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

March 7, 1996

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	OCAHO Case No. 95A00151
GLORIA FASHIONS, INC., Respondent.	)	

ERRATA

In my Order Granting In Part, and Taking Under Advisement in Part, Complainant's Motion for Judgment on the Pleadings dated March 1, 1996, on page 2, the first paragraph which currently reads

> Because OCAHO procedural rules do not provide specifically for the equivalent of Rule 15(c) of the Federal Rules of Civil Procedure, in considering a motion for judgment on the pleadings I look to the case law interpreting Rule 15(c) for a general guideline as directed by §68.1.

is hereby corrected to read

> Because OCAHO procedural rules do not provide specifically for the equivalent of Rule 12(c) of the Federal Rules of Civil Procedure, in considering a motion for judgment on the pleadings I look to the case law interpreting Rule 12(c) for a general guideline as directed by §68.1.

SO ORDERED

Dated and entered this 7th day of March, 1996.

ELLEN K. THOMAS
Administrative Law Judge

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

March 1, 1996

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	OCAHO Case No. 95A00151
GLORIA FASHIONS, INC., Respondent.	)	

ORDER GRANTING IN PART, AND TAKING UNDER ADVISEMENT IN PART, COMPLAINANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is an action pursuant to the Immigration and Nationality Act, as amended, 8 U.S.C. §1324a (INA), in which the United States Department of Justice Immigration and Naturalization Service (INS) is the Complainant and Gloria Fashions, Inc. is the Respondent. On November 2, 1995, INS filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting that Respondent failed properly to complete Section 2 of Form I–9 for 15 employees hired after November 6, 1986, and failed to ensure that the individuals properly completed Section 1 of the Form, and that Respondent also failed properly to complete Section 2 of the Form for two other employees. On November 8, 1995, the Complaint was sent to the Respondent, together with a Notice of Hearing and a copy of the applicable Rules of Practice and Procedure[1]. The record reflects service of these documents was made on the Respondent on November 15, 1995.

On December 11, 1995, a timely response was made by letter-pleading. On February 8, 1996, Complainant filed its Motion for

[1] Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1995).

Judgment on the Pleadings. No timely[2] response was made to this motion and it is accordingly ripe for ruling.

Applicable Law

Because OCAHO procedural rules do not provide specifically for the equivalent of Rule 15(c) of the Federal Rules of Civil Procedure, in considering a motion for judgment on the pleadings I look to the case law interpreting Rule 15(c) for a general guideline, as directed by §68.1.

The federal courts have followed a fairly restrictive standard in ruling on motions for judgment on the pleadings, see generally, 5A C. Wright and A. Miller, Federal Practice and Procedure §§1367 and 1368. The governing standard, like that for Rule 56, is that the moving party must clearly establish that there is no material issue of fact and that the movant is entitled to judgment as a matter of law. *Alexander v. City of Chicago*, 994 F.2d 333 (7th Cir. 1993).

For purposes of considering this motion I therefore take as true all well pleaded factual allegations in the answer and as false all controverted assertions in the complaint, but I do not take as true any conclusions of law or any facts which would be inadmissible at a hearing. I draw no inferences in favor of the moving party and all reasonable inferences in favor of the nonmoving party. All doubts are resolved in favor of the nonmoving party, particularly where, as here, Respondent is unrepresented.

Factual Allegations in the Complaint and Answer

The Complaint asserts that a Notice of Intent fo Fine (NIF) was served on Respondent on March 3, 1995, and that Respondent does business at 315 West 36th Street, 3rd Floor, New York, New York 10018. OCAHO Rules provide that any allegation not expressly denied shall be deemed admitted, §68.9(c)(1), and these facts are so deemed.

Respondent's letter-pleading does not appear to deny the factual allegations of the Complaint with regard to the failure to complete

[2] §68.11(b) provides that a party has ten (10) days after service of a written motion to file a response. §68.8(c)(2) provides that where service is had by ordinary mail, five (5) days shall be added to the prescribed period.

I–9s. The clear implication, moreover, of the statement that Respondent has "remedied" the situation is an admission that the complained-of omissions occurred. The letter-pleading states in part:

> In the complaint, it is alleged by the Complainant that Gloria Fashions Inc. failed to ensure that fifteen (15) of the employees properly completed Section 1, and failed to properly complete Section of the Employment Eligibility Verification Form, to wit: Form I–9. . . .
>
> . . . The Complaint also alleges that Gloria Fashions Inc. failed to properly complete Section 2 of the Employment Eligibility Verification Form (Form I–9) for 2 other employees. . . .
>
> . . . Please be advised that Gloria Fashions, Inc. has, since the alleged violations, remedied the situation. And, as such Gloria Fashions Inc. would like to pay this penalty. Unfortunately, Gloria Fashions Inc. is not in the position financially to make a one lump payment. We would like to propose payments in installment of $100.00 per month.
>
> As soon as we receive an acceptance to our proposal, we will start paying immediately. We await your response.

Notwithstanding the narrow standards governing judgments on the pleadings, there appears to be no genuine issue of material fact with respect to the facts alleged in the Complaint. The facts as admitted constitute, as a matter of law, violations of the requirements of §1324a.

Penalties Sought

Complainant seeks penalties in the amount of $490.00 each for some of the violations in Count I, and $350.00 each for others. For Count II, Complainant seeks $450.00 for each violation. No explanation is provided for how those amounts were arrived at, and I am without sufficient facts or information providing a basis for me to give due consideration to the statutory criteria I am required to consider.

Moreover, it is unclear from Respondent's letter-pleading that it understands that the penalty provisions of 8 U.S.C. §1324a(e)(5) are not set in stone, and that the civil money penalties may vary from $100.00 to $1000.00 for each individual with respect to whom a violation occurred, depending upon the specific circumstances surrounding the violations.

Accordingly, I am taking the penalty request under advisement, in order to give the parties an opportunity to provide me with any

information they wish to be considered respecting the following subjects:

1. the size of Respondent's business,

2. the good faith of the Respondent,

3. the seriousness of the violation,

4. whether any individuals were unauthorized aliens,

5. any history of previous violations.

These are the statutory criteria which I am obligated to consider in setting civil money penalties. Responses will be considered timely if filed before March 21, 1996.

SO ORDERED

Dated and entered this 1st day of March, 1996.

ELLEN K. THOMAS
Administrative Law Judge