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

December 18, 2014

UNITED STATES OF AMERICA, Complainant, v. LEED CONSTRUCTION, MEGAN BURKHOLDER, Respondent.	)))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 13A00111

Appearances:

Bruce Imbacuan
For complainant

Leslie Johnson
For respondent

FINAL DECISION AND ORDER

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 (2012). The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a two-count complaint alleging that Leed Construction and Megan Burkholder (Leed or the company) violated 8 U.S.C. § 1324a(a)(1)(A), (B). Count I alleged that the company hired twenty-one individuals knowing they were aliens unauthorized for employment in the United States, and Count II alleged that Leed failed to ensure that fourteen employees properly completed section 1 of their I-9 forms or failed itself to

properly complete section 2 or 3 of the forms.[1] Leed filed a timely answer denying the allegations and asserting four affirmative defenses.

Prehearing procedures have been completed. Presently pending are the government's motion for summary decision and Leed's motion to dismiss. Each party filed a response to the other's motion.[2] Leed's motion is predicated upon an affirmative defense that all of ICE's claims are barred by the statute of limitations set forth at 28 U.S.C. § 2462. Because the record was in need of clarification with respect to certain facts, an order of inquiry was addressed to both parties requesting that they provide any available evidence as to the termination dates for the employees named in Count I. The government was also asked to clarify the contentions with respect to the I-9s at issue in Count II and the application of 28 U.S.C. § 2462 to those violations. Each party filed a response to the inquiry, and both motions are ripe for resolution.

Because Leed's motion to dismiss requires consideration of evidence outside the pleadings, it will be treated as one for summary decision.

II. BACKGROUND INFORMATION

Leed Construction is a domestic limited liability company located in Columbus, Ohio. Leed was incorporated on March 11, 2008 and formally dissolved on April 3, 2012. A companion case, *United States v. Anchor Management Group, Inc., Lawrence Gunsorek*, OCAHO case no. 14A00001, is also pending in this office. Leed was affiliated with the Anchor Management Group and operated at the same location, but under a separate employer identification number. Megan Burkholder, the president of Leed, and her father, Lawrence Gunsorek, the owner of Anchor, each owned fifty-percent of Leed. ICE's investigation of the Anchor group began in 2008 after union members complained that the company was, inter alia, employing unauthorized workers. ICE served the companies with a Notice of Inspection (NOI) on June 26, 2008 and with a Notice of Suspect Documents (NSD) on July 21, 2008.

The record contains an entry in the Court of Common Pleas for the County of Franklin, Ohio reflecting that Megan Burkholder entered a plea of guilty on July 25, 2011 for a lesser included offense of tampering with records. Burkholder was also a party to a settlement agreement entered into by Anchor, Leed, and the Ohio Department of Commerce on July 22, 2011 resolving various allegations of violations of Ohio labor laws. As part of the settlement, the companies

[1] The order of the counts in the complaint reverses the order used in the Notice of Intent to Fine. References to the counts in this decision conform to those used in the complaint.

[2] ICE captions its response to Leed's motion to dismiss as a response to the company's motion for summary decision.

agreed to pay to the Department of Commerce $140,000 for alleged underpayment of wages, together with attorney fees and costs.

The government served a Notice of Intent to Fine on the company on February 6, 2012. Leed made a timely request for hearing on February 29, 2012, and the government filed a complaint with this office on September 30, 2013.[3] All conditions precedent to the institution of this proceeding have been satisfied.

III. THE PARTIES' RESPONSES TO THE ORDER OF INQUIRY

A. Leed's Response

Leed says that the claims in ICE's complaint first accrued on July 21, 2008, the date that the Notice of Suspect Documents was served, and that the limitations period began to run, at the latest, on July 21, 2008, but that the government did not file its complaint until September 30, 2013, more than five years after the NSD was served. Leed argues that under 28 U.S.C. § 2462, this action should not be entertained since it was not commenced within the five-year period following service of the NSD.

The company says claims based on both the illegal hiring as well as the I-9 paperwork violations would also have occurred prior to June 2008. First, the company says it immediately terminated all but one of the unauthorized aliens upon receipt of the NSD. In support of this assertion, Leed tendered copies of letters dated July 23, 2008 from Megan Gunsorek,[4] as president of Leed, to Efrain Bustamante, Gerardo Mendoza-Ortega, Guillermo Hernandez, Jorge Astilleros-Osorio, Jose Contreras, Juan Villegas, Luis Gonzalez-Sanchez, Miguel Orozco, Rogaciano Escobar, Teofilo Miranda, Roverto Fernandez, Ociel Turrubiates-Perez, Margarito Lara-Hernandez, Julio Quintana, Juan Carlos Gonzalez-Sanchez, Jose Antonio Garcia-Trevino, Ignacio Bautista, Gerardo Mercado-Palmas, Felipe Rodriguez-Perez, and Candelario Reyes-Mendez notifying them that they were not authorized to work in the United States and were no longer eligible to work for Leed. Leed says that except for Giovanni Escobar, the employees named in the NSD did not return to the jobsite after July 22, 2008.

Leed also says that ICE's own Report of Investigation authored by Senior Special Agent Nathanial A. Simon clearly states that by the time Anchor was notified that the individuals were unauthorized, the only one still working at 770 West Broad Street was Giovanni Escobar, who

[3] A related complaint in the companion case against Anchor Management was filed the next day, October 1, 2013.

[4] Burkholder's maiden name was Gunsorek.

apparently worked for both Anchor and Leed.[5] The report is dated August 7, 2008 and summarizes the events surrounding Escobar's arrest on July 30, 2008. The report states that Escobar falsely claimed to be a U.S. citizen on an I-9 form that he used to obtain employment at "Anchor Management, Inc./LEED construction" in Columbus, Ohio, and that he was charged under 18 U.S.C. § 911 for this false claim of citizenship. The report details ICE's interrogation of Escobar, who said he began working for Anchor in March 2008 and that he knew Anchor paid Jesus Ortiz a large check that was cashed to pay all the "illegal alien workers." Escobar told the government that on July 22, 2008, Larry Gunsorek told the other employees not to come back to work, and also called him to tell him he could no longer work because he was not eligible. Escobar also said Gunsorek tried to put him on a landscaping job, but the company's general counsel advised against it since Anchor was being investigated at that point.

Leed also points to a presentence investigation report prepared for Judge James Graham of the United States District Court for the Southern District of Ohio in a case captioned *United States v. Larry Gunsorek*. The report is dated December 3, 2009 and was revised on January 19, 2010. It indicates that on October 26, 2009, Gunsorek was charged with encouraging and inducing aliens to enter and reside illegally in the United States from September 18, 2005 until June 20, 2008, and that a plea agreement was entered on November 5, 2009 regarding that charge. The report says further that from September 2005 until June 2008, Gunsorek used the labor of undocumented aliens to perform renovation, construction, landscaping, and maintenance work. Gunsorek was identified as the president and founder of the Anchor Management Group, in business since 1989, and the owner of multiple properties. The report says Anchor is the parent company for a total of fifty-six limited liability corporations. Gunsorek is the father of four children, one of whom is Megan Burkholder.

Leed says it's clear that the individuals in question were not employed on or after September 30, 2008 and that the claims in the complaint fall outside the statute of limitations set forth at 28 U.S.C. § 2462. The company says the government has provided no evidence whatsoever that any employee worked for Anchor or any of its affiliates, including Leed, after July 2008. Leed's prehearing statement reflects that the company operated for only one year, 2008. Leed also argues that ICE's complaint should be dismissed as to the I-9 forms containing the paperwork violations because the I-9s are also outside the retention period set forth at 8 U.S.C. § 1324a(b)(3). Leed also says it cured all the violations on the I-9s after the inspection, and all the violations ceased to exist prior to September 30, 2008 and are barred by 28 U.S.C. § 2462.

B. The Government's Response

ICE's response to the inquiry says Leed never provided documentation or evidence to show that the unauthorized workers were terminated prior to the cancellation of the company's articles of

[5] Leed submitted an I-9 for Escobar, and is named as the employer in section 2 of the form.

incorporation, and that there can be no statute of limitations issue in the absence of a showing that the employees were terminated. ICE's response to Leed's motion to dismiss argues vigorously that evidence shows that the employees "were employed continuously through the dissolution of the company on April 2, 2009." [6]

The government's response to Leed's motion also stated, as did its response to the inquiry, that all fourteen paperwork violations are continuing so there are no statute of limitations issues as to those violations either. ICE says that "[f]ailure to properly prepare a form I-9 is a substantive violation when section 1 or 2 is dated but untimely and the claim accrued on the untimely date." The government contends in addition that "an I-9 that is backdated is a continuing violation as a failure to properly prepare and present if it was not done and completed by the issuance of the Notice of Inspection." ICE says that, like the employees in Count I, all fourteen of these employees continued to be employed through the date of the company's dissolution. The government contends in its motion for summary decision that Leed cannot prove that it inspected valid documentation at the time it hired the employees and that the date of certification on the forms was left blank or filled in after the NOI.

IV. EVIDENCE CONSIDERED

Exhibits accompanying ICE's prehearing statement include: G-1)[7] Notice of Inspection (2 pp.); G-2) Notice of Suspect Documents (2 pp.); G-3) Forms I-9 (35 pp.); G-4) Notice of Intent to Fine (6 pp.); G-5) Articles of Incorporation and related documents (5 pp.); G-6) Settlement Agreement dated July 22, 2011 (4 pp.); and G-7) Entry in Court of Common Pleas for County of Franklin, Ohio dated January 3, 2011 (2 pp.). One exhibit accompanied the government's motion for summary decision: G-8)[8] Memorandum to Case File Determination of Civil Monetary Penalty (4 pp.). No exhibits accompanied the government's response to the order of inquiry.

Exhibits accompanying Leed's prehearing statement include: R-1) 2008 tax return for Leed Construction Ltd. (29 pp.); R-2) Certificate of Dissolution for Leed Construction Ltd. dated April 3, 2012 (4 pp.); R-3) 2008 personal income taxes for Megan Burkholder (2 pp.); and R-4) 2008 Interest and Ordinary Dividends for Megan Burkholder (69 pp.). Exhibits accompanying Leed's

[6] Leed was not formally dissolved until 2012. April 2, 2009 is the date the Ohio Secretary of State cancelled Anchor Management's articles for failure to file corporate franchise tax reports.

[7] For clarity, the letter "G" is added before the government's numerical designation, and the letter "R" is added before the respondent's.

[8] The government did not number this exhibit.

response to the order of inquiry include: A) Letters to employees dated July 23, 2008 (20 pp.); B) ICE investigation report dated August 7, 2008 (5 pp.); and C) Presentence Investigation Report prepared for Judge James Graham, United States District Court (18 pp.).

V. DISCUSSION AND ANALYSIS

The complaint in this matter was filed on September 30, 2013. Pursuant to 28 U.S.C. § 2462, a complaint is timely if filed within five years of the date a violation accrues. *See United States v. H & H Saguaro Specialists,* 10 OCAHO no. 1144, 6 n.5 (2012). For purposes of this case, claims that accrued prior to September 30, 2008 are not cognizable. As explained in the order of inquiry, Leed is mistaken in its assertion that a knowing hire violation accrues upon the issuance of a NSD. A knowing hire violation is continuous in nature, and the statute does not begin to run until the unauthorized individual ceases to be employed. *See United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 874, 894 (1997). [9] While ICE complains that evidence of the employees' termination dates is lacking, the government fails to acknowledge that there is not a scintilla of evidence showing that any of the thirty-five individuals named in the complaint, or for that matter anyone at all, actually worked for Leed at any time after September 30, 2008.

ICE's motion for summary decision rests on the hypothesis that Leed continued to employ all its workers after July 2008. The memorandum supporting the motion says that civil and criminal litigation shows culpability on the part of Leed and Megan Burkholder, and that "evidence previously submitted with the prehearing statement demonstrate and show that the respondent knowingly hired the unauthorized employees at issue." The government's motion for summary decision says the company knowingly hired twenty-one unauthorized employees. That may be true. But the only evidence that the government points to consists of documents reflecting Larry Gunsorek's conviction and the settlement of the state court proceeding involving alleged violations of Ohio labor law. These documents do, as the government suggests, show some culpability on the part of Leed and Burkholder. What they do not show, however, is that Leed and/or Burkholder had any employees after Giovanni Escobar's employment ended in July 2008.

[9] 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. ham# PubDecOrders.

The term "employee" means a person who provides services or labor for an employer for wages or other remuneration. 8 C.F.R. § 274a.1(f). The mere presence of an individual's name on a list, or even on an I-9 form, without a scintilla of evidence that the individual actually provided any services or labor to an employer or ever actually received any wages or other forms of remuneration from the employer during the period at issue, is insufficient to make a prima facie showing that the person was an employee. *See United States v. Speedy Gonzalez Constr., Inc.*, 11 OCAHO no. 1228, 8 (2014); *United States v. DuBois Farms, Inc.*, 2 OCAHO no. 376, 599, 614-15 (1991). The record is wholly devoid of payroll records or any other documentation suggesting that any of the individuals named in the complaint received any wages from or performed any services for Leed after September 2008. ICE's own investigation report, moreover, corroborates the fact that Escobar alone remained employed by the company after the NSD, and that he too was terminated by the end of July 2008.

The latest possible accrual date for the knowing hire violations would be the dates on which the employees were terminated. Once the employee is terminated, the limitations period begins to run. Because all the individuals named in Count I were terminated by the end of July 2008, and the complaint was not filed until September 30, 2013, more than five years later, the knowing hire violations are barred by limitations.

The same cannot be said, however, with respect to Count II because, unlike a knowing hire violation, a violation involving failure to properly prepare an I-9 form is not a violation that ends when the employee is terminated. A substantive paperwork violation continues until it is cured or until the employer no longer has a duty to retain the I-9. *United States v. Rupson of Hyde Park, Inc.*, 7 OCAHO no. 940, 331, 332 (1997). An employer is obligated to retain an I-9 form for a former employee for a period of three years after the individual's hire date or one year after the termination date, whichever is later. 8 U.S.C. § 1324a(b)(3)(B); 8 C.F.R. § 274a.2(b)(2)(i)(A). The expiration date for the retention period is not measured from the date of termination alone, it is measured by comparing a date one year after the termination date to a date three years after the hire date, and determining which is the latest.

All Leed's employees were terminated by July 30, 2008. Visual inspection of the I-9s Leed presented reflects that Thomas Brison's employment began on June 27, 2008. Leed would accordingly be obligated to retain his I-9 form until June 27, 2011, a date less than five years prior to the filing of the complaint. The I-9 for Brent Damron contains no date for the beginning of his employment, but section 2 was signed on June 9, 2008. The retention period for his I-9 is also less than five years prior to the filing of the complaint. Michael Day's I-9 reflects a start date of June 27, 2008, Megan Gunsorek's hire date is shown as March 30, 2008, Daniel Hooper started on June 27, 2008, Daniel Howell started in April 2008 but the actual day is illegible, Mark Jamison started on April 25, 2008, Delbert King on April 30, 2008, Glenn Lowe on April 22, 2008, Patrick McEnroe on April 22, 2008, Steven Mullins on April 2, 2008, and Garry Scott on April 25, 2008. No start date appears on the I-9 for Ryan Shortridge, but he signed section 1 on April 29, 2008. Steven Tope started his employment on June 27, 2008, so Leed was required

to retain his I-9 until June 27, 2011. All the retention dates for these employees expired fewer than five years prior to the filing of the complaint and the violations are not barred by limitations.

ICE's motion for summary decision says it is evident that Leed failed to properly complete section 2 of the I-9s for these individuals because their I-9s do not contain complete document titles, identification numbers, and/or expiration dates, and the forms are not accompanied by copies of the List A, B, or C documents. The government says that as a result, Leed cannot prove that it inspected valid documentation at the time it hired the employees. Additionally, the dates of section 2 certification on all the forms were left blank or filled in after the NOI. ICE did not, however, address the I-9s individually; it simply made a general statement.

Visual examination reflects that the I-9 for Thomas Brison appears to be facially complete. ICE contends that the section 2 attestation date was not entered until after the NOI, but all the dates on Brison's form, including the start date for employment, were after the NOI. The forms for Michael Day and Daniel Hooper similarly appear facially complete and all the dates entered are June 27, 2008. There is no showing that employment of these individuals began earlier, and absent evidence that these individuals actually worked for Leed prior to June 27, 2008, their I-9s are taken at face value.

Brent Damron's I-9, on the other hand, is not signed by the employee in section 1, and section 2 reflects that an Ohio ID was erroneously entered as a List A document. No documents are entered in List B or List C. Megan Gunsorek signed her I-9 as both the employee and the employer. Daniel Howell's I-9 reflects that his employment began April 22, 2008, but the attestation in section 1 is dated "8/27/82." Garry Scott's I-9 lacks a date in section 1 and there is no box checked to indicate his immigration status. The only entries in section 2 of the I-9 for Glenn Lowe are the date of employment and the entry of a driver's license under List B. No List A or List C document is entered, there is no employer attestation signature, no print name, no business name, and no date. This is virtually a total failure to complete section 2. The section 2 attestation for Ryan Shortridge is completely blank. These are all substantive violations.

Failure to enter a date for the section 2 attestation is, however, the only facially apparent violation on the forms for Mark Jamison, Delbert King, Patrick McEnroe, Steven Mullins, and Steven Tope. Because the Virtue Memorandum classifies this omission as technical or procedural and ICE provided no explanation as to why it should be considered substantive, it is not so considered.

Facially apparent substantive violations accordingly appear on the I-9 forms for Brent Damron, Megan Gunsorek, Daniel Howell, Glenn Lowe, Garry Scott, and Ryan Shortridge, and Leed is found liable for six of the fourteen substantive violations alleged in Count II.

Conclusion

Leed's motion to dismiss is converted to one for summary decision and will be granted as to Count I of the complaint and denied as to Count II. ICE's motion for summary decision will be denied as to Count I of the complaint, and granted in part and denied in part as to the allegations in Count II. The complaint will be dismissed as to Count I and as to the allegations in Count II involving the I-9s for Thomas Brison, Michael Day, Daniel Hooper, Mark Jamison, Delbert King, Patrick McEnroe, Steven Mullins, and Steven Tope. Leed is found liable for substantive violations in the I-9s for Brent Damron, Megan Gunsorek, Daniel Howell, Glenn Lowe, Garry Scott, and Ryan Shortridge.

VI. PENALTIES

A. The Government's Penalty Request

ICE sought penalties at the rate of $695.75 for each of the substantive violations. The penalty determination accompanying the motion reflects that the baseline amount for each violation was calculated as $605 in accordance with internal agency guidance, then enhanced by fifteen percent, five percent for bad faith, five percent for the seriousness of the violations, and five percent for the presence of unauthorized aliens. The size of the employer was treated as a neutral factor, as was the absence of any history of previous violations.

The government's penalty memorandum says that Megan (Gunsorek) Burkholder was the president "on paper" but that Larry Gunsorek was behind the day-to-day operations. ICE says the size of Leed was difficult to determine because many employees were unauthorized. ICE says further that Anchor (sic) did not maintain proper records, incorrectly classified employees as subcontractors to avoid taxes, and paid unauthorized workers in cash. ICE nevertheless concluded that Leed was a small business. The government asserts that Leed did not act in good faith, although the company had knowledge about the requirements and had partially completed forms on the first day of contact. ICE says Leed was created from Anchor employees in an attempt to legitimize their status, and that many had worked for Anchor for years with no I-9s. As Leed employees, they had to complete paperwork and receive checks. The memo notes that the founding partner of Anchor, Larry Gunsorek, entered a guilty plea to knowingly using the labor of undocumented workers. ICE says further that all the violations are serious, that twenty-one unauthorized aliens were involved, and that the company had no history of previous violations.

B. Leed's Response

Leed contends in response that the penalties proposed are excessive and disproportionate to the size and resources of the business, and that the government did not carry its burden to prove the

existence of aggravating factors. The company contends in addition that it has ceased and desisted from the violations, the business is no longer operating, and the company has been dissolved.

C. Discussion and Analysis

Favorable factors for Leed are its small size and its lack of any history of previous violations. Unfavorable factors include the seriousness of the violations and the presence of unauthorized workers prior to the period at issue. To the extent that the government's allegations of bad faith are based on facts alleged about Anchor Management for which evidentiary support is lacking in the record for this case, those allegations are accorded minimal weight. There is, for example, no evidence in this record to show that Lawrence Gunsorek was involved in the day-to-day management of Leed. While there are a number of suspicious circumstances, the penalties for Leed may be assessed based only on the evidence that was presented in this case.

I have accordingly discounted ICE's finding of bad faith, and have given somewhat greater weight to the small size of the business. An additional factor for consideration is the fact that Leed no longer exists, and no deterrent effect will be achieved by the penalties to be assessed. Based on the record as whole and the statutory factors in particular, the government's baseline assessment at the rate of $605 for each substantive paperwork violation is well within the mid-range of potential penalties, is proportionate to the violations, is reasonable under the circumstances, and need not be disturbed. The total penalty for the six violations is $3630.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Leed Construction was incorporated in Ohio on March 11, 2008, and was a domestic limited liability company engaged in the construction business in Columbus, Ohio; its president was Megan Burkholder.

2. Department of Homeland Security, Immigration and Customs Enforcement served Leed Construction and Megan Burkholder with a Notice of Inspection (NOI) on June 26, 2008.

3. Department of Homeland Security, Immigration and Customs Enforcement served Leed Construction and Megan Burkholder with a Notice of Suspect Documents on July 21, 2008.

4. Department of Homeland Security, Immigration and Customs Enforcement served Leed Construction and Megan Burkholder with a Notice of Intent to Fine on February 6, 2012.

5. Leed Construction and Megan Burkholder made a timely request for hearing on February 29, 2012.

6. Leed Construction was formally dissolved on April 3, 2012.

7. Department of Homeland Security, Immigration and Customs Enforcement filed a complaint against Leed Construction and Megan Burkholder on September 30, 2013.

8. No showing was made that any individual named in the complaint either provided services to or received wages or other remuneration from Leed Construction or Megan Burkholder at any time after September 29, 2008.

9. Megan Burkholder sent letters dated July 23, 2008 to all the individuals listed in the Notice of Suspect Documents and in Count I of the complaint, except for Giovanni Escobar, stating that the individuals were not authorized to work in the United States and advising them that they were no longer eligible to work for Leed.

10. A Department of Homeland Security, Immigration and Customs Enforcement investigation report dated August 7, 2008 states that Giovanni Escobar, named in Count I of the complaint, told ICE that by the time Anchor was notified that the workers were unauthorized, he was the only one still working and that Anchor had told all the other workers not to come back to work.

11. Giovanni Escobar told the Department of Homeland Security, Immigration and Customs Enforcement that Larry Gunsorek called him on July 22, 2008 to tell him he could no longer work because he was not eligible.

12. Leed Construction was a small business.

13. Leed Construction had no history of previous violations.

B. Conclusions of Law

1. Leed Construction is an entity and Megan Burkholder is an individual within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).

2. The term "employee" means a person who provides services or labor to an employer in return for wages or other remuneration. 8 C.F.R. § 274.1(f).

3. The presence of an individual's name on an I-9 form without evidence that the individual provided services to or received wages or remuneration from an employer is not sufficient to demonstrate that an individual is an employee within the meaning of § 274.1(f). *See United States v. Speedy Gonzalez Construction, Inc.*, 11 OCAHO no. 1228, 8 (2014); *United States v. DuBois Farms, Inc.*, 2 OCAHO no. 376, 599, 614-15 (1991).

4. Pursuant to 28 U.S.C. § 2462, a complaint arising under 8 U.S.C. § 1324a is timely if filed within five years of the date a violation first accrues. *United States v. H & H Saguaro Specialists*, 10 OCAHO no. 1144, 6 n.5 (2012).

5. A knowing hire violation is continuous in nature and lasts for as long as the unauthorized person continues to be employed. *See United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 882, 894 (1997).

6. An employer is required to retain the I-9 of a former employee for a period of three years after the employee's hire date, or one year after the employee's termination date, whichever is later. 8 U.S.C. § 1324a(b)(3)(B); 8 C.F.R. § 274a.2(b)(2)(i)(A); *see United States v. H & H Saguaro Specialists*, 10 OCAHO no. 1144, 6 (2012); *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998).

7. The knowing hire violations alleged in Count I of the complaint are barred by 28 U.S.C. § 2462.

8. Leed Construction hired Brent Damron, Megan Gunsorek, Daniel Howell, Glenn Lowe, Garry Scott, and Ryan Shortridge for employment in the United States and failed to ensure that they properly completed section 1 of Form I-9 and/or failed itself to properly complete section 2 of Form I-9 for them.

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

Leed Construction and Megan Burkholder are liable for six violations of 8 U.S.C. § 1324a(a)(1)(B) and are directed to pay civil money penalties totaling $3630.

SO ORDERED.

Dated and entered this 18th day of December, 2014.

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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.