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

United States of America, Complainant, v. Robert Griffin d/b/a, Griff's Landscape, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100030.

DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

Procedural History and Statement of Relevant Facts

On December 30, 1988, the United States of America served a Notice of Intent to Fine on Robert Griffin, d/b/a Griff's Landscape, Respondent, alleging violation of Section 274A(a)(1)(B) of the Immigration and Nationality Act. Respondent requested a hearing in a letter dated January 4, 1989. The United States subsequently filed a Complaint, to which an Answer was required, on January 17, 1989. As of this date, no Answer to the allegations in the Complaint has been filed by the Respondent.

On February 2, 1989, Complainant submitted its First Set of Interrogatories. Robert Griffin, d/b/a Griff's Landscape, acting independently and without counsel, responded on March 11, 1989. Additional information was supplied in response to Complainant's Request for Admissions of February 3, 1989, to which Respondent also replied on March 11, 1989.

On April 13, 1989, Complainant entered a Motion for Summary Decision and Points and Authorities in support of the motion. As of this date, no response in opposition to the Motion for Summary Decision has been submitted by Respondent.

Legal Standards for a Motion for Summary Decision

The federal regulations applicable to this proceeding 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 mate-

rial fact and that a party is entitled to summary decision.'' 28 C.F.R. section 68.36 (1988).

The purpose of the summary judgment 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.Court. 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.Court. 2505, 2510 (1986).

Legal Analysis Supporting Decision to Grant Motion

In the present case, the Respondent has personally prepared the answers to Complainant's Request for Admissions and Complainant's First Set of Interrogatories.

After careful review of the pleadings and documents submitted, I am granting the Complainant's Motion for Summary Decision for the following reasons:

Complainant alleges that Respondent violated Section 274A(a)(1)(B) of the Act, 8 U.S.C. section 1324a(a)(1)(B), 8 C.F.R. 274a.2(b)(1)(i)(A), which require a person or entity to verify on the Employment Eligibility Verification Form (Form I-9), the identity and employment eligibility of all individuals hired after November 6, 1986.

Respondent is charged in Count 1 with hiring Rodolfo Ruiz-Flores on September 22, 1988 and with failure to prepare the Employment Eligibility Verification Form for Rodolfo Ruiz-Flores as of November 18, 1988.

In response to Complainant's Request for Admissions, Respondent admitted that he hired Rodolfo Ruiz-Flores after November 6, 1986, and that as of November 18, 1988, he failed to prepare a Form I-9 for him.

Thus, there is no genuine issue of material fact and summary judgment is appropriate as to Count 1.

Respondent is charged in Count 2 with hiring Juan Manuel Cruz-Perez on October 27, 1988, and with keeping him in his employ despite the failure of Mr. Cruz-Perez to complete Section 1 of the Employment Eligibility Verification Form (Form I-9).

Complainant's Motion for Summary Judgment correctly describes the first step in the employment eligibility verification process in which the employee attests that he is a citizen, a lawfully admitted permanent resident, or an alien otherwise authorized to work in this country on the Form I-9, as required by 8 U.S.C. sec-

tion 1324a(b)(2), and 8 C.F.R. section 274a.2(b)(1)(i)(A), and charged in Count 2 of the Complaint.

Respondent admits that he hired the individual named in Count 2, Juan Manuel Cruz-Perez, and that Mr. Cruz-Perez failed to complete Section I of the Form I-9 by not recording an alien registration number or admission number. Complainant's Exhibit 4 demonstrates that Mr. Cruz-Perez did not record an alien registration number or an admission number after indicating his status as an alien authorized to work in the United States, and thereby failed to complete Section 1 of the Form I-9.

Therefore, there is no genuine issue of material fact as to this second count and summary judgment is also appropriate as to Count 2.

Accordingly, for the foregoing reasons, I find that the Respondent has violated Section 13241(a)(1)(B) of Title 8 of the U.S.C. in that Respondent hired for employment in the United States the individuals named in both Counts of the Complaint without complying with the verification requirements provided for in Section 274A(a)(1)(B) of the Immigration and Nationality Act, Section 274A(b) of the Act, and 8 C.F.R. 274a.2(b)(1)(i)(A).

Civil Penalties

Since I have found violations of Section 274A(a)(1)(B) of the Immigration and Nationality Act, assessment of civil money penalties are required as a matter of law. 8 U.S.C. 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 occured. 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 Complainant seeks a fine as to Count 1 of $300 and a fine as to Count 2 of $100. In order to determine whether or not the fine requested by the Complainant is appropriate, I am required by the regulations to consider the mitigating factors described above. Because Respondent has not answered the Complaint, or otherwise attempted to inform the Court of mitigating circumstances, and because the fines assessed are not unreasonable on their face, I find the total fine of $400 to be appropriate.

Ultimate Findings of Fact, Conclusions of Law, and Order

I have considered the pleadings and documents submitted by the parties. 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 issue as to any material facts have been shown to exist with respect to counts one (1) and two (2) of the Complaint and that therefore pursuant to 8 C.F.R. section 68.36, Complainant is entitled to a Summary Decision as to all counts of the Complaint as a matter of law.

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

3. That the Complainant is entitled to a civil monetary penalty to be assessed against the Respondent as to each count of the Complaint in the total amount of $400 as set forth in the Notice of Intent to Fine.

4. That pursuant to 8 U.S.C. 1324(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 Administrative Hearing Officer shall have modified or vacated it.

SO ORDERED: This 19th day of April, 1989, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge