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

June 13, 2013

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 12A00065
A&J KYOTO JAPANESE RESTAURANT, INC., Respondent.	)	

FINAL DECISION AND ORDER

Appearances: Marvin J. Muller, III, Esq.
for Complainant

Michael B. Berger, Esq.
for Respondent

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2006), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a two-count complaint alleging that A&J Kyoto Japanese Restaurant, Inc. (A&J or the company) violated 8 U.S.C. § 1324a(a)(1)(B). Count I alleged that A&J failed to prepare Forms I-9 for ten employees within three business days of their respective dates of hire, and/or failed to present their I-9s upon request. Count II alleged that A&J failed to ensure that eight-five employees properly completed section 1 of Form I-9 and/or that A&J itself failed to properly complete section 2 or 3 of the form. A&J filed an answer denying the material allegations of the complaint and requesting its dismissal, after which prehearing procedures were undertaken. Presently pending is the government's motion for summary decision, to which respondent made a timely reply.

II. BACKGROUND INFORMATION

A&J is a Japanese restaurant located in Amherst, New York. It is organized as an S corporation and Ming Li and Fen Liu are the company's sole shareholders. A&J said that between April 2009 and October 2011, it had an average of thirty-five employees. ICE served A&J with a Notice of Inspection on August 12, 2010, and subsequently issued the company a Notice of Intent to Fine on March 26, 2012. A&J filed a request for hearing on April 18, 2012. The government filed its complaint on April 26, 2012, and all conditions precedent to the institution of this proceeding have been satisfied.

III. THE POSITIONS OF THE PARTIES

A. The Government's Motion

The government's motion asserts that there is no genuine issue of material fact and that it is entitled to summary decision as to liability for both counts, as well as to the penalty it seeks. Regarding Count I, ICE asserts that the names Feibing Jiang, Athena Zhou, Danielle[1] Rychnowski, Nathan West, Tina Chang, Emily Arnold, Qi Guan Gao, Yan Fang Xie, Molly Andrews, and Michelle Lin appear on the list of employees that A&J presented in response to the NOI, but that no I-9 was timely presented for any of them. Second, ICE asserts that although

I-9s were produced for the eighty-five individuals named in Count II, visual examination reflects that the section 2 attestation portion of their forms is totally blank on all eighty-five, and that the forms contain other substantive violations as well.

The government says it followed internal agency guidance in setting the penalties at $935 for each violation. It then mitigated the penalties for the size of the business, the good faith of the employer, and the absence of unauthorized workers. ICE treated the absence of previous violations as neutral, but aggravated the penalties because of the seriousness of the violations. ICE states further that its penalty assessment is supported in the record and should be enforced in full, and that there is no necessity for a de novo determination.

The government seeks $79,942.50 in penalties, and argues that no reduction should be made to this amount unless A&J's shareholders submit their personal tax returns for review because S corporations do not pay federal income taxes. A&J's S corporation tax returns for 2010 and 2011 show gross receipts in excess of $1,545,000; the company's profits were $59,000 in 2010 and exceeded $132,000 in 2011. Exhibits accompanying the motion include A&J's New York

[1] The complaint says Daniel Rychnowski, but the employee's name is spelled Danielle Rychnowski in A&J's employment records.

State sales and use tax registration; and a Memorandum to Case File, Determination of Civil Money Penalty (3 pp.).

B. A&J's Response

A&J's response acknowledges responsibility for some, but not all, of the violations alleged. The company says first that it is liable for only two violations in Count I because I-9 forms do exist for Molly Andrews, Emily Arnold, Tina Chang, Qi Guan Gao, Danielle Rychnowski, Nathan West, and Athena Zhou. A&J produced those I-9 forms as exhibit A, but concedes that all six of them contain substantive violations for failure to complete section 2. The company asserts that it cannot be found liable for failure to present an I-9 for Michelle Lin because her name does not appear on A&J's payroll lists, and she was never an employee within the meaning of the statute because she was never hired for remuneration. A&J says in addition that because Molly Andrews worked for only one day and completed section 1 of the form on her day of hire, the company cannot be found liable for failing to complete section 2 inasmuch as the company had up to three days in which to complete it.

As to Angela Buscaglia, Eileen Hagerty, Guo Qin Lin, Nikita Maldorado, Lauren Pasternak, and Dilang Wang,[2] all named in Count II, A&J contends that like Molly Andrews, these individuals were employed for less than three days before they quit or were fired, and that they too completed section 1 on the date they were hired. The company argues that it cannot be held liable for failure to complete section 2 for these employees and that the violations alleged with respect to their I-9s should be dismissed from Count II. A&J asserts further that the allegations in Count I as to the I-9s for Molly Andrews and Michelle Lin should be dismissed from Count I, and that the allegations in Count I respecting Emily Arnold, Tina Chang, Qi Guan Gao, Danielle Rychnowski, Nathan West, and Athena Zhou, for whom it belatedly produced I-9 forms, should be moved from Count I to Count II.

A&J thus acknowledges liability for two of the violations in Count I for failure to present I-9s for Feibing Jiang and Yan Fang Xie, and for eighty-five violations in Count II. The company calculated the total for Count II by dismissing the allegations with respect to six employees in Count II that the company says worked less than three days, and moving the six violations involving individuals for whom it belatedly produced I-9s from Count I to Count II.

A&J suggests that equity requires significant mitigation of the penalty proposed and that failure to mitigate would be punitive and result in closure of the business. The company asserts that it attempted to comply with the requirements by photocopying documents for "a significant

[2] There are two spellings for the name of this individual, Dilang Wang and Di Lang Wang. The spelling used in the complaint is Di Lang Wang.

majority" of its employees, and that ICE made no educational visits and did not alert the respondent to any errors. It points out that the proposed penalty is close to the maximum permissible and disproportionate to the size and character of this small restaurant business inasmuch as it represents 135% of the company's ordinary business income for 2010 and more than 60% of its ordinary income for 2011. A&J emphasizes its high turnover and its location in the "rust belt," where unemployment exceeds the national average.

A&J's response was accompanied by exhibits consisting of A) I-9 forms for Molly E. Andrews, Emily A. Arnold, Tina Chang, Qi Guan Gao, Danielle S. Rychnowski, Nathan R. West, and Athena Z. Zhao (7 pp.); B) Earnings Reports (25 pp.); C) list of hire and termination dates (5 pp.); D) copies of supporting documents (87 pp.); E) tax returns for 2010 and 2011 (35 pp.); F) New York State sales and use tax registration; G) calculation of average number of employees and employee check records (29 pp.).

IV. STANDARDS APPLIED

A. Summary Decision

A motion for summary decision is granted under OCAHO regulations if the evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to summary decision as a matter of law. 28 C.F.R. § 68.38(c). The party seeking summary decision bears the initial burden of showing the absence of a material factual dispute. *See Celotrex, Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994).[3] Once the moving party satisfies its burden, the burden shifts to the nonmoving party to come forward with evidence that a genuine issue of material fact exists. *See Primera Enters.*, 4 OCAHO no. 615 at 261 (citing Fed. R. Civ. P. 56(e)). All facts must be viewed in the light most favorable to the nonmoving party. *Id.*

[3] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

B. The Employment Eligibility Verification System

The INA imposes an affirmative duty upon employers to prepare and retain certain forms for employees hired after November 6, 1986 and to make those forms available for inspection on three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii). Regulations designate the I-9 form as the Employment Eligibility Verification Form to be used by employers. 8 C.F.R. § 274a.2(a)(2). Forms must be completed for each new employee within three business days of the hire, 8 C.F.R. § 274a.2(b)(1)(ii), and each failure to properly prepare, retain, or produce the forms upon request constitutes a separate violation, 8 C.F.R. § 274a.10(b)(2). Section 1 of the form consists of an employee attestation, in which the employee provides information under penalty of perjury about his or her status in the United States. 8 C.F.R. § 274a.2(a)(3), (b)(1)(i)(A). Section 2 consists of an employer attestation under penalty of perjury that the company examined specific documents to establish the individual's identity and eligibility for employment. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii)(A)-(B). It is unlawful for an employer to hire an individual for employment without complying with the requirements of the employment eligibility verification system. 8 U.S.C. § 1324a(a)(1)(B).

An I-9 form is timely prepared when the employee completes section 1 on the day the employee is hired, and the employer completes section 2 within three business days of the hire. 8 C.F.R. § 274a.2(b)(1)(i)(A), (ii)(B). An employer who hires an individual for employment that will last fewer than three business days, however, must complete the entire I-9 form at the time of hire. 8 C.F.R. § 274a.2(b)(1)(iii). Where an individual is hired with the expectation of continued employment but quits after the first day, an employer may be able to avoid liability for failure to complete the section 2 attestation. In *United States v. ABC Roofing & Waterproofing*, 2 OCAHO no. 358, 447, 462-64 (1991), *aff'd in pertinent* part, 2 OCAHO no. 358, 435, 441 (1991) (Modification by the Chief Administrative Hearing Officer), for example, an individual was hired at the jobsite for work as a roofer. Although he worked an eight hour shift, the individual never came back to present his documents or complete the I-9 process. In declining to hold the employer liable for failure to complete an I-9 for this worker, the administrative law judge observed that,

> Many people seek employment, obtain it, and then quit on the first day when they discover the work is not to their liking . . . . When a job site hire is combined with a prompt quit, as here, the employer's efforts to comply with IRCA, and probably the Social Security Act and the Internal Revenue Code as well, is easily frustrated.

Id. at 464; *see also United States v. DuBois Farms*, 2 OCAHO no. 376, 601, 628-29 (1991) (declining to find the employer liable for failure to prepare I-9 where employment was terminated on the first day). These are circumstances under which it would simply be unfair to penalize an

innocent employer. The expectations of the parties with respect to the duration of employment as well as other facts and circumstances surrounding the hire must be evaluated on a case-by-case basis; there is no per se rule. Thus in contrast, where an employee was picked up at a day labor site for work on the employer's premises, the employer was held liable for failure to prepare an I-9 even though the employee was arrested shortly after arriving at the property. *See United States v. Jenkins*, 5 OCAHO no. 743, 164, 169-71 (1995).

After completing the appropriate verification procedures set out in 8 U.S.C. § 1324a(b), employers are required to retain the verification form. Regulations provide that employers are required not only to prepare and retain I-9s for their employees, but also to make those forms available upon three days' notice for inspection by officers of an authorized agency of the United States. 8 C.F.R. § 274a.2(b)(2)(ii).

C. Penalty Assessments

Civil money penalties are assessed for paperwork violations according to the parameters set forth in 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is $110, and the maximum is $1100. In assessing an appropriate penalty, the following factors must be considered: 1) the employer's size business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5). The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

V. DISCUSSION AND ANALYSIS

A. Liability

While ICE's motion recites that the ten individuals named in Count I appear on A&J's Employee Listing, examination of the document[4] reflects that Michelle Lin's name is not on that list. The employee paycheck records A&J presented as its exhibit G contain no reference to Michelle Lin either, and her name appears nowhere in the company's records. No liability can be assessed for

[4] Some confusion results from the fact that ICE identifies the Employee List as exhibit C, but there is no exhibit C accompanying its motion, which included only two exhibits. The document referred to appears in the record as exhibit G-3 accompanying the government's prehearing statement. A copy also accompanied A&J's response to the motion as respondent's exhibit C.

failure to present the form for Michelle Lin because there is no evidence that she was ever employed by A&J.

The I-9s A&J presented to ICE at the time of the inspection did not include I-9s for the other nine employees named in Count I. While A&J subsequently presented as its exhibit A the I-9s for seven of these employees, Molly Andrews, Emily Arnold, Tina Chang, Qi Guan Gao, Danielle Rychnowski, Nathan West, and Athena Zhou, the company, like the employer in *United States v. DJ Drywall, Inc.*, 10 OCAHO no. 1136, 8 (2010), did not suggest that these forms were presented to ICE on three days' notice at the time of the inspection as is required by law. A&J also failed to explain where those forms had been during the interval between the service of the NOI on August 12, 2010 and the company's response to the government's motion more than two years later on March 7, 2013. There appears to be no genuine issue with respect to the fact that the I-9 forms for these individuals were not timely presented for inspection to ICE, an authorized agency of the United States, upon three days' notice as is required by 8 C.F.R. § 274a.2(b)(2)(ii). Their belated presentation does not alter this conclusion and ICE is entitled to summary decision for nine of the ten violations alleged in Count I.

As to Count II, visual inspection of the I-9s for the individuals named in that count reflects that section 2 is totally blank on each of the forms. Not only is the section 2 attestation unsigned, there is in addition no indication that any documents were ever presented to the employer for inspection. That A&J may have copied documents for some of these employees does not excuse the company's failure to complete and sign section 2 of their I-9s. *See United States v. Seven Elephants Distrib. Corp.*, 10 OCAHO no. 1173, 4 (2013). While A&J asserts that Molly Andrews, Angela Buscaglia, Eileen Hagerty, Guo Quin Lin, Nikita Maldorado, Lauren Pasternak, and Dilang Wang worked for less than three days before they quit or were fired, moreover, the record supports these allegations only with respect to Andrews, Buscaglia, Hagerty, and Pasternak. Exhibit C reflects that Molly Andrews was hired June 4, 2010 and terminated the same day; she worked for five hours. According to the company's exhibits C and G, Angela Buscaglia was hired on October 22, 2010 and terminated October 23, 2010; she worked for a total of ten hours, and was paid $83.18. Exhibit C reflects that Eileen Hagerty was hired on September 19, 2010 and terminated on the same day; she worked for five hours. Lauren Pasternak was hired on September 19, 2010 and terminated the next day; Pasternak worked for eleven hours. The record demonstrates that these employees were terminated before A&J was obligated to complete I-9s for them and the company will not be penalized for failing to complete forms it was not obligated to complete.

A&J's allegations as to the other three employees are, however, belied by the company's own exhibits. Exhibit G, the company's paycheck records, reflects that the name Guo Quin Lin appears in four different pay periods in 2009, and that this individual was paid a total of $1530 in wages. Exhibit G also reflects that Nikita Maldorado was paid wages of $321.60 on April 3,

2009, $121.55 on April 17, 2009, $193.10 on October 2, 2009, $154.10 on October 16, 2009 and $71.30 on October 30, 2009. Exhibit G similarly reflects that wages of $640 were paid to Dilang Wang in each of three successive pay periods, October 2, 2009, October 16, 2009, and October 30, 2009. Each of these employees clearly worked for more than three days.

The government's motion will be denied with respect to the alleged violations in Count II involving the I-9s for Angela Buscaglia, Eileen Hagerty, and Lauren Pasternak, and those three allegations will be dismissed, as will the allegation in Count I respecting Michelle Lin. ICE's motion will be granted with respect to the remainder of the violations and the government is accordingly entitled to summary decision for eighty-two violations in Count II and nine violations in Count I, or a total of ninety-one violations.

B. Penalty

Potential penalties in this matter range from $10,010 to $100,100, and the government seeks $79,942.50. A&J is, as it says and as the record reflects, a small restaurant in the rust belt that has a high employee turnover rate, that did not employ any unauthorized aliens, and that has no history of previous violations. While the violations are serious, all the other statutory factors weigh in the company's favor, and a penalty constituting 135% of the company's ordinary business income for 2010 and more than 60% for 2011 is excessive on its face in light of the record as a whole. *See United States v. H&H Saguaro Specialists*, 10 OCAHO no. 1147, 5 (2012).

A penalty should be sufficiently meaningful to accomplish the purpose of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being "unduly punitive" in light of the respondent's resources, *United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993). Here the proposed penalty is close the maximum permissible by law, and way out of proportion to the nature of the business and the degree of culpability shown. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013) (finding that maximum penalties should only be reserved for the most egregious violations).

For the nine violations in Count I, the penalty will be set at $425 each, and for the eighty-two violations in Count II, the penalty will be set at $325 each. The total penalty thus is $30,475, an amount sufficiently significant to motivate a small restaurant business to comply in the future. The parties are free to negotiate a payment schedule to avoid the impact of a lump sum payment.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. A&J Kyoto Japanese Restaurant, Inc. is located in Amherst, New York.

2. Ming Li and Fen Liu are the sole shareholders of A&J Kyoto Japanese Restaurant, Inc.

3. The Department of Homeland Security, Immigration and Customs Enforcement served A&J Kyoto Japanese Restaurant, Inc. with a Notice of Inspection on August 12, 2010.

4. The Department of Homeland Security, Immigration and Customs Enforcement served A&J Kyoto Japanese Restaurant, Inc. a Notice of Intent to Fine on March 26, 2012.

5. A&J Kyoto Japanese Restaurant, Inc. filed a request for hearing on April 18, 2012.

6. A&J Kyoto Japanese Restaurant, Inc. hired Feibing Jiang, Athena Zhao, Danielle Rychnowski, Nathan West, Tina Chang, Emily Arnold, Qi Guan Gao, Yan Fang Xie, and Molly Andrews, and failed to present Forms I-9 for them to the Department of Homeland Security, Immigration and Customs Enforcement within three days of being requested to do so.

7. A&J Kyoto Japanese Restaurant, Inc., hired Guo Qin Lin, Jing Li Hao, Di Lang Wang, Chao Chen, Bao Rong Chen, Qi Qi Zai, May Yeung, Karen Tam, Min Jie Wang, Jeremy Felmut, Feng Gao, Jing Chen, Michael Shi Lin, Nikita Maldorado, Juan Huang, Yan Qing Wen, Vincent Marzullo, Zhen Chai Chen, Ashley Steifel, Ming Qing Xie, San Le, Jia Guo Wang, Guo Le Huang, Zing Gang Chen, Laura Morey, Zian Hua Zhang, Jessica Cheng, De Sheng Li, Cheng Shi, Jian Xin Lu, Yan Xu, Fen Liu, Ming Qing Li, Cheng Yang, Jian Xin Lin, Zeng Meng Liu, Sara Gryzbowski, Zhang Bin Chen, Min Ying Wang, Inthiphone Syharath, Chun Mei Feng, Kristen Young, Christa Perrella, Sally Hom, Dai Hui Dong, Vithaya Kornalalangsy, Dazhong Weng, Zhi Feng Lin, BoaJing Huang, Si Ming Zhou, Sylvia Chen, You Xing Xie, Paul Coleman, Guang Chen, Yu Qiong Liu, Li Zhu Cai, Cassandra Lyons, Min Dong Lin, Feng Chen, Amber Munoz, Ye Dong, Yan Fang Qui, Jian Yu, Devin Sutherland, Fei Bin Jiang, Joanna Kociubiniski, Justin Pitts, Sarah Bastian, Milana Dudets, Ming Zheng, Melissa Lalonde, Caitlin Tarver, Jing Chen, George Leroy, Guizhen Shenne, Jun Xian Wang, Ann Marie Tran, Zhi Kai Huang, Michelle Wei, Wen Kai Li, Kew Shi, and Allison Funk, and failed to complete section 2 of their I-9 forms.

B. Conclusions of Law

1. A&J Kyoto Japanese Restaurant, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2006).

2. All conditions precedent to the institution of this proceeding have been satisfied.

3. Employers are required to prepare and retain I-9s for employees and make those forms available for inspection upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii).

4. An I-9 form is timely prepared when the employee completes section 1 on the day the employee is hired, and the employer completes section 2 within three business days of the hire. 8 C.F.R. § 274a.2(b)(1)(i)(A), (ii)(B).

5. When an employee is hired for a period of less than three days, the employer is obligated to complete that employee's I-9 at the time of hire. 8 C.F.R. § 274a.2(b)(1)(iii).

6. A&J Kyoto Japanese Restaurant, Inc. is liable for ninety-one violations of 8 U.S.C. § 1324a(a)(1)(B).

7. When the expected duration of an individual's employment is cut short, an employer's efforts to comply with its I-9 obligations can become frustrated and, in some circumstances, liability may be avoided. *See United States v. DuBois Farms*, 2 OCAHO no. 376, 601, 628-29 (1991).

8. In assessing the appropriate amounts of civil money penalties for violations of 8 U.S.C. § 1324a(b), due consideration must be given to the following factors: 1) the employer's size of business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the history of previous violations. 8 U.S.C. § 1324a(e)(5) (2006).

9. The statute requires neither that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

10. A respondent's ability to pay is considered an appropriate factor used in assessing a civil money penalty. *See United States v. H&H Saguaro Specialists*, 10 OCAHO no. 1147, 5 (2012).

11. A penalty should be sufficiently meaningful to accomplish the purpose of deterring future

violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being "unduly punitive" in light of the respondent's resources, *United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

A&J Kyoto Japanese Restaurant is liable for ninety-one violations of 8 U.S.C. §1324a(a)(1)(B) and ordered to pay $30,475 in civil money penalties.

SO ORDERED.

Dated and entered this 13th day of June, 2013.

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Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for

review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.