

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

United States of America, Complainant v. Cyrus Kiani, d/b/a Copies, Etc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100624.

DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DECISIONAS TO LIABILITY

E. MILTON FROSBURG, Administrative Law Judge

Appearances: **JOHN PAULSON**, Esquire, for Complainant,
Immigration and Naturalization Service
MR. CYRUS KIANI, pro se, Respondent.

I. Procedural History and Statement of Relevant Facts

On November 20, 1989, the United States of America, Immigration and Naturalization Service, served a Notice of Intent to Fine on Mr. Cyrus Kiani, d.b.a. Copies, Etc. The Notice of Intent to Fine, in Count I, alleged violations of the Immigration and Nationality Act (the Act) Section 274A(a)(1)(B). On December 5, 1989, Respondent, acting pro se, requested a hearing before an administrative law judge.

The United States of America, through its Attorney John Paulson, filed a Complaint incorporating the allegations in the Notice of Intent to Fine against Respondent on December 27, 1989. On January 11, 1990, the Office of the Chief Administrative Hearing Officer issued a Notice of Hearing on Complaint Regarding Unlawful Employment, assigning me as the administrative law judge in this case and setting the hearing place at Seattle, Washington, date to be determined pursuant to further notice of the administrative law judge.

Respondent, pro se, answered the Complaint on February 10, 1990, neither specifically admitting nor denying either allegation. On March 2, 1990, I issued an Order Directing Procedures for Pre-

hearing. On March 1, 1990, Complainant submitted a Motion for Summary Decision/Judgment on the issue of liability. On April 12, 1990, a pre-hearing telephonic conference was held. I reserved ruling on the Complainant's Motion for Summary Decision to allow Respondent the opportunity to respond. On the same date, I issued to Respondent an Order To Show Cause Why Summary Decision Should Not Issue, explaining the possible ramifications for failure to submit a timely response to a Motion for Summary Decision, and granting Respondent until April 22, 1990 to provide his response. As of this date, I have not received a response from Respondent to my Order To Show Cause.

After careful consideration of the documents before me, I conclude that no genuine issue of material fact exists as to the issue of liability and that Complainant is entitled to Summary Decision on this issue as a matter of law.

II. Legal Standards for a Motion for Summary Decision

The federal regulations applicable to this proceeding, set out at 28 C.F.R. Section 68, authorize an administrative law judge to "enter summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." See, 28 C.F.R. Section 68.36 (1988).

The Supreme Court has issued a trilogy of decisions which strengthens the summary judgment process, and are applicable to the motion for summary decision procedure set forth in 28 C.F.R. 68.36. The purpose of the summary judgment procedure is to avoid an unnecessary trial when there is no genuine issue as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2555, 91 L.Ed.2d 265 (1986). A material fact is one which controls the outcome of the litigation. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986). Also see, Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

III. Legal Analysis Supporting Decision

Complainant argues in its Motion for Summary Decision that the government sets forth, in its Complaint, a prima facie case, and that the Respondent, by not denying the facts as set forth in the Complaint, has admitted them. Complainant states that Respondent did not deny that the individuals named in the Complaint worked for him and were hired after November 6, 1986. Neither did he deny that he failed to prepare any Forms I-9 for these employees within three days of hire. Complainant submits, therefore, that no issue of any material fact exists and that Complainant is

entitled to Summary Decision as a matter of law on the issue of liability.

IV. Findings of Fact, Conclusions of Law, and Order

I have considered the pleadings, memoranda and supporting documents submitted in support of the Motion for Summary Decision. Accordingly, and in addition to the findings and conclusions already mentioned, I make the following findings of fact, and conclusions of law:

1. As previously found and discussed, I determine that no genuine issues as to any material facts have been shown to exist with respect to the issue of liability. Therefore, Complainant is entitled to a Summary Decision as a matter of law pursuant to 28 C.F.R. Section 68.36.

2. That Respondent violated 8 U.S.C. Section 1324a(a)(1)(B) in that Respondent hired for employment in the United States the individuals identified in Count I without complying with the verification requirements in Section 1324a(b)(1) and 8 C.F.R. Section 274a.2(b)(1)(ii).

3. That, the Court will keep jurisdiction of this matter to make a determination as to civil penalties after oral argument or by stipulation of the parties in consideration of 28 C.F.R. Section 68.50 of the Rules of Practice and Procedure.

4. That, pursuant to 8 U.S.C. Section 1324a(e)(6), and as provided in 28 C.F.R. Section 68.52, this Decision and Order shall become the final decision and order of the Attorney General as to the issue of liability, unless, within thirty (30) days from this date, the Chief Administrative Hearing Officer shall have modified or vacated it.

IT IS SO ORDERED: This 2nd day of May, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge