

Modified by CAHO (6/16/88) Ref. No. 17.

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

United States of America, Complainant, v. Rainbow Steel Company, Respondent; 8 U.S.C. Section 1324a Proceeding; Case No. 88-100009.

DECISION AND ORDER

On February 8, 1988, a Complaint Regarding Unlawful Employment, herein called the Complaint, was filed against Rainbow Steel Company, herein called the Respondent, by the United States of America, herein called the Complainant, pursuant to 8 U.S.C. Section 1324a. Attached thereto and incorporated therein is a Notice of Intent to Fine, herein called the Notice, which had previously been served upon Respondent, by mail, on November 30, 1987. A Notice of Hearing issued on February 17, 1988, setting this matter for hearing in San Diego, California, on May 24 through 27, 1988. Thereafter, the hearing was rescheduled to June 21 through 24, 1988.

The complaint alleges, as set forth in the Notice, that, in violation of Section 274A(a)1 (A) and (B) of the Immigration and Nationality Act, as amended, by the Immigration Reform and Control Act of 1986, herein called the Act, Respondent:

(1) On November 3, 1987, knowingly hired for employment in the United States an alien not authorized to work in the United States.

(2) Failed to prepare Employment Eligibility Verification Forms (Form I-9) for two employees hired in March and November 1987.

Further, the Complaint requests that an Order issue directing Respondent to cease and desist from said violations and pay a fine for each of the alleged violations as specified in the Notice.

On May 27, 1988, Complainant and Respondent filed a Stipulated Motion To Approve Consent Findings with a Settlement Agreement signed by both parties attached thereto.

Upon a full consideration of said Settlement Agreement, I find that it complies with the requirements of subsection 68.10(b) of the Interim Final Rules Of Practice And Procedure¹ and fully disposes

¹52 Fed. Reg. 44971, 44976, November 24, 1987, pp. 44973-44985 (to be codified at 28 C.F.R. Part 68).

of the allegations of the Complaint by providing that Respondent cease and desist from any further violations of Section 274A of the Act and pay the compromise sum set forth therein as full settlement and satisfaction of any and all claims set forth in the Notice. I further find it unnecessary to conduct a hearing to determine the fairness of the agreement.²

Accordingly, the provisions of the Settlement Agreement are accepted as the Consent Findings herein, said Agreement is hereby approved and incorporated herein, and it is hereby ORDERED that Respondent pay the amount stated in the Consent Findings, and all other relief agreed to in the Consent Findings is hereby granted. IT IS FURTHER ORDERED that this Decision And Order shall have the same force and effect as a Decision And Order issued after a full evidentiary hearing.

Dated: June 3, 1988.

EARLDEAN V.S. ROBBINS
Administrative Law Judge

²See, subsection 68.10(d) of the Interim Final Rules of Practice And Procedure, supra.

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SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter ``Agreement'') is made and entered into by and between the United States Department of Justice, Immigration and Naturalization Service (hereinafter ``INS'') and Rainbow Steel Company (hereinafter ``Respondent''). INS AND RESPONDENT SHALL BE COLLECTIVELY REFERRED TO HEREIN AS ``THE PARTIES.''

WITNESSETH

WHEREAS, the INS has issued a Notice of Intent to Fine (Form I-763) issued on November 30, 1987 (hereinafter ``the Notice'') against Respondent under Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (hereinafter ``the Act'') in a case denominated as In the Matter of Rainbow Steel Company, File No. SDC 274(a)-22 (hereinafter ``the Action''). On February 8, 1988, a formal complaint was filed by the Service, incorporating the Notice, and the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, set the case for hearing, at San Diego, California, beginning May 24, 1988 through May 27, 1988. At a conference call, among the parties on May 4, 1988, the hearing was postponed until June 21, 1988; and

WHEREAS, INS has stated in the Notice that it intends to order Respondent to pay (a) fine(s) in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for violation(s) of Section(s) 274A(a)(1)(A) and 274A(a)(1)(B) of the Act, concerning Respondent's employment of the individuals listed in the attached exhibit (hereinafter referred to as the ``named employee(s)''); and

WHEREAS, the Parties to this Agreement desire to settle fully and finally the Action.

NOW THEREFORE in consideration of the mutual promises and undertakings and covenants contained herein, and intending to be bound by this Agreement, THE PARTIES AGREE AS FOLLOWS:

1. That the Respondent will pay the total sum of One Thousand Dollars (\$1,000.00) in full settlement and satisfaction of any and all claims set forth in the Notice;

2. That the Complaint and the allegations contained therein, are incorporated herein as though fully set forth;

3. That the Respondent acknowledges that there is an issue under Section 274A(a)(1)(A) of the Act regarding the employment of Ruperto Cardenas-Suares, with knowledge that he was not authorized to work in the United States, as stated in Allegations 1-2 of the Complaint. That Respondent, although not admitting liability, concedes that there is a conflict between his version of the facts and the facts as known to the INS. That Respondent further acknowledges that under Section 274A(a)(2) of the Act, there is an issue regarding the employment of Ruperto Cardenas-Suares, following an educational visit by Border Patrol Agents on August 25, 1987, with knowledge that he had no documents authorizing employment in the United States;

4. That in a compromise settlement of Allegations 1-2 in the complaint, the Respondent agrees to pay Five Hundred Dollars (\$500.00) in cash or cashier's check upon execution of this Agreement and approval by the Administrative Law Judge;

5. That Respondent admits liability as to Allegations 3-5 of the Complaint, acknowledging that he failed to prepare and present the Employment Eligibility Verification Forms (I-9 Forms) for Ruperto Cardenas-Suares and Juan Trejo-Rosas as required by Section 274A(a)(1)(B) of the Act;

6. That Respondent, therefore, agrees to pay Two Hundred and Fifty Dollars (\$250.00) each for the two violations of failing to prepare and present the Employment Eligibility Verification Forms (I-9 Forms), a total of Five Hundred Dollars (\$500.00).

7. That the Respondent will cease and desist from any further violations of Section 274A of the Act;

8. That nothing in this Agreement shall be construed as relieving the Respondent of liability for future violations of Section 274A of the Act nor shielding it from subsequent applicable penalties;

9. That if the Respondent fails to comply with this Agreement, which forms the basis for the issuance of the Final Order, the Attorney General pursuant to Section 274A(e)(8), is authorized to file

suit to seek compliance with the Final Order in any appropriate district court;

10. That the entire record on which any order may be based shall consist solely of the Complaint and the Agreement;

11. That the parties agree that the Settlement Agreement shall constitute a waiver of any further procedural steps before the Administrative Law Judge;

12. That the parties agree that the Settlement Agreement shall constitute a waiver of any right to challenge or contest the validity of the Order entered into in accordance with the Agreement;

13. That INS accepts the total sum of One Thousand Dollars (\$1,000.00) in full and final satisfaction of this action;

14. That INS releases and discharges the Respondent, parent corporations, subsidiaries, associated and affiliated entities, their officers, directors, representatives, employees, agents, successors, and assigns (hereinafter the ``companies'' and ``person'') from any further penalties under Section 274A of the Act for the violations as set forth in the Notice, except for those penalties listed hereinafter, and this Agreement shall constitute a complete release from and bar to any and all causes of action, claims, rights, liens or subrogated interests, by reason of or arising from the violations as set forth in the Notice, except for those penalties listed hereinafter. Specifically excepted from the effect of this paragraph are penalties listed in Section(s) 274A(e)(5).

15. That each Party shall bear its own costs, attorneys fees and any other expenses incurred by such party in this Action;

16. That this Agreement shall be governed by, and construed in accordance with, the laws of the United States and the State of California. Should any provision of this Agreement be declared or determined by any court or legal body to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement;

17. That this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the INS and the Respondent and their heirs, assigns and successors in interest and all parent, subsidiary, and affiliated firms, corporations, and entities;

18. That this Agreement contains the entire understanding of the Parties and fully supercedes any and all prior agreements and understandings with respect to the subject matter hereof. There have been no representations, express or implied, as to the subject matter hereof, except as contained herein. This Agreement may be amended or modified only by a written instrument duly executed

by each of the Parties prior to the effective date of any such amendment or modification;

19. That this Agreement is effective on the date this Agreement is executed by the Parties and approved by the Administrative Law Judge;

20. Each party represents and warrants that this Settlement Agreement has been duly approved and authorized by such Party and constitutes a binding obligation of such Party, and that the officer or official signing this Agreement is authorized by the Party to sign on its behalf.

Immigration and Naturalization Service

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