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

UNITED STATES OF AMERICA, Complainant,	)	8 U.S.C. § 1324c Proceeding
v.	)	OCAHO Case No. 96C00089
LEONOR YOLANDA ORTIZ, Respondent.	)	Judge Robert L. Barton, Jr.

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION
(December 10, 1996)

I. BACKGROUND

Respondent currently is the subject of two similar but as yet separate complaints[1] brought by the Immigration and Naturalization Service (INS). The complaint in the first case, United States v. Leonor Yolanda Ortiz, OCAHO Case. No. 96C00024, was filed on February 28, 1996. That complaint alleges that Respondent knowingly used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Resident Alien Card, Form I-551, bearing the number A095318490 after November 29, 1990, for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA). First Compl. ¶¶ A-D.[2] Respondent filed an answer,

[1] On August 13, 1996, Complainant filed a motion to consolidate the two cases, but I have not ruled on that motion to date.

[2] Document citations preceded by the term "first" refer to court documents filed in Case No. 96C00024. Document citations that appear without such designation refer to court documents filed in Case No. 96C00089, which is the case that is the subject of this Order.

including an affidavit from herself, on April 9, 1996. Complainant filed its Motion for Summary Decision in that case on April 16, 1996, and Respondent filed her Opposition to Motion for Summary Decision on April 22, 1996. I denied Complainant's motion by order of May 21, 1996.

United States v. Ortiz, 6 OCAHO 863 (1996) (Order Denying Complainant's Motion for Summary Decision). Later, after the record was developed more fully, Complainant submitted its Memorandum in Support of Motion for Reconsideration of Motion for Summary Decision on August 13, 1996. Respondent filed its Opposition to Complainant's Motion for Reconsideration of Summary Decision on August 16, 1996. I denied Complainant's motion for reconsideration by order of August 30, 1996. United States v. Ortiz, 6 OCAHO 889 (1996) (Order Denying Complainant's Motion for Reconsideration of Summary Decision Ruling).

The second Ortiz case, United States v. Leonor Yolanda Ortiz, OCAHO Case. No. 96C00089, is the subject of Complainant's present Motion for Summary Decision and of this Order. The Complaint in the case at hand was filed on August 12, 1996, and was served on August 21, 1996. In its one count, the Complaint alleges that Respondent knowingly used, attempted to use, and possessed a forged, counterfeit, altered, and falsely made document, specifically a Social Security card bearing the number SSN1, on or after February 23, 1995, for the purpose of satisfying a requirement of the INA. Compl. ¶¶ A-D. As a result, the complaint alleges that Respondent is in violation of INA section 274C(a)(2), as codified at 8 U.S.C. § 1324(c)(a)(2), and requests a civil money penalty in the amount of $250 and an order to cease and desist from violating section 274C(a)(2) of the INA.

Respondent filed an Answer on September 25, 1996, in which she denied the allegations of ¶¶ C and D and stated that she lacked sufficient knowledge to form a belief as to the truth or falsity of ¶¶ A and B. Answer ¶¶ 1-4. Respondent, therefore, denies the substantive charges of the Complaint because a statement of lack of information has the effect of a denial. 28 C.F.R. § 68.9(c)(1) (1996). Respondent's Answer also asserts two affirmative defenses.

Also on September 25, 1996, Respondent filed a motion to dismiss pursuant to 28 C.F.R. § 68.7 and 68.10. On September 27, 1996, Complainant filed a Motion for Summary Decision and a Memorandum in Support of Complainant's Opposition to Respondent's Motion to Dismiss and in Support of Complainant's Motion to Strike Affirmative Defenses. Complainant, however, did not file its Motion to Strike Affirmative Defenses until October 11, 1996. On October 16, 1996, Respondent filed its Opposition to Complainant's Motion for Summary Decision and Motion to Strike Affirmative Defenses. An Order was issued October 25, 1996, that denied Respondent's Motion to Dismiss and granted Complainant's Motion to Strike Affirmative Defenses. A decision regarding Complainant's Motion for Summary Decision was reserved for a separate order. Order Denying R.'s Mot. Dismiss and Granting C.'s Mot. Strike Aff. Defenses at 1.

In its Motion for Summary Decision, Complainant incorporates, by reference, the evidence regarding Respondent's February 22, 1995, arrest at Sather's Candy as detailed in the following three

documents filed in United States v. Leonor Yolanda Ortiz, OCAHO Case. No. 96C00024: (1) Complainant's Motion for Summary Decision, filed April 16, 1996; (2) Supplemental Brief of Immigration and Naturalization Service in Response to Order Requiring Further Briefing of April 23, 1996, and in Support of Complainant's Motion for Summary Decision, filed May 2, 1996; and (3) Complainant's Memorandum in Support of Motion for Reconsideration of Motion for Summary Decision, including Deposition Transcript of June 24, 1996, filed August 13, 1996. Also in support of its present Motion for Summary Decision, Complainant attaches the following exhibits:

Exhibit 1: Declaration of Jose A. Garcia, Special Agent, dated May 29, 1996, with the following attachments:
- Various employment application and agreement documents from Interim Personnel dated January 10 and 11, 1996
- Respondent's I-9 Form from Interim Personnel, including attached photocopies of a Minnesota Driver's License bearing the number 0-632-507-961-052 and Social Security Card bearing the number SSN1
- Respondent's Form W-4 (1995)
- Payroll printout
- Note from Joel Prest containing information relating to Respondent's employment history at Interim Personnel

Exhibit 2: Pages 85-88 and 105-108 of transcript of Respondent's deposition of June 24, 1996

Exhibit 3: Letter from John Melssen to Valerie Blake, dated June 18, 1996

Exhibit 4: Declaration of Joel Prest, dated June 27, 1996, with the same attachments as in Exhibit 1

Exhibit 5: Affidavit of Leonor Yolanda Ortiz, dated May 15, 1996

Exhibit 6: Pages 77-80 and 93-104 of transcript of Respondent's deposition of June 24, 1996

In her Opposition to Motion for Summary Decision and Motion to Strike Affirmative Defenses, Respondent states that the Complaint is legally insufficient and that, "[b]y filing a Motion for a Summary Decision, the Complainant attempts to force the Respondent to contend to a fatally deficient Complaint." R.'s Opp'n to Mot. Summ. Decision and Mot. Strike Aff. Defenses at 2. Respondent further asserts that she "cannot adequately prepare a response to such an ill-drafted and vague pleading." Id. Respondent, however, did not submit an affidavit in opposition to Mr. Garcia's declaration or submit any extraneous evidence in opposition to any of the other evidence Complainant includes in support of its Motion.

II. STANDARDS FOR SUMMARY DECISION

The Rules of Practice and Procedure that govern this proceeding permit the Administrative Law Judge (ALJ or Judge) to "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) (1996). Although the Office of the Chief Administrative Hearing Officer (OCAHO) has its own procedural rules for cases arising under its jurisdiction, the ALJs may reference analogous provisions of the Federal Rules of Civil Procedure and federal case law interpreting them for guidance in deciding issues based on the rules governing OCAHO proceedings. The OCAHO rule in question is similar to Federal Rule of Civil Procedure 56(c), which provides for summary judgment in cases before the federal district courts. As such, Rule 56(c) and federal case law interpreting it are useful in deciding whether summary decision is appropriate under the OCAHO rules. United States v. Aid Maintenance Co., 6 OCAHO 893, at 3 (1996) (Order Granting in Part and Denying in Part Complainant's Motion for Partial Summary Decision) (citing Mackentire v. Ricoh Corp., 5 OCAHO 756, at 3 (1995) and Alvarez v. Interstate Highway Constr., 3 OCAHO 430, at 7 (1992)); United States v. Tri Component Product Corp., 5 OCAHO 821, at 3 (1995) (Order Granting Complainant's Motion for Summary Decision) (also citing Mackentire and Alvarez).

Only facts that might affect the outcome of the proceeding are deemed material. Aid Maintenance, 6 OCAHO 893, at 4 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)); Tri Component, 5 OCAHO 821, at 3 (citing same and United States v. Primera Enters., Inc., 4 OCAHO 615, at 2 (1994)); United States v. Manos & Assocs., Inc., 1 OCAHO 130, at 878 (1989) (Order Granting in Part Complainant's Motion for Summary Decision). An issue of material fact must have a "real basis in the record" to be considered genuine. Tri Component, 5 OCAHO 821, at 3 (citing Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586-87 (1986)). In deciding whether a genuine issue of material fact exists, the court must view all facts and all reasonable inferences to be drawn from them "in the light most favorable to the non-moving party." Id. (citing Matsushita, 475 U.S. at 587 and Primera, 4 OCAHO 615, at 2).

The party requesting summary decision carries the initial burden of demonstrating the absence of any genuine issues of material fact. Id. at 4 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Additionally, the moving party has the burden of showing that it is entitled to judgment as a matter of law. United States v. Alvand, Inc., 1 OCAHO 296, at 1959 (1991) (Decision and Order Granting in Part and Denying in Part Complainant's Motion for Partial Summary Decision) (citing Richards v. Neilsen Freight Lines, 810 F.2d 898 (9th Cir. 1987)).

After the moving party has met its burden, the opposing party must then come forward with specific facts showing that there is a genuine issue for trial. In this respect the Federal Rules of Civil Procedure provide:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324-26 (1986) (discussing Rule 56 (e) and its purposes); First Sec. Sav. v. Kansas Bankers Sur. Co., 849 F.2d 345, 349 (8th Cir. 1988) (noting that "[o]nce a motion for summary judgment is made and supported by proper affidavits or other forms of evidence, however, 'an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial.'") (quoting Fed. R. Civ. P. 56 (e) and citing Celotex Corp. v. Catrett, supra and McCormick v. Ross, 506 F.2d 1205, 1208 (8th Cir. 1974)).

The Rules of Practice and Procedure governing OCAHO has language similar to Federal Rule 56(e):

> [w]hen a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

28 C.F.R. § 68.38(b) (1996). OCAHO case law holds that the party opposing summary decision may not "rest upon conclusory statements contained in its pleadings." Tri Component, 5 OCAHO 821, at 4; Alvand, 1 OCAHO 296, at 1959 (citing Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec, 854 F.2d 1538 (9th Cir. 1988)). Consequently, when a party supports a motion for summary decision with affidavits, the party opposing the motion must present specific facts, by its own affidavits or other extrinsic evidence, showing that a genuine issue of material fact exists for trial. Ortiz, 6 OCAHO 889, at 4 n.1 (citing 28 C.F.R. § 68.38(b) and Fed. R. Civ. P. 56(e)); see also United States v. Flores-Martinez, 5 OCAHO 733 (1995) (granting the complainant's motion for summary decision when the complainant supported its motion with affidavits and other exhibits and the respondent submitted no counter-affidavits, documentary evidence, or witness statements in opposition to the motion); United States v. Limon-Perez, 5 OCAHO 796 (1995) (granting the complainant's motion for summary decision when the complainant supported its motion with an affidavit and the respondent submitted no counter-affidavit to refute the statements in the complainant's affidavit).

Under the Federal Rules of Civil Procedure, the court may consider any admissions on file as part of the basis for summary judgment. Tri Component, 5 OCAHO 821, at 4 (citing Fed. R. Civ. P. 56(c)). "Similarly, summary decision issued pursuant to 28 C.F.R. Section 68.38 may be based

on matters deemed admitted." Id. (citing Primera, 4 OCAHO 615, at 3 and United States v. Goldenfield Corp., 2 OCAHO 321, at 3-4 (1991)).

III. ANALYSIS AND DECISION

As I stated in the Order Denying Complainant's Motion for Summary Decision in United States v. Ortiz, Case No. 96C00024, 6 OCAHO 863, at 4-6 (1996), issues regarding a party's state of mind generally are inappropriate for resolution in the context of a motion for summary decision. Moreover, when there are credibility determinations to be made, it is generally inappropriate to resolve those differences on the basis of a motion for summary decision. Id. at 4; United States v. Ortiz, 6 OCAHO 889, at 5 (1996) (Order Denying Complainant's Motion for Reconsideration of Summary Decision Ruling).

The present motion for summary decision, however, is different from the motion for summary decision in Case No. 96C00024, because there are neither any credibility determinations to be made nor any issues regarding Ms. Ortiz's state of mind. In the present case and in direct contrast to the first case, Ms. Ortiz has not filed any affidavits or submitted other extraneous evidence to the Motion. As Complainant has supported its present motion with affidavits, Respondent "may not rest upon the mere allegations or denials" of its pleading, but "must set forth specific facts showing that there is a genuine issue of fact for the hearing." 28 C.F.R. § 68.38(b) (1996). Respondent, however, has not submitted an affidavit setting forth facts showing that there is a genuine issue of material fact in dispute. Respondent's only response to Complainant's Motion for Summary Decision is that she cannot respond to it because the underlying Complaint is legally insufficient. See R.'s Opp'n to Mot. Summ. Decision and Mot. Strike Aff. Defenses at 2. That argument has no validity, as I ruled when I denied Respondent's Motion to Dismiss, which was based on the same argument that the Complaint was legally insufficient. See Order Denying R.'s Mot. Dismiss and Granting C.'s Mot. Strike Aff. Defenses at 4. Respondent has not requested permission to submit an additional response,[3] even though I have rejected her argument that the Complaint is legally insufficient.

As previously noted in the Order Denying Complainant's Motion for Reconsideration of Summary Decision Ruling in Case No. 96C00024, judges in OCAHO cases have granted motions for summary decision when the non-moving party has failed to respond with counter-affidavits or other extrinsic evidence after the moving party has supported its motion with affidavits and/or other evidence. Ortiz, 6 OCAHO 889, at 4-5 (citing United States v. Flores-Martinez, 5 OCAHO 733 (1995) and United States v. Limon-Perez, 5 OCAHO 796 (1995)). I reaffirm my rulings in the Order Denying Complainant's Motion for Summary Decision and Order Denying Complainant's Motion for Reconsideration of Summary Decision Ruling in the first Ortiz case that it is generally

[3] Under the OCAHO Rules of Practice, a further responsive document may be filed with the permission of the Administrative Law Judge. 28 C.F.R. § 68.11(b) (1996).

inappropriate to decide credibility issues on summary decision. I distinguish the present case from the situation in the first Ortiz case because, here, there are no credibility issues to decide because Respondent has neither filed any counter-affidavits, nor made assertions in any other manner outside her initial pleading regarding the facts of the case.

The present case also is factually different from the first Ortiz case with respect to the knowledge issue. In the present case, Respondent's knowledge is in question after the time when the INS agent told her directly that a Social Security card, which bears the same number as the Social Security card currently at issue, was invalid.

Because the moving party has the burden of proof, it is necessary to decide whether Complainant has shown that there are no genuine issues of material fact. Complainant has provided evidence demonstrating that Respondent used, attempted to use, and possessed a forged, counterfeited, altered, and falsely made Social Security card bearing the number SSN1, as paragraph A of Count I of the Complaint alleges. Complainant's evidence shows that the Social Security card in question is forged, counterfeited, altered, and falsely made: the June 18, 1996 letter from John Melssen, a district manager in the Social Security Administration, to Valerie Blake, a district director in the Immigration and Naturalization Service, reveals that Social Security number SSN1 was issued to a person born in California in 1991, and not to Leonor Yolanda Ortiz, born in Peru in 1963. C.'s Mot. Summ. Decision Ex. 3 at 1. Complainant's evidence also indicates that Respondent used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Social Security card in question; Complainant has submitted a photocopy of an I-9 Form for Respondent at Interim Personnel in which Social Security card number SSN2 is noted in section two List C, and to which a photocopy of the Social Security card bearing that number, Respondent's typed named, and a signature is attached. C.'s Mot. Summ. Decision Ex. 1 at 10-12, Ex. 4 at 10-12.

Next, Complainant has furnished evidence that Respondent used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Social Security card in question on or after February 23, 1995, as paragraph B of Count I of the Complaint alleges. Respondent's I-9 Form from Interim Personnel lacks the date that Respondent completed section one of the Form, as well as the date that the employer or its agent completed section two of the Form. The Form, however, lists January 15, 1996, as Respondent's starting date. If the employer fulfilled the requirement of examining the employee's documentation and filling out section two within three business days of hire, see 8 C.F.R. § 274a.2(b)(1)(ii) (1996), then Respondent used the Social Security card on or around January 15, 1996, which falls after February 23, 1995. There is no evidence that the employer did not complete section two of the I-9 Form within the mandated time period.

Respondent states in her Answer that she lacks sufficient knowledge to form a belief as to the truth or falsity of this paragraph of the Complaint and, therefore, makes a general denial of the paragraph. Respondent, however, has presented no specific evidence countering Complainant's assertion that Respondent used the Social Security card on or after February 23, 1995. Also, given Respondent's starting date of January 15, 1996, it would not make sense for her to have used the

Social Security card at Interim Personnel before February 23, 1995. As a result, Respondent's use of the Social Security card at Interim Personnel must have occurred on or after February 23, 1995.

Complainant has supplied evidence that Respondent used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Social Security card for the purpose of satisfying a requirement of the Immigration and Nationality Act, as part of paragraph D of Count I of the Complaint alleges. The appearance of Social Security card number SSN2 in section two List C of the I-9 Form for Interim Personnel shows that Respondent used that Social Security card to establish her employment authorization. The establishment of employment authorization is a requirement of the INA. 8 U.S.C. § 1324a(b) (1994).

The remaining element that Complainant must establish is Respondent's knowledge; Complainant must demonstrate that Respondent used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Social Security card for the purpose of satisfying a requirement of the INA knowing that the card was forged, counterfeited, altered, and falsely made, as paragraphs C and D of Count I of the Complaint allege. Although a material fact, it must be decided whether Respondent's knowledge is a genuine issue in dispute.

The standards for summary judgment in the judicial circuit whose precedents are binding in the present case are as follows:

> The standards for summary judgment are well settled in this circuit. We have repeatedly recognized that summary judgment is an extreme remedy and one which is not to be entered unless the movant has established its right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances. Bellflower v. Pennise, 548 F.2d 776 (8th Cir. 1977); Robert Johnson Grain Co. v. Chemical Interchange Co., 541 F.2d 207 (8th Cir. 1976); Percival v. General Motors Corp., 539 F.2d 1126 (8th Cir. 1976); Windsor v. Bethesda General Hospital, 523 F.2d 891 (8th Cir. 1975).

McMahon v. Prentice-Hall, Inc., 486 F. Supp. 1296, 1300 (E.D. Mo. 1980) (quoting Equal Employment Opportunity Comm'n v. Liberty Loan Corp., 584 F.2d 853, 857 (8th Cir. 1978)). However, a mere "scintilla" of evidence is not enough to deny a motion for summary judgment or decision. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986) (citation omitted).

In a non-jury case in which there are no witness credibility issues, a court may draw factual inferences and resolve competing inferences from uncontested facts in deciding whether to grant a motion for summary decision if a trial would not enhance the court's ability to draw such inferences and conclusions from the facts. Nunez v. Superior Oil Co., 572 F.2d 1119, 1123-24 (5th Cir. 1978); CSX Transp., Inc. v. City of Pensacola, Fla., 936 F. Supp. 880, 883 (N.D. Fla. 1995) (citing Coats & Clark, Inc. v. Gay, 755 F.2d 1506, 1510 (11th Cir. 1985) and Nunez); In re Bevill, Bresler, & Schulman Asset Management Corp., 67 B.R. 557, 583 (D.N.J. 1986) (citing Nunez and United States

v. ACB Sales & Servs., Inc., 590 F.Supp. 561, 569 (D. Ariz. 1984)); see also McMahon, 486 F.Supp. at 1299 (citing Nunez and noting that "[t]he standards to be applied, and the appropriateness of summary judgment, will necessarily depend on whether or not this case is to be tried to a jury").

Complainant states that two different Social Security cards are involved in the Ortiz cases: the first card (hereinafter Social Security card one) bears Respondent's hand printed name, while the second card (hereinafter Social Security card two) bears Respondent's name written in cursive. C.'s Mot. Summ. Decision at 2. The second Social Security card is at issue in Case No. 96C00089.[4] Both cards bear the same Social Security number. Id.

Respondent surrendered Social Security card one and a resident alien card to INS Special Agents Jose Garcia and Amy Aug during Respondent's apprehension at Sathers Candy Company on February 22, 1995. Ortiz Aff. of May 15, 1996 ¶¶ 5-6, 15 (also attached as Exhibit 5 of Complainant's Motion for Summary Decision). As Complainant points out, see C.'s Mot. Summ. Decision at 3-4, Respondent admits that Special Agent Garcia told her on February 22, 1995, that Social Security card one and the resident alien card in her possession were invalid and illegal. Id. ¶¶ 7-8. Respondent specifically states in her May 15, 1996 affidavit:

> Mr. Garcia examined the documents and told me in Spanish "Estos documentos son chuecos." (These documents are "chuecos"). I did not understand this last term, which I have later learned is a slang term for "wrong". I asked Mr. Garcia what he meant. He told me that the documents were not legal.

Id. ¶ 7. Also, as Complainant points out, see C.'s Mot. Summ. Decision at 4, Respondent confirmed during her June 24, 1996, deposition that Special Agent Garcia told her on February 22, 1995, that Social Security card one and the resident alien card in her possession at that time were not legal. Ortiz Dep. at 78-79, 94, 95, 102 (also attached as Exhibit 6 of Complainant's Motion for Summary Decision).[5]

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[4] The first Social Security card is the subject of neither the complaint in Case No. 96C00024, nor the complaint in Case No. 96C00089. Only the Resident Alien Card bearing the number A095318490 is the subject of the complaint in Case No. 96C00024.

[5] Respondent admits that Special Agent Garcia had told her that Social Security card one and the resident alien card were illegal:

> Q. [by Terry Louie, counsel for Complainant] But when the agents of the Immigration Service took them from you on February 22, 1995, you realized they were illegal, these two documents . . . ?
> A. In `95 when I was detained?

Even though Respondent states on page 94 of her deposition that Special Agent Garcia did not tell her that the documents she surrendered on February 22, 1995, were illegal, but instead that they were "phony," "chuecos," or "bogus," that alone does not raise a genuine issue of fact with respect to Respondent's knowledge. Respondent agrees very specifically on pages 78 and 102 of the deposition that Special Agent Garcia told her that Social Security card one and the resident alien card were not legal. Also, even though Respondent refuses to use the term "illegal" on page 94, she nevertheless admits that Special Agent Garcia told her those two documents were "phony," "chuecos," or "bogus." For purposes of deciding whether Respondent knew that she could not use those documents after February 22, 1995, all of those terms would have the same effect as the term "illegal."

As discussed above, Respondent used Social Security card two, which bears the same number as Social Security card one, after the date on which she learned that Social Security card one was invalid and illegal. In essence, Complainant is arguing that because Respondent knew that Social Security card one was illegal, she also knew that Social Security card two was illegal. In deciding a motion for summary decision, all reasonable inferences from the facts presented must be drawn in favor of the non-moving party. Also, if a motion for summary decision is granted, it must be decided that no genuine issues of fact exist. Therefore, the next issue to address in the present case is whether any genuine facts exist with respect to whether Respondent knew Social Security card two was invalid and illegal at the time she presented it, on or around January 15, 1996, at Interim Personnel.

A Social Security card other than the one Respondent was directly told was illegal is at issue in this case. Although no evidence indicates that Respondent was told directly that Social Security card two was illegal, the second Social Security card bears a number that is identical to the number on the Social Security card that she admits she knew, after February 22, 1995, was illegal. Further, Respondent has not argued, in her opposition or in an affidavit, that she believed Social Security card two was valid.

Q. Yes, February 22nd. And they didn't give them back to you?
A. Yes.
Q. You knew they were illegal then?
A. Yes. The man told me, yes, that they were.
Q. Illegal?
A. Yes.
Q. No misunderstandings about that?
A. No.

Id. at 101-02.

Complainant was not entitled to summary decision in Case No. 96C00024, because there was a genuine issue regarding Respondent's credibility and state of mind and because Respondent submitted counter-affidavits in opposition to the motion. In contrast, Complainant in Case No. 96C00089 is entitled to summary decision because there is no genuine issue of fact with respect to Respondent's knowledge, and because Respondent has relied only on the general denials of her Answer and has failed to assert any specific facts showing a genuine issue for trial. Consequently, I grant Complainant's Motion for Summary Decision in the present case.

With respect to penalty, Complainant requests a civil money penalty in the amount of $250 and an order to cease and desist from violating section 274C(a)(2) of the INA. Upon a finding of liability, the ALJ must fine a respondent at least $250 "for each document used, accepted, or created and each instance of use, acceptance, or creation." 8 U.S.C. § 1324c(d)(3)(A) (1994). As Complainant is seeking the statutory minimum penalty that may be assessed in this case, there is no issue regarding the appropriate amount of the civil money penalty. As a result, I order Respondent to pay a civil money penalty in the amount of $250 and to cease and desist from violating section 274C(a)(2) of the INA.

IV. CONCLUSION

I find, as charged in the Complaint, that Respondent used, attempted to use, and possessed a forged, counterfeited, altered, and falsely made Social Security card, number SSN1, on or after February 23, 1995, knowing that such document was forged, counterfeited, altered, and falsely made, for the purpose of satisfying a requirement of the INA, in violation of section 274C(a)(2) of the INA, 8 U.S.C. § 1324c(a)(2). Respondent is ordered to pay a civil money penalty in the amount of $250 and to cease and desist from violating section 274C(a)(2), 8 U.S.C. § 1324c(a)(2).

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ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE REGARDING APPEAL

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief

Administrative Hearing Officer (CAHO) a written request for review, with supporting arguments, by mailing the same to the CAHO at the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. The request for review must be filed within 30 days of the date of the decision and order. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become the final order of the Attorney General of the United States unless, within thirty days of the date of the decision and order, the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a person or entity adversely affected by a final order issued by the Administrative Law Judge or the CAHO may, within 45 days after the date of the Attorney General's final agency decision and order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of the final decision and order. A party's failure to request review by the CAHO shall not prevent a party from seeking judicial review in the appropriate circuit's Court of Appeals. See 8 U.S.C. § 1324c(d)(5).