

UNITED STATES OF AMERICA
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a PROCEEDING
) Case 90100306
PPJV, INC., DBA PUBLISHERS)
PRESS,)
Respondent.)
_____)

Frederick E. Newman, Atty., San Francisco, CA,
for the Complainant.

William S. Johnson, Pres., PPJV, Inc.
San Jose, CA, for the Respondent.

DECISION AND ORDER

Statement of the Case

WILLIAM L. SCHMIDT, Administrative Law Judge: The Complaint of October 9, 1990, alleges Respondent violated the Immigration Reform and Control Act of 1986 (IRCA) by employing, or continuing to employ, an alien knowing that alien was an unauthorized alien with respect to that employment, and by failing to comply with the employment verification requirements of IRCA as to 14 employees.

Respondent filed a timely answer denying the complaint allegations.

On January 2, 1991, Complainant moved for summary decision. Respondent opposed. The hearing, then scheduled for January 29, 1991, was stayed pending consideration of the motion for summary decision.

An Order Granting in Part and Denying in Part Complainant's Motion for Summary Decision issued on June 4, 1991 (June 4 Order). The June 4 Order granted summary decision in favor of Complainant on eleven (11) separate allegations that Respondent failed to comply with IRCA's employment verification system. In so doing, that Order rejected the good faith and vindictive prosecution defenses advanced by Respondent.

Summary decision in favor of Complainant was denied on the allegation that Respondent employed, or continued to employ, an alien knowing that alien was an unauthorized alien with respect to employment with Respondent, and on three (3) separate allegations that Respondent failed to comply with the employment verification system. Assessment of a civil money penalty was deferred until completion of the case. A hearing was ordered on these remaining matters.

On June 24, 1991, Complainant filed a Supplementary Brief and Renewed Motion for Summary Decision. The renewed motion essentially sought reconsideration of the June 4 Order insofar as it denied summary decision on the employment verification allegations of three individuals.

On July 17, 1991, an Order Denying Renewed Motion for Summary Decision (July 17 Order) issued. That Order concluded that Respondent's substantial compliance defense raised material issues precluding summary judgment in favor of Complainant on its claim that the I-9 Forms of three resident alien employees were defective because the employees failed to enter their alien registration numbers in Section 1 of their I-9 Forms where the employees had not relied on their alien registration cards to establish their identity and employment eligibility under the employment verification system.

Findings of Fact

1. Complainant's Motion to Dismiss

On August 30, 1991, Complainant filed a Motion to Dismiss Specified Violations and Order Fine Payment Pursuant to 28 CFR 68.9. By its motion Complainant seeks to dismiss, with prejudice, Complaint Count 1 pertaining to the employment of, or continuing to employ, an unauthorized alien, and Complaint Count 3 insofar as it relates to Ignacia Ivoa, Maria E. Lemus, and Jose L. Navia. In addition, Complainant's motion requests that the tribunal enter a civil money

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penalty of \$100 each for the employment verification violations found in the June 4 Order.

By an order dated the same date, the hearing, then scheduled for September 12, was postponed indefinitely pending consideration of Complainant's motion. The same order provided that any opposition to Complainant's motion by Respondent would be considered if filed on or before Monday, September 9, 1991.

2. Ruling on Motion and Final Conclusions

No opposition having been filed, Complainant's pending motion is granted. In accord with the foregoing, and Findings of Fact and Conclusions of Law Nos. 1 and 2 of the June 4 Order, I hereby enter the following

Order¹

1. Complaint Count 1 and that portion of Complaint Count 3 pertaining to Ignacia Ivoa, Maria E. Lemus, and Jose L. Navia is hereby dismissed with prejudice.

2. Respondent shall pay a civil money penalty in the amount of one thousand one hundred dollars (\$1,100) for failing to comply with the employment verification requirements of 8 U.S.C. §1242a(a)(1)(B).

3. The hearing in this proceeding, presently postponed indefinitely, is hereby canceled.

Dated: September 12, 1991.

WILLIAM L. SCHMIDT
Administrative Law Judge

¹ Pursuant to 28 CFR 68.51(a)(1), this Order shall become the final order of the Attorney General unless within five (5) days of the date of this decision a written request for review is filed with the Chief Administrative Hearing Officer. Address any request for review to:

Mr. Jack E. Perkins
Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041