

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

December 22, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2020A00050
)	
EDGEMONT GROUP, LLC,)	
Respondent.)	
_____)	

Appearances: Daniel Burkhardt, Esq., for Complainant
Robert Gibbs, Esq., and Adam Boyd, Esq., for Respondent¹

ORDER ON SUMMARY DECISION – LIABILITY

I. BACKGROUND & PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On October 17, 2019, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), served a Notice of Intent to Fine (NIF) upon Respondent, Edgemont Group, LLC. Compl. Ex. A. The NIF alleges that Respondent failed to timely prepare and/or present the employment eligibility verification form (Form I-9) for forty-six individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B), for a total proposed penalty of \$90,387.20. *Id.* On October 23, 2019, Respondent, through counsel, timely requested a hearing before this office. *Id.* at Ex. B.

On February 14, 2020, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent. In accordance with the NIF, the Complaint alleges that Respondent failed to timely prepare and/or present Forms I-9 for forty-six individuals, proposing a civil monetary penalty of \$90,387.20.² *Id.* at Ex. A.

¹ On January 12, 2022, the Court received a Notice of Entry of Appearance from Adam Boyd, Esq., on behalf of Respondent.

² For Count I, the heading identifies the alleged § 1324a violation as “FAILED TO PREPARE AND/OR PRESENT THE EMPLOYMENT ELIGIBILITY VERIFICATION FORM (FORM I-9).” Compl. Ex. A. However, the language of Count I itself and the NIF describe the violation as

On March 5, 2020, Respondent, through counsel, filed its Answer. On April 10, 2020, Complainant filed its Prehearing Statement. Complainant's Prehearing Statement lists proposed stipulations, including that "Respondent failed to timely prepare and/or present Forms I-9" for the forty-six individuals named in the Complaint. C's Prehr'g Stmt 2. On May 13, 2020, Respondent filed its Prehearing Statement. Respondent's Prehearing Statement responds to Complainant's proposed stipulations and presents additional proposed stipulations. R's Prehr'g Stmt 2-4. Through its Prehearing Statement, Respondent admitted liability for failure to timely prepare Forms I-9 for the forty-six identified individuals. *Id.* at 1-2. On June 22, 2020, Complainant filed a Response to Respondent's Proposed Stipulations.

Pending before the Court are Complainant's Motion for Summary Decision, filed August 7, 2020, and Respondent's Motion for Summary Disposition, filed on August 10, 2020. This Order resolves these motions only as to liability.

II. LEGAL STANDARDS

A. Summary Decision

The OCAHO Rules provide that an administrative law judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . 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).³ OCAHO precedent has held that "[a]n issue of fact is genuine only if it has a real basis in the record" and a "genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).⁴

a failure to *timely* prepare and/or present the Forms I-9 at issue. *Id.* (emphasis added). Respondent admitted to the alleged violation as a "failure to timely prepare," and Complainant did not amend the complaint. R's Prehr'g Stmt 2; C's Prehr'g Stmt 2; *see also United States v. Sal's Lounge*, 15 OCAHO no. 1394, 1-2 (2021) (citing 28 C.F.R. § 68.9(e), and then citing Fed. R. Civ. P. 15(a)(1)-(2)). The Court will thus consider the allegation as "failure to timely prepare and/or present."

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

⁴ 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 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>.

“Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution.” *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986)). “[T]he party opposing the motion for summary decision ‘may not rest upon the mere allegations or denials’ of its pleadings, but must ‘set forth specific facts showing that there is a genuine issue of fact for the hearing.’” *United States v. 3679 Commerce Pl., Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). “The Court views all facts and reasonable inferences ‘in the light most favorable to the non-moving party.’” *United States v. Prima Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted). Federal Rule of Civil Procedure 56(c), permissible guidance for OCAHO proceedings, allows an ALJ to consider “admissions on file” for the basis of summary decision. *United States v. Maverick Constr., LLC*, 15 OCAHO no. 1405, 1 (2021) (citing 28 C.F.R. § 68.1, and then citing *United States v. St. Croix Pers. Servs., Inc.*, 12 OCAHO no. 1289, 9 (2016)).

B. Employer Verification Requirements

Under 8 U.S.C. § 1324a, the Government bears the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment verification requirements. *United States v. Metro Enters.*, 12 OCAHO no. 1297, 7 (2017) (citing *United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013) (citation omitted)).

The regulations specify what is required of employers: employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the Forms I-9 for inspection by the Government upon three days’ notice. 8 C.F.R. § 274a.2(b)(2)(ii). The employer ensures that an employee completes section 1 of the Form I-9, by signing and dating the Form I-9, no later than the first day of employment. 8 C.F.R. § 274a.2(b)(1)(A), (ii)(B)); *United States v. Imacuclean Cleaning Servs., LLC*, 13 OCAHO no. 1327, 3 (2019) (citing *United States v. A&J Kyoto Japanese Rest.*, 10 OCAHO no. 1186, 5 (2013)). The employer must sign section 2 of the Form I-9 for employees employed for three business days or more, within three business days of the employee’s first day of employment. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii)); *United States v. Alpine Staffing, Inc.*, 12 OCAHO no. 1303, 9 (2017). The employer must retain the 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).

Generally, “paperwork violations are ‘continuous’ violations until they are corrected or until the employer is no longer required to retain the Form I-9 pursuant to IRCA’s retention requirements.” *United States v. Psychosomatic Fitness, LLC*, 14 OCAHO no. 1387a, 9 (2021) (citations omitted). However, timeliness verification failures are “frozen in time” at the point when the employer does not properly complete an I-9 form by the date required, and they cannot be cured. *United States v. T-Ray Constr. Co.*, 13 OCAHO no. 1346, 7 (2020) (citations omitted). “If a timeliness violation involves the employee’s failure to sign section 1 of the I-9, the violation occurred on the first business day after hiring.” *Id.* “If a timeliness violation involves the employer’s failure to sign section 2, the violation occurred on the fourth business day after hiring.” *Id.*

III. DISCUSSION

A. Position of the Parties

1. Complainant's Motion for Summary Decision

Through its motion, Complainant argues that the Court should enter a summary decision in its favor for the § 1324a(a)(1)(B) violations alleged in the Complaint. C's Mot. Summ. Dec. 2, 18 (citing Fed. R. Civ. P. 56(f), and then citing 28 C.F.R. § 68.38(c)). Specifically, Complainant asserts that there is no genuine issue of material fact as to liability because Respondent admitted to forty-six § 1324a(a)(1)(B) violations.⁵ *Id.* at 7, 18; *see* R's Prehr'g Stmt 2. Complainant maintains that the issue of penalty can be resolved based upon the exhibits presented.⁶ *See* C's Mot. Summ. Dec. 18.

In support of its motion, Complainant provided: the Notice of Inspection (NOI); the NIF; the Notice of Suspect Documents (NOSD); Respondent's business license information; Respondent's employee roster and roster of terminated employees (as of August 2020); the forty-six Forms I-9 for individuals named in the Complaint; Respondent's payroll information and 2017–2018 state quarterly wage reports; and a declaration from Complainant's auditor.

2. Respondent's Motion for Summary Disposition

Respondent's motion does not directly address the issue of liability. Rather, Respondent states that Complainant's proposed fine is "punitive and disproportionate," and analyzes statutory and nonstatutory factors. *See generally* R's Mot. Summ. Disp. 2–7. In support of its motion, Respondent provided: 2018–2019 state unemployment tax filings; the NOSD; a list of termination dates for the persons identified in the NOSD; a declaration from its CEO, with an attached 2020 cash flow report; and 2020 state quarterly wage reports.

B. Stipulations

In accordance with the Court's March 11, 2020, Order, both parties included proposed stipulations in their Prehearing Statements. *See* 28 C.F.R. § 68.47. Complainant further responded to Respondent's proposed stipulations in a subsequent filing. Upon review of these submissions, the Court finds that the parties stipulated to the following and receives these facts in evidence:

- a. "Respondent is a Limited Liability Company registered in the State of Washington." C's Prehr'g Stmt 2; R's Prehr'g Stmt 2.

⁵ Complainant's motion appears to conflate "failure to prepare and/or present Forms I-9" and "failure to timely prepare and/or present Forms I-9." These are distinct violations of 8 U.S.C. § 1324a(a)(1)(B). Complainant charged Respondent with one count of "failure to timely prepare and/or present Forms I-9" in the Complaint. Compl. 3–5.

⁶ While both parties' motions address penalty assessment, the Court defers discussion given the bifurcation of proceedings. *See infra* Part II.D (Penalties).

- b. “Respondent was served a [NOI] on July 16, 2018 by Complainant, through its agents and/or officers.” C’s Prehr’g Stmt 2; R’s Prehr’g Stmt 2.
- c. “Respondent failed to timely prepare and/or present Forms 1-9 for 46 of its employees. These employees are included on the Complaint under Count I. This was determined by a review of Respondent’s Employee Roster, Washington State Quarterly Wage Reports, Form I-9’s and the identity documentation furnished by the employees to Respondent.”⁷ C’s Prehr’g Stmt 2; R’s Prehr’g Stmt 2.
- d. “Of the 46 deficient Forms 1-9 provided to Complainant, 45 failed to complete Section 2 within three days of the employee’s date of hire. These employees are included on the Complaint under Count I, paragraph A . . . [.]” C’s Prehr’g Stmt 2–3; R’s Prehr’g Stmt 2.
- e. “Of the 46 deficient Forms 1-9 provided to Complainant, 18 were found to have Section 1 completed after the employee’s date of hire, or were undated. These employees are included on the Complaint under Count I, paragraph A . . . [.]” C’s Prehr’g Stmt 3–4; R’s Prehr’g Stmt 2.
- f. “M.P. checked the USC and LPR boxes and included her alien number.” R’s Prehr’g Stmt 2; *see* C’s Prehr’g Stmt 5.
- g. “[T]he employment authorization document for M.E.A. was erroneously entered as a [L]ist A document.” R’s Prehr’g Stmt 2; *see* C’s Prehr’g Stmt 5.
- h. “M.E.A.[’s] work authorization expired May 18, 2018,” R’s Prehr’g Stmt 3, and M.E.A. was the “individual [who] provided a work authorization card that later expired.” C’s Prehr’g Stmt 5.
- i. “Of the 46 deficient Forms I-9 provided to Complainant, one was found to have no entries in Section 2 whatsoever, found under Count I, paragraph A (45)[.]” C’s Prehr’g Stmt 6; R’s Prehr’g Stmt 3.
- j. “Respondent has not previously been the subject of a Form I-9 inspection.” C’s Prehr’g Stmt 6; R’s Prehr’g Stmt 3.
- k. “Respondent hired HR Manager Patricia Lucio on February 6, 2018.” R’s Prehr’g Stmt 3; C’s Resp. Stip. 1.
- l. “43 [of the] 1-9 forms identified by the Complaint at pp. 2-3 as untimely were for employees hired before the 26 2018 hiring date of Ms. Lucio and were completed corrected by Ms. Lucio in the months after her own hire date and prior to the HSI audit.” R’s Prehr’g Stmt 3; C’s Resp. Stip. 1.

⁷ The Appendix lists the forty-six individuals named in the Complaint. While the Appendix has the full names for these individuals, this Order uses initials to ensure privacy.

- m. “Of [the] untimely 1-9's, just three of the employees were hired after Lucio commenced employment: O.G., J.M., and K.W. The [others] were hired before Lucio's hire date, and she completed the defective forms after she was hired.” R’s Prehr’g Stmt 3; C’s Resp. Stip. 1.
- n. “Respondent should be considered a ‘small business.’” C’s Prehr’g Stmt 6; *see* R’s Prehr’g Stmt 3 (admitting Respondent is a “small employer”).

C. Liability

Complainant contends that Respondent failed to timely prepare and/or present Forms I-9 for the forty-six employees listed in Count I of the Complaint. As noted above, an employer must ensure that an employee completes section 1 of the Form I-9 no later than the first day of employment. *Imacuclean Cleaning Servs., LLC*, 13 OCAHO no. 1327, at 3 (citations omitted). An employer must also ensure that it completes section 2 of the Form I-9 within three business days of an employee’s first day of employment. *Alpine Staffing, Inc.*, 12 OCAHO no. 1303, at 9 (citation omitted).

The Court finds that Respondent is summarily liable for failing to timely prepare forty-six Forms I-9. *See* R’s Prehr’g Stmt 2; C’s Prehr’g Stmt 2. Respondent stipulated that it engaged in the conduct described at Count I of the Complaint. *See id.*; *see also* 28 C.F.R. § 68.47 (“Stipulations may be received in evidence . . . and when received in evidence, shall be binding on the parties[.]”). Moreover, the ALJ may consider “admissions on file” as the basis for summary decision per Federal Rule 56(c). *Maverick Constr., LLC*, 15 OCAHO no. 1405, at 4 (citations omitted). From Respondent’s admission on the paperwork timeliness violations, Complainant has met its burden of proof and is entitled to judgment as a matter of law on liability for Count I.

The Court sets forth the violation date for each timeliness violation in Appendix A. *See T-Ray Constr. Co.*, 13 OCAHO no. 1346, at 7. OCAHO precedent recognizes that “[a]n employer is liable for only one violation per I-9, despite the presence of other violations.” *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 34 n.49 (2022) (citations omitted). Accordingly, Appendix A reflects one violation for each Form I-9 in violation of § 1324a(a)(1)(B).⁸

D. Penalties

The Court will bifurcate the issues of liability and penalty assessment given the passage of time and the COVID-19 pandemic. *See, e.g., United States v. Bazan’s Enters., Inc.*, 15 OCAHO no. 1408, 6 (2021); *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355, 8–9 (2020). The decision to bifurcate proceedings is in the Court’s discretion. *Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355, at 8–9 (citing *Hernandez v. Farley Candy Co.*, 5 OCAHO no. 781, 464, 465 (1995)). Complainant’s Motion for Summary Decision and Respondent’s Motion for Summary Disposition both rely on Edgemont Group LLC’s financial and business information largely

⁸ For example, a Form I-9 that had both an untimely prepared section 1 and section 2 would only be counted as one timeliness violation.

predating the COVID-19 pandemic. *E.g.*, C’s Mot. Summ. Dec. 17–18; R’s Mot. Summ. Disp. 4–6, Ex. R-1, R-4, R-6.

In light of these factors, the Court permits Respondent to submit updated financial information relevant to the penalty determination, no later than January 19, 2023. If Respondent files supplemental financial evidence, Complainant may file a response addressing the financial information only, no later than February 2, 2023. The Court will assess the penalties in a subsequent order.

IV. CONCLUSION

The undersigned GRANTS IN PART Complainant’s Motion for Summary Decision and finds that Respondent is liable for forty-six violations of 8 U.S.C. § 1324a(a)(1)(B). The Court bifurcates the issues of liability and penalty assessment.

Respondent may submit updated financial information no later than January 19, 2023. If Respondent submits supplemental financial evidence, Complainant may file a response no later than February 2, 2023.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. The Court incorporates the stipulations listed in Part III.B as findings of fact.
2. Appendix A sets forth each timeliness violation.
3. Edgemont Group, LLC’s financial and business information in the record largely predates the COVID-19 pandemic.

B. Conclusions of Law

1. Edgemont Group, LLC, is an entity within the meaning of 8 U.S.C. § 1324a(a).
2. The administrative law judge shall enter a summary decision for either party where, as here, “the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact that a party is entitled to summary decision.” 28 C.F.R. § 68.38(c).
3. The Government met its burden of proof and is entitled to judgment as a matter of law on liability for Count I of the Complaint based on Respondent’s admission to failure to timely prepare forty six Forms I-9 as permitted by Federal Civil of Civil Procedure 56(c), permissible guidance for OCAHO proceedings, and which allows the administrative law judge to consider “admissions on file” for the basis of

summary decision. *United States v. Maverick Constr., LLC*, 15 OCAHO no. 1405, 1 (2021) (citing 28 C.F.R. § 68.1, and then citing *United States v. St. Croix Pers. Servs., Inc.*, 12 OCAHO no. 1289, 9 (2016)).

4. Edgemont Group, LLC is summarily liable for forty-six violations of 8 U.S.C. § 1324a(a)(1)(B), as the company did not either ensure that an employee completed section 1 of the Form I-9 no later than the first day of employment, or that the company completed section 2 of the Form I-9 within three business days of an employee's first day of employment. *United States v. Imacuclean Cleaning Servs., LLC*, 13 OCAHO no. 1327, 3 (2019) (citations omitted); *United States v. Alpine Staffing, Inc.*, 12 OCAHO no. 1303, 9 (2017) (citations omitted).
5. Edgemont Group, LLC's forty-six violations of 8 U.S.C. § 1324a(a)(1)(B) are "frozen in time" at the point when the company did not properly complete the Form I-9 by the date required, and cannot be cured. *United States v. T-Ray Constr. Co.*, 13 OCAHO no. 1346, 7 (2020) (citations omitted).
6. Appendix A reflects one violation by Edgemont Group, LLC for each Form I-9, as the company is liable for only one violation per Form I-9. *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 34 n.49 (2022) (citations omitted).
7. The Court exercises its discretion to bifurcate the liability and penalty assessment, given the passage of time and the COVID-19 pandemic. *United States v. Bazan's Enters., Inc.*, 15 OCAHO no. 1408, 6 (2021); *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355, 8–9 (2020).

SO ORDERED.

Dated and entered on December 22, 2022.

Honorable Jean C. King
Chief Administrative Law Judge