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

United States of America, Complainant v. William & Maria Sievert, Respondents; 8 USC 1324a Proceeding; Case No. 90100350.

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

E. MILTON FROSBURG, Administrative Law Judge.

Appearances: ALAN S. RABINOWITZ, Esquire for Complainant, Immigration and Naturalization Service. WILLIAM SIEVERT, pro se Respondent.

Procedural History and Statement of Relevant Facts

On October 11, 1990, the United States of America, Immigration and Naturalization Service (INS), served a Notice of Intent to Fine (NIF) on William and Maria Sievert, Respondents. The NIF, in Count I, alleged one violation of Section 274A(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. Section 1324a(a)(1)(B) of the Immigration Reform and Control Act (IRCA). In a letter dated October 22, 1990, Respondents, through William Sievert, requested a hearing before an Administrative Law Judge.

The United States of America, through its attorney, Alan S. Rabinowitz, filed a Complaint incorporating the allegation in the NIF on November 26, 1990. On November 28, 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 or around San Diego, California, on a date to be determined.

Respondents submitted an Answer to the Complaint on December 24, 1990, indicating that their failure to complete the Form I-9 at issue was an inadvertent error, rather than a failure to understand the applicable IRCA regulations. At the time of the INS in-

spection of their Forms I-9, they believed they had completed the form prior to delivering it to the INS Agent.

On January 14, 1991, Complainant filed a Motion for Summary Decision, along with supporting documents, including an Affidavit of Richard John Miller, Border Patrol Agent, INS. Complainant argued in its Motion that no genuine issues of material fact existed and that it was entitled to summary decision as a matter of law.

On February 11, 1991, I conducted a pre-hearing telephonic conference with counsel for Complainant, and William Sievert, Respondent. I had not received a response from Respondents to Complainant's Motion for Summary Decision. I indicated to Mr. Sievert that his Answer and written request for a hearing supported the granting of Complainant's motion as to liability only and that I intended to grant a Summary Decision. I requested information from the parties regarding an appropriate civil penalty.

Counsel for Complainant indicated that he would offer to lower the penalty amount to $175.00 (one hundred seventy-five) from the $250.00 (two hundred fifty) previously assessed. Respondent orally accepted this lowered amount as a fair and reasonable figure.

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. Part 68.36.

The purpose of the summary decision 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 (1986). A material fact is one which controls the outcome of the litigation. Anderson v. Liberty Lobby, 477 U.S. 242 (1986). See also, Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

Legal Analysis Supporting Decision

Complainant's Motion sets forth each of the elements required for a finding of an IRCA paperwork violation, as found in section 274A(a)(1)(B) of the Act. Complainant further demonstrates, through the supporting documents and pleadings of record, that William and Maria Sievert hired Emilio Flores-Cardona for employment in the United States after November 6, 1986. On June 6, 1990, Agent Miller personally served a Notice of Inspection upon William Sievert, noting that the inspection of Respondents Forms I-9 would occur on June 20, 1990. During the subsequent inspec-

tion, Respondent provided a Form I-9 for Emilio Flores-Cardona. This I-9 was determined to be totally incomplete in Section 2.

In this case, Respondents have not denied that they failed to complete the I-9 in question, but relied upon a defense of neglect or inadvertence for their failure to ensure that the form was completed.

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

Findings of Fact and Conclusions of Law

I have considered the pleadings, memoranda and supporting documents submitted regarding the Motion for Summary Decision as well as the statements made during the telephonic conference. Accordingly, and in addition to the finings 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 Summary Decision as a matter of law pursuant to 28 C.F.R. Part 68.36.

2. I find that Respondents have violated 8 U.S.C. Section 1324a(a)(1)(B) in that Respondents hired Emilio Flores-Cardona for employment in the United States without complying with the verification requirements in Section 1324a(b)(1).

3. I find that the recommended civil penalty of $175.00 (one hundred seventy-five) is fair and reasonable and will require Respondents to pay such amount to the INS within 30 days after the date of this Order, as agreed during the telephonic conference.

4. The hearing to be scheduled in or around San Diego, California is cancelled.

5. As provided in 28 C.F.R. Section 68.51, this Decision and Order shall become the final order of the Attorney General unless, within thirty (30) days from this date, the Office of the Chief Administrative Hearing Officer shall have vacated or modified it.

IT IS SO ORDERED: This 11th day of February, 1991, at San Diego, California.

E. MILTON FROSBERG
Administrative Law Judge
Executive Office for Immigration Review
Office of the Administrative Law Judge
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San Diego, California 92101