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

December 30, 1998

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 96C00004
MARIA SOUROVOVA,	)	
Respondent.	)	
_____	)	

FINAL DECISION AND ORDER GRANTING COMPLAINANT'S RENEWED MOTION FOR SUMMARY DECISION

I. *PROCEDURAL HISTORY*

This is an action pursuant to the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c, in which the Immigration and Naturalization Service (INS or complainant) alleged that Maria Sourovova (respondent) knowingly possessed, used, and attempted to use a forged, counterfeit, altered, and falsely made document, consisting of a letter dated January 2, 1995 confirming Sourovova's employment as a dance instructor with the Indianapolis Ballroom Co. (IBC), after November 29, 1990, for the purpose of satisfying a requirement of the INA. All jurisdictional prerequisites have been satisfied. Respondent's answer denying the material allegations was timely filed and discovery was begun.

Presently pending are the motion of Stanley J. Horn to withdraw as counsel, and the INS' renewed motion for summary decision filed on September 30, 1998. No response has been made to the renewed motion. A previous motion for summary decision was denied, *United States v. Sourovova*, 7 OCAHO 987 (1998); the renewed motion will be granted.

II. *APPLICABLE LAW*

OCAHO rules[1] provide that the Administrative Law Judge may enter a summary decision in favor of either party if the pleadings, affidavits, or other record evidence show that there is no genuine issue of material fact and that a party is entitled to judgment as a matter of law. 28 C.F.R. § 68.38(c). This rule is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal cases. Accordingly it is appropriate to look to federal case law interpreting that rule for guidance in determining when summary decision is appropriate. *See United States v. Candlelight Inn*, 4 OCAHO 611, at 222 (1994).[2]

The party seeking a summary decision has the initial burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When a motion for summary decision is made and supported as provided in the rules, the opposing party may not rest upon mere allegations or denials in a pleading, but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 28 C.F.R. § 68.38(b). However, even in the absence of a response, a summary decision may issue only if it is clear that the moving party is entitled to judgment as a matter of law. 28 C.F.R. § 68.38(c). Summary decision is thus appropriate only when the undisputed facts give rise to no reasonable inferences other than those urged by the moving party. *United States v. Jonel, Inc.*, 7 OCAHO 967, at 742 (1997).

III. *SUPPLEMENTAL EVIDENCE TO SUPPORT THE MOTION*

On the basis of the evidence in the record at the time of the previous denial of summary decision, I found it was established that Sourovova had possessed and used the subject document on January 5, 1995 by presenting it to an INS examiner at an inter-

[1] Rules of Practice and Procedure for Administrative Hearing, 28 C.F.R. Pt. 68 (1998).

[2] Citations to OCAHO precedents reprinted in bound Volumes 1 and 2, *Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States*, and Volumes 3 through 7, *Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Law of the United States*, reflect consecutive pagination within those bound volumes; pinpoint citations to those volumes are to the specific pages, seriatim, of the specific *entire* volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 7, however, are to pages within the original issuances.

view regarding her application for adjustment of status, but that INS had not shown that the document actually was forged, counterfeit, altered, or falsely made, 7 OCAHO 987, at 1023–24. The evidence in support of the first motion consisted principally of INS' requests for admissions which had been deemed admitted after Sourovova failed to respond to them, the interrogatories and requests for documents to which Sourovova also did not respond, Sourovova's application for adjustment of status (Exhibit 1), various documents related to a lawsuit filed by IBC against Sourovova and Konstantine Antonov[3] in the Superior Court of Marion County, Indiana, in which it was alleged that they had breached a contract of employment with IBC (Exhibits 3 and 5), an order to show cause and notice of hearing dated January 5, 1995 addressed to Sourovova together with a subsequent order of the immigration judge granting her voluntary departure in lieu of deportation (Exhibits 6 and 7), and the allegedly fraudulent letter on IBC stationery dated January 2, 1995, bearing the signature of Daniel Rutherford (Exhibit 4). The letter states, "This will confirm the employment of Maria Sourovova as a full time instructor of ballroom dance at an approximate annual income of eighteen thousand dollars." No affidavits were presented.

This evidence showed that there was no issue of material fact as to whether the subject letter was possessed and used by Sourovova subsequent to November 29, 1990. The deemed admissions and other evidence established that Maria Sourovova was interviewed by Donna Petree, Immigration Examiner, on January 5, 1995 at the INS' Indianapolis office and that on the occasion of that interview Sourovova presented a photocopy of the letter dated January 2, 1995 bearing the signature of Dan Rutherford, owner of the IBC, confirming her employment. The purpose of the interview was to discuss Sourovova's application for adjustment of status. As to whether the letter was forged, counterfeited, altered, or falsely made, I found in my previous order that there was no showing that it was; the only showing made as to the character of the letter was that the information it contained was incorrect. 7 OCAHO 987, at 1026–27.

Additional evidence now offered in support of INS's renewed summary decision motion consists of:

[3] Antonov was Sourovova's dance partner who allegedly used a nearly identical letter at his adjustment of status interview the same day as Sourovova s interview. INS filed a separate complaint against Antonov, OCAHO case no. 96C00003, in which it alleged that he was responsible for the creation of both letters.

1. a record of sworn statement in affidavit form (Form I–215W) consisting of five pages, executed by Daniel L. Rutherford (Exhibit A);

2. a letter from Daniel L. Rutherford addressed to the INS Indianapolis Office and dated January 12, 1995 (Exhibit B);

3. a one-page letter from Claude E. Eaton, Senior Forensic Document Analyst at the INS Forensic Document Laboratory, describing the laboratory's analysis of two specific documents, with three pages of attachments identified as Exhibits Q1, Q2, and K1 (Exhibit C);

4. Form I–140, an Immigrant Petition for Alien Worker signed by Daniel L. Rutherford consisting of two pages, stamped "Approved Apr. 20, 1994," with attachments consisting of six pages, one of which appears to be Form G–325A, Biographic Information Sheet; four of which appear to be portions of Form ETA 750, Application for Alien Labor Certification; and the sixth of which is a Final Determination from the Department of Labor dated January 26, 1994 certifying Form ETA 750 (Exhibit D);

5. a three-page memorandum from Roger D. Piper, Officer in Charge of the Indianapolis INS Office, addressed to the INS Director in Chicago, and captioned "274C Fine Justification" (Exhibit E);

6. a one-page letter dated February 6, 1995 on the letterhead of the Starlite Ballroom addressed "To Ballroom Dancers," together with an advertisement for a Professional International Showcase containing photographs of dancers identified as Sourovova and Konstantine Antonov;

7. a memorandum to the file from Roger D. Piper, Officer in Charge of the Indianapolis INS Office, dated June 7, 1995 reporting a status verification inquiry from a mortgage company (Exhibit G);

8. an Order of the Immigration Judge dated October 12, 1995, and a memorandum from an Immigration Inspector dated April 29, 1996 addressed to "Deportation, Chicago, Il." (Exhibit H); and

9. a Notice to Alien Ordered Excluded by Immigration Judge (Form I–296) dated October 7, 1996 and addressed to Maria Sourovova (Exhibit I).

IV. *DISCUSSION*

In order to establish a violation of § 1324c, the INS must establish that respondent: (1) possessed, used, or attempted to use a forged, counterfeit, altered, or falsely made document; (2) knowing the document to be forged, counterfeit, altered, or falsely made; (3) after November 29, 1990; and (4) for the purpose of satisfying any requirement of the INA. *United States v. Morales-Vargas*, 5 OCAHO 732, at 70–71 (1995) (Modification by the Chief Administrative Hearing Officer). Sourovova's possession and use of the subject document after November 29, 1990 were already shown.

Additional evidence submitted with the renewed motion for summary decision now demonstrates that the disputed letter was forged. The letter may also be altered, counterfeited, andsor falsely made, because the four categories are not mutually exclusive. In fact, common law forgery has also been defined as falsely making or materially altering a document. *United States v. London*, 714 F.2d 1558, 1563 (11th Cir. 1983) (citing cases). Although the complaint alleged that respondent used a "forged, counterfeit, altered *and* falsely made document" (emphasis added), the statute does not require that each of these criteria be met; it makes it unlawful to use "any forged, counterfeit, altered, *or* falsely made document." 8 U.S.C. § 1324c(a)(2) (emphasis added). *See also United States v. Davila*, 7 OCAHO 936, at 276 n.21 (1997) ("Although the Complaint uses the terms in the conjunctive (i.e., Respondent used a forged, counterfeit, altered and falsely made document), since the statute uses these terms in the disjunctive, proof of any one would constitute a statutory violation."), *aff'd*, 158 F.3d 584 (5th Cir. 1998) (table). Since the letter is forged, it is not necessary to determine whether it also fits within another definition.[4]

The new evidence submitted by INS clearly demonstrates that the signature on the letter was not the original or genuine signature of Daniel L. Rutherford, IBC's owner. The report from Claude E. Eaton, the Forensic Document Analyst (Exhibit C), states that

[4] There is thus no need to address INS assertion that the definition of "falsely made" added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, § 212(b), 110 Stat. 3009 (1996), applies to the document at issue in this case.

the INS Forensic Document Laboratory performed comparative instrumental and microscopic examination of two documents, Q1 and Q2, and found that the signatures thereon were photocopies of a genuine signature of Daniel Rutherford appearing on a third document identified as K1, but that the duplicated signatures on Q1 and Q2 had been enlarged to 111%. The document identified as Q1 is the letter at issue in this proceeding. The document analyst's conclusions are also supported by Rutherford's statements. His affidavit (Exhibit A) states he absolutely did not provide Sourovova with the employment letter on January 2, 1995 and states with respect to the two letters that "they are not documents I prepared." He stated, "It is not my actual signature. It appears to be a photocopy."

Federal case law supports the proposition that the fraudulent use of a photocopied signature constitutes a forgery. In *London*, the defendant attorney was convicted of violating, *inter alia*, 18 U.S.C. § 505, which prohibits the forging of signatures of federal judges and court officers. The attorney had photocopied the authentic signatures of a district court judge and deputy court clerk onto an order largely of his own creation. The forged order, which ruled against the attorney's clients, was displayed to them in an apparent attempt to force them to pay the supposed damages to the attorney for his own benefit. In fact, the genuine order had found his clients not liable for damages. In affirming the conviction, the Eleventh Circuit said, "The question for us to determine, then, is whether the word 'forges', as used in § 505, includes the photocopying of genuine signatures . . . when such signatures are used to authenticate false documents for fraudulent purposes. We answer this in the affirmative." 714 F.2d at 1563. The court reasoned that "the technology is unimportant" and that "a false writing can be made by any number of artificial means and still fall within the ambit of common law forgery." *Id.* at 1564. The defendant's conduct fell within the "heart" of forgery since "false writings of the names of others were used in an attempt to defraud." *Id.*

The Seventh Circuit, in which the present case arose, reached a similar conclusion in a case involving a different technology. *United States v. Garfinkel*, 285 F.2d 548 (7th Cir. 1960), *cert. denied*, 365 U.S. 879 (1961). The appellate court held that the stamping of an authorized name on American Express money orders was a forgery when the machine making the stamp was stolen. *Id.* at 550. The fact that the person whose name was stamped on the money orders was authorized to issue the money

orders was irrelevant in determining that the documents were forgeries. *Id. Accord Benson v. McMahon*, 127 U.S. 457, 467 (1888) ("It is difficult to perceive how the question as to whether the forgery was committed by printing, or by stamping, or with an engraving plate, or by writing with a pen can change the nature of the crime charged."). Complainant's unchallenged evidence demonstrates that Sourovova used a forged document when she presented INS with the letter containing a photocopy of Rutherford's signature.

INS also urges that I reconsider the effect of Sourovova's deemed admissions that she knew that the letter was falsely made or altered and that she knew on January 2, 1995 that Daniel L. Rutherford had not prepared and signed the letter (admissions 30 and 31). I was previously unwilling to give full effect to those admissions absent some independent corroborating evidence showing that the letter was, in fact, falsely made or that Rutherford had not, in fact, prepared, signed, or authorized it. 7 OCAHO 987, at 1027. The first admission contained both an admission of fact and a conclusion of law. Absent corroboration, I declined to be bound by the conclusion of law because it appeared to me that there were conflicting inferences which could be drawn in Sourovova's favor and that I was obliged to give her the benefit of those inferences.

Complainant's uncontested supplemental evidence now provides a sufficient basis to accept and give full effect to those two admissions to satisfy the element of Sourovova's knowledge because the evidence now unequivocally establishes the character of the letter and eliminates any reasonable inference that Sourovova could have been ignorant of its character. Rutherford's affidavit states that Sourovova was terminated on October 27, 1994 (Exhibit A). She knew that she had been dismissed from IBC and that she was no longer welcome there. Rutherford's affidavit states that he had to have the police escort Sourovova from IBC when she came to the premises on one occasion in December 1994, created a scene, and refused to leave willingly when asked to do so. He stated unequivocally that he was not the author of the letter and did not give it to her. Sourovova nevertheless presented the letter at her interview for adjustment of status on January 5, 1995, representing that it was from IBC and that she still worked there. She did so knowing not only that the facts represented in the letter were false, but also that the letter was forged, counterfeit, falsely made, or altered.

She did so in an attempt to satisfy a requirement of the INA. In order to qualify for an adjustment of status, an alien must specifically show that he or she is both admissible to the United States for permanent residence, and eligible to receive an immigrant visa. 8 U.S.C. § 1255(a) provides:

> The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in [her] discretion and under such regulations as [she] may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

In order to obtain an employment-related immigrant visa, it is generally necessary to have both a labor certification[5] issued by the Secretary of Labor and a visa petition approved by the Attorney General. 8 U.S.C. §§ 1182(a)(5)(A), and 1153(b)(2) and (3) (1994). Sourovova's admissibility to the United States for permanent residence and her eligibility for an immigrant visa thus depended in part on her continued employment by IBC as a skilled worker as defined by 8 U.S.C. § 1153(b)(3)(A)(i), because an alien's eligibility for an immigrant visa under that section is contingent upon having an approved labor certification. 8 U.S.C. § 1153(b)(3)(C). An application for labor certification was filed on Sourovova's behalf by IBC and was approved by the Department of Labor on January 26, 1994. That approval permitted IBC to file a petition for Immigrant Worker (Exhibit D), approval of which on April 20, 1994 in turn allowed Sourovova to file Form I–485 and seek to have her status adjusted to that of permanent resident.

Although Sourovova was unaware of it prior to her adjustment interview on January 5, 1995, Rutherford had already notified INS in November 1994 that her employment had been terminated, and requested that the petition for immigrant worker filed on her behalf be withdrawn (Exhibit A). Sourovova's termination also invalidated the approved labor certification and extinguished her eligibility for an immigrant visa. *Cf. Matter of Danquah*, 16 I. & N. Dec. 191, 193 (BIA 1977) ("[A]n applicant for adjustment of status no longer employed in the position for which his labor certification was granted is not eligible for an immigrant visa based

[5] A labor certification certifies only that there are not sufficient United States workers and that employment of the alien will not adversely affect the wages and working conditions of others similarly employed. § 1182(a)(5)(A). By itself, it does not authorize either employment or entry into the United States.

upon that labor certification."). *Accord Matter of Tien*, 17 I. & N. Dec. 436 (BIA 1980), *Matter of Stevens*, 12 I. & N. Dec. 694 (BIA 1968).

Rules governing the submission of documents to support an application for adjustment of status are found at 8 C.F.R. § 245.2(a)(3)(i). An applicant for adjustment is required to submit Form G–325 and the evidence specified in the instructions attached to the application. For an employment-based applicant, these instructions require a letter from the employer showing that the individual is employed in a job that is not temporary. Form I–485, Application for Permanent Resident, Instructions. Sourovova's presentation of the bogus letter as evidence of current employment in order to support her application for adjustment of status constitutes use of a forged document to satisfy a requirement of the INA as prohibited by 8 U.S.C. § 1324c. *Cf. United States v. Noorealam*, 5 OCAHO 797, 618–19 (in proceeding for adjustment, "effort to satisfy the INA requirement to establish residence in the United States by submitting fake documents violates 8 U.S.C. § 1324c"), *modified on other grounds by the Chief Administrative Hearing Officer*, 5 OCAHO 797 (1995).

INS has thus met its burden of showing that there are no issues of genuine fact concerning Sourovova's knowing use of a forged document after November 29, 1990 to satisfy a requirement of the Act, and is entitled to judgment as a matter of law. It is therefore appropriate to grant complainant's renewed motion for summary decision.

V. *PENALTIES*

The penalties provided for a first violation of 8 U.S.C. § 1324c consist of a cease and desist order and a civil money penalty of not less than $250 or more than $2,000. 8 U.S.C. § 1324c(d)(3). INS requested a penalty of $1,500 for this violation. I have considered the memorandum by Roger D. Piper, the Officer in Charge of the Indianapolis INS office, in support of the requested penalty amount (Exhibit E) which identifies the various factors INS considered, including Sourovova's youth, the seriousness of the violation, her unlawful immigration status, the purpose of the document fraud, her repeated violations of immigration law, her previous abuse of the privilege of voluntary departure, and her attempt to purchase property in the United States after receiving an Order to Show Cause. I find the penalty proposed to be generally reason-

able, without necessarily agreeing with the specific weights INS assigned to each of these factors. The seriousness of Sourovova's unlawful attempt to obtain permanent resident status for which she was actually ineligible, and her demonstrated history of disregard for our immigration laws justify the harshness of the penalty.

VI. *FINDINGS AND CONCLUSIONS*

I have considered the record in its entirety, including the Complaint, Answer, Motion to Deem Complainant's Request for Admissions, Motion for Summary Decision, and Renewed Motion for Summary Decision, and all accompanying documentary materials including affidavits and exhibits. All motions not previously addressed are denied. As set out more fully above, I find and conclude that:

1. There is no genuine issue as to any material fact and the Complainant's Renewed Motion for Summary Decision is granted;

2. Maria Sourovova is a native and citizen of Russia;

3. Maria Sourovova was admitted to the United States as a non-immigrant temporary worker with authorization for employment at the Arthur Murray Dance Studio in Sarasota, Florida;

4. In or about July of 1993, Sourovova began working at the Indianapolis Ballroom Company (IBC) in Indianapolis, Indiana;

5. On or about August 24, 1993, Sourovova's permission to remain in the United States as a non-immigrant temporary worker was revoked by the Immigration and Naturalization Service;

6. On August 25, 1993, Maria Sourovova was granted permission to voluntarily depart the United States on or before August 25, 1994;

7. Maria Sourovova did not depart the United States on or before August 25, 1994;

8. On or about November 22, 1993, Daniel Rutherford filed a petition for labor certification for Maria Sourovova as a skilled ballroom dance instructor at IBC;

9. The labor certification for Maria Sourovova was approved on January 26, 1994;

10. On or about April 4, 1994, Daniel Rutherford filed an immigrant petition for alien worker (I–140) on Sourovova's behalf;

11. The I–140 petition was approved on April 20, 1994;

12. On or about October 27, 1994, IBC terminated Maria Sourovova's employment;

13. On or about November 28, 1994, IBC withdrew its I–140 petition for Sourovova;

14. On or about November 29, 1994 Maria Sourovova filed an application with INS for adjustment of status (Form I–485);

15. On January 5, 1995, Maria Sourovova was interviewed regarding her application for adjustment of status;

16. At the adjustment interview, Maria Sourovova presented Immigration Examiner Donna Petree with a photocopy of a letter dated January 2, 1995 bearing the forged signature of Daniel L. Rutherford;

17. Maria Sourovova presented the letter to INS in order to establish her eligibility for adjustment of status to lawful permanent residence in the United States based on employment as a skilled dance instructor at IBC;

18. Maria Sourovova knew that the letter she presented to the examiner on January 5, 1995 was forged, counterfeited, altered, or falsely made; and

19. Maria Sourovova, after November 29, 1990, knowingly possessed, used, and attempted to use a forged document for the purpose of satisfying a requirement of the INA in violation of § 274C(a)(2) of the INA, 8 U.S.C. § 1324c(a)(2).

VII. *ORDER*

Maria Sourovova shall pay a civil money penalty in the amount of $1,500 and shall cease and desist from violating 8 U.S.C. § 1324(c)(a)(2).

SO ORDERED.

Dated and entered this 30th day of December, 1998.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324c(d)(4); 1324c(d)(5), and 28 C.F.R. § 68.53.