

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

United States of America, Complainant v. J.J.L.C., Inc., Respondent;  
8 U.S.C. 1324a Proceeding; Case No. 89100187.

**AFFIRMATION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER OF THE  
ADMINISTRATIVE LAW JUDGE'S ORDER**

On April 14, 1989, the United States of America, by and through its agency the Immigration and Naturalization Service (hereinafter Complainant), filed a complaint with the Office of the Chief Administrative Hearing Officer (hereinafter OCAHO) against J.J.L.C., Inc., T/A Richfield Caterers and/or Richfield Regency (hereinafter Respondent). The Complaint charged Respondent with violations of the Immigration Reform and Control Act of 1986, codified at 8 U.S.C. § 1324a. The Complainant alleged seven violations for failing to ensure that employees properly complete sections one and two of the Employment Eligibility Verification Form (hereinafter Form I-9) (Count I), and further alleged one hundred eight violations for failing to ensure that employees properly completed section two of the Form I-9 (Count II). Complainant requested that a civil money penalty be assessed for Counts I and II in the amount of sixteen thousand two hundred dollars (\$16,200.00).

On April 20, 1989, the Chief Administrative Hearing Officer (hereinafter CAHO), appointed an Administrative Law Judge (hereinafter ALJ), to this case. On May 9, 1989, the ALJ received Respondent's Answer in which Respondent specifically denied the allegations contained in both Counts I and II.

On April 13, 1990, the ALJ issued his Decision and Order finding Respondent in violation of 8 U.S.C. § 1324a(a)(1)(B) for failing to comply with the requirements of 8 U.S.C. § 1324a(b)(1) and (2). Respondent was subsequently assessed a civil money penalty in the amount of thirteen thousand one hundred fifty dollars (\$13,150.00).

Pursuant to 8 U.S.C. § 1324a(e)(7),

[t]he decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection.

Accordingly, the ALJ's initial Decision and Order of April 13, 1990, would become the final agency decision and order on May 14, 1990, provided the ALJ or the CAHO did not modify or vacate it in any way.

On May 1, 1990, Respondent requested the ALJ to stay his Decision and Order of April 13, 1990, pending a reconsideration. Respondent's Motion for Stay and Reconsideration was denied by the ALJ in an Order issued May 11, 1990. Because the initial Decision and Order of April 13, 1990 was not vacated or modified during the 30-day time period for administrative review, the Decision and Order became the final agency decision and order on May 14, 1990.

Respondent subsequently filed a Request for Review of the ALJ's Order Denying its Motion For Reconsideration And For Stay, Pursuant to § 68.51(a) of the applicable Rules of Practice and Procedure, appearing at 54 Fed. Reg. 48593 [to be codified at 28 C.F.R. Part 68] (hereinafter Regulations). The Request for Review was received by the CAHO on May 22, 1990. In reviewing this request, it must be noted at the outset that the Regulations anticipate the use of the Federal Rules of Civil Procedure (F.R.C.P.) as a general guideline for situations not provided for by these rules. (§ 68.1 of the Regulations). Therefore, it was within the ALJ's discretion to apply the appropriate rule(s) of the F.R.C.P. as necessary, in light of the Regulations, as to the reconsideration of final decisions and orders.

The Respondent's contentions were based on the doctrine of substantial compliance, believing that it had followed the spirit and intent of the statute it was charged with violating. At issue was the unsatisfactory completion of the Forms I-9, which was addressed by the ALJ's Decision and Order of April 13, 1990. This Decision and Order became final on May 14, 1990 because it was not modified or vacated within the prescribed 30-day statutory time period.

Through its present request for review of the order denying its Motion For Reconsideration And For Stay, Respondent would essentially have the CAHO revisit the Sufficiency of the Forms I-9 in terms of their completeness. This the CAHO can not do. As stated in U.S. v. Valdez, OCAHO Case No. 89100014 (Sept. 27, 1989); aff'd by CAHO (Dec. 12, 1989), unless a decision and order is modified or vacated within the prescribed 30-day time period, an ALJ's decision and order becomes the OCAHO's final decision and order. Therefore, the CAHO is precluded from reviewing matters settled by an

ALJ's decision and order which has become the final decision and order of the OCAHO.

Upon the initiation of the 30-day time limit regarding review by this office of final orders and decisions of ALJs, an aggrieved party filing a request for review has a prescribed window of opportunity in which to seek review of an unfavorable decision. It thus becomes incumbent on that party seeking review to pursue the most efficient means of obtaining such review; be it with the ALJ, the OCAHO, or the appropriate Court of Appeals.

By way of example, had the ALJ granted respondent's Motion for Stay and Reconsideration and modified his initial decision in some manner (which would have had the effect of ``restarting'' the 30-day time limit), and Respondent, dissatisfied with the subsequent modification, appealed to the CAHO within the prescribed time limit, this office would review the entire case de novo. Further, had Respondent appealed directly to the OCAHO, rather than first moving for a stay and reconsideration of the ALJ's initial Decision and Order, OCAHO would again have had de novo review authority. See Mester v. INS, No. 89-70133, (9th Cir. April 10, 1990).

In the instant case, the CAHO's ability to review the final Decision and Order of April 13, 1990 ended on May 14, 1990. Respondent's May 22, 1990 Request for Review of the ALJ's May 11, 1990 Denial of Respondent's Request for Stay and Reconsideration of the April 13, 1990 Decision and Order, gave the CAHO 30 days to review the May 11, 1990 Decision and Order only. The May 22, 1990 Request for Review raised issues which became final on May 14, 1990. Namely, the completeness of the Forms I-9. Thus, the CAHO is precluded from review of these issues.

ACCORDINGLY,

Pursuant to 8 U.S.C. § 1324a(e)(7) and § 68.21 of the regulations, the Chief Administrative Hearing Officer has conducted a review of the ALJ's May 11, 1990 Order Denying Respondent's Request for Stay and for Reconsideration and after careful consideration hereby affirms the ALJ's Order of May 11, 1990.

**IT IS SO ORDERED:** This 7th Day of June, 1990.

JACK E. PERKINS  
Chief Administrative Hearing Officer