

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

UNITED STATES OF AMERICA, )  
Complainant, )  
 )  
v. ) 8 U.S.C. § 1324c Proceeding  
 ) Case No. 94C00085  
LETICIA CRUZ-MENDOZA, )  
Respondent. )  
\_\_\_\_\_ )

FINAL DECISION AND ORDER OF DISMISSAL  
(April 6, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Zsa Zsa DePaolo, Esq.  
for Complainant

Jay W. Stansell, Esq.  
for Respondent

I. Procedural History

On April 28, 1994, the Immigration and Naturalization Service (INS or Complainant) filed a complaint in the Office of the Chief Administrative Hearing Officer (OCAHO).<sup>1</sup> Complainant alleges a violation of Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324c, enacted by the Immigration Act of 1990, Pub. L. No. 101-649 (1990). The Complaint is predicated on an underlying Notice of Intent to Fine (NIF), served by INS on Leticia Cruz-Mendoza (Cruz-Mendoza or Respondent) on December 19, 1993.

Count I, the only count, charges Respondent with knowingly, falsely making one employment eligibility verification form (Form I-9) dated August 30, 1993 in the name of Leticia Cruz. INS seeks a civil money

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<sup>1</sup> This case was originally assigned to Administrative Law Judge (ALJ) Robert Schneider and reassigned to me on February 7, 1995.

5 OCAHO 750

penalty of \$250 and requests an order directing Respondent to cease and desist from violating 8 U.S.C. § 1324c.

On May 17, 1994, this Office issued a Notice of Hearing (NOH) which transmitted the Complaint to Respondent.

On June 20, 1994, Respondent timely filed an answer to the Complaint which asserts affirmative defenses challenging Complainant's allegation that filling out the Form I-9 constitutes a violation of § 1324c.

On September 14, 1994, Complainant filed a status report stating that the parties were involved in discovery and intended to formulate stipulations of fact. Subsequent status reports filed by the parties indicate continuing efforts to formulate statements of factual and legal issues.

Notwithstanding the parties' efforts, the recent decision by the Chief Administrative Hearing Officer (CAHO) in United States v. Remileh, 5 OCAHO 724 (1995), obliges me, sua sponte, to dismiss the Complaint against Respondent.

## II. Discussion

In Remileh, the CAHO determined that:

the attestation of an employee to false information on a Form I-9 does not constitute the creation of a "falsely made" document in violation of 8 U.S.C. § 1324c. It is the underlying fraudulent document, submitted to an employer to establish identity and/or work authorization, which is the proper basis of a section 1324c violation against an employee in the context of the employment eligibility verification system of 8 U.S.C. § 1324a.

5 OCAHO 724, at 2-3.

Count I (the false making of a Form I-9 for the purpose of satisfying a requirement of the INA) of the Complaint fits squarely within the interpretation of a falsely made Form I-9 violation addressed by the CAHO in Remileh. Most significantly, the specification of the charge in Count I before me is on all fours with the specification alleged in Remileh. In that light, it would be futile to require the parties to continue their exercise in developing factual and legal stipulations. Therefore, I dismiss the Complaint for failing to state a cause of action

upon which relief can be granted. See 28 C.F.R. §§ 68.10, .28(a)(5) and .28(a)(8).<sup>2</sup>

III. *Ultimate Findings, Conclusions and Order*

I have considered the Complaint, Answer and accompanying documentary materials and pleadings. All motions and other requests not previously disposed of are denied. Accordingly, as more fully explained above, I determine and conclude that:

1. The Complaint fails to state a claim upon which relief can be granted;
2. The Complaint is dismissed.

Absent modification by the CAHO within 30 days, this decision and order shall become the final agency decision and order of the Attorney General. 8 U.S.C. § 1324c(d)(4). "A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324c(d)(5).

**SO ORDERED.**

Dated and entered this 6th day of April, 1995.

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MARVIN H. MORSE  
Administrative Law Judge

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<sup>2</sup> See Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k) [hereinafter cited as 28 C.F.R. pt. 68].