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

United States of America, Complainant v. Basim Aziz Hanna, d/b/a Ferris & Ferris Pizza, Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100331.

Appearances: **IGNACIO FERNANDEZ**, Esquire For the Complainant
ROY R. GUNNER, Esquire For the Respondent

Before: ROBERT B. SCHNEIDER, Administrative Law Judge

DECISION AND ORDER ON CIVIL MONETARY PENALTY

I. Procedural History:

On February 26, 1990, I issued an Order Granting Complainant's Motion for Summary Decision. In the Ultimate Findings of Fact, Conclusion of Law and Order, I found that Respondent was liable for twelves Counts of violating 8 U.S.C. § 1324a(a)(1)(B). Respondent hired, for employment in the United States, the employees identified in Counts one through twelve of the Complaint without complying with the verification requirements in section 1324(b), and ⌊8 C.F.R. § 274a.2(b)(1)(ii) (A) and (B).

On March 12, 1990, an evidentiary hearing was held to determine the amount of civil money penalty that is appropriate for Respondent's failure to comply with the verification requirements in section 1324(b) and 8 C.F.R. § 274a.2(b)(1)(ii)(A).

On March 13, 1990, I issued an Order Directing Post-Hearing Briefing. On June 4, 1990, Respondent filled its Recommended Proposed findings of Facts and Conclusions of Law in support of mitigation of civil money penalty for said violations.

On June 21, 1990, Complainant filed its Brief in Support of the Government's Proposed Findings of Fact and Conclusions of Law regarding the civil money penalty.

II. Summary of the Relevant Facts:

The parties have stipulated the following facts:

Respondent, Basim A. Hanna, is the owner of Ferris & Ferris Pizza. On March 23, 1989, Special Agent Stephen R. Schultz of the Immigration and Naturalization Service (INS) served Respondent with a Notification of Inspection. On March 28, 1989, Agent Schultz visited Respondent's business to conduct the Inspection. At the inspection, Respondent did not produce any Forms I-9 (Employment Eligibility Verification Forms).

Respondent has no prior history of IRCA violations. None of Respondent's employees were found to be aliens unauthorized to work in the United States.

At the evidentiary hearing held on March 12, 1990, four witnesses testified on the issue of what should be an appropriate civil money penalty in this case. The following is a summary of their testimony and the exhibits introduced.

Respondent testified that he is the sole owner of Ferris & Ferris Pizza; that his restaurant occupies about 1500 square feet; and that he employs three to six persons. (Tr. at 14, 15, 16-17)

According to Respondent's monthly payroll records and Respondent's testimony, during Respondent's three years of ownership, Respondent has employed about thirty-seven persons. (Exhibit C-5; Tr. at 108) The payroll records and Respondent's testimony indicate the average monthly payroll is under $1,000. (Exhibit C-5; Tr. at 27) Respondent's unaudited income statement for the first eleven months of 1989 indicates sales of approximately $127,600, with a net profit of approximately $5,400. (Exhibit R-1; Tr. at 22, 101)

INS Special Agent Ramon Putnam testified that on November 17, 1987, he spoke with Respondent regarding the requirements of IRCA during an educational visit at Ferris & Ferris Market, a business owned by Respondent located across the street from Ferris & Ferris Pizza. (Tr., at 70-72; Exhibit C-3) Agent Putnam testified that he left a Handbook for Employers with Respondent. (Tr. at 74)

Agent Putman further testified that he conducted an educational visit at Ferris & Ferris Pizza on November 18, 1987, and spoke with Jamshid Naghdi, the manager, and left a Handbook for Employers with him. (Tr. at 68, 69; Exhibit C-2)

INS Special Agent David Laguna testified that he visited Ferris & Ferris Pizza on September 7, 1988, to educate the employer on IRCA. (Tr. at 54, 62) Agent Laguna testified that he spoke with Faja Hanna, the manager. Agent Laguna testified that Faja Hanna told him that there was no need to explain the requirements of IRCA to her since she was not the owner, but to leave the Handbook for Employers with her and she would see that the owner got

it. (Exhibit C-1; Tr. at 55, 59) Agent Laguna testified that he left the Handbook for Employers with Hanna. (Tr. at 55)

Special Agent Terrance Emery of United States Immigration testified that he and three other agents visited Ferris & Ferris Pizza on March 23, 1989, to conduct an employee survey and to deliver a Notice of Inspection to view the Form I-9s. Agent Emery testified that Agent Schultz explained the Notice of Inspection to Respondent and Respondent's bookkeeper. (Tr. at 87) Agent Emery testified that he overheard the bookkeeper say to the Respondent upon leaving the restaurant, ``I knew you would get caught for not doing those forms.'' (Tr. at 89; Exhibit C-4)

Respondent testified that he recalls a conversation he had with Agent Putnam sometime in 1987 at the Market which Respondent recalls concerned his payroll records. (Tr. at 111)

Respondent further testified that Jamshid Naghdi had spent about ten days at Ferris & Ferris Pizza, observing the operations to determine if he wanted to become a partner. (Tr. at 110-111) Respondent testified that Naghdi was not employed by Respondent, but acted like a manager during this period. (Tr. at 110) Respondent did not state whether Naghdi informed him of the Agent's visit.

Respondent further testified he had not hired anyone by the name of Faja Hanna and that he had not received the Handbook for Employers or any other information regarding this visit. (Tr. at 19, 37, 109)

Respondent does not recall having heard his bookkeeper say, upon leaving the restaurant after the March 23, 1989, visit that ``I (the bookkeeper) knew you (the Respondent) would get caught for not doing those forms.'' (Tr. at 115)

Respondent further testified that after the visit on March 30, 1989, by the INS agents, he copied the Form I-9s left with him and started to complete them. (Tr. at 40) Respondent testified that the Forms were ready for inspection on March 31, 1989, when the Agents returned the income statement, but the Agents did not ask to see the Form I-9s. (Tr. at 21) Respondent testified that since the March 1989 visits he has satisfied the requirements of the IRCA by keeping the appropriate records on his employees. (Tr. at 24, 28)

Respondent testified that, prior to March 31, 1989, he had not completed the Form I-9s necessary to comply with the requirements of IRCA. (Tr. at 27, 39-40) However, respondent testified that he verified his employees authorized status by checking their Social Security card, driver's license, or birth certificate when he hired them. (Tr. at 17) Respondent did not have any unauthorized aliens working for him.

On March 16, 1990, INS Special Agent Steven W. Schultz declared, under penalty of perjury, that on March 28, 1989, he visited Respondent's place of business to inspect the Respondent's Form I-9s pursuant to the Notice of Inspection served on March 23, 1989. Agent Schultz declared that Respondent did not produce any Form I-9s at the inspection. Agent Schultz declared that on March 30, 1989, he personally contacted Respondent to obtain Respondent's payroll record as previously agreed to by Respondent and his bookkeeper, and that on March 31, 1989, he returned the payroll record to the Respondent.

III. Statutory and Regulatory Framework

Since I have found that Respondent has violated Section 1324a(a)(1)(B) of Title 8 in that Respondent hired, for employment in the United States, an individual without complying with the verification requirements in section 1324a(b) of the Act, and 8 C.F.R. §§ 274a.2.(b)(1)(i)(A) and 274a.2(b)(1)(ii)(A) and (B) with respect to all counts of the Complaint, assessment of civil money penalties are required as a matter of law. See, § 1324.a(e)(5).

Section 1324a(e)(5) states, in pertinent part, that:

> With respect to a violation of subsection (a)(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 and not more than $1,000 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.

The regulations reiterate the statutory penalty provision including the mitigating factors which should be taken into consideration for paperwork violations. See 8 C.F.R. § 274a.10(b)(2).

IV. Respective Legal Positions

Both Complainant and Respondent stipulate that Respondent did not employ any aliens unauthorized to work in the United States nor does Respondent have a history of previous IRCA violations. These two factors will be fully mitigated.

A. Complainant's Position

Complainant suggests a civil monetary penalty of $9,000 for the twelve counts.

Complainant asserts that the amount of civil monetary penalty for size of business should be mitigated only fifty percent. Complainant argues that Respondent did not fully develop the true economic size of the business and that, without knowing the economic size, the appropriate monetary penalty cannot be accurately determined.

Complainant asserts that Respondent did not demonstrate good faith, and, therefore, should not receive any mitigation on this factor. Complainant argues that Respondent did not comply with the requirements of IRCA, mainly, because Respondent did not consider the law to be important enough to warrant his attention.

Complainant asserts that the violation is serious because no Form I-9s were produced for any of the thirty-seven employees hired. Complainant suggests an additional $100 for both good faith and for seriousness of the violation be assessed for each of the twelve Counts because of the magnitude of the violation.

B. Respondent's Position

Respondent argues that the size of business is small and the civil monetary penalty should be fully mitigated.

Respondent argues for full mitigation for good faith because Respondent complied fully with what he understood to be the requirements of the Act.

In respect to seriousness of the violation, Respondent argues that the violation was due to a negligent failure to comply and should therefore be mitigated about thirty percent.

V. Legal Analysis

I have heretofore applied a methodical analysis in order to assess civil money penalties for paperwork violations. See, United States of America v. The Body Shop, OCAHO Case No. 89100450, June 19, 1990; United States v. Felipe Cafe, OCAHO Case No. 89100151, October 11, 1989, aff'd by CAHO, November 29, 1989; United States of America v. Juan V. Acevedo, OCAHO Case No. 89100397, October 12, 1989; United States of America v. Le Merengo/Rumors Restaurant, OCAHO Case No. 89100290, April 20, 1990. I intend to apply the suggested standards of mitigation specified in Felipe and its progeny to the facts in this case.

There are twelve counts in the Complaint. All counts involve a failure to prepare and/or present the Form I-9 for each named individual.

Two of the five mitigating factors, no prior IRCA violations and actual employment of unauthorized aliens, are not contested and should be fully mitigated.

The parties have not been able to agree on the effect the other three mitigating factors, size of business, good faith, and seriousness of the violation, should have on the assessment of the civil penalty.

A. Size of the Business

With respect to size of business, I find it to be a small operation. Respondent, the sole owner, had been in business for two years when the Complaint was filed. Respondent employs three to six employees. The premises, including the kitchen, cashier area, storage area, and dining room, are only 1500 square feet. Respondent's monthly payroll averages under $1,000 and his sales for the first eleven months of 1988 were approximately $127,600, with a net profit of approximate $5,400.

Complainant argues that the financial information presented is insufficient to draw a conclusion about the size of the business. I point out that, although the business' revenue is important, it is just one element to consider when determining the size of the business. The size of the business must be determined from an analysis of many factors, including, but not limited to, those set out in Felipe.

Therefore, after analyzing the situation in its totality, I conclude that the Respondent's business is small in size and intend on fully mitigating the civil monetary penalty for this factor.

B. Good Faith

I have previously defined good faith as the honest intention to exercise reasonable care and diligence to ascertain and comply wit the record-keeping provisions of IRCA. See The Body Shop, supra, at 4; Felipe, supra, at 9. Additionally, I have discussed the necessity of applying an objective reasonableness standard to the subjective ``honest intention'' component of this definition. The Body Shop, supra, at 4-5.

In evaluating a respondent's good faith effort to comply with the requirements of IRCA, I first must determine whether respondent has had a reasonable opportunity to ascertain his verification obligation under IRCA. Then, I must determine whether respondent made a reasonable effort to comply with these requirements.

In the case at bar, Respondent has had numerous opportunities to ascertain his obligations as an employer under IRCA. First and foremost, Respondent personally met with an INS special agent during an educational visit. On November 17, 1987, Respondent received an educational visit from Agent Putnam. The visit was conducted at Ferris & Ferris Market, a business distinct from Ferris & Ferris Pizza, but also owned and operated by Respondent. Ferris & Ferris Market is located across the street from Ferris & Ferris Pizza and, according to the record, Respondent is active in the day-to-day operations of both.

Respondent has argued that he did not correctly understand his responsibilities under IRCA. Agent Putnam has testified that he educated Respondent and left a Handbook for Employers with Respondent at the November 17, 1987, educational visit at Ferris & Ferris Market. Although there may very well have been a verbal communication problem between Respondent and Agent Putnam, the Handbook for Employers is written in a clear and straight forward manner which should have clarified for Respondent the paperwork requirements imposed by IRCA. The Handbook for Employers succinctly lists what is lawfully required of employers, and explains when and how to comply. If still unclear about his obligations after the educational visit and after reading the Handbook for Employers, Respondent could easily have obtained additional information. The Handbook for Employers lists the addresses of INS offices across the country, one of which is in San Diego, and gives a toll-free number where employers can obtain additional information.

Moreover, the INS need only make a reasonable effort to educate an employer about the employer's obligations under IRCA. An educational visit at which the INS agent stated the purpose of the visit to the employer or his manager, answered any questions the employer or manager may have had regarding his obligations or requirements under IRCA, and left a Handbook for Employers with the employer or manager could be found to be a reasonable effort by the INS. See, also, United States of America v. New El Rey Sausage Company, Inc, OCAHO Case No. 88100080, July 7, 1989, as modified at 34, f.n. 15 (wherein I discuss at length the communicative responsibilities of both the INS and employers during an educational visit).

Agent Putnam testified that he personally educated Respondent and left a Handbook for Employers with him. Agent Putnam further testified that it is his practice to discuss the requirements with the employer, if the employer is willing, for as long as is needed to clarify the employer's obligations. I find that Respondent, despite any communication problem he may have had understanding spoken English, nevertheless had sufficient opportunity to ascertain his verification requirements under IRCA. Thus, since Respondent had sufficient opportunity to ascertain generally his obligations under IRCA, then it is clear that his being on personal notice with respect to one business should apply to these requirements in all his businesses.

In addition to the educational visit made to Respondent on November 17, 1987, however, the INS also conducted two other educational visits at his separately owned business of Ferris & Ferris

Pizza. Agent Putnam testified that, on November 18, 1987, he conducted an educational visit with Jasmid Nagdhi at Ferris & Ferris Pizza and left a Handbook for Employers with him.[1] Respondent has neither admitted nor denied knowledge of this November 18, 1987, visit.

Additionally, Agent Laguna testified that, on September 7, 1988, he conducted an educational visit with Faja Hanna at Ferris & Ferris Pizza and left a Handbook for Employers with her. Agent Laguna also testified that he identified himself as an INS Special Agent and Hanna identified herself as the manager.[2] Respondent has denied knowledge of this September 7, 1988, visit.

Having had an opportunity to observe the conduct and demeanor of all the witnesses, and having had an opportunity to examine the entire record, including the exhibits introduced at the hearing, I do not find Respondent's alleged lack of notice of either of these visits to be persuasive. I find it unlikely that Nagdhi and Hanna, after being contacted by INS Special Agents, did not communicate these official educational visits to Respondent. However, even if Respondent did not have actual knowledge of the educational visits, Respondent allowed Nagdhi and Hanna to present themselves as managers of the business and, by doing so, Respondent, in effect, made each his agent.[3]

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[1] Jasmid Nagdhi was a potential partner who was observing the business operations on the day of the visit. Although Respondent testified that Nagdhi was not employed at the restaurant nor did he work there, Respondent testified that Nagdhi ``ma[d]e himself like a manager or something.'' (Tr. at 110) This is corroborated by Complainant's Exhibit C-2 in which Agent Putnam indicated Nagdhi's title as ``manager.''

[2] Respondent has testified that he has neither employed anyone named Faja Hanna nor does he know of anyone by this name even though his surname is also Hanna. I note that in Respondent's Pre-Hearing Statement, Respondent listed an individual named Saja Hanna as a potential witness.

[3] Restatement (Second) of Agency sec. 1(1) (1958) defines ``agency'' as ``the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.'' The ``manifestation of consent'' is an objective test. Thus, even if Respondent did not intend for Nagdhi to act on his behalf, Respondent consented to the agency relationship by being aware of and permitting Naghdi to act like a manager during his observational visit.

Additionally, it is my view that an agency relationship was created between Respondent and Hanna. Respondent, as owner and operator of Ferris & Ferris Pizza, has a responsibility to control the premises and operation of his business. Based on the record as a whole, I am persuaded that INS Agent Laguna did meet with an individual who identified herself as the manager of Respondent's business. Respondent has denied having any knowledge of a person named ``Faja Hanna'' and denied that this person ever worked for him. However, in contrast to Respondent's asser-

Therefore, because I find that Nagdhi and Hanna were managerial agents of Respondent, it is my view that Respondent can be held to have had constructive knowledge of the visits.[4]

Based on the foregoing analysis, and consistent with my decision in The Body Shop, I will impute to the Respondent that he has had sufficient opportunity to ascertain his verification requirements under IRCA.

Therefore, because Respondent was personally educated by an INS Special Agent and because he knew or, at least, should have known about the visits made to his managerial agents, I find that Respondent had more than enough opportunity to ascertain what his verification obligations were under IRCA.

Therefore, since Nagdhi and Hanna appeared to have the authority to act on behalf of the Respondent, the knowledge of the educational visits can be imputed to the Respondent.

Having found that Respondent had a reasonable opportunity to ascertain his obligation under IRCA, I turn my attention to Respondent's efforts to comply with the IRCA requirements. Respondent testified that there were no Form I-9s prepared for the March 28, 1989, inspectional visit. Even though he did not prepare any Form I-9s, Respondent argues that by checking the Social Security card, driver's license, or birth certificate of the individuals before he hired them, he complied with the purpose of the Act; by verifying the authorized working status of his employees. Respondent

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tions which I do not find credible, I find that some individual, possibly named Faja Hanna or maybe Saja Hanna, did appear to be managing Ferris & Ferris Pizza and did identify herself as manager to the INS agent. I base this finding on the the fact that (1) Agent Laguna testified to having conducted an educational visit with Faja Hanna who identified herself as manager at Ferris & Ferris Pizza which is corroborated by Complainant's Exhibit C-1; (2) the individual Agent Laguna spoke with has the same surname as Respondent; and (3) in his PreHearing Statement, Respondent listed as a potential witness an individual named Saja Hanna. Since this individual had apparent authority to act on Respondent's behalf, an agency relationship was created. Thus, by allowing persons to conduct and/or present themselves as ``managers,'' Respondent manifested his consent to an agency relationship, even if he did so inadvertently. See, Kimbro v. Atlantic Richfield Co., 889 F.2d 869, 876 (9th Cir. 1989); Restatement (Second) of Agency sec. 268, comment c (1958); See, generally, H. Reuschlein & W. Gregory, Agency and Partnership, sec. 2, at 3 (1979).

[4]Once an agency relationship is created, the ``[k]nowledge of the agent is imputed by law to the principal.'' Kimbro, supra, at 876. In Kimbro, the court found that, as a matter of law, the employer had knowledge of the extent of an employee's severe medical condition when a supervisor-employee had actual knowledge of the condition, but failed to accurately communicate the extent of the condition to the employer. The court stated that ``if notification is given to an agent who has, or appears to have authority `either to receive it, to take action upon it or to inform the principal . . .,' then such notice is chargeable to the principal. Id. (quoting Restatement (Second) of Agency sec. 268, comment c (1958). (Emphasis added)

points out that he did not hire any aliens unauthorized to work in the United States.

While one of the goals of the Act is to verify the authorized working status of all employees in the United States, it is equally important to verify the individual's employment authorization status in the nondiscriminatory manner prescribed by statute. See, section 1324a(b). The Form I-9s were developed to provide employers with a standardized method to verify the employment eligibility of potential employees without discriminating against them. See, United States of America v. De Witt Nursing Home, OCAHO Case No. 88200202, June 29, 1990. In addition, the completed Form I-9s allow INS to efficiently monitor the employer's compliance with the Act. Thus, Respondent's effort to comply with the Act's verification requirements in his own personalized way is not sufficient to warrant good faith mitigation.

Respondent makes another attempt to show his good faith effort to comply by stating that he had prepared the Form I-9s by March 31, 1989, when the INS returned his payroll records. However, Respondent did not present the forms to the INS at this time. Furthermore, at the hearing, Respondent did not introduce into the record the Form I-9s he claimed to have completed. Thus, I do not find Respondent's statement credible.

Although untimely preparation of the Form I-9s is no defense to liability, where there is evidence that the Forms were properly completed within a reasonable time after the Inspectional visit, I might consider mitigating the civil monetary penalty as it applies to the Respondent's good faith effort to comply. Here, however, Respondent did not make an adequate documentary record that he in fact completed the Form I-9s at a reasonable time subsequent to the Inspection. In this regard, Respondent warrants no good faith mitigation on account of his unsupported self-serving testimony that he had completed the Form I-9s at a reasonably proximate time subsequent to the Inspection.

Thus, having analyzed all of the arguments raised by Respondent, I find and conclude that Respondent did not make a reasonable effort to comply with the verification requirements under IRCA.

Accordingly, I find that Respondent's efforts, in light of the numerous opportunities he had to correctly ascertain his obligations, were not reasonable. Furthermore, I find that Respondent's efforts to comply with the verification requirements of IRCA were also not reasonable. Since I have found Respondent did not exercise reasonable care and diligence in his efforts to ascertain and comply with the verification requirements of IRCA, I will not mitigate the civil monetary penalty with respect to good faith.

C. Seriousness of the Violation

As stated in The Body Shop, supra, and Felipe, supra, there are gradations, of the seriousness of the violation. In the case at bar, I find the Respondent negligently failed to prepare the Form I-9s for those employees listed in the Complaint.

Since Respondent and his agents received educational visits, I find that his failure to complete the Form I-9 to be a serious violation. Although the Respondent had testified that he did eventually comply, he never presented the completed Forms for inspection nor did he introduce the Forms into the record to support his testimony.

Therefore, as stated in my earlier decisions, I will not mitigate the amount of the civil monetary penalty as it applies to the seriousness of the violation when the Respondent, after an educational visit, completely fails to prepare the Form I-9s for his employees.[5] See The Body Shop, supra; Felipe, supra; Acevedo, supra.

VI. Conclusion

Complainant has suggested that, given the magnitude of Respondent's violations, I deviate from the Felipe formula and increase the monetary amount for both the good faith factor and the seriousness of the violation factor by $100. In essence, Complainant is asking me to treat these factors in a disproportionately emphasized manner as aggravating circumstances.

In my previous decisions, I have used these factors as mitigating circumstances to decrease the statutorily imposed maximum penalty. See Felipe, supra; The Body Shop, supra. My interpretation of section 1324a(e)(5) of the Act and 8 CFR § 274A.10(b)(2) has been reviewed and approved by the Chief Administrative Hearing Officer. See, Felipe, supra.

I find Complainant's request to increase the civil monetary penalty to be inconsistent with the statute, the regulations and, I might add, the record in this case.

Therefore, I conclude that the appropriate amount of civil monetary penalty to be assessed in this case is $460 per violation, or $5,520 for all twelve counts charged in the Complaint.[6]

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[5] However, in United States v. Jennifer Dittman, d.b.a. The Ready Room Restaurant, OCAHO Case No. 90100027, July 9, 1990, I did mitigate the civil penalty for seriousness of the violation twenty percent even though no Form I-9s were prepared. I mitigated the penalty because, it was my view that, the respondent, therein, decided not to prepare a Form I-9 based on her incorrect but honest belief that no employer-employee relationship existed.

[6] The fine is calculated as follows. The statutory maximum for twelve paperwork violations is $12,000. For three of the five factors of mitigation, I will mitigate the civil penalty in full for each of the twelve counts. (3x12x$180=$6,480). For the other

Ultimate Findings of Fact, Conclusions of Law

Based upon the foregoing analysis, I conclude:

(1) That the determination of civil monetary penalty for violations of the verification requirements of the Immigration Reform and Control Act are discretionary decisions that are guided and structured by factors of mitigation as set out by Congress in section 1324(e)(5) of Title 8 of the United States Code.

(2) That, in determining the amount of penalty, due consideration shall be given to the size of the business of the employer, 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.

(3) That Respondent shall receive full mitigation of penalty for each of the twelve record-keeping violations because Respondent has no history of previous violations.

(4) That Respondent shall receive full mitigation on each of the twelve counts because none of the named employees were unauthorized aliens.

(5) That Respondent shall receive full mitigation of penalty for each of the twelve counts because he operates a small sized business.

(6) That Respondent shall receive no mitigation for good faith on each of the twelve counts because Respondent failed to exercise reasonable care and diligence to ascertain and comply with IRCA's verification requirements.

(7) That Respondent shall receive no mitigation of penalty on account of seriousness of violation for each of the twelve counts because Respondent completely failed to fill out any portion of the Form I-9.

(8) That, I find that the appropriate amount of civil money penalty for Respondent's twelve IRCA verification violations is $5,520.

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

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two factors, I will not mitigate the civil penalty for any of the twelve counts. I then subtract the amount to be mitigated from the statutory maximum. ($12,000-$6,480=$5,520)

SO ORDERED:
This 19th day of July, 1990 at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge