

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

UNITED STATES OF)
AMERICA,)
Complainant,)
)
v.) 8 U.S.C. § 1324a Proceeding
) CASE NO. 93A00160
TORRES MEXICAN)
FOOD, INC.,)
Respondent.)
_____)

ORDER OF DISMISSAL - SETTLED

A complaint in this case was filed by Complainant on August 30, 1993 and a Notice of Hearing was issued on August 31, 1993. On January 7, 1994, pursuant to 28 C.F.R. 68.14(a)(2), a Joint Motion for Dismissal and a copy of the parties' Settlement Agreement were filed.

Under the Rules of Practice & Procedure:

- (a) Where the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement, they shall:
 - (1) Submit to the presiding Administrative Law Judge:
 - (i) The proposed agreement containing consent findings; and
 - (ii) A proposed decision and order; or (emphasis added)

- (2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge.

28 C.F.R. 68.14

In this case, I find that the parties have complied with the requirements of 28 C.F.R. 68.14(a)(2) which does not require a review of the settlement agreement. However, it should be noted that the Administrative Law Judge is not precluded from conducting such a review. In this case, I have reviewed the Settlement Agreement.

I find that the terms of the Settlement Agreement in this case are proper and appropriate pursuant to 28 C.F.R. Part 68.14(a)(2) except for paragraph No. 8, in said agreement, which calls for the Respondent to cease and desist from further violations of 274A(a)(1)(B) of the Act. Prior case law of the Office of the Chief Administrative Hearing Officer indicates that where, as in the instant case, only paperwork violations are involved, the cease and desist remedy of section 1324a(e)(4)(A) is not available. See, e.g., U.S. v. Gutierrez, Ind., OCAHO Case No. 93A00118 (8/25/93); modified by CAHO (9/22/93); U.S. v. Chuy's Paint and Body Shop, 1 OCAHO 19 (6/27/88); U.S. v. Elsinore Manufacturing, 1 OCAHO 13 (6/16/88); U.S. v. USA Cafe, 1 OCAHO 42 (2/6/89); U.S. v. Torres, 1 OCAHO 83 (8/18/89). The cease and desist remedy applies only to violations which refer to the hiring, recruiting, and referral violations and not to violations of the employment verification system. See U.S. v. Torres, 1 OCAHO 83 (8/18/89).

I further find that under the terms of the Settlement Agreement and the Joint Motion to Dismiss, and pursuant to 28 C.F.R. Part 68.14:

1. that Respondent has waived its right for hearing on the merits.
2. that the hearing to be scheduled in or around Denver, Colorado is canceled;
3. this matter is dismissed with prejudice in that respondent will pay a civil monetary fine in the amount of \$6,500.00; and
4. that it is appropriate to grant the Joint Motion to Dismiss in the instant proceeding based upon the parties' notification made pursuant to 28 C.F.R. Part 68.14(a)(2).

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5. that the Settlement Agreement filed with the Court is approved with omitting paragraph No. 8.

IT IS SO ORDERED this 13th day of January, 1994, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge