

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

July 31, 1998

United States of America,)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) OCAHO Case no. 98A00045
Dany Industries Inc., d/b/a)
Quality Contractor Company,)
Respondent.)
_____)

DECISION

Appearances: Bridgette Hickey, Esquire
 Immigration and Naturalization Service for complainant

Douglas U. Rosenthal, Esquire
Tsoi and Associates for respondent

Before: Administrative Law Judge Joseph E. McGuire

On February 10, 1998, complainant, acting by and through the Immigration and Naturalization Service (INS), commenced this action, which arises under the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324a, by having filed a five (5) count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

That initiating pleading contained 49 alleged IRCA illegal hire and paperwork violations, for which civil money penalties totaling \$21,070 were assessed.

Count I alleged that subsequent to November 6, 1986, Dany Industries, Inc. (Dany/respondent), violated the provisions of 8 U.S.C. §§ 1324a(a)(1)(A) and 1324a(a)(2) by having illegally hired for employment and having continued to employ in the United States one Maria Angilita Chasijuan whom respondent knew was not authorized for employment in the United States. For that alleged knowing hire violation, complainant levied a \$790 civil money penalty assessment.

In Count II complainant alleged that respondent violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to prepare, retain, or make available for inspection the pertinent employment eligibility verification Forms I-9 for 27 of its employees. For those alleged paperwork infractions, complainant assessed civil money penalties totaling \$11,880, or \$440 for each of those 27 alleged infractions.

Count III alleged that Dany had also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to ensure that the 17 employees listed therein properly completed Section 1 of their pertinent Forms I-9 and that respondent had also failed to complete Section 2 of those same 17 forms. For these alleged paperwork infractions, complainant levied civil money penalties totaling \$6,800, or \$400 for each of the 17 alleged offenses.

In Count IV it was alleged that Dany had also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to complete Section 2 of the pertinent Form I-9 concerning Luisa Miranda. For that single paperwork infraction, complainant levied a civil money penalty of \$400.

The final count alleged that Dany failed to ensure that three (3) of its employees properly completed Section 1 of their Forms I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B). Complainant levied civil money penalties totaling \$1,200, or \$400 for each of the three (3) alleged violations.

On July 29, 1998, the parties jointly filed a Motion to Dismiss, as well as a fully executed six (6) page document captioned Settlement Agreement which forms the basis for the Motion to Dismiss and resolves all matters in controversy, as well as a proposed Order of Dismissal.

Under the pertinent rule of OCAHO Rules of Practice and Procedure, 28 C.F.R. §§ 68.14(a)(1), (b), and (c), where the parties have submitted a settlement agreement containing consent findings and a proposed decision and order, the Administrative Law Judge may, if satisfied with its timeliness, form, and substance, accept such an agreement by issuing a decision and order based upon the agreed findings.

It is found that the terms of the Settlement Agreement comply with the applicable regulations and are appropriate in timeliness, form, and substance pursuant to 28 C.F.R. §§ 68.14(b) and (c). It is further found, under the terms of the Settlement Agreement and pursuant to the provisions of 28 C.F.R. §§ 68.14(b) and (c), that:

1. Dany has withdrawn its request for a hearing on the merits;
2. Dany admits the facts of violation set forth in the 49 allegations contained in Counts I through V of the Complaint and agrees to pay civil money penalties in the total amount of \$11,000 in the allocations set forth in the Settlement Agreement;

3. Dany also agrees to cease and desist from any further violations of 8 U.S.C. §§ 1324a(a)(1)(A) and 1324a(a)(2);

4. The parties have waived any further procedural steps before the Administrative Law Judge;

5. Each party shall bear its own costs and attorney's fees and any other expenses incurred by such party in this action;

6. In the event of any action to enforce any of the terms or conditions of the Settlement Agreement, INS shall be entitled to recover the reasonable attorney's fees incurred;

7. The parties have waived any right to challenge or contest the validity of this Decision;

8. The entire record on which this Decision is based consists solely of the Complaint, the Notice of Hearing, and the Settlement Agreement, which is incorporated herein by reference;

9. This Decision shall have the same force and effect as if this ruling had been issued following a full administrative hearing.

In view of the foregoing, the parties' joint Settlement Agreement is approved and their Joint Motion to Dismiss is hereby granted.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of July, 1998, I have served copies of the foregoing Decision to the following persons at the addresses shown, in the manner indicated:

Office of Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
(original hand delivered)

Dea Carpenter, Associate General Counsel
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Legal Technician to
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