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

February 18, 2016

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 15A00016
HAIR U WEAR, LLC Respondent.	)	

FINAL DECISION AND ORDER

APPEARANCES:

Michele Henriques
for complainant

Herbert Greenman
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 (2012). On December 1, 2014, the United States Department of Homeland Security, Immigration and Customs Enforcement (complainant, ICE, or the government) filed a complaint consisting of a single count against Hair U Wear, LLC (respondent or the company). The company filed an answer and the parties completed prehearing procedures.

Presently pending is the government's Motion for Summary Decision. No response to this motion has been filed. As discussed in detail below, the government's Motion for Summary Decision will be granted in part.

II. BACKGROUND INFORMATION AND POSITIONS OF THE PARTIES

Hair U Wear is a small company located in Buffalo, New York.[1] On or about January 21, 2014, the government served Hair U Wear with a Notice of Inspection.[2] The Notice of Inspection

[1] The Notice of Inspection identifies Mrhsen Slah as the owner, while the government's Motion for Summary Decision alleges that Ammar Shaibi is the owner and operator of Hair U Wear.

informed Hair U Wear that ICE had scheduled a review of its Employment Eligibility Verification (Forms I-9), and Hair U Wear complied with the Notice of Inspection by presenting the requested documentation to ICE on January 30, 2014.[3]

On June 30, 2014, the government personally served Hair U Wear with a Notice of Intent to Fine. The Notice of Intent to Fine identified that respondent failed to timely prepare Forms I-9 for five employees, and that respondent failed to present a Form I-9 for one employee. As a result of these violations, ICE assessed a fine of $5329.50. In a letter dated July 25, 2014, Hair U Wear requested a hearing before an Administrative Law Judge.

On December 1, 2014, ICE filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint's single count alleged that respondent failed to prepare Forms I-9 within three days of employment and/or failed to present to the government the Forms I-9 for the following six individuals: (1) Ali S. Ahmed Alshuaibi; (2) Ahmed F. Shaibi; (3) Ammar A. Shaibi; (4) Saleh A. Shaibi; (5) Maryam Mohamed; and (6) Jafar Ahmed. The complaint also identified ICE's penalty assessment against Hair U Wear in the amount of $5329.50 for violating 8 U.S.C. § 1324a(a)(1)(B).

On February 11, 2015, Hair U Wear filed its three-sentence answer to the complaint. Hair U Wear denied all of the allegations contained in the complaint. Hair U Wear also denied "any other allegations not heretofore admitted . . . ." The company did not raise any affirmative defenses and requested that OCAHO dismiss the complaint.

On March 24, 2015, ICE filed its prehearing statement, which included five proposed exhibits as attachments. ICE attached respondent's Form NYS-45-ATT, Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return (Form NYS-45-ATT), which lists six employees, their social security numbers, and the wages each employee earned during the tax year 2013. *ICE's Prehearing Statement*, Attachment G5. Notably, the six individuals listed on the Form NYS-45-ATT are the same individuals listed in Count I of ICE's complaint: (1) Ali S. Ahmed Alshuaibi; (2) Ahmed F. Shaibi; (3) Ammar A. Shaibi; (4) Saleh A. Shaibi; (5) Maryam Mohamed; and (6) Jafar M. Ahmed.

Additionally, ICE attached copies of the Forms I-9 it received from respondent. *ICE's Prehearing Statement*, Attachment G4. ICE also submitted two letters attached to its prehearing statement that appear to have been completed by Hair U Wear on January 28, 2014. *Prehearing Statement*, Attachment G2. One letter lists the "current" employees and their dates of hire as follows: (1) Ali S. Ahmed Alshuaibi, October 1, 2006; (2) Ahmed F. Shaibi, April 1, 2011; (3)

See Government's Prehearing Statement, Attachment G-1; *Motion for Summary Decision* at 2.

[2] The Notice of Inspection does not indicate whether service was made in person or by "certified mail, return receipt requested." However, the government states in its Motion for Summary Decision that it served the Notice of Inspection on respondent on January 21, 2014.

[3] Although the government's Notice of Inspection contains an erroneous proposed inspection date of "December 23, 2013," the government identifies in its Motion for Summary Decision that respondent presented its documentation to ICE on "January 30, 2014."

Ammar A. Shaibi, October 1, 2003; (4) Saleh A. Shaibi, April 1, 2008; and (5) Maryam Mohamed, April 1, 2012. The second letter states, "Some employees that were employed were terminated before January 1, 2012 and some are still currently employed."

The government also proposed numerous stipulated facts in its prehearing statement. Proposed stipulated facts numbered one through nine primarily relate to the procedural history of the case. The tenth proposed stipulated fact is that respondent hired all of the employees listed in the complaint after November 6, 1986, despite respondent denying this fact in its answer. The proposed stipulated facts numbered eleven through fourteen directly relate to the government's penalty assessment, and these stipulations appear to favor respondent company with respect to ICE's fine assessment as follows: (a) respondent company is a small business; (b) there is no evidence that respondent has acted in bad faith; (c) the government's audit did not reveal the employment of unauthorized aliens; and (d) respondent does not have a prior history of violating the employment eligibility verification requirements at 8 U.S.C. § 1324a(a)(1)(B).

Moreover, the government's prehearing statement also set forth the relevant legal standards, including: the duty of employers to properly prepare, retain, and produce Forms I-9; the distinction between Form I-9 violations that are substantive and violations that are technical and procedural; and the assessment of penalties. ICE asserted that based on its inspection of Hair U Wear's Forms I-9, the company engaged in six separate violations of INA § 274A(a)(1)(B). In addition, the government provided the calculation it used in determining the appropriate fine, which included adjustment for mitigating and aggravating factors.

As explained in its prehearing statement, ICE determined that Hair U Wear had a 100 percent violation ratio because there was at least one Form I-9 violation for each of the six individuals employed by Hair U Wear during the inspection period. As such, ICE assessed a base fine per its guidelines at the highest rate of $935 per violation for each of the six violations. Next, ICE set forth its penalty calculation considering the five statutory factors as follows:

> Specifically, the baseline penalty of $935.00 per violation was mitigated by five percent (-$46.75) given the small size of Respondent's business. The baseline penalty was unaffected by a neutral determination relating to bad faith. The baseline penalty was further mitigated by five percent (-46.75) given the absence of illegal workers during the period of inspection. The baseline penalty was mitigated another five percent (-$46.75) given the absence of any prior non-compliance. The baseline penalty was aggravated by five percent (+46.75) given the seriousness of the violations noted. The resulting fine of $888.25 per violation was assessed for each of the violations noted. The resulting total fine assessed for the substantive verification violations is $5,329.50.

ICE's Prehearing Statement at 8-9.

Although ICE set forth in detail its calculation of the assessed penalty, ICE's calculations of $888.25 per violation and a total penalty amount of $5329.50 do not add-up properly based on

the above-listed discussion of factors: one aggravating factor and three mitigating factors. Importantly, ICE provides an additional penalty assessment in its Motion for Summary Decision, whereby it assesses two mitigating factors instead of three mitigating factors. The fine assessment in the Motion for Summary Decision adds up properly to ICE's per violation penalty calculation of $888.25 and total penalty calculation of $5329.50.

Respondent filed its prehearing statement on or about June 23, 2015. In its prehearing statement on pages three and four, respondent argued that it "does not acknowledge the existence of any of the violations noted in the Complaint" and that it has not "engaged in the 6 violations." Hair U Wear further contended that "it hopes to show that the individuals employed by Respondent were not unauthorized aliens."[4] *Respondent's Prehearing Statement* at 3. Hair U Wear also claimed that it complied with the employment eligibility verification requirements, "at the latest, after the Notice of Inspection." *Id*. Regarding the fines, respondent claimed that the fines "should not be imposed." *Id*. Respondent attached to its prehearing statement copies of the Notice of Inspection, Notice of Intent to Fine, and the United States Citizenship and Immigration Services (USCIS) Handbook for Employers (M-274).

Respondent also attached copies of five Forms I-9 and copies of employee documentation used to complete section 2 of the Forms I-9.[5] A review of all documentation submitted reveals a discrepancy between two Forms I-9 filed and the names of two employees listed in the complaint. The Form I-9 for "Saleh A. Shaibi" states in section 1 within the box for "Other Names Used (if any)" the following name: "Ahmed F. Shaibi." However, both the complaint and the form NYS-45-ATT list the names "Ahmed F. Shaibi" and "Saleh A. Shaibi" as separate and distinct employees with different social security numbers, both of whom were employed and earned wages during the period of inspection. Although the Form I-9 for Saleh A. Shaibi indicates that Saleh A. Shaibi and Ahmed F. Shaibi are a single person, the information in the Form NYS-45-ATT contradicts this assertion due to the different social security numbers and wages for each individual.

Interestingly, the social security number listed on the Form NYS-45-ATT for "Ahmed F. Shaibi" is the same social security number listed on the Form I-9 presented for "Ahmed Fadel A. Mohamed." However, although both respondent and ICE attached to their prehearing statements Forms I-9 for Ahmed Fadel A. Mohamed, showing a hire date of April 1, 2011, this individual is not listed in the complaint and is not listed on the form NYS-45-ATT as an employee.[6]

---

[4] The government concedes in its proposed stipulated facts that the evidence shows Hair U Wear did not employ unauthorized individuals during the period of inspection. *See Government's Prehearing Statement* at 3.

[5] Although Respondent submitted only one page of the Forms I-9 for Maryam Mohamed and Saleh A. Shaibi, the copies of the Forms I-9 for these employees filed by ICE with its prehearing statement contain both pages constituting complete Forms I-9 for these two employees.

[6] ICE submitted two letters attached to its prehearing statement that appear to have been completed by Hair U Wear on January 28, 2014. One lists current employees and the other states, "Some employees that were employed were terminated before January 1, 2012 and some

Respondent's Prehearing Statement, Attachment; *ICE's Prehearing Statement*, Attachment G5. Therefore, whether Ahmed Fadel A. Mohamed is an employee or whether respondent committed a paperwork violation with respect to Ahmed Fadel A. Mohamed is not under consideration in this case because ICE failed to identify this individual in Count I of the complaint.[7]

A review of the four remaining Forms I-9 reveal that the employer failed to affix a date in the certification portion of section 2 on all Forms I-9 and that the employees failed to affix a date next to their signatures in section 1 of all Forms I-9. Although the version of the Form I-9 used by respondent for all employees was published on March 8, 2013, the "first day of employment" for these employees predate the version of the Form I-9 used. Specifically, the employer listed in section 2 of the 2013 Forms I-9 first dates on the job for its employees as follows: October 1, 2003; October 1, 2006; April 1, 2008; and April 1, 2012. Therefore, the dates employment began for all of these employees predate the issuance of the version of the Form I-9 used, and there is no evidence to prove when these Forms I-9 were completed because the employer and employees failed to date the forms.

Respondent also attached copies of two documents that do not appear to be related to this case: a document entitled "Commercial Package Policy Summary Page" from Technology Insurance Company Inc. for Saleh K Mohammed; and an ICE Notice of Inspection for "Players Sports." These two documents that appear unrelated to the above-captioned case will not be considered. *Respondent's Prehearing Statement*, Attachments.

On August 20, 2015, a telephonic prehearing conference was held, and respondent alleged during the conference that it is unable to pay the penalty assessed by the government. As a result, the parties were encouraged to discuss settlement negotiations and initiate discovery requests. The government informed respondent that it would be seeking discovery in the forms of Hair U Wear's tax returns in order to assess its ability to pay the fine.

On September 22, 2015, complainant filed a Motion To Compel Discovery, requesting that OCAHO compel respondent to turn over its tax returns. In the Motion To Compel, the government outlines the attempts made to engage in conversation with respondent's counsel and attempts made to secure the tax returns prior to seeking judicial intervention. Additionally, the government explained why the tax return were needed and provided legal precedent to support the arguments as to why the tax returns were needed.

---

are still currently employed." These letters do not explain the name and social security number conflicts related to Ahmed Fadel A. Mohamed and Ahmed F. Shaibi.

[7] Had the complaint listed Ahmed Fadel A. Mohamed in Count I and had ICE provided an explanation for this individual's Form I-9, then this individual's Form I-9 could have been considered in this case. Moreover, if the name "Ahmed F. Shaibi" had been listed in the alias box in section 1 of the Form I-9 for Ahmed Fadel A. Mohamed, it might have been reasonable to conclude that these two names are for a single individual in light of their common social security number and date of hire. However, without any explanation in the parties' filings, the relationship, if any, between Ahmed Fadel A. Mohamed and Ahmed F. Shaibi has not been proven by a preponderance of the evidence

Respondent did not file a response to the Motion to Compel. *See* 28 C.F.R. § 68.11(b). An Order Granting ICE's Motion to Compel Discovery was granted, instructing respondent to produce copies of the company's corporate tax returns no later than November 20, 2015. There is no evidence to suggest that respondent complied with the Order Granting the Motion to Compel.

Complainant filed a Motion for Summary Decision on October 20, 2015 (Government's Motion).[8] In the Government's Motion, ICE contends that it has satisfied its burden of proof as to respondent's liability for violating the INA, that its penalty assessment should be upheld, and that the government is entitled to summary decision without a hearing as there is no genuine issue of material fact in this case. *Government's Motion* at 3-8. The government reiterates the arguments previously discussed in its prehearing statement. Initially, the government claims that respondent hired all employees listed in the complaint after November 6, 1986, and that all employees were employed in the United States, which is a threshold requirement for proving violations of the employment eligibility verification requirements. *Government's Motion at* 3, 9. In support of these claims, the government points to the Form NYS-45-ATT, which is proof of respondent employing the six individuals listed in Count I during the period at issue in this case.[9] *Government's Motion at 9.*

Next, the government alleges that it has met its burden of proving that respondent is liable for all six violations set forth in Count I of the complaint. *Government's Motion at* 9-10. Specifically, the government argues that respondent signed but failed to date the Forms I-9 for 4 employees, thereby failing to "prepare" Forms I-9 within three days of hire as required by the employment eligibility verification requirements. Additionally, the government argues that respondent is liable for failing to "present" one Form I-9 for inspection when requested by ICE Forms I-9. *Government's Motion at 8-10.* The government also claims that "no genuine issue of material fact exists with respect to Respondent's liability for failing to prepare and/or present Forms I-9, as alleged in Count I of the complaint." The government claims that the evidence of record "further establishes by a preponderance of the evidence that Respondent violated section

[8] Complainant attached four exhibits to its Motion for Summary Decision, labeled "GA-GD." These exhibits consist of a list of "all current employees and hiring date for each employee," a Form NYS-45-ATT, a State of New York Department of State Filing Receipt, and an ICE Memorandum to File. These attachments do not pertain to the Hair U Wear case and will not be considered. These documents relate to the business "Wave Green, Inc. d/b/a Golden Farm Market," who is the respondent in another, unrelated case in this forum. It is important to note that respondents Hair U Wear and Waive Green are represented by the same attorney, and that the government's filings in Hair U Wear and Wave Green are being managed by the same ICE attorney. *Government's Motion,* Exh. B.

[9] Although the government claims that it attached a Certificate of Authority showing that respondent was first authorized to conduct business in the State of New York on December 10, 2009, no such certificate is attached to the Government's Motion and no such certificate has been introduced into evidence. Therefore, the alleged Certificate of Authority is not in the record, and any claims with respect to this certificate will not be considered. *Government's Motion* at 9.

274A(a)(1)(b) of the INA, 8 U.S.C. § 1324a(a)(1)(B), as alleged in Count I." *Government's Motion* at 10.

In its Motion, ICE argued that its penalty assessment of $5329.50 is in accordance with ICE guidelines, should be upheld, and represents "an objective review of the totality of the circumstances." *Government's Motion* at 10-12. Specifically, the government argues that it "utilized a detailed mathematical formula to determine the penalty amount . . ." including the base "penalty determined by the percentage of violations as related to the total number of employees for which Forms I-9 are required . . . ." *Government's Motion* at 10. The government further explained its penalty assessment as follows:

> Respondent is identified as a small business, and no unauthorized aliens were identified during the course of the investigation. Consequently, Complainant mitigated the baseline penalty by five percent for each of these two fine factors . . . . That said, the large number of employees for whom no Form I-9 was prepared or presented remains a serious concern and an aggravation of the penalty was found to be warranted for an additional five percent. Consistent with its internal guidance . . . , Complainant assessed a fine in the amount of $5329.50.

Government's Motion at 11.

Importantly, this explanation of the government's fine assessment differs from the explanation previously provided in ICE's prehearing statement. In the prehearing statement, ICE explained that its penalty assessment included consideration of "three" mitigating factors and "one" aggravating factor. After reviewing ICE's calculations in its prehearing statement, it was clear that the numbers did not "add up" to the assessed penalty amount. However, in ICE's Motion for Summary Decision, ICE identifies only "two" mitigating factors (small size of the business and the lack of unauthorized aliens) and "one" aggravating factor (seriousness of the violation). Using the mitigating and aggravating factors assessed in the government's Motion for Summary Decision, the government's fine assessment amounts to $888.25 per violation and a total fine amount of $5329.50.[10] Finally, the government argues that its fine assessment of $5329.50 comports with internal ICE guidance, and that it was appropriately calculated by considering mitigating and aggravating factors based on "an objective review of the totality of the circumstances." *Government's Motion* at 10-12.

[10] The actual fine assessed is calculated as follows: baseline penalty amount of $935 (for more than 50 percent Form I-9 violations to number of employees ratio), less $93.50 for the "two" mitigating factors (-$46.75 for small business size and -$46.75 for failure to hire unauthorized workers) and adding $46.75 for the "one" aggravating factor (+$46.75 for seriousness of the violations), which results in a penalty assessment of $888.25 per violation, and a total penalty amount of $5329.50 for six violations.

The government contends that respondent made verbal assertions about a financial inability to pay the fine assessed, and the government alleges making multiple attempts to discuss settlement and secure respondent's tax returns to assess respondent's ability to pay the fine. The government argues that "no reduction in the properly assessed fine should be considered unless and until the corporate tax returns are submitted for examination and review." The government argues that its fine assessment should be upheld, citing *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 673 (2000),[11] for the proposition that the Administrative Law Judge in *Hernandez* held "that there is no need for *de* novo redetermination of the penalty when the assessment made by ICE is supported by the record."[12] *Government's Motion* at 12. As such, the government seeks enforcement of ICE's penalty assessment of $5329.50.

Respondent did not file a response to the Government's Motion For Summary Decision. *See* 28 C.F.R. §§ 68.11(b), 68.38(a) (providing 10 days within which to respond to a Motion for Summary Decision). Therefore, only the Government's Motion for Summary Decision is being adjudicated. 28 C.F.R. § 68.38(a).

III. DISCUSSION

A. Applicable Legal Standards

1. Summary Decision

OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge "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." Relying on United States Supreme Court precedent, OCAHO case law has established that "an

[11] 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.

[12] Contrary to the government's assertion in its prehearing statement that the Administrative Law Judge in *Hernandez* held "that there is no need for *de novo* redetermination of the penalty when the assessment made by ICE is supported by the record[,]" the Administrative Law Judge in *Hernandez* conducted a thorough *de novo* review of the government's penalty assessment and of the government's request for additional penalty enhancement. 8 OCAHO no. 1043 at 665-73. The Administrative Law Judge not only found that further penalty aggravation is not warranted, but also reduced the total fine assessment from $6925 to $5550, demonstrating that a *de novo* review was conducted. *Id.* at 673.

issue of material fact is genuine only if it has a real basis in the record . . . . 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, 1014-15 (1993) (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586-87 (1986)).

"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)). *See generally* FED. R. CIV. P. 56(e). OCAHO rule 28 C.F.R. § 68.38(b) sets forth that the 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." Moreover, "[a]ll facts and reasonable inferences to be drawn therefrom should be viewed in the light most favorable to the non-moving party." *United States v. Primera Enters.*, 4 OCAHO no. 615, 259, 261 (1994).

"Summary decision does not issue automatically, even when the nonmoving party fails to respond to a motion." *Four Seasons Earthworks,* 10 OCAHO no. 1150, at 3-4 (citing *United States v. Sourovova*, 8 OCAHO no. 1020, 283, 284 (1998)). Pursuant to OCAHO's rules at 28 C.F.R. §§ 68.38(b) and (c), the moving party is required to meet its burden of proof using evidence to show that there is no genuine issue of fact and that summary decision is warranted.

2. Burdens of Proof and Production

In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Clean Sweep Janitor Serv*., 11 OCAHO no. 1226, 2 (2014). In addition to proving liability, "[t]he government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), and must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121,159 (1997)." *United States v. Niche*, 11 OCAHO no. 1250, 6 (2015).

However, after the government has introduced evidence to meet its burden of proof, "the burden of *production* shifts to the respondent to introduce evidence . . . to controvert the government's evidence. . . . If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the government may be sufficient to satisfy its burden . . . ." *United States v. Durable, Inc.*, 11 OCAHO no. 1231, 5 (2014) (referencing *United States v. Alvand, Inc*., 2 OCAHO no. 352, 378, 382 (1991) (modification by the CAHO)).

As explained in *United States v. Kumar*, 6 OCAHO 833, 4 (1996),

> A summary decision, in other words, is not a penalty to be imposed for the failure of the nonmoving party to respond to a motion. Only if the evidentiary materials demonstrate by uncontradicted

> admissible evidence that the moving party would be entitled to judgment as a matter of law does the burden of production shift to the non-movant to set forth—by affidavit or otherwise—specific facts showing that there is a genuine issue. Assessing whether the movant has met this burden requires that the evidence be construed in the light most favorable to the non-movant, but only reasonable inferences need to be drawn.

The government has provided both arguments and evidence in an attempt to meet its burden of proving by a preponderance of the evidence Count I of the complaint, its penalty assessment, and its entitlement to summary decision. Currently, respondent has the burden of producing evidence and arguments to rebut the government's case and to rebut the evidence of record supporting the government's case. Because respondent has failed to provide any response to the government's Motion for Summary Decision, the cursory arguments and evidence contained in respondent's prehearing statement and answer will be considered for the purposes of rebutting the government's claims.

3. The Employment Verification Requirements

a. Form I-9 Obligations

Title 8 C.F.R. § 274a.2(b) requires employers to prepare and retain Forms I-9 for employees hired after November 6, 1986, and requires employers to produce the Forms I-9 for governmental inspection within three days' notice. *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014). An employee must complete section 1 of the Form I-9 and attest to his or her citizenship or immigration status in the United States by signing and dating the Form I-9 no later than the first day of employment. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury); 8 C.F.R. § 274a.2(b)(1)(i)(A). For employees employed three business days or more, employers must complete section 2 of the Form I-9 by signing and dating the certification within three days of an employee's first day of employment. 8 C.F.R. § 274a.2(b)(1)(ii), (iii).

Pursuant to 8 C.F.R. §§ 274a.2(b)(1)(ii) and (v), employers must examine an employee's identity and work authorization documents "to determine if the document reasonably appears to be genuine and to relate to the person presenting it. The person who examines the documents must be the same person who signs Section 2. The examiner of the documents and the employee must both by physically present during the examination." Form I-9 Instructions 03/08/13 at 3, https://www.uscis.gov/sites/default/files/files/form/i-9.pdf. After examining the documents, the employer must record the document-specific information under the List A or List B and C sections of the Form I-9, and the employer must attest under penalty of perjury that the employer has reviewed the documentation by signing and dating section 2 of the Form I-9. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury); 8 C.F.R. § 274a.2(b)(1)(i)(A).

Employers who make copies of employee identity and work authorization documents "must" retain those copies with the Forms I-9 or in employees' records; however, retaining copies of the documents "does not relieve the employer from the requirement to fully complete section 2 of the Form I-9." 8 C.F.R. § 274a.2(b)(3). *See Four Seasons Earthworks*, 10 OCAHO no. 1150, 2-

3 (2012). Civil money penalties are assessed when an employer fails to properly prepare, retain, or produce upon request the Forms I-9. 8 C.F.R. § 274a.10(b)(2).

b. Penalty Assessment

Civil money penalties are assessed for paperwork violations according to the following parameters established at 8 C.F.R. § 274a.10(b)(2): the minimum penalty is $110 and the maximum penalty is $1100 for each individual with respect to whom a paperwork violation occurred after September 29, 1999. Pertinent regulations and OCAHO case law set forth that if a paperwork violation is proven, then a fine must be assessed. 8 C.F.R. § 274a.10(b)(2) ("A respondent determined . . . to have failed to comply with the employment verification requirements as set forth in § 274a.2(b) shall be subject to a civil penalty . . . ."); *Keegan Variety*, 11 OCAHO no. 1238 at 7 (discussing that there is no fine waiver and a penalty must be assessed). As stated above, the government must prove by a preponderance of the evidence its penalty assessment and any aggravating factors enhancing the penalty assessment. *Niche*, 11 OCAHO no. 1250 at 6.

As set forth at 8 U.S.C. § 1324a(e)(5), the following factors must be considered when assessing civil money penalties for paperwork violations: (1) the size of the employer's business; (2) the employer's good faith; (3) the seriousness of the violations; (4) whether the employee is an unauthorized alien; and (5) the employer's history of previous violations. "The statute does not require that equal weight necessarily be given to each factor, nor does it rule out consideration of other factors." *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000). Although not an exhaustive list, additional factors that may be considered include economic information, a company's ability to pay the proposed penalty, and policies of leniency established by statute. *See Niche*, 11 OCAHO no. 1250 at 6-7.

B. Liability for Paperwork Violations

1. Hair U Wear's Form NYS-45-ATT and Forms I-9

ICE attached to its prehearing statement respondent's 2013 Form NYS-45-ATT, which lists as employees the six individuals identified in the government's complaint. The Form NYS-45-ATT is reliable for identifying employees who earned wages during the tax year 2013. Respondent failed to rebut the veracity of the Form NYS-45-ATT, and respondent has failed to proffer any other evidence that contradicts the list of employees on the Form NYS-45-ATT. Therefore, ICE has met its burden of proving by a preponderance of the evidence that the six individuals listed on the Form NYS-45-ATT and listed in Count I of the complaint were employees subject to the employment eligibility verification requirements.

The record does not contain Forms I-9 for employees Jafar M. Ahmed and Ahmed F. Shaibi. These two individuals are listed on the NYS-45-ATT as employees who earned wages in 2013. Ahmed F. Shaibi is listed as a "current" employee in a letter dated January 28, 2014. *ICE's Prehearing Statement*, Attachment G2. Both Jafar M. Ahmed and Ahmed F. Shaibi are listed in Count I of the Complaint as employees. To date, respondent has not provided any evidence to

rebut the status of these two individuals as employees, nor has respondent filed Forms I-9 for these employees. [13]

ICE and respondent filed as attachments to their prehearing statements copies of the four Forms I-9 at issue in this case for the following employees: (1) Ali S. Ahmed Alshuaibi; (2) Ammar A. Shaibi; (3) Saleh A. Shaibi; and (4) Maryam Mohamed. A review of the Forms I-9 clearly reveal that the employees failed to date section 1 and the employer failed to date section 2 of all Forms I-9. Respondent has not rebutted the evidence of record and has failed to show that the Forms I-9 were dated contemporaneously with the signing of the forms. In addition, respondent has failed to rebut ICE's evidence demonstrating that the Forms I-9 were not timely completed within three days of the employee's first day of employment.

Specifically, the evidence of record shows that all Forms I-9 were completed long after the employees' first dates of employment. First, the employer used the version of the Form I-9 issued in March 2013. However, the employer identified on the four Forms I-9 that the individual employees began employment on the following dates: (1) October 1, 2006; (2) October 1, 2003; (3) April 1, 2008; and (4) April 1, 2012. Because these initial dates of employment precede the date of issuance of the Form I-9, it is clear that the Forms I-9 were not completed within three days of employees beginning their jobs.

Second, respondent admitted in its prehearing statement that it complied with the Form I-9 requirements "at the latest, after the notice of inspection" in January 2014. *Respondent's Prehearing Statement* at 3. Respondent's admission that it complied with the Form I-9 requirements in 2014 also demonstrates its failure to timely complete its Forms I-9 within three days of the employees' initial employment date. Respondent did not present any evidence to the contrary and failed to rebut the evidence of record. Accordingly, ICE has presented evidence proving that respondent failed to present two Forms I-9 when requested by the government and that respondent failed to prepare four Forms I-9 within three days of its employees commencing employment as alleged in Count I of the complaint.

2. Hair U Wear Failed To Rebut the Evidence and is Liable for All Violations

Respondent Hair U Wear has failed to rebut any of the evidence of paperwork violations, notably by failing to raise any arguments other than a blanket "denial" of wrongdoing. Although respondent alleges that it complied with the employment eligibility verification requirements "at the latest, after the notice of inspection," the evidence clearly shows that the Form I-9 requirements were not fully satisfied. In fact, the statement of respondent coupled with the state

[13] Regarding Ahmed F. Shaibi, he is listed by social security number on the Form NYS-45-ATT. Although Ahmed F. Shaibi is listed as an alias on the Form I-9 for Saleh Shaibi, the Form NYS-45-ATT lists different social security numbers for these two individuals and different wage earnings for these two individuals. These obvious contradictions undermine any attempt to prove a Form I-9 was presented for Ahmed F. Shaibi. Additionally, as previously discussed, although Ahmed F. Shaibi has the same social security number as another individual named Ahmed Fadel A. Mohamed, this individual is not under consideration in this case because he was not listed in Count I of the complaint.

of the Forms I-9 in the record indicate that there was likely very little Form I-9 compliance until respondent was served with a notice of inspection in January 2014.

First, respondent has failed to rebut the evidence of record demonstrating that it failed to prepare and/or present Forms I-9 for employees Jafar M. Ahmed and Ahmed F. Shaibi. The Form NYS-45-ATT provided by the government identifies both Jafar M. Ahmed and Ahmed F. Shaibi as employees and shows that these employees earned wages during the 2013 tax year. *See Government's Prehearing Statement*, Attachment G5. The government, therefore, alleges that because these individuals were employees during the relevant period, respondent should have prepared and/or presented Forms I-9 for them. Respondent has not only failed to address the allegations in Count I, but also failed to rebut the evidence of record supporting its liability for failing to prepare and/or present Forms I-9 for Jafar M. Ahmed and Ahmed F. Shaibi. Therefore, the government has sustained its burden of proof by a preponderance of the evidence that respondent is liable for failing to present for inspection two Forms I-9 as alleged in Count I of the complaint. 8 U.S.C. § 1324a(a)(1)(B).

Second, respondent has failed to rebut the unequivocal evidence of record demonstrating its liability for failure to prepare timely Forms I-9 for four of the individuals listed in Count I. 8 U.S.C. § 1324a(a)(1)(B); *see also* 8 C.F.R. § 274a.2(b)(1)(i)-(ii). The Forms I-9 for Ali S. Ahmed Alshuaibi, Ammar A. Shaibi, Saleh A. Shaibi, and Maryam Mohamed do not contain dates of completion by the employees (in section 1) or the employer (in section 2). Thus, there is no way of ascertaining when respondent or its employees completed these forms. However, based on internally inconsistent information contained in these Forms I-9, it is evident that the forms were *not* completed within three days of the employees' hire dates as mandated by IRCA. Respondent used the version of the Form I-9 issued in March 2013 for all four employees. However, the four employees' initial employment dates predate issuance of the form as follows: (1) Ali S. Ahmed Alshuaibi, began employment on October 1, 2006; (2) Ammar A. Shaibi began employment on October 1, 2003; (3) Saleh A. Shaibi began employment on April 1, 2008; and (4) Maryam Mohamed began employment on April 1, 2012. Because the Forms I-9 for these four employees could not have been completed until March 2013, which is well after the dates of hire, the government met its burden of proving by a preponderance of the evidence that respondent is liable for failing to prepare within three days of hire Forms I-9 for four employees listed in Count I of the complaint.

Additionally, in its answer and prehearing statement, respondent simply "denied" all allegations contained in the complaint by refusing to "acknowledge the existence of any of the violations noted in the complaint." Moreover, respondent's mere assertions that it has not "engaged in any of the 6 separate violations," and that "it hopes to show that the individuals employed by respondent were not unauthorized" also fail to rebut the evidence of record. *Respondent's Prehearing Statement* at 3-4. It is important to note that the government proposed to stipulate to the fact that no unauthorized aliens were employed, and that the employment of unauthorized aliens is not an issue in this case.

Respondent has failed to come forward with contravening evidence to rebut the evidence of record supporting the government's case. Respondent has also failed to demonstrate the existence of a factual issue that might affect the outcome of the case and warrant a hearing. *See*

Sepahpour, 3 OCAHO no. 500 at 203. Because respondent provides no evidence to rebut the government's case and evidence, respondent has failed to satisfy its burden of production. *Durable*, 11 OCAHO no. 1231 at 5. The government has met its burden of proving by a preponderance of the evidence that respondent is liable for the six violations alleged in Count I of the complaint. In light of the absence of any material factual dispute, the government's Motion for Summary Decision with respect to liability for the violations in Count I will be granted.

C. Penalty Assessment

1. Penalty Must Be Imposed When Liability is Found

Respondent argued on page three of its prehearing statement that fines "should not be imposed" in this case. However, because the government has met its burden of proving by a preponderance of the evidence that respondent is liable for committing six violations of 8 U.S.C. § 1324a(a)(1)(B), fines must be imposed pursuant to 8 C.F.R. § 274a.10(b)(2). *See also Keegan Variety*, 11 OCAHO no. 1238 at 7.

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2). For first time violators, the minimum penalty for each individual with respect to whom a paperwork violation occurred after September 29, 1999, is $110, and the maximum penalty imposed is $1100. Therefore, in the instant case, the range of penalty assessment for respondent's six violations is between a minimum penalty of $660 and a maximum penalty of $6600.

2. The Government's Four Stipulated Penalty Assessment Factors

In its prehearing statement, the government proposed numerous stipulated facts, including four stipulated facts directly related to the factors the government considers when assessing penalties for paperwork violations. First, the government proposed stipulating to the fact that respondent is a small business. Second, the government proposed stipulating to the fact that there is no evidence showing respondent has acted in bad faith. Third, the government proposed stipulating to the fact that its audit did not reveal the employment of any unauthorized aliens. Fourth, the government proposed stipulating to the fact that respondent does not have a previous history of committing paperwork violations pursuant to 8 U.S.C. § 1324a(a)(1)(B).

In addition to these proposed stipulated facts, the government explained that its penalty assessment of $5329.50 is in accordance with ICE guidelines, should be upheld, and represents "an objective review of the totality of the circumstances." *Government's Motion* at 10-12. Specifically, the government argues that it "utilized a detailed mathematical formula to determine the penalty amount . . ." including the base "penalty determined by the percentage of violations as related to the total number of employees for which Forms I-9 are required . . . ." *Government's Motion* at 10. The government further explained its penalty assessment as follows:

> Respondent is identified as a small business, and no unauthorized aliens were identified during the course of the investigation. Consequently, Complainant mitigated the baseline penalty by five percent for each of these two fine factors . . . . That said, the large number of employees for whom no Form I-9 was prepared or presented remains a serious concern and an aggravation of the penalty was found to be warranted for an additional five percent. Consistent with its internal guidance . . . , Complainant assessed a fine in the amount of $5,329.50.

Government's Motion at 11.

Respondent has failed to challenge the penalty assessment, other than to claim that no penalty should be imposed. Respondent has not submitted any rebuttal evidence. ICE ultimately mitigated the penalty by five percent pursuant to two mitigating factors. However, viewing the evidence in the light most favorable to respondent and considering the totality of circumstances and relevant OCAHO case law, it appears that mitigation at eight percent for three statutory factors is appropriate due to the small size of the business employing six employees, the absence of unauthorized workers, and the lack of prior violations. This analysis is akin to ICE's original three mitigating factors assessment and equates to a fine of approximately $710 per violation for each untimely Form I-9. Additionally, as discussed below, penalty aggravation is warranted and will increase the fine.

3. The Seriousness of the Violations

ICE considered respondent's substantive violations, as discussed above, as serious, warranting aggravation of the penalty. "Paperwork violations are always potentially serious. The seriousness of a violation refers to the degree to which the employer has deviated from the proper form. A violation is serious if it renders the congressional prohibition of hiring unauthorized aliens ineffective." *United States v. Sunshine Bldg. Maint., Inc.*, 7 OCAHO no. 997, 1122, 1179-80 (1998) (internal citations omitted). "While all paperwork violations are potentially serious because the principal purpose of the I-9 form is to allow the employer to ensure that it is not hiring an individual who is unauthorized for work, the seriousness of each violation must be determined by examining the specific failure in each case." *United States v. American Terrazzo Corp.*, 6 OCAHO no. 877, 576, 593 (1996) (internal citations omitted).

An Administrative Law Judge's *de novo* review of the government's fine assessment can lead to a determination that differing degrees of seriousness exist among the paperwork violations, which can result in different fine assessments for each count. *See United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 10 (2015); *Niche*, 11 OCAHO no. 1250 at 10. Typically, a failure to prepare and/or present a Form I-9 is considered among the most serious of paperwork violations and considered a more serious violation than a failure to properly complete section 1 or 2 of the Form I-9. *Niche*, 11 OCAHO no. 1250 at 9-10.

Although none of the forms appear to have been completed contemporaneously with the hiring of any employees, the employees and employers attested to the accuracy of the Forms I-9. It is a

serious violation for an employee to fail to complete and attest to the accuracy of a Form I-9 on or before the first day of employment (but not before accepting the job). Additionally, it is a serious violation for an employer to fail to complete and attest to the accuracy of a Form I-9 within three business days of an employee's first day of employment. The failure to complete timely Forms I-9 constitutes a serious violation, but not as serious a violation as a failure to present Forms I-9, which is considered the most serious of paperwork violations. Although the government has met its burden of proof by a preponderance of the evidence demonstrating penalty enhancement for seriousness is warranted for the failure to present two Forms I-9, the failure to timely prepare the four Forms I-9 in this case are not as serious a violation as the failure to present two Forms I-9.

In light of the differing degrees "to which the employer has deviated from the proper form," it is appropriate to adjust the penalty assessed by ICE to mirror the differing degrees of seriousness of violations in this case. *Holtsville 811 Inc.*, 11 OCAHO no. 1258 at 10; *Niche*, 11 OCAHO no. 1250 at 10. Although penalty aggravation is warranted for all violations identified in Count I, the four violations for untimely preparation of Forms I-9 should be aggravated to a lesser degree than the two violations for failure to present Forms I-9. Therefore, the penalty assessment of $888.25 per violation for the two failures to present Forms I-9 will remain as originally assessed by ICE (equaling $1776.50 for failure to present two Forms I-9). However, the penalty for preparing four untimely Forms I-9 will be adjusted to $750 each (equaling $3000 for failure to prepare timely four Forms I-9), accounting for three mitigating factors and one aggravating factor. Accordingly, the new penalty assessment for all six violations listed in Count I of the complaint is $4776.50.

4. Other Penalty Assessment Factors

Respondent has failed to raise any additional factors for consideration in the penalty assessment. *See generally Holtsville 811 Inc.*, 11 OCAHO no. 1258 at 12-13; *Niche*, 11 OCAHO no. 1250 at 11-15. Although the government discussed in its prehearing statement, Motion to Compel, and Motion for Summary Decision that respondent had alleged an inability to pay for the penalty as assessed, respondent failed to provide any evidence or arguments to support consideration of financial hardship as a penalty assessment factor. Respondent had an opportunity to provide evidence of financial hardship throughout these proceedings, including in response to the Order Granting ICE's Motion to Compel Discovery. However, because respondent's pleadings are devoid of any allegations and the record is devoid of any evidence demonstrating a financial inability to pay the fine, any inability to pay the assessed penalty is not at issue in this case.

IV. CONCLUSION

The government proved by a preponderance of the evidence that respondent is liable for all six violations of 8 U.S.C. § 1324a(a)(1)(B) as charged in the complaint. Hair U Wear failed to rebut this showing by neither presenting any countervailing arguments or evidence, nor responding to ICE's Motion for Summary Decision or to the Order Granting Motion to Compel. Accordingly, the government met its burden by showing that no genuine issue of material fact exists with respect to liability, penalty assessment, or penalty aggravation. ICE's penalty assessment for the

two violations of failing to present Forms I-9 are upheld. However, additional penalty mitigation on account of the statutory factors of small business size, absence of unauthorized workers, and lack of prior violations is warranted for the four Forms I-9 that were not timely prepared. After conducting a *de novo* review, the undersigned finds that the proper penalty assessment for all six violations listed in Count I of the complaint is $4776.50. Thus, ICE's Motion for Summary Decision will be granted in part.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Hair U Wear, LLC, is a domestic business in Buffalo, New York.

2. The Department of Homeland Security, Immigration and Customs Enforcement, served Hair U Wear, LLC, with a Notice of Inspection on or about January 21, 2014.

3. The Department of Homeland Security, Immigration and Customs Enforcement, served Hair U Wear, LLC, with a Notice of Intent to Fine on June 30, 2014.

4. On or about July 25, 2014, Hair U Wear, LLC, requested a hearing with an Administrative Law Judge.

5. Hair U Wear, LLC, is a small business with no history of prior Form I-9 violations.

6. Hair U Wear, LLC, hired after November 6, 1986, and employed in the United States during the inspection period all six individuals listed on its Form NYS-45-ATT, Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return, for the 2013 tax year.

7. No specific individual employed by Hair U Wear, LLC, was shown to be an alien not authorized for employment in the United States.

8. Hair U Wear, LLC, was not shown to have acted in bad faith.

9. Hair U Wear, LLC, failed to ensure that section 1 of all Forms I-9 were dated by employees no later than an employee's first day of employment.

10. Hair U Wear, LLC, failed to date section 2 of all Forms I-9 within three business days of its employees' first day of employment.

11. Hair U Wear, LLC, failed to present Forms I-9 for two employees: Ahmed F. Shaibi; and Jafar Ahmed.

12. Hair U Wear, LLC, failed to file any response to either the Department of Homeland Security, Immigration and Customs Enforcement's Motion for Summary Decision or to the Order Granting Motion To Compel Discovery.

B. Conclusions of Law

1. Hair U Wear, LLC, is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).

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

3. 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, 1014-15 (1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586-87 (1986)).

4. OCAHO rule 28 C.F.R. § 68.38(b) sets forth that the 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."

5. OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge "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."

6. "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)); *see generally* FED. R. CIV. P. 56(e).

7. "[A]ll facts and reasonable inferences to be drawn therefrom should be viewed in the light most favorable to the non-moving party." *United States v. Primera Enters.*, 4 OCAHO no. 615, 259, 261 (1994).

8. In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Clean Sweep Janitor Serv.*, 11 OCAHO no. 1226, 2 (2014). In addition to proving liability, "[t]he government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), and must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121,159 (1997)." *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015).

9. After the government has introduced evidence to meet its burden of proof, "the burden of *production* shifts to the respondent to introduce evidence . . . to controvert the government's evidence. If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the government may be sufficient to satisfy its burden." *United States v. Durable, Inc.*, 11 OCAHO no. 1231, 5 (2014) (internal citations omitted).

10. OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge "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."

11. Hair U Wear, LLC, is liable for six violations of 8 U.S.C. § 1324a(a)(1)(B).

12. Assessment of a penalty is required by 8 C.F.R. § 274a.10(b)(2), which sets forth that "[a] respondent determined . . . to have failed to comply with the employment verification requirements . . . shall be subject to a civil penalty . . . . "

13. In assessing the appropriate penalty, an Administrative Law Judge must consider the following factors: 1) the size of the employer's 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).

14. Failure to prepare a Form I-9 is one of the most serious violations because it completely subverts the purpose of the employment verification requirements. *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 9-10 (2015).

15. An Administrative Law Judge's *de novo* review of the government's fine assessment can lead to a determination that differing degrees of seriousness exist among the paperwork violations, which can result in different fine assessments for each count. *See United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 10 (2015); *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 10 (2015).

ORDER

ICE's Motion for Summary Decision is granted in part. The government met its burden of proving that Hair U Wear, LLC is liable for six violations of 8 U.S.C. § 1324a(a)(1)(B) and the company is therefore directed to pay civil penalties in the total amount of $4776.50. The parties are free to establish a payment schedule in order to minimize the impact of the penalty on the operations of the company.

SO ORDERED.

Dated and entered on February 18, 2016.

_____

Stacy S. Paddack
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.