining whether any of the Aid Maintenance employees involved in any of the 116 proven paperwork violations were unauthorized aliens. By my reckoning, only four of the Aid Maintenance employees involved in the 116 violation, five-count paperwork violation matrix can be so categorized. Accordingly, the involvement of those four unauthorized aliens will be considered as an aggravating factor in only four of the 116 proven paperwork violations. United States v. Monroe Novelty Co., 7 OCAHO 986, at 1015 (1998); United States v. Hudson Delivery Serv. Inc., 7 OCAHO 945, at 401 (1997); United States v. Four Star Knitting, Inc., 6 OCAHO 868, at 501(1996); United States v. Ricardo Calderon, Inc., 6 OCAHO 832, at 107,108 (1996).

Those four Aid Maintenance employees who were alleged and proven to have been unauthorized aliens in Count I were also named in two of the remaining five paperwork counts in the Complaint. Three were named in Count III and one was listed in Count V. Accordingly, due consideration of that criterion will be given in those four of the 116 proven paperwork violations in arriving at civil money penalty assessments which are appropriate, fair and just.

In Count II, each of the eight proven paperwork violations was assigned an average civil money penalty sum of $480, which I consider inadequate under the facts. Instead, $750 civil money penalty sums are being levied for each of those eight established violations, or a total of $6,000 on that count.

In Count III, INS assessed 35 civil money penalty sums totalling $3,840 or $410 for each of the 33 proven paperwork violations and $520 for each of the remaining two violations which involved three employees named in Count I as having been unauthorized aliens, for a total civil money penalties assessment sum of $14,570, or an average of $416 on each.

Those three Aid Maintenance employees who were alleged and proven to have been unauthorized aliens in Count I and who were also named in Count III are Martha Escobar, Juan Badillo, and Mario Sasbim a/k/a Mario Sasbin.

Therefore, the appropriate civil money penalty sums to be assessed for each of those three proven violations is $875 and each of the remaining 32 proven violations in Count III is being assigned civil money penalty amounts of $750, or civil money penalty sums which total $26,625 on that count.

In Count IV, INS had previously assessed $400 civil money penalty sums for each of the 21 proven paperwork infractions, or a total of $8,400. The facts developed in this hearing record cause me to believe that the appropriate, fair, and just civil money penalty assessment sums for these 21 proven infractions must be increased to $750 for each, or a total of $15,750 in that count.

In Count V, based upon the information then contained in its related investigative file, presumably, INS assessed civil money penalties totalling $20,820 for the 50 proven paperwork violations. It levied $410 assessments in each of the 48 of those matters and $570 for each of the remaining two, or an average of $416.40 for each of those 50 proven charges.

Since the fourth Aid Maintenance employee who was named and proven in Count I to have been an unauthorized alien was also presumably listed in Count V, that proven infraction in the latter count will be assigned an additionally enhanced civil money penalty sum. That employee, identified in Count I as Jerry Solak, is being considered to be the same person listed in Count V as Jerzy (sic) Solak, whose first name had apparently been simply misspelled.

Accordingly, the appropriate, fair, and just civil money penalty sum being assigned to the proven Count V paperwork violation involving that Aid Maintenance employee is $875. Each of the remaining 49 proven paperwork infractions is being assigned a civil money penalty sum of $750, or a subtotal of $36,750 for those 49 established violations and a grand total of $37,625 for those 50 proven infractions.

In Count VII, the total civil money penalties sum assessed by INS earlier was $820, or an average of $410 on each of the two proven paperwork violations in that count. Because those levies are also inadequate under these facts, the total civil money penalties sum under this count is being increased to $1,500, or $750 for each of the two proven charges.

In summary, the total civil money penalties sum for the 12 proven illegal hire/continue to employ violations in Count I and the related levies for the 116 proven paperwork violations in Counts II, III, IV, V, and VII is being increased from $60,570 to $105,500, allocated in the following manner.

In Count I, the 12 proven illegal hire/continue to employ violations are each assigned civil money penalty sums of $1,500, or a total of $18,000, rather than the previously-assessed total sum of $12,120, reflecting previous levies of $1,010 for each of the 12 proven violations.

In Count II, the eight proven paperwork infractions are being assessed civil money penalty sums of $750, or a total of $6,000, as opposed to the total sum of $3,840 which had been previously assessed, or $480 for each of those proven violations.

In Count III, a total civil money penalties sum of $26,625, representing three $875 assessments and 32 levies of $750 for each of the proven paperwork violations is appropriate under these facts, rather than the 35 civil money penalty assessment sums totalling $14,570 which had been previously assessed in this count.

In Count IV, the 21 proven paperwork violations are each being assigned $750 civil money penalties, or a total assessment of $15,750, rather than the $8,000 in total civil money penalty sums which had been levied previously.

In Count V, the proven paperwork infractions, some 50 in total, are being assigned the revised civil money penalties sum of $37,625, representing an $875 civil money penalty for one proven illegal hire/continue to employ violation and a $750 civil money penalty for each of the remaining 49 proven paperwork charges in that count and that revised $37,625 civil money penalties sum replaces the previously-assessed total sum of $20,820 which INS had proposed for these 50 proven paperwork violations.

In Count VII, the total civil money penalty sum for the two proven paperwork charges is being increased to $1,500, or $750 for the two proven violations, rather than the previously-assessed total sum of $820, representing a $410 levy for each.

Order

The request of Aid Maintenance for review of the alleged facts of violation contained in Notice of Intent to Fine PRO-92-034, as well as the appropriateness of the proposed civil money penalty sums arising out of the issuance of that citation, is hereby denied.

Aid Maintenance is hereby ordered to cease and desist from further violating the provisions of 8 U.S.C. § 1324a(a)(1)(A) by hiring aliens for employment while knowing the aliens to be unauthorized for employment in the United States, or from continuing to employ unauthorized aliens after learning that they are unauthorized, and shall comply with the requirements of 8 U.S.C. § 1324a(a)(1)(A) and 1324a(a)(2).

In accordance with the previous allocations, Aid Maintenance is ordered to pay a total civil money penalty of $105,500.

Joseph E. McGuire
Administrative Law Judge

Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. § 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.