

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

United States of America, Complainant v. National P.R. Engineer Corp., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100261.

DECISION AND ORDER

(March 28, 1990)

MARVIN H. MORSE, Administrative Law Judge

Appearances: RAFAEL B. ORTIZ-SEGIRA, Esq., for the Immigration and Naturalization Service.

JOSE T. SILVA-CUETARA, Esq., for the Respondent.

DISCUSSION AND DECISION:

This case was initiated before me when Respondent was advised, by Notice of Hearing dated June 16, 1989, of the filing of a Complaint by the Immigration and Naturalization Service (INS) alleging violation 8 U.S.C. § 1324a(a)(1)(A), for Respondent's employment of an alien knowing the alien to be unauthorized for employment in the United States, and alleging violation of 8 U.S.C. § 1324a(b), for Respondent's failure to comply with statutory verification requirements, and violation of 8 C.F.R. § 274a.2(b).

The parties have submitted a proposed agreement in full settlement of this case [pursuant to 28 C.F.R. § 68.12(a)(1)], by a joint Motion To Approve Consent findings executed by counsel for INS and for Respondent on March 23, 1990. The terms of the agreement are contained in a document entitle Consent Findings, executed on March 23, 1990 by counsel of both parties.

The agreement of the parties reflected in the Consent Findings is in a form which satisfies the controlling regulation for disposition by the administrative law judge of "[a]ny agreement containing consent findings" 28 C.F.R. § 68.12(6). Accordingly, as provided by § 68.12(c), this Decision and Order is issued (in lieu of the form of order submitted by the parties by their joint motion dated March 23).

FINDINGS OF FACT AND CONCLUSION OF LAW:

(1) The document entitled Consent Findings, including the recitation of facts contained therein, is adopted and made a part of this Decision and Order, according to its terms as fully as if set out herein.

(2) The parties have agreed that with the exception of Count I Respondent admits the allegations set forth in the Complaint, including allegations contained in Counts II, III and IV of the Notice of Intent to Fine incorporated therein, thereby conceding violations by Respondent of § 274A(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1324a(a)(1)(B). I conclude that the Consent Findings are fair and satisfactory, and there is no reason not to accept them within the contemplation of 28 C.F.R. § 68.12.

(3) I do, however, note that the Consent Findings provide, at paragraph 10, that ``Respondent will cease and desist from any further violations of 8 U.S.C. § 1324a.'' Customarily, the cease and desist formulation is contained only in adjudications involving substantive violations and not where paperwork violations alone are implicated. See 8 U.S.C. § 1324a(e)(4). Here because the settlement deletes Count I, only paperwork violations, and no substantive offenses, survive the settlement (by deleting Count I).

Early in the adjudication of 8 U.S.C. § 1324a I held as follows:

``[W]here only paperwork violations are involved, INS is not entitled to a cease and desist order in light of the clear statutory distinction: the statute commands that cease and desist orders issue where there are findings of unlawful hiring, recruitment referral for a fee, or continued employment of unauthorized aliens, but provides no such command, indeed is silent, except as to civil money penalty, with respect to findings of paperwork violations.'' U.S. v. Elsinore Manufacturing, Inc., Summary Decision on Default and Order of the Administrative Law Judge, No. 88100007, at 5 (OCAHO May 20, 1988) (Morse, J.), modified on other grounds by Attorney General (CAHO), (June 16, 1988).

See also, U.S. v. Masonry Fencing Company, No. 88100006 (OCAHO May 11, 1988) (Morse, J.) and U.S. v. Cafe, No. 88100098 (OCAHO February 6, 1989) (Schneider, J.).

On further consideration, it is my judgment that paperwork violations alone may serve to sustain a cease and desist order. In my judgment the better understanding is that while 8 U.S.C. § 1324a requires a cease and desist order where there is a finding of substantive violations, i.e., unlawful hiring and continued employment, silence as to such provision with respect to paperwork violations, i.e., 8 U.S.C. § 1324a(e)(5), simply means that there is no requirement for such an imposition, not that a cease and desist is inappropriate or unauthorized. There is an analogy in context of assessment of civil money penalties where 8 U.S.C. § 1324a requires, at subsection (e)(5) that ``due consideration'' be given to specified

criteria in respect to paperwork violations, but 8 U.S.C. § 1324a is silent as to applicability of such criteria to assessments for substantive violations. In the absence of a statutory command not to utilize such authority in either situation, it appears to be that such formula may be applied within the judge's discretion.

Accordingly, this decision and order provides that a cease and desist order, as proposed in the Consent Findings, may issue even though only paperwork violations are involved.

(3) On the basis of the Consent Findings, I find and conclude that P.R. Engineering Corp., Respondent, has violated § 274A(a)(1)(B) of the Act, 8 U.S.C. § 1324(a)(1)(B), with regard to its failure to comply with statutory verification requirements of § 274A(b) of the Act, 8 U.S.C. § 1324a(b), and 48 C.F.R. § 274a.2(b).

ACCORDINGLY, IT IS HEREBY ORDERED:

(1) that Respondent pay a civil monetary penalty in the amount of Two Thousand Nine Hundred dollars (\$2,900.00) to be increased to \$10,250 in event the lower amount is not forthcoming as agreed between the parties;

(2) that Respondent will cease and desist from any further violation of § 274A of the Act, 8 U.S.C. § 1324a;

(3) that this Decision and Order has the same force and effect as a decision and order made after a full hearing;

(4) that the entire record on which this Decision and Order is based consists solely of the Complaint, the Notice of Hearing, and Consent Findings duly executed by the parties;

(5) that the parties have waived any further procedural steps before the Administrative Law Judge;

(6) that the parties have waived any right to challenge or contest the validity of this Decision and Order; and

(7) that the fourth prehearing conference, and evidentiary hearing, previously scheduled, are canceled.

SO ORDERED.

Dated this 28th day of March, 1990.

MARVIN H. MORSE
Administrative Law Judge