

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

September 26, 2019

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 19A00018
)	
LAZY DAYS SOUTH, INC.,)	
Respondent.)	
)	

NOTIFICATION OF ADMINISTRATIVE REVIEW OF INTERLOCUTORY ORDER

This case arises under the employer sanctions provision of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (2018). The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or Complainant) filed a complaint with the Office of the Chief Administrative Hearing Officer alleging that Respondent Lazy Days South, Inc. violated 8 U.S.C. § 1324a(a)(1)(B) by failing to prepare and/or present Employment Eligibility Verification (I-9) Forms for sixty-four employees. ICE's complaint sought a total of \$75,271.80 for the alleged violations. The case was originally assigned to Administrative Law Judge (ALJ) Thomas McCarthy and subsequently reassigned to Chief ALJ Jean King.

After the complaint was served on the parties, Respondent filed a Motion to Dismiss Complaint, a Motion for Summary Disposition, and (eventually) an answer to the complaint. The Respondent's answer admitted certain allegations in the complaint, but denied that Respondent had violated the law. The Respondent's Motion to Dismiss and Motion for Summary Disposition argued (among other things) that the complaint should be dismissed for failure to state a claim upon which relief can be granted, and asserted that Respondent was no longer required to retain Forms I-9 for many of the employees listed in the complaint.

Complainant subsequently filed a response to the Respondent's motions, disputing many of Respondent's arguments. Attached to the Complainant's response were two exhibits: (1) an employer questionnaire purportedly completed by Respondent's office manager; and (2) an employee list allegedly provided to ICE by the Respondent, which listed hire and termination dates for the employees identified in the complaint. Complainant's response asserted that all of the former employees listed in the complaint fell within the Form I-9 retention period and the Respondent was therefore required to retain and produce a Form I-9 for each of those employees.

On September 19, 2019, ALJ King issued an Order on Motion to Dismiss and Motion for Summary Decision. The Order denied Respondent's Motion to Dismiss and granted in part and denied in part Respondent's Motion for Summary Disposition.

The undersigned has reviewed the ALJ's September 19th Order and has determined that such order is appropriate for interlocutory review pursuant to the standards set out in 28 C.F.R. § 68.53(a)(1) and (3) (2018). Therefore, the undersigned hereby issues this notification of administrative review, in accordance with 28 C.F.R. § 68.53(a)(3).

The sole issue to be reviewed is whether the ALJ properly granted summary decision to Respondent on the violation related to David Bodenstein's Form I-9. As recounted in the ALJ's Order, "Employers must retain an employee's Form I-9 for three years after the date of hire or one year after the date of termination, whichever is later. 8 C.F.R. § 274a.2(b)(2)(i)(A). The record shows that Respondent hired Bodenstein in 2011, and terminated him on January 22, 2016." Order at 7. Based on this legal principle and the facts as recounted by the ALJ (and reflected in the record), it appears that Respondent was required to retain Bodenstein's Form I-9 until January 22, 2017 (one year after the date of his termination). Nevertheless, the ALJ found that as of the date of service of the Notice of Inspection on Respondent (November 15, 2016), Respondent "no longer had an obligation to retain Bodenstein's Form I-9." *Id.* The undersigned will review whether the ALJ correctly applied the law to the facts in reaching this conclusion.

Pursuant to 28 C.F.R. § 68.53(c), this administrative review will be conducted in accordance with the provisions of 28 C.F.R. § 68.54(b)-(d). Accordingly, within twenty-one days of the date of entry of the ALJ's order, the parties may submit briefs or other written statements addressing the issue presented above. *See* 28 C.F.R. § 68.54(b)(1). Consequently, the deadline for submitting such briefs or other written statements is **October 10, 2019**. Parties should file and serve their briefs or other written statements by email, pursuant to the ALJ's August 29, 2019, Order Directing Parties to File Case Documents by Email.

In light of the current procedural posture of the case, the undersigned has determined that the circumstances do not require a postponement or stay of the proceedings before the ALJ. *See* 28 C.F.R. § 68.53(b) (providing that review of an ALJ's interlocutory order "will not stay the proceeding unless the [ALJ] or the Chief Administrative Hearing Officer determines that the circumstances require a postponement."). Therefore, the parties must continue to fully participate in proceedings before the ALJ—including complying with all filing deadlines previously established by the ALJ—while this administrative review is pending.

Robin M. Stutman
Chief Administrative Hearing Officer