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

United States of America, Complainant v. Y.E.S. Industries, Inc., d/b/a Soft Touch Carwash, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 88100070.

Appearances: **STEPHEN BUTCHER**, Esq. and
ROBERT YEARGIN, Esq. of Los Angeles, Calif. for the Complainant
CYNTHIA J. LANGE, Esq. of Fragomen, Del Rey & Bernsen, P.C., Los Angeles, Calif. for the Respondent.

DECISION AND ORDER

Statement of the Case

EARLDEAN V.S. ROBBINS, Administrative Law Judge: This case was tried before me on various dates in 1989, pursuant to a Complaint Regarding Unlawful Employment filed on July 26, 1988 under 8 U.S.C. Section 1324a against Y.E.S. Industries, Inc., d/b/a Soft Touch Carwash, herein called Respondent, by the United States of America, through the Department of Justice, Immigration and Naturalization Service, herein called INS or the Complainant. Attached thereto and incorporated therein is a Notice of Intent to Fine, herein called the NIF, which had previously been served upon Respondent, on June 30, 1988.

8 U.S.C. Section 1324a, also known as the Immigration Reform and Control Act of 1986 (IRCA) establishes several major changes in national policy regarding illegal immigrants. Section 101 of IRCA amends the Immigration and Nationality Act of 1952, herein called the Act, by adding a new Section 274A (8 U.S.C. 1324a) which seeks to control illegal immigration into the United States by the imposition of civil liabilities, herein referred to as sanctions, upon employers who knowingly hire, recruit, refer for a fee or continue to employ unauthorized aliens in the United States. Section

274(a)(1)(A) prohibits the ``knowing hire'' of unauthorized aliens, and Section 274A(a)(2) prohibits the ``knowingly continue to employ'' of unauthorized aliens.

The complaint alleges, as set forth in the Notice, that Respondent violated Section 274A(a)(1)(A) and/or (a)(2) of the Act by hiring and continuing to employ Francisco Martinez-Malagon and Wilibaldo Reynozo-Arroyo (Count I) and by continuing to employ Dario Bravo-Razo (Count II), knowing that they were not authorized for employment in the United States. The unauthorized status of these employees is undisputed. The issue is whether Respondent had knowledge of such status.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. INTRODUCTION

Y.E.S. Industries, which is owned by Duane Younker and Tom Ennis, is the agent and distributor in the Western United States for a car wash equipment manufacturer. As such, it serves as a consultant to the car wash industry with constant, ongoing contact with car wash operators in the Western United States as to car wash policy, equipment facility design and operating procedures. It also works in conjunction with the California Car Was Association and ICA, an international association.

Soft Touch Car Wash was acquired by Y.E.S. Industries in 1981 for use as a demonstration and training facility for the industry. Ennis is the operating partner for Soft Touch and Younker has no involvement in its day-to-day operations. Ennis' involvement is one of oversight and establishment of general policy. His wife, Carol Ennis, is the general manager of the Car Wash facility. Assisting her in the management of the facility is Roberto ``Jose'' Garcia. It is undisputed that Jose Garcia trains employees, assists in the preparation of work schedules, makes daily job assignments and interviews applicants for employment. According to him, if Carol Ennis is on the premises she gives the final approval for all hiring. However, if she is not on the premises, Garcia hires employees without her approval.

Many of the Employees only speak Spanish. Garcia speaks Spanish. Carol Ennis does not. Garcia is responsible for requiring new employees to fill out Part 1, ``employee information and verification'' of the employment Eligibility Verification form (Form I-9)

and serves as ``preparer translator'' when necessary. He also fills out Part 2 ``employer review and verification'' of the Form I-9 and signs it on behalf of Respondent. Opposite his signature he indicates his title as ``manager''. According to Carol Ennis, he uses that title because he ``manages'' the employees. A copy is made of the supporting documents which are later reviewed, along with the Form I-9.

II. THE ALLEGED VIOLATIONS

A. FACTS

The events herein began on March 26, 1988 [1] when INS Special Agent Louie Garcia had his car washed at Respondent's facility. At that time Agent Garcia, formerly a Border Patrol Agent, made certain observations as to Respondent's employees which led him to suspect that some of them were illegal aliens. He reported his observations to his supervisor and it was agreed that a survey[2] of Respondent's workforce should be conducted.

On March 31, Complainant requested, and received, Respondent's consent to conduct a survey of Respondent's workforce. The survey was conducted on that same day and thirteen aliens were arrested as not having authorization to be in the United States. Another person was arrested for aiding two illegal aliens in their attempt to hide from the INS agents.

There is some dispute as to whether, immediately following the survey, one of the agents ``educated'' Respondent as to the employment verification requirements of the Act. Special Agent Robert Guerrero testified that he spoke to Younkers and Tom Ennis, who identified themselves as Respondent's co-owners. He asked if they were aware of IRCA and if they had been ``educated'' with regard to the law. Younkers said they were aware of, and in full compliance with, the law. Guerrero spoke to them regarding the requirements as to filling out the Forms I-9 and gave them several handbooks and a supply of Forms I-9. He then asked if they had any questions. They said, no, they were in full compliance with the verification requirements. Carol Ennis was also present during some of the conversation. Younkers and Ennis deny that any ``education'' took place.

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[1] All dates herein are in 1988 unless otherwise indicated.

[2] A survey, commonly referred to by the public as a raid, involves the entry of INS agents on the premises of an employer to interview the employees as to their immigration status.

On either April 1, according to Agent Garcia, or April 4, according to Tom Ennis, Agent Garcia served Respondent with a Notice of Inspection and a letter concerning the results of the March 31 survey. The letter informed Respondent of the arrests made during the March 31 survey. The Notice of Inspection informed Respondent that complainant would review its Forms I-9 on April 8. According to Tom Ennis, he immediately terminated the two listed unauthorized employees still in Respondent's employ.

An inspection was performed by Agent Garcia on April 8. He found that 13 employees had used false alien registration numbers. He also found deficiencies on the forms I-9 of 15 of the 33 current employees and 69 of the 79 terminated employees. The parties stipulated that Respondent was ``educated'' on that date.

On May 31, Garcia served Respondent with a citation covering the verification deficiencies and a Notice of Results of Inspection with regard to the false alien registration numbers. Neither Carol nor Tom Ennis were on the premises. However Agent Garcia spoke to Carol Ennis on the phone and she assured him it was alright for Jose Garcia to accept service, which he did. On June 7, Agent Garcia telephoned Tom Ennis and asked if he understood the citation and letter of results. Ennis said he did. It is undisputed that Respondent immediately implemented certain recordkeeping changes designed to facilitate compliance with verification requirements.

Bravo-Razo commenced his employment with Respondent on May 12. His Form I-9 indicates that he presented an Alien Registration Receipt Card (Green Card), a temporary California identification card, and a Social Security Card as proof of identity and/or employment eligibility. Martinez-Malagon and Reynoso-Arroyo began their employment with Respondent on June 2 and 11, respectively. Their respective Forms I-9 show that each of them presented a Green Card and a Social Security card as proof of identity, and/or employment eligibility. It is undisputed that these documents were presented to Jose Garcia and the parties stipulate that the documents appeared genuine on their face.

On June 17, Agent Garcia and other INS agents conducted a second survey of Respondent's workforce. Seven aliens were arrested during the survey, including Bravo-Razo, Martinez-Malagon and Reynoso-Arroyo who remained in INS custody for several days prior to being returned to Mexico. On the day of their arrest each of them made statements to an INS agent indicating that Jose Garcia knew their documents were false.

On June 20, Complainant notified Respondent, through a letter of results, that seven unauthorized aliens had been apprehended at

Respondent's facility during the June 17 survey. Also, on that same day, Complainant served a Notice on Respondent that an inspection would be conducted on June 24.

On June 21, Bravo-Razo, Martinez-Malagon and Reynoso-Arroyo each gave a sworn statement to INS agents concerning the circumstance of his illegal entry into the United States and his hiring by Respondent. Each of them admitted he was a citizen of Mexico who had entered the United States illegally and had no valid documents authorizing him to work in the United States. Each of them also stated that, at the time of his hire, Jose Garcia knew his documents were false. Specifically, Bravo-Razo stated he told Jose Garcia his documents were false and Garcia said that was o.k. Martinez-Malagon stated he told Jose Garcia he did not have valid immigration documents but he did have some fake immigration and social security documents. Jose Garcia said that was no problem. Reynozo-Arroyo stated he knew Jose Garcia prior to applying for a job at the Car Wash. Jose Garcia asked him if he was applying for papers to stay in the United States. Reynoso said he was not eligible because he had only been in the country for seven months. Reynoso-Arroyo also stated he told Jose Garcia he wanted to work at the Car Wash to earn money to purchase a false letter so he could get his immigration papers through the agriculture program. He further told Garcia he had used a fake green card and a fake social security card to obtain his other job. Subsequently, after deportation hearing, each of them was found deportable as a person who had entered the United States without inspection by an immigration officer and was granted voluntary departure from the United States to Mexico.

Thereafter Agent Garcia decided to test the truth of these statements by sending a confidential informant, Benjamin Calvo, to seek employment at Respondent's facility. On June 24, Agent Garcia provided Calvo with a false Alien Registration Card and social security card under the name of Benjamin Castro. He instructed Calvo what to do and say, and agreed to pay him a $300 fee. According to Calvo, he approached Jose Garcia at the Carwash and asked if he had any work. Jose Garcia asked what documents he had. Calvo said he had not applied for Amnesty or anything, that he had a green card and a social security card but they were false. Jose Garcia said Calvo (Castro) could work with those documents. Jose Garcia took the cards to the office, returned and told Calvo (Castro) to return the following day at 7:30 a.m.

Calvo (Castro) did return to the Car Wash on the following morning. Jose Garcia asked if he had his documents. Calvo (Castro) said he did and gave the documents to Jose Garcia, whereupon Jose

Garcia went to the office. After about 20 minutes he returned, gave Calvo (Castro) a work jacket, and Calvo (Castro) worked at the Carwash for the remainder of the shift. Later that day, Jose Garcia returned Calvo's documents to him and had him sign some forms. Calvo (Castro) did not return to work after June 25. However, on June 27 he did return and obtain his paycheck from Jose Garcia.

Jose Garcia denies that either Calvo (Castro), Bravo-Razo, Reynozo-Arroyo or Martinez-Malagon ever told him they were in the United States illegally or that their employment eligibility documents were false. Reynozo-Arroyo and Martinez-Malagon did not testify as complainant was unsuccessful in its attempt to get them to return voluntarily from Mexico for the hearing herein.

The efforts made by the INS to secure the presence at the hearing of all three witnesses was documented by Victor W. Johnston, whose affidavit was received into evidence. Mr. Johnston personally contacted each of the three witnesses at their residences in Mexico. Martinez-Malagon regretfully informed Mr. Johnston he would not be able to travel to Los Angeles in time for the hearing. Reynoso-Arroyo said he would be ready to travel, but when Mr. Johnston arrived to transport him to the United States, Reynoso-Arroyo's mother said her son was afraid to testify and had left. Bravo-Razo agreed to travel to the United States to testify.

Bravo-Razo did testify. According to him, on May 11, he approached Jose Garcia at the Car Wash and asked him for a job. Jose Garcia asked ``do you have papers? Have you made arrangements in some form like by Amnesty or through Agriculture so that you would have a permit to work?'' Bravo-Razo said ``no, I don't have anything. I don't qualify for anything.'' Jose Garcia said, ``you know, in order to work here, you have to have your social security and your ID and your green card.'' Bravo-Razo said he would go buy them and bring them to Garcia the following day. Garcia said ``okay''. Bravo-Razo returned to the Car Wash early on the following morning and gave Jose Garcia a social security card, a Green Card, and a receipt for an ID card. Jose Garcia then had another employee show Bravo-Razo what to do and Bravo-Razo commenced working at the Car Wash.

B. THE POSITION OF THE PARTIES

The Complaint, in count I, alleges a violation of Section 274A(a)(1)(A) of the Immigration Reform and Control Act, 8 U.S.C. 1324a(a)(1)(A) for the hiring, after November 6, 1986, of Francisco Martinez-Malagon and Wilibaldo Reynozo-Arroyo, knowing that they were not authorized to be employed in the United States. In

count II, the Complaint alleges a violation of Section 274A(a)(2) for the continued employment of Daria Bravo-Razo after Respondent became aware that Bravo-Razo was not authorized to be employed in the United States. Complainant relies heavily on the Forms I-213 and sworn prehearing statements of Martinez-Malagon and Reynozo-Arroyo, and the testimony of Bravo-Razo to establish that Jose Garcia was told by each of these employees, at the time of hire, that their documents were false.

Respondent denies the allegations of counts I and II, asserting that it acted in good faith and had no knowledge that these employees were not authorized to be employed in the United States. Specifically, Respondent contends that the sworn statements and the Forms I-213 are unreliable and thus the evidence is insufficient to establish that Roberto Garcia had knowledge of the unauthorized status of the employees involved herein; and even assuming that he did, such knowledge cannot be imputed to Respondent since Garcia was not authorized to hire ineligible employees. Further, Respondent contends, it effectively repudiated his conduct upon discovery. As to count II, Respondent argues that no violation can be found since the knowledge as to Bravo-Razo's immigration status was acquired at the time of his hire during the citation period and therefore the conduct cannot be charged as a ``continuing to employ'' violation. Hence the Count should be dismissed.

C. CONCLUSIONS

1. Respondent's Motion to Dismiss Count II of the Complaint.

In support of its motion to dismiss Count II of the complaint, Respondent asserts that any knowledge of Bravo Razo's unauthorized status acquired at the time of initial hire cannot support a finding of ``continuing to hire'' in violation of Section 274A(a)(2).

Section 274A provides, inter alia:

Sec. 274A (a) **MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL-**

(1) **IN GENERAL**.-It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States-

(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) an individual without complying with the requirements of subsection (b).

(2) **CONTINUING EMPLOYMENT**.-It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United

States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) **DEFENSE**.-A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

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(i) Effective Dates.

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(2) **12-MONTH FIRST CITATION PERIOD**.-In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue any order, under this section on the basis of such alleged violation or violations.

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The implementing regulations authorized by the Statute provide inter alia at 8 C.F.R. 274a.9(C):

> If after investigation the Service determines that a person or entity has violated section 274A of the Act for the second time during the citation period or for the first time after May 31, 1988, the proceeding to assess administrative penalties under section 274A of the Act is commenced by the Service by issuing a Notice of Intent to Fine on Form I-762.

Complainant and Respondent urge differing interpretations of these provisions. Complainant concedes that under Section 274A(i) a violation of Section 274A(a)(1)(A) cannot be found even assuming that Respondent hired Bravo-Razo knowing him to be an unlawful alien; since the 12-month citation period ended on May 31, 1988 and Bravo-Razo was hired on May 12, 1988. However, Complainant contends that by continuing to employ Bravo-Razo beyond the statutory citation, or grace, period. Respondent has violated Section 274A(a)(2).

Respondent makes essentially three arguments. One, that Complainant is seeking to subvert the statute by alleging, as a ``continuing to employ'' violation, facts which form the elements of a ``knowingly hire'' violation but which cannot be alleged as such because of the statutory grace period. Two, that, in these circumstances, the statute would be further subverted by a statutory in-

terpretation supporting such an allegation because, under such an interpretation, every Section 274A(a)(1)(A) violation could also be alleged as a Section 274A(a)(2) violation, thereby effectively destroying the affirmative defense of good faith which is applicable to Section 274A(a)(1)(A) but not directly to Section 274A(a)(2). Finally, Respondent contends that the statute requires an initial ``innocent hire'' as a predicate to bringing a ``continuing to employ'' charge. In this latter regard, Respondent argues that the ``innocent hire'' situation presumed in Section 274A(a)(2) only envisions one of two circumstances: (1) an employer continues to employ an alien after learning during the alien's course of employment that documents, which at the time of hire the employer reasonably and in good faith believed to be authentic, were in fact fraudulent; or (2) an employer continues to employ an alien whose valid temporary work authorization has expired during the course of the alien's employment.

I have carefully considered, and reject, Respondent's arguments. The language of the provisions involved herein is not susceptible to the interpretation urged by respondent. Section 274A(a) (1) and (2) is intended to discourage the employment of unauthorized aliens. United States v. Todd Corp. F.2d (9th Cir. 1990). It is clear from the plain meaning of the language of Section 274A(a)(2) that it is intended to prohibit an employer from continuing in its employ an employee whom it knows to be unauthorized for employment in the United States. It is further clear from a reading of Section 274A(i) that employers were to receive a 12-month grace period during which only a warning would be given for first violations. The language of these sections is clear and unambiguous.

It is well established, as a matter of statutory construction, that where the language of the statute is clear the words therein are given their plain meaning since it is to be presumed that the legislative purpose is expressed by the ordinary meaning of the words used. Legislative history need not be considered. American Tobacco Co. v. Patterson, 456 U.S. 63 (1982); Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980), Richards v. United States, 369 U.S. 1, 9 (1962). Moreover, Respondent has cited no legislative history tending to support its position. Another established canon of statutory construction applies to remedial statutes. In construing such statutes one must look to the ``defects or evils to be cured or abolished, or the mischief to be remedied . . . and they should be interpreted liberally to embrace all cases fairly within their scope so as to accomplish the object of the legislature . . .'' (82 C.J.S. Section 388 pp. 919-920; See also 73 Am. Jur.2d Section 279, pp. 443-4, United States v. Ven-Fuel, Inc., 758 F.2d 741 (1st Cir.

1985) citing United States v. Stowell, 33 U.S. 1, 12 (1890); St. Mary's Sewer Pipe Company v. Director of the United States Bureau of Mines, 262 F.2d 378, at 381 (3rd Cir. 1959).

A remedial statute has been defined as one ``designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good.'' 82 C.J.S. Section 388, p. 918. The employer sanction provisions of IRCA are clearly remedial. It is apparent from both the Senate Judiciary Committee report and the House Judiciary Committee report that, in the interest of the public good, this statute seeks through employer sanctions to curtail illegal immigration so as to prevent an exacerbation of the unemployment problem in the United States, allay any resentment against the continued admission of lawful immigrants and refugees, and in general to promote legal, orderly and regulated immigration in a manner beneficial both to immigrants and to the interest and long term welfare of citizens. House Judiciary Committee Report No. 99-682 (I), page 46-49, to Public Law 99-603 (1986) (IRCA), Senate Judiciary Committee Report No. 99-132, pp. 2-7 (1985).

Applying these two canons of statutory construction to Section 274A(a)(2) and Section 274A(i), Respondent's argument must fail. To conclude that the ``continuing to employ'' concept of Section 274A(a)(2) applies to the employer who hires an alien in good faith but subsequently learns the alien's documents are fraudulent; yet does not apply to the employer who has known from the time of hire of the unauthorized status of the alien does violence to a statute intended to discourage the employment of unauthorized aliens.

Also unpersuasive is Respondent's argument that the application of Section 274A(a)(2) in these circumstances would subvert the statutory scheme by effectively denying it a good faith defense. In general, the argument is specious. Specifically applied to the evidence herein, it has absolutely no validity. The good faith defense of Section 274A(3) relates to the verification of document requirements of Section 274A(b). These requirements are not at issue here. The knowledge alleged to have been acquired by Respondent comes from specified statements alleged to have been made to Jose Garcia.

For the reasons set forth above, I conclude that the prohibition against continuing to employ an alien after acquiring knowledge of the alien's unauthorized status applies regardless of how or when the knowledge was acquired so long as the employment continued after such knowledge. Accordingly, Respondent's motion to dismiss Count II is denied.

2. Conclusions as to the Alleged Violation

The gravamen of the violations alleged herein is that Respondent hired or continued to employ the three alien-employees even though each of them had told Jose Garcia his documents were false.

The only direct evidence of knowledge supporting the complaint allegations relating to Martinez-Malagon and Reynozo-Arroyo are their sworn prehearing statements. Respondent argues that these statements and the Form I-213 reports prepared by various INS agents should be accorded little or no weight because the circumstances under which they were obtained and prepared casts doubt on their reliability. For the reasons set forth below, I reject this argument.

It is well settled that hearsay may constitute substantial evidence in administrative hearings if factors assuring the underlying reliability and probative value of the evidence are present. Gimbel v. Commodities Futures Trading Commission, 872 F.2d 196, 199 (7th Cir. 1989), citing Richardson v. Perales, 402 U.S. 389 (1971). The various factors which are helpful in such an analysis include the possible bias of the declarant, whether the statements are signed or sworn to as opposed to oral, or unsworn, whether the statements are contradicted by direct testimony, whether the declarant is unavailable and no other evidence is available, and finally, whether the hearsay is corroborated. Richardson, 402 U.S. at 402.

It is clear that the statements are probative of material elements of the complaint allegations. However Respondent attacks the reliability of this evidence in two regards. First, Respondent contends that the alien-employees are not credible based upon their admission of illegal conduct in gaining entry into the United States, their use of counterfeit documents, and the possible coercion in obtaining the statements. Second, Respondent attacks the credibility of INS Special Agent Garcia, suggesting motives for bias and intentional falsification of official records.

To support the assertion that the aliens' statements are not trustworthy, Respondent relies on several facts and unsupported assumptions. Respondent reasons that the aliens had illegally entered the United States and used fake documents to obtain their jobs with Respondent. Next, Respondent notes that the aliens were arrested in a raid on their employer's premises, which ``undoubtedly created'' the impression that the Respondent was powerless to aid them. Although Respondent does not clearly explicate its reasoning as to the connection between this alleged impression in the minds of the aliens and the truthfulness of their statements, it ap-

pears that Respondent is suggesting that the aliens falsely accused their employer of wrongdoing because they were intimidated by being arrested.

Respondent notes that the aliens were incarcerated for four days prior to giving the sworn statements. Due to this confinement, coupled with the alleged unpleasant questioning by the arresting officers, Respondent argues that the aliens might have allowed their loyalty to their employer to be superseded by their desire to end the interrogation, causing the aliens to lie. Thus, the only motivation suggested by Respondent for the aliens to lie was the desire to end the questioning coupled with a propensity for dishonesty evidenced by their willingness to violate U.S. immigration laws. However, I conclude that the evidence as to the circumstances surrounding the questioning does not indicate an atmosphere so coercive as to support a conclusion that an average person in such circumstances would fabricate their testimony to relieve themselves of the pressure they faced.

While the ``powerful psychological inducements'' associated with custodial interrogations has led to the imposition of restrictions on the use of admissions so obtained, United States v. Henry, 447 U.S. 264 (1980), Miranda v. Arizona, 384 U.S. 436 (1966), the mere fact that the questioning occurs is not sufficient to raise due process concerns. United States v. Carroll, 710 F.2d 164 (4th Cir. 1984). Rather, the totality of the circumstances must be considered in determining whether an admission is the product of duress or coercion. Here there is no evidence of overt coercive conduct by the INS agents. Further one of the aliens testified at the hearing and reaffirmed his prior sworn statement. Additionally, Calvo gave similar testimony implicating Jose Garcia.

Respondent's second prong of attack on the reliability of the alien employee's statements is to attempt to discredit the testimony of Agent Garcia. Respondent suggests that Agent Garcia had a vested interest in a favorable outcome which corrupted his investigation. The facts marshalled to support this theory include an inconsistency in the date of the service of the Notice of Results of Inspection, the absence of a reference to the employer's knowledge of the alien's unlawful status in the Form I-213 reports, and the failure to use Spanish language statement forms for the three aliens who were kept in custody whereas such forms were used for aliens who were allowed an earlier voluntary departure. This attack on Agent Garcia's credibility seems intended to suggest that that aliens' statements were not freely given, but rather were the product of a calculated effort to obtain a judgment against Respondent at any cost.

Respondent argues that Agent Garcia falsified his records to show he served the Notice of Results of Inspection on Friday, April 1st, rather than on Monday, April 4th. Respondent's co-owner Tom Ennis testified he was certain that service was on Monday because he terminated the employment of the aliens who had used falsified documents on the same date. Agent Garcia stated he was fairly certain he served the Notice on Friday, though he indicated that he could have been wrong. I find that any error in this date is insufficient to impugn Agent Garcia's credibility.

As to the question of why only three out of seven aliens were not allowed immediate voluntary departure, Agent Garcia testified that they were the three who indicated during their initial interviews that their employer knew of their status at the time they were hired. Agent Garcia could not explain the absence of any reference to the employer's knowledge in two of three Form I-213 reports. He testified that the agents who conducted the initial interviews told him the aliens indicated the employer had knowledge.

Finally, Agent Garcia testified to the conduct of the questioning when the sworn statements were taken. The aliens were each questioned in Spanish, and their answers were translated into English by Agent Garcia for another agent to type. The questions were formulated based upon the answer to the previous question. At the conclusion of the questioning, each of the aliens had the questions and answers repeated to them in Spanish, and they initialed each page and signed the declaration. There is nothing to indicate that the agents deceived the aliens concerning the contents of the statements in order to obtain their signatures.

I find that the evidence of the Respondent's knowledge of the aliens' ineligibility for employment, in the form of the sworn statements, is reliable and probative. Furthermore, it has been corroborated by the testimony of one of the declarants, Bravo-Razo, and by the informant Calvo. I credit both Bravo-Razo and Calvo whom I found to be honest, reliable witnesses who appeared to be endeavoring to tell the truth. Accordingly, I find that Jose Garcia learned, at the time of their hire, that each of the three alien-employees was not authorized to work in the United States.

Finally, Respondent argues that even if Jose Garcia had knowledge of the falsity of the documents, such knowledge cannot be imputed to Respondent. In this regard, Respondent does not dispute that, Jose Garcia was delegated the responsibility of explaining to employees the requirements of the Form I-9, of filling out the Employer section, and ensuring that the employee fill out the the employee section, of the Form I-9 and signing the Form I-9 on behalf of the employer. However, Respondent argues that Jose Garcia's

knowledge cannot be imputed to Respondent for the following reasons.

One, Respondent took adequate steps to educate Jose Garcia regarding the verification requirements of the Act. This included initial instructions regarding the proper methods for completing the I-9 forms and attempts to obtain for him information from varius sources, including the INS, so as to ensure that he had sufficient knowledge to perform his responsbilities in accordance with the law. Two, the Employer was very careful to limit Jose Garcia's responsibility and authority in the intake/hiring process. Thus, although he could provisionally allow employees to start work pending Carol Ennis' review of their documents, only she had the authority to verify the documents and only she had the authority to hire new employees. As a result, many potential employees were rejected by the Respondent when those papers proved inadequate to establish the individual's eligibility to work in this country. Three, when INS notified Respondent of the unauthorized status of certain of its employees, Respondent immediately terminated each such employee.

I find none of these reasons adequate to insulate Respondent from the conduct of Jose Garcia. A principal is chargeable with, and bound by, the knowledge of or notice to its agent while the agent is acting within the scope of his authority and in reference to matters over which his authority extends. Curtis, Collins & Holbrook Co. v. United States, 262 U.S. 215 (1923). Also, ``Under an apparent authority theory `liability is based upon the fact that the agent's position facilitiates the consummation of the fraud, in that from the point of view of the third person the transaction seems regular on its face and the agent appears to be acting in the ordinary course of the business confided to him.' '' American Society of Mechanical Engineers, Inc. v. Hydrolevel Corporation, 456 U.S. 556 (1981), quoting the Restatement (Second) of Agency.

Thus, it is immaterial that Jose Garcia was instructed in the proper procedure for completing Section 2 of the I-9 Form. He was given the responsibility to interview applicants as to their employment eligibility and to attest to such employment eligibility on the I-9 form, a form mandated by the Attorney General and subject to periodic inspection. His signature on the form was intended to communicate to the Attorney General that Respondent was in full compliance with IRCA. Respondent thus cloaked him with the authority to verify the employment eligibility of its employees. Therefore Respondent must bear the consequences of Jose Garcia's wrongful conduct. Respondent cannot escape liability by asserting that it properly instructed him. Jose Garica had apparent author-

ity to complete the form and in order to do so was required to obtain information from employees as to their eligibility for employment. Here he obtained, and ignored, information that their documents were false. In these circumstances I find that Jose Garcia was an agent of Respondent who acquired knowledge within the scope of his authority and in reference to matters over which his authority extended, as to the unauthorized status of the three alien-employees.

Contrary to Respondent's arguments, Respondent cannot escape the consequences of his conduct by its so-called acts of repudiation. It simply terminated those employees whom INS had discovered to be unauthorized. This does not rise to the level of an affirmative repudiation of some act of misconduct. Further, Respondents reliance upon cases under the National Labor Relations Act is misplaced. Those cases involve circumstances where the misconduct was the coercion of employees and the employer promptly repudiated the conduct of its agent by a timely specific, unambiguous disavowal of its agent's conduct which was sufficent to dispel the coercive consequences of its agents conduct. A fraudulent verification of employment eligibility is not susceptible to the same type of reasoning.

Based on the above, I conclude that Respondent hired Martinez-Malagon and Reynoso-Arroyo, and continued to employ Bravo-Razo knowing each of them to be unauthorized for employment in the United States.

III. CONCLUSIONS OF LAW

1. Respondent, a Calfironia corporation, is a legal entity within the meaning of 8 U.S.C. Sec. 1324a(a) and 8 C.F.R. Sec. 274a(1)(b).

2. Francisco Martinez-Malagon, Wilibaldo Reynozo-Arroyo, and Dario Bravo-Razo, each is an alien unauthorized for employment in the United States.

3. Francisco Martinez-Malagon and Wilibaldo Reynozo-Arroyo each was hired by Respondent after November 6, 1986.

4. Dario Bravo-Razo was hired by, and continued to work for, Respondent after November 6, 1986.

5. Respondent has violated Section 274A(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C., 1324a(a)(2), by hiring Francisco Martinez-Malagon and Wilibaldo Reynozo-Arroyo for employment in the United States knowing each of them to be an unauthorized alien with respect to such employment.

6. Respondent has violated Section 274A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1324a(A)(2), by continuing to employ

in the United States Dario Bravo-Razo knowing him to be, or to have become, an unauthorized alien with respect to such employment.

IV. CIVIL PENALTIES

Since I have found violations of Section 274A(a)(1)(A) and 274A(a)(2) of the Act, assessment of civil money penalties and a cease and desist order are required by the Act. Section 274(e)(4) provides:

(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS._WITH respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection-

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of-

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred.

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this subparagraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this subparagraph; and

(B) may require the person or entity-

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

* * * * * * *

The complaint seeks a penalty of $2,000 for each of the violations found with regard to the three employees named above in the Conclusions of Law, the maximum amount permitted under the Act for a first violation. Although the Act provides for the consideration of certain factors in determining the amount of any money penalties imposed for violations of Section 274A(a)(1)(B), it provides no such guidelines for the assessment of monetary penalties for Section 274A(a)(1)(A) and (a)(2) violations other than history of prior violations which is reflected in the statute by a lower monetary range for first time violators and a higher range for previous multiple violations. Since the amount requested by Complainant is within the statutory limit, and no mitigating circumstances have been asserted with regard to the size of the fine, I find the total fine in the amount of $6,000 to be appropriate. I further find that in the cir-

cumstances herein, an Order of Compliance under Section 274A(e)(4)(B) is warranted.

ORDER

IT IS HEREBY ORDERED that:

1. Respondent pay a civil money penalty of $2,000 for each of the two violations with regard to the hire of Francisco Martinez-Malagon and Wilibaldo Reynozo-Arroyo and for the violation with regard to continuing to employ in the United States Dario Bravo-Razo knowing him to be, or to have become, an unauthorized alien with respect to such employment.

2. Respondent shall cease and desist from violation of the prohibitions against hiring, recruiting, referring or continuing to employ unauthorized aliens, in violation of Section 274A(a)(1)(A) and (a)(2) of the Act. 8 U.S.C. 1324a(1)(A) and (a)(2).

3. Respondent shall comply with the requirements of Section 274A(b) with respect to individuals hired during a period of three years.

4. Pursuant to 8 U.S.C. 1324a(e)(6) and Section 68.51 of the practice and procedure of the office, 28 C.F.R. 68.51, this decision and order shall become the final Order of the Attorney General unless within thirty (30) days from the date of this decision and order the Chief Administrative Hearing Officer shall have modified or vacated it.

Dated: July 16, 1990.

EARLDEAN V.S. ROBBINS
Administrative Law Judge