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

July 9, 1997

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324c Proceeding
) OCAHO Case No. 97C00051
BUDIMAN NAPITUPULU,)
Respondent.)
)

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

I. *Background*

On September 9, 1995, the Immigration and Naturalization Service (complainant/INS), issued and served upon Budiman Napitupulu (respondent) Notice of Intent to Fine (NIF) SAC 274C–95–0007. That single-count citation alleged one (1) violation of the document fraud provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §1324c, for which a civil penalty sum of $450 was proposed.

In that count, complainant alleged that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made document described therein, namely an Alien Registration Receipt Card (A09 289 3765), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, 8 U.S.C. §1324c(a)(2).

Respondent was advised in the NIF of his right to request a hearing before an Administrative Law Judge assigned to this Office if he filed such a request within 60 days of his receipt of that NIF.

On November 8, 1995, Cesar R. Fumar, Esquire, filed a written request for a hearing on behalf of respondent.

On January 14, 1997, complainant filed the single-count Complaint at issue, reasserting the one (1) alleged violation contained in the NIF, as well as the requested civil money penalty of $450.

On January 17, 1997, a Notice of Hearing on Complaint Regarding Civil Document Fraud, along with a copy of the Complaint at issue, were served upon respondent and also upon respondent's counsel of record, Cesar R. Fumar, Esquire.

On February 27, 1997, complainant filed a Motion for Default Judgment, pursuant to OCAHO Rules of Practice and Procedure 28 C.F.R. §68.9(b), requesting that a default judgment be entered against respondent for his having failed to file the required answer within the 30-day period prescribed, 28 C.F.R. §68.9(a).

On April 2, 1997, an Order to Show Cause was issued directing the respondent to file an answer comporting with the requirements set forth at 28 C.F.R. §68.9(c).

On April 28, 1997, respondent's answer was filed, in which he denied having knowingly used forged documents and requesting that the Complaint be dismissed for lack of merit.

On May 14, 1997, complainant filed a pleading captioned Motion for Summary Decision requesting that summary decision be granted in its favor because "[t]here are no issues of material fact as to liability." Complainant also urges that the appropriate civil penalty for the cited violation in Count I is $450.

Respondent has not filed a response to that dispositive motion.

II. *Standards of Decision*

The pertinent procedural rule governing motions for summary decision in document fraud cases provides that "[t]he Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, and 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).

Section 68.38(c) is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal court cases. For this reason, federal case law interpreting Rule 56(c) is instructive in determining whether summary decision under section 68.38 is appropriate in proceedings before this Office. *United States v. Limon-Perez*, 5 OCAHO 796, at 5, *aff'd*, 103 F.3d 805 (9th Cir. 1996).

The purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact and is properly regarded "not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as an inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

An issue of material fact is genuine only if it has a real basis in the record and, under the governing law, it might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *United States v. Primera Enters., Inc.*, 4 OCAHO 615, at 2 (1994).

The party seeking summary decision assumes the initial burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. In determining whether the complainant has met its burden of proof, all evidence and inferences to be drawn therefrom are to be viewed in a light most favorable to the respondent. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

Once the movant has carried this burden, the opposing party must then come forward with "specific facts showing that there is a genuine issue for trial." *Id.*; Fed. R. Civ. P. 56(e). The procedural rule governing motions for summary decision in OCAHO proceedings explicitly provides that "a party opposing the motion may not rest upon the mere allegations or denials of such pleading . . . [s]uch response must set forth specific facts showing that there is a genuine issue for trial." 28 C.F.R. §68.38(b) (1996).

III. *Discussion*

In Count I, complainant alleged that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made docu-

ment described therein, namely an Alien Registration Receipt Card (A09 289 3765), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, 8 U.S.C. §1324c(a)(2).

In order to prove the violation alleged in Count I, complainant must show that:

(1) respondent used, attempted to use, possessed, or provided the forged, counterfeit, altered or falsely made document described therein,

(2) knowing the document to be forged, counterfeit, altered or falsely made,

(3) and did so after November 29, 1990,

(3) for the purpose of satisfying a requirement of the INA.

United States v. Limon-Perez, 5 OCAHO 796 (1995), *aff'd*, 103 F.3d 805, 809 (9th Cir. 1996).

Enacted in 1986, the Immigration Reform and Control Act (IRCA) established an employment verification system which requires that all of the nation's employers verify the employment eligibility of all persons hired after November 6, 1986, by viewing certain documents or combinations of documents and completing an Immigration and Naturalization Service (INS) Form I–9 within three (3) days of hire. 8 U.S.C. §1324a(b); 8 C.F.R. §274a.2(a); *Costigan v. NYNEX*, 6 OCAHO 918, at 6 (1997).

The preparation of the Form I–9, officially known as the INS Employment Eligibility Verification Form, is a single-page, two-sided document which is utilized by the hiring person or entity to determine the work eligibility of job applicants.

IRCA imposes civil money penalties for both employers who knowingly hire undocumented workers and for individuals who knowingly use fraudulent documents to unlawfully gain employment in the United States. *See* 8 U.S.C. §1324a and §1324c; *United States v. Palominos-Talavera*, 6 OCAHO 896, at 8 (1996).

Complainant's May 14, 1997 Motion for Summary Decision contains several exhibits, marked A through K, supporting its factual contentions. From those evidentiary sources, the following facts have been made available.

Respondent, an Indonesian national, was admitted to the United States at Los Angeles, California on June 29, 1990, as a nonimmigrant visitor with a class B2 visa for a period not to extend beyond December 28, 1990, exhibit A, Record of Deportable Alien dated March 1, 1995 and exhibit B, Nonimmigrant Information System (NIIS) Basic Data Display for Budiman Napitupulu.

On March 1, 1995, respondent was apprehended at his place of residence by agents of the INS, exhibit D, affidavit of Special Agent Barbara Morihara. At that time, respondent had in his possession a counterfeit Alien Registration Receipt Card (A09 289 3765) and a counterfeit Social Security Card (603–38–6297).

While in custody, respondent admitted having obtained and used the counterfeit Alien Registration Receipt Card at issue and the counterfeit Social Security Card for the purpose of securing employment, exhibit C, Record of Sworn Statement of Budiman Napitupulu, dated March 1, 1995.

In particular, respondent admitted that he had purchased the false documents, including the Alien Registration Receipt Card at issue, from a vendor in Los Angeles for $40. He further admitted that he presented those documents to his employer, Hillhaven Healthcare Center in Roseville, California (misidentified by respondent as Rossville Convalescent Health Care Center), for Form I–9 employment verification purposes, exhibit C.

Dora Taggart, Hillhaven Healthcare Center's staff developer, confirms that respondent presented an Alien Registration Receipt Card (A09 289 3765) for Form I–9 employment eligibility verification on February 21, 1995, exhibit F.

Complainant has provided a copy of that Form I–9, including copies of the underlying documents, demonstrating that respondent had presented the Alien Registration Receipt Card (A09 289 3765) at issue to Hillhaven Healthcare Center as proof of both employment eligibility and identity, exhibit E.

It is well settled that a respondent's act of presenting fraudulent documents to prove identity and/or employment eligibility in order to gain employment in the United States is sufficient to satisfy the last element of a section 1324c(a)(2) violation, specifically that the

documents were used in order to satisfy any requirement of the INA. *Limon-Perez*, 103 F.3d at 811 ("employees violate section 1324c(a) by using false documents to verify their employment eligibility"); *United States v. Morales-Vargas*, 5 OCAHO 732, at 5–6 (1995).

In order to show that the document named in the Complaint was counterfeit, complainant has submitted a copy of the March 14, 1996 report from the INS Forensic Document Laboratory in McLean, Virginia confirming that the Alien Registration Receipt Card (A09 289 3765) was counterfeit, exhibit J.

Based on these facts, it is found that complainant has met its burden of demonstrating that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made document described in Count I namely, an Alien Registration Receipt Card (A09 289 3765), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, and in having done so, has violated the provisions of 8 U.S.C. §1324c(a)(2).

As noted earlier, respondent has not filed a response to complainant's dispositive motion and has thus failed to offer specific facts showing that there is a genuine issue of material fact with regard to his liability for the one (1) violation set forth in Count I. Accordingly, complainant's May 14, 1997 Motion for Summary Decision is hereby granted.

All that remains at issue, therefore, is a determination of the appropriate civil money penalty to be assessed for that single violation.

IRCA provides for civil money penalties for individuals who violate the document fraud provisions of 8 U.S.C. §1324c, and for first-time offenders those fines range from a statutorily mandated minimum of $250 to a maximum of $2,000 for each instance of use, acceptance, or creation. 8 U.S.C. §1324c(d)(3)(a).

Complainant has requested a penalty of $450 for the one (1) proven violation, and after carefully reviewing the record and complainant's argument in favor of that sum, it is found that complainant has appropriately recommended that penalty amount, having moved upwardly only some 11.43% on its discretionary $1,750 penalty spectrum in the process of doing so.

Order

Because respondent has been shown to have violated the provisions of 8 U.S.C. §1324c(a)(2), as alleged in complainant's January 14, 1997, Complaint, respondent's November 8, 1995, request for hearing is hereby ordered to be dismissed with prejudice to refiling.

The appropriate civil money penalty assessment for this single proven document fraud violation is $450.

Further, respondent is ordered to cease and desist from further violations of 8 U.S.C. §1324c(a)(2).

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 respondent, in accordance with the provisions of 8 U.S.C. §1324c(d)(4), 1324c(d)(5), and 28 C.F.R. §68.53.