

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

April 27, 2016

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 15A00037
)	
GOLDEN EMPLOYMENT GROUP, INC.,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

Appearances:

Terry M. Louie
for the complainant

Patrick W. Ledray
for the 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 April 1, 2016, a partial summary decision was entered in the matter finding that Golden Employment Group, Inc. (Golden Employment or the company) was liable for 465 violations of the employment eligibility verification provisions of 8 U.S.C. § 1324a(b) and 8 C.F.R. § 274a.2(b). See *United States v. Golden Employment Group, Inc.*, 12 OCAHO no. 1274 (2016).¹ That order gave the parties until April 15, 2016, to supplement their previous

¹ 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

filings, should they so wish, to further address the sole remaining issue, which is the question of penalties. Neither party provided supplementary submissions and the penalty issue is accordingly ripe for resolution.

II. STANDARDS APPLIED

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is \$110, and the maximum is \$1100. Because the government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), ICE 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).

In assessing an appropriate penalty, the following factors must be considered: 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 weight to be given each of these factors will depend upon the facts and circumstances of the individual case. *United States v. Raygoza*, 5 OCAHO no. 729, 48, 51 (1995) (each factor's significance is based on the specific facts in the case). Nothing in the statute suggests that equal weight must be given to each factor, nor does the enumeration of these factors rule out consideration of such additional factors as may be appropriate in a specific case. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

Although the statutory factors must be considered in every case, there is otherwise no single official method mandated for calculating civil money penalties. *United States v. Senox Corp.*, 11 OCAHO no. 1219, 4 (2014). ICE's penalty calculations have no binding effect in OCAHO proceedings, and penalties may be examined *de novo* by the Administrative Law Judge if appropriate. *See United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011).

III. THE POSITIONS OF THE PARTIES

A. The Government's Motion

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>.

Although the government's motion for partial summary decision was expressly addressed only to issues of liability, ICE's evidence included the government's Memorandum to Case File, Determination of Civil Money Penalty (Ex. G-9). The exhibit reflects that ICE set a baseline penalty of \$605 for each violation as called for by the government's penalty matrix based on an error rate of 35%. ICE then treated the size of the company as a mitigating factor warranting a 5% reduction in the penalty, but treated the seriousness of the violations as an aggravating factor, warranting a 5% aggravation. These two factors cancelled each other out, leaving the penalty assessment at \$605 for each violation because the government treated the remaining factors of good faith, the absence of unauthorized workers, and the lack of history of previous violations, as neutral.

B. Golden Employment's Position

Golden Employment responded by stating that while the government's exhibit G-9 recommends a fine based on a violation percentage of 1427 forms that should have been provided, ICE's calculation erroneously left out the company's subsequent submission of numerous I-9 forms that the company provided after the original deadline of April 15, 2013. The company says that based upon the government's own rationale, the company's calculations would result at most in a penalty of \$63,250.

IV. DISCUSSION

Golden Employment was ultimately found liable for 140 violations involving failure to timely present I-9 forms, 236 violations involving failure to prepare and/or present the forms at all, and 89 violations of failure to properly complete I-9 forms. The permissible penalties for these violations range from a minimum of \$51,150 to a maximum of \$511,500. The goal in calculating civil penalties is to set a sufficiently meaningful fine to promote future compliance without being unduly punitive. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

The seriousness of Golden Employment's violations may be evaluated on a continuum because not all violations are equally serious. *United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 8 (2010). Failure to prepare an I-9 at all generally warrants a higher penalty than do errors or omissions in completing the form. *See United States v. MEMF LLC*, 10 OCAHO no. 1170, 5 (2013); *see also United States v. Buffalo Transportation, Inc.*, 11 OCAHO no. 1263, 12 (2015). Our case law has consistently viewed failure to prepare an I-9 at all as being among the most serious of possible violations because it frustrates the national policy intended to ensure that unauthorized aliens are excluded from the workplace. *See United States v. Super 8 Motel*, 10 OCAHO no. 1191, 14 (2013).

While the government mitigated its proposed penalty based on the small size of the company, its penalty memorandum offered no explanation as to why three factors were treated as neutral.

Although the penalty memorandum notes that Golden Employment responded in a timely and satisfactory manner to its Request for Missing I-9s, Notice of Suspect Documents, and Notice of Technical and Procedural Failures, and that the company did everything ICE requested of it, the memo did not explain why good faith was not treated as a mitigating factor. The memo also pointed out that the Notice of Suspect Documents revealed a number of unauthorized workers who had to be terminated, but ICE said there was no evidence the company employed these individuals knowingly. The government similarly made no suggestion of any history of previous violations. These are ordinarily factors favoring leniency to a small employer.

Based on the record as a whole and the statutory factors in particular, the penalties will be adjusted to reflect the relative seriousness of the violations and to fall more closely within the mid-range of potential penalties, taking into account the factors favoring mitigation. For the 236 violations in Count II involving the failure to prepare or present I-9 forms at all, the penalties will be assessed at \$500 each. For the remaining 229 violations, 140 of which involve the failure to timely present I-9 forms, and 89 of which involve paperwork errors, the penalties will be \$400 each. Accordingly, the total civil money penalty is \$209,600.

ORDER

Golden Employment Group, Inc. is directed to pay civil penalties in the total amount of \$209,600. 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 this 27th day of April, 2016.

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.