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

April 2, 1996

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding OCAHO Case No. 94A00186
JIM BAILEY AND CHARLES FRISTOE, d.b.a.: B & F GOLF SERVICES, INC., Respondent.	)	

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION AND ASSESSING CIVIL MONEY PENALTIES

On October 21, 1994, the Immigration and Naturalization Service (INS or complainant) filed a single-count Complaint against Jim Bailey and Charles Fristoe, dba: B & F Golf Services, Inc. (respondent). Complainant alleged that after November 6, 1986, respondent had failed to properly complete Section 2 of the Employment Eligibility Verification Forms (Forms I–9) for the nine (9) individuals hired for employment in the United States and named in Count I, in violation of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324a(a)(1)(B), and sought civil money penalties totalling $2250, or $250 for each violation.

In its Answer to the Complaint, respondent admitted that it had employed those nine (9) individuals after November 6, 1986, for work in the United States. Answer at 1. Respondent also stated that it "admits *only* to the allegation of paragraph C [which states '[t]he respondent failed to properly complete section 2 of the Form I–9 for the individuals listed in paragraph A'] as to not properly completing Section 2 of the Form I–9, but denies *failure to comply with Section 2." Id.* (emphasis in original). Respondent offered four (4) affirmative

defenses, including good faith, lack of clarity as to which section it was being charged with violating, and factors to be considered in support of its request that the penalty be lowered from $250 per violation to the statutory minimum of $100 per violation. *Id.* at 2–3.

After unsuccessful attempts to settle this matter, complainant filed a Motion for Summary Judgment on February 14, 1996. Under the pertinent rules of the Office of the Chief Administrative Hearing Officer (OCAHO), that motion shall be treated as a Motion for Summary Decision. 28 C.F.R. §68.38 (1995).

Respondent has failed to file a timely response to that dispositive motion.

Legal Standard for Motions for Summary Decision

An Administrative Law Judge (ALJ) is authorized to grant summary decision in cases in which no genuine issue of material fact exists. "The Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. §68.38(c). A fact is material only if it must be resolved to decide the motion. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). An issue of material fact is genuine only if it has a real basis in the record. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586–587 (1986).

In a motion for summary decision, the moving party has the initial burden of identifying those portions of the Complaint "that it believes demonstrate the absence of genuine issues of material fact." *United States v. Davis Nursery, Inc*., 4 OCAHO 694, at 8 (1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–325 (1985)). Once the moving party has carried its burden, the non-moving party must demonstrate specific facts showing there is a genuine issue for trial. *Id.*

To prove a violation of Section 1324a(a)(1)(B), complainant must prove:

(1) respondent hired for employment in the United States;

(2)those nine (9) individuals named in Count I;

(3) after November 6, 1986; and

(4) failed to properly complete Section 2 of their Forms I–9, as required by 8 U.S.C. §1324a(b)(1).

8 U.S.C. §1324a(a)(1)(B).

Respondent admitted in its Answer that: (1) those nine (9) individuals "named in paragraph A had worked at B & F Golf Services, Inc."; (2) they "did work at said company after November 6, 1986"; and (3) it had "not properly complet[ed] Section 2 of the Form I–9," even though it denied "failure to comply with Section 2." Answer at 1. In spite of its attempt to argue that it had complied with the requirements of Section 2 as to those nine (9) Forms I–9—even though it had not completed Section 2 of those forms, as required by 8 U.S.C. §1324a(b)(1)—respondent has nonetheless admitted all four (4) elements required to prove a violation of 8 U.S.C. §1324a(a)(1)(B).

Because respondent has admitted in its Answer that it violated 8 U.S.C. §1324a(a)(1)(B) in the manner alleged, no genuine issue of material fact exists as to those nine (9) facts of violation alleged in Count I, and complainant is therefore entitled to summary decision as to those charges.

Assessment of an Appropriate Civil Money Penalty

The only remaining task is that of assessing appropriate civil money penalties for those nine (9) violations. Complainant has indicated that it "is willing to accept a minimum penalty of $100 per violation." Mot. Summ. Decision at 1. Complainant maintains, and correctly so, that "[o]nce liability is established, Complainant is entitled to this statutorily minimum penalty as a matter of law." *Id.; see* 8 U.S.C. §1324a(e)(5) (stating that "[w]ith respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection *shall* require the person or entity to pay a civil penalty in an amount of not less that $100) (emphasis added).

Accordingly, respondent is hereby found to be in violation of IRCA, 8 U.S.C. §1324a(a)(1)(B) in the manner alleged in Count I, and is further ordered to pay a civil money penalty of $100 for each of those nine (9) violations for a total civil money penalty sum of $900.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondents, in accordance with the provisions of 8 U.S.C. §§1324a(e)(7), (9) and 28 C.F.R. §68.53 (1991).