

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

United States of America, Complainant vs. The Wrangler's Country Cafe, Inc., and Henry D. Steiben, Individually, Respondents; 8 U.S.C. 1324a Proceeding; Case No. 89100381.

FINAL DECISION AND ORDER

STATEMENT OF THE CASE

On August 7, 1989, a complaint was filed by the United States with the Office of the Chief Administrative Hearing Officer, charging respondents, The Wrangler's Country Cafe, Inc., and Henry D. Steiben, jointly, with violations of the Immigration Reform and Control Act of 1986 (IRCA). In Count I of the Notice of Intent to Fine, incorporated into the Complaint, Respondents were charged with three violations of 8 U.S.C. Section 1324a(a)(1)(A) for hiring three named individuals knowing these individuals were not authorized for employment in the United States. Count II further charged Respondents with three violations of 8 U.S.C. Section 1324a(a)(1)(B) paperwork violations for failing to prepare Form I-9 for the three aliens. Count III charged Respondents with 12 additional violations of 8 U.S.C. Section 1324a(a)(1)(B) for failing to prepare Form I-9 for 12 employees. A hearing was scheduled to be held on December 5, 1989 in Kansas City, Missouri. That hearing was postponed indefinitely pending the resolution of various motions filed by Respondent Steiben.

On August 17, 1989, Respondent Steiben filed a Motion to Dismiss and a Motion for Summary Judgment. Subsequently, on August 28, 1989, both Respondents filed a joint Answer to the Complaint denying the material allegations therein. This Answer was filed by Respondent Steiben ``in the alternative'' to his Motion to Dismiss or for Summary Judgment.

On March 6, 1990, the Motion to Dismiss and for Summary Decision was denied, and a finding was made that Respondent Steiben, individually, was subject to joint personal liability, together with Respondent The Wrangler's Country Cafe, Inc. During a subsequent conference call, Respondents chose not to contest the validity

of the allegations in the complaint, and the parties agreed to brief the issue of the appropriate civil money penalty to be imposed in this matter.

In support of its proposed penalty assessment, Complainant submits various documents which it contends accurately depict the Respondents' culpability. Many of these documents were submitted by Complainant in opposition to Respondent Steiben's Motion to Dismiss or for Summary Decision, the admissibility of which were the subject of a stipulation of the parties.

Respondents, complaining of their hearsay character, now urge that those documents which were not subject to the previous stipulation not be considered in the discretionary assessment of the appropriate penalty. I agree with Respondents' position on this point.

Count I

Under the Final Rules for the Control of Employment of Aliens, at 8 C.F.R. Section 274a.10, a respondent found to have knowingly hired an unauthorized alien is subject, for a first violation, to a penalty of not less than \$250 and not more than \$2,000 for each unauthorized alien. Complainant seeks the maximum penalty allowable of \$2,000 for each of the three violations of 8 U.S.C. Section 1324a(a)(1)(A) alleged in Count I, for a total amount of \$6,000. Complainant takes the position that the Respondents' violations were egregious and merit the most severe penalty.

The record evidence includes the affidavit of one of the undocumented aliens, Jose Guadalupe Hernandez-Lopez. This affidavit states that Hernandez-Lopez entered the United States illegally, together with the two other undocumented aliens named in the complaint herein, Francisco Aguilar and Alberto Gonzalez-Castaneda, and that the three individuals resided at various locations in the greater Kansas City area and eventually secured a job with the Respondents through an intermediary, Manuel, who introduced them to Respondent Henry D. Steiben, owner of the Respondent, The Wrangler's Country Cafe, Inc. The affidavit of Hernandez-Lopez describes the initial meeting with Steiben as follows:

. . . Manuel translated for Steiben, and Steiben asked us if we had any Immigration papers. We told him that none of us had any Immigration papers and that we had no work permits. Steiben said that he would protect us, and that if there was any problem with Immigration, that would be his problem.

. . . Steiben said he would pay us each \$50.00 per week, plus room and board. Steiben said that we would stay at his house, as part of our pay. We asked Steiben if he would help us arrange our Immigration documents, and he said yes he would.

The affidavit relates that the three individuals moved into Steiben's house, that Steiben transported them to work in his truck

each morning, and that on one occasion Manuel relayed a message from Steiben, namely, that Hernandez-Lopez should ``run if immigration came.``

Since the conduct of the Respondents is egregious and because it is clear that Steiben has demonstrated his total disregard for the proscriptions of the Act, the Complainant recommends that the maximum permissible civil penalty of \$2000.00 for each hiring violation be imposed.

Conclusions Regarding Count I

Because Respondent The Wrangler's Country Cafe, Inc. is no longer a viable business entity, and ceased business with over \$37,00 in accounts payable, not including unpaid wages owed to employees, I shall impose a fine of \$1,000.00 for each of the three hiring violations, for a total of \$3,000.00. Such an amount is deemed reasonable under the circumstances, particularly because of the Respondents' egregious conduct.

Counts II and III

In determining the amount of the penalty to be imposed for paperwork violations, 8 U.S.C. Section 1324a(e)(5) provides that:

With respect to a violation of subsection (1)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than \$100.00 and not more than \$1000.00 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

Conclusions Regarding Counts II and III

In Count II, Complainant seeks the maximum penalty of \$1,000 for each of the three violations as a result of the Respondents' failure to prepare Employment Eligibility Verification forms (Form I-9) for the three undocumented aliens.

I have given ``due consideration`` to the foregoing factors. However, I place overriding significance upon the fact, not listed among the factors to be evaluated, that Respondent The Wrangler's Country Cafe, Inc., is no longer in business, and that any fine imposed will ultimately become the responsibility of Respondent Steiben, individually. As shown above, the violations which he orchestrated are egregious. I shall therefore impose a penalty of \$250.00 for each of the three violations in Count II, for a total of \$750.00.

In Count III, Complainant seeks a penalty of \$500 for each of the twelve additional paperwork violations. I shall impose a penalty of

\$125.00 for each violation, for a total of \$1,500.00, for the reasons set forth above.

Findings of Fact

1. Respondents hired for employment in the United States Jose Guadalupe Hernandez-Lopez, Francisco Aguilar, and Alberto Gonzalez-Casteneda, after November 6, 1988, knowing that they were unauthorized to be employed in the United States.

2. Respondents hired for employment in the United States, after November 6, 1988:

- a. Kip McBride
- b. J. Roark
- c. D. Manning
- d. S. Burnett
- e. M. Cornish
- f. Patricia Van Gorp
- g. Keith A. Russell
- h. M. Coker
- i. D. Hedrick
- j. Coeta Stokes
- k. Delma Russell
- l. Michele Reynolds

3. Respondents failed to prepare and present the form designated by the Attorney General, Form I-9, verifying the employment eligibility of these fifteen employees.

Conclusions of Law

1. Respondents have violated 8 U.S.C. Section 1324a(a)(1)(A) by employing Jose Guadalupe Hernandez-Lopez, Francisco Aguilar, and Alberto Gonzalez-Casteneda, knowing they were unauthorized for employment in the United States.

2. Respondents have violated 8 U.S.C. Section 1324a(A)(1)(B) by failing to prepare and present Form I-9 as required by the Immigration Reform and Control Act for the 15 named employees.

3. For the three violations of 8 U.S.C. Section 1324a(a)(1)(A) Respondents are required to pay a civil money penalty in the amount of \$1,000.00 for each violation, for a total of \$3,000.00. Respondents are ordered to cease and desist from any further violations.

4. For the three violations of 8 U.S.C. Section 1324a(a)(1)(B), as charged in Count II, Respondents are required to pay a civil money penalty in the amount of \$250.00 for each violation, for a total of \$750.00.

5. For the twelve additions violations of 8 U.S.C. Section 1324a(a)(1)(B), Respondents are required to pay a civil money penalty in the amount of \$125.00 for each violation, for a total of \$1,500.00.

6. Pursuant to 8 U.S.C. Section 1324a(e)(7), and as provided in 28 C.F.R. Section 68.51, this Final Decision and Order shall become the final decision and order of the Attorney General unless, within five (5) days of the date of this decision any party files a written request for review of the decision together with supporting arguments with the Chief Administrative Hearing Officer.

SO ORDERED.

Dated: June 29, 1990.

GERALD A. WACKNOV
Administrative Law Judge