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

January 23, 2024

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 2022A00054
HDB NETWORK TECHNOLOGY, INC. Respondent.	)	

Appearances: Ryan Kahler, Esq., for Complainant
HDB Network Technology, Inc., pro se Respondent

ORDER ON MOTION FOR SUMMARY DECISION

I. INTRODUCTION

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a.

On August 30, 2022, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, HDB Network Technology, Inc., failed to prepare and/or present a Form I-9 for one worker, and failed to ensure proper completion of Forms I-9 for an additional 48 workers, in violation of § 1324a(a)(1)(B). Complainant seeks a total proposed penalty of $92,460.30, a "cease and desist" order, and an order requiring compliance with § 1324a(b) during a period of three years. Compl. 3, Ex. A.

On October 18, 2022, Respondent filed an answer in which it denied both allegations. Answer, 3.

On May 19, 2023, Complainant filed its Motion for Summary Decision. Respondent filed nothing in response.

This is a Final Order.

II. COMPLAINANT'S POSITION

Complainant argues no genuine issues of material fact exist and it is entitled to summary decision.

In its first Count, Complainant asserts Respondent failed to present a Form I-9 for one worker who appeared on Respondent's payroll during the relevant period. C's Mot. Summ. Dec., 7. In its second Count, Complainant asserts Respondent failed to ensure Forms I-9 were properly completed for an additional 48 workers. *Id.* at 8.[1]

After concluding all violations were substantive, Complainant determined it need not provide Respondent with an opportunity to correct these issues before issuing a Notice of Intent to Fine (NIF). *Id*. at 7. Complainant concluded these were "serious violations that demonstrate a complete disregard for the employee verification process," noting a "100% violation rate." *Id*. at 8.

III. RESPONDENT'S POSITION

While Respondent declined to file a response to Complainant's motion, it did provide its position on liability through its Answer (to which Respondent attached investigative correspondence from Complainant[2]).

Respondent claims it "responded timely to the request for I-9 documents and verified with DHS whether it had received all the required documents and received an affirmative response."[3] Answer, 3. Respondent also stated Complainant's allegations "came as a shock after being told four years ago by DHS [that] it had received all the documents," adding "the missing information or documents were never mentioned until now." *Id*.

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[1] Complainant alleged all 48 Forms I-9 provided by Respondent lacked a page 2, and 19 of the provided Forms I-9 were backdated, both of which constitute substantive paperwork violations under § 1324a. C's Mot. Summ. Dec., 8.

[2] Respondent included with its Answer correspondence between its representative and ICE confirming receipt of requested documents, and travel records for the worker mentioned in Count I of the Complaint. Answer, Ex. 1. Evidence and assertions made in the Answer are part of the record and may be considered by the Court.

[3] With its Answer, Respondent included a letter from its counsel to Complainant's attorney in which Respondent acknowledges "the form I-9s my client submitted were not complete." Answer Ex. 1, 2. While this admission contradicts Respondent's blanket denial of the allegations in Count I made earlier in the Answer, it is in line with the reliable evidence presented by Complainant.

IV. EVIDENCE CONSIDERED

At the outset, the Court will analyze the evidence offered by Complainant in support of its Motion for Summary Decision.[4] To conduct this analysis, "[t]he Court must ensure that evidence is sufficiently reliable, and then it must consider what weight, if any, to assign the evidence based on its probative value."[5] *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).[6] The evidence considered by the Court will serve as the basis for factual findings made in a later section.

A. Complainant's Evidence

With its Motion for Summary Decision, Complainant included nine evidentiary exhibits. *See* Mot. Summ. Dec., Exs. C-1–C-9. These exhibits contain the following documentary evidence: a copy of the Complaint and NIF (C-1); ICE's own fact sheet regarding workplace I-9 inspections, found on the agency's website (C-2); Interim Guidelines: Section 274A(b)(6) of the INA Added by Section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Virtue Memorandum] (C-3); copies of the subpoena and Notice of Inspection issued by Complainant on Respondent (C-4); a copy of DHS's receipt of Forms I-9 from Respondent (C-5); the sworn

[4] While the Motion for Summary Decision is unopposed, this fact alone does not create an obligation that this Court grant the Motion. *Lopez-Gomez v. Sessions*, 693 F. App'x 729, 731 (9th Cir. 2017) ("Even when a motion for summary judgment is unopposed, as here, the moving party retains its burden to demonstrate the absence of any issue of material fact . . . Trial courts resolving unopposed summary judgment motions have an obligation to evaluate independently the sufficiency of the moving papers." (citations omitted)); *see also Contreras v. Cavco Industries, Inc*., 16 OCAHO no. 1440a, 2 (2023) ("[T]he Court is under no obligation to grant a motion for summary decision simply because it is unopposed. Courts must remain mindful of their obligation to hold a moving party to its burden and must evaluate motions based on the sufficiency of the moving papers.")

[5] For documentary evidence to be reliable, its proponent must "authenticate [the] document by evidence sufficient to demonstrate that the document is what it purports to be[.]" *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted). Generally, documentary evidence that is complete, signed, sworn under penalty of perjury, dated, authenticated, laid down with foundation contain sufficient indicia of reliability. *See United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021). "Probative value is determined by how likely the evidence is to prove some fact[.]" *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428d, 9 n.5 (2023) (citation omitted).

[6] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

declaration of the auditor who conducted the audit of Respondent's Forms I-9 (C-6); payroll records from Respondent and immigration information related to the worker named in Count I (C-7); auditor notes, payroll information from respondent, and Forms I-9 related to the 48 workers named in Count II (C-8);[7] and ICE's penalty calculation worksheet (C-9).

The Court finds all of Complainant's documentary evidence to be reliable, in that each document is signed, printed on the issuer's letterhead, or published by a government agency. In each case, it is clear "that the document is what it purports to be[.]" *United States v. Carpo-Lingan*, 6 OCAHO no. 914, 5 (1997). Moreover, each piece of evidence is highly probative, as each is likely to assist the Court in making a factual determination relative to whether Respondent met its statutory obligations.

B. Respondent's Evidence

Respondent offered no evidence by way of a response to Complainant's Motion for Summary Decision. It did include evidence with its answer, although the included evidence appears to contradict Respondent's position on liability. Nevertheless, the Court will analyze that evidence under the same framework outlined above.[8]

Respondent, through its Answer, offered documentary evidence, consisting of correspondence between Respondent's former counsel[9] and ICE, and immigration and travel records for the employee named in Count I.

The Respondent provided a letter from Respondent's former counsel as evidence. This letter is signed and dated. Based on the content of the letter, Respondent's counsel appears to have personal knowledge of the facts of the case and the documents are consistent with other evidence in the record. Thus, this evidence has indicia of reliability (internally and in the context of other reliable evidence), and the Court will consider it. The correspondence is highly probative, as it discusses deficiencies in the Forms I-9, and will assist the Court in making a factual determination on liability, and where appropriate penalty.

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[7] C-8 was provided in nine parts (presumably because of the size of the electronic files). The first part contains a list of all the employees whose I-9s contained failure to properly prepare violations, listed in alphabetical order, then proceeds to include scans of the provided (incomplete) I-9s, a copy of the employee list, payroll information, and where applicable, tax report forms and scans of identification documents. These documents are sorted by employee, in alphabetical order. Where necessary, citations are to C-8 are to the specific parts.

[8] Fed. R. Civ. P. 56(c)(1)(A) (stating that a party may support or oppose a motion for summary judgment by "citing to particular parts of materials in the record, including depositions, documents . . .").

[9] On May 24, 2023, this Court granted Respondent's Motion to Withdraw as Counsel. In the motion, Respondent's counsel stated that Respondent had terminated his services and attached a letter of termination, in which Respondent indicated it wanted counsel to withdraw. The Court granted the motion, and Respondent now appears pro se. *United States v. HDB Network Tech., Inc.,* 18 OCAHO no. 1483 (2023).

The Respondent provided a Form I-94 travel record for the employee named in Count I.[10] This document is reliable in that it appears to have been taken directly from the CBP website. Further, it is probative in that it sheds light on the immigration status and international travel of the employee identified in Count I. The Court will consider it.

V. FINDINGS OF FACT

Based on the reliable evidence presented by Complainant through its Motion and by Respondent in its Answer, the Court makes the following findings of fact.

1. Respondent, HDB Network, Inc., is a duly incorporated company located in Portland, Oregon. Answer, 1.
2. Homeland Security Investigations (HSI), a component of DHS, considers Respondent corporation to be an international logistics and export/import company. C-6, 1.
3. On July 16, 2018, HSI initiated a Form I-9 inspection of Respondent. C-6, 1.
4. On July 18, 2018, an HSI agent served the Notice of Inspection (NOI) and an Immigration Enforcement Subpoena on Respondent's registered agent. C-6, 1.
5. The NOI requested Forms I-9 for all current employees as of July 16, 2018 and all employees terminated on or after April 1, 2018. C-6, 1.
6. According to the employee records, 50 employees fell within this range. C-6, 1.
7. Of these 50 employees, one was determined to be an owner of Respondent business, for whom an I-9 Form would not be required. C-6, 1.
8. HSI anticipated receipt of 49 Forms I-9 from Respondent. C-6, 2.
9. On July 26, 2018, HSI received partial photocopied Forms I-9, as well as the requested payroll and business records from Respondent. C-6, 1.
10. On August 8, 2018, the HSI auditor emailed Respondent's listed contact requesting the original Forms I-9. C-6, 1.
11. On August 14, 2018, HSI received a packet of Forms I-9, which DHS documented as containing "49 original & copied I-9s (partial)." C-6, 1; *see also* C-5.[11]
12. When the HSI auditor reviewed the documents, she noted that KI (Count I employee) had no Form I-9 and "did not appear authorized to work." C-6, 1.

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[10] Respondent does not explain why it provided the I-94 travel record.

[11] Of the 49 I-9s received, 48 are listed in Count II. The one remaining I-9 may belong to an individual with ownership interest, which would exclude it from inspection. C-5 at 2; C-8, part 5, at 22; *see United States v. Speedy Gonzalez Constr., Inc.,* 11 OCAHO no. 1228, 9 (2014) ("[A]s a general rule, an individual is not an employee of an enterprise if he or she has an ownership interest in, and control over, all or part of the enterprise."); *United States v. El Camino LLC*, 18 OCAHO no. 1479, 7 (2023) ("[E]mployers cannot be held liable under § 1324a for failing to timely prepare or present a Form I-9 for an owner of the company."); *United States v. Alpine Staffing, Inc*., 12 OCAHO no. 1303, 11 (2017) (holding that the respondent company is not liable for any violations in the company's president and manager's Form I-9).

13. Upon further investigation, the HSI auditor discovered, through State Department records, that KI had been performing unauthorized work for Respondent. C-6, 1.
14. On June 23, 2022, Complainant, ICE, served Respondent with a Notice of Intent to Fine (NIF). C-1, Ex. A.
15. On July 25, 2022, Respondent timely requested a hearing. C-1, Ex. B.

FACTS RELATED TO COUNT I

16. Respondent failed to prepare and/or present a Form I-9 for one employee from the relevant period. C-1, 8.
17. The relevant period covers current employees of Respondent as of July 16, 2018 and all those terminated on or after April 1, 2018. C-6, 1.
18. The employee, KI, was identified as not having completed a Form I-9. C-1, 8.
19. The start date for KI is unknown. C-7, 1, 18.
20. KI appeared on Respondent's payroll from April 1, 2018 to July 25, 2018. C-7, 19.
21. It is unclear what KI's role was in the company, based on payroll documents, she was a salaried employee. *See* C-7, 20–21.
22. On May 19, 2019, HSI mailed a Notice of Suspect Documents (NOSD) to Respondent, which stated KI "did not appear to have valid work authorization documents." C-6, 2.
23. On July 11, 2019, Respondent sent an email to the auditor stating that KI "is no longer employed in the U.S. and her last pay was September 2018." C-6, 2.
24. The HSI auditor further noted KI was listed on Respondent's April – July 2018 payroll reports, but no Form I-9 had been submitted for her, so she listed the individual under Count I Failure to Prepare or Present the Form I-9. C-6, 2.
25. On November 29, 2013, KI applied for a B-2 visa, stating her purpose for her travel was "to purchase a small airplane on behalf of a club of which she was vice president." C-7, 11.
26. The Court takes official notice of the following: "Visitor visas are non-immigrant visas for persons who want to enter the United States temporarily for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2). Visitor Visa, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html.[12]
27. KI traveled to and from the United States several times beginning in 2013, staying each time for approximately 6 months. C-7, 11.
28. KI entered the United States on April 3, 2015 on a B-2 visa and was to depart the United States on or before October 2, 2015. *See* Answer Ex. 1.
29. After October 3, 2015, KI remained in the United States in contravention of the terms of her B-2 visa. Answer Ex. 1.
30. KI ultimately departed the United States on February 25, 2016. Answer Ex. 1.
31. In June 2015, while in the United States, KI applied for an L-1 visa. USCIS approved her application on September 24, 2015. C-7, 5–6.
32. The Court takes official notice of the following: "The L-1 non-immigrant classification enables a U.S. employer to transfer an executive or manager from one

[12] Visitor Visa, U.S. Department of State – Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html.

of its affiliated foreign offices to one of its offices in the United States." L-1 A Intracompany transferee Executive or Manager, https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager.[13]

33. On March 22, 2016, KI appeared at the United States embassy in Hong Kong with her USCIS L-1 approval notice, seeking consular processing. C-7, 4.
34. KI's application was flagged by embassy staff due to "concerns [KI] was working during [her time as B1/B2 visitor]." C-7, 4.
35. On April 27, 2016, her application was elevated by an Embassy official, who noted "[KI] admitted during her interview that she was working while in the U.S., which was not authorized on a B1/B2 visa, she was working unlawfully in the U.S. for more than 180 days. Therefore, she is ineligible for the visa under 9B1 which means she is inadmissible to the U.S. for 3 years[.]" C-7, 5.
36. On June 24, 2016, KI returned to the United States embassy in Hong Kong and met with a different consular officer, who noted KI could not explain in her native language what Respondent company does, or the duties of her position. C-7, 10.
37. This consular officer recommended KI's petition be "revoked," referring it to the State Department's Fraud Protection Unit (FPU). C-7, 10, C-8.
38. On August 5, 2016, the FPU investigation recommended KI's case be referred for additional review. C-7, 10.
39. On February 15, 2017, the Consulate's Visa Chief determined the evidence in the FPU investigation supported a finding of fraud or misrepresentation pursuant to INA § 212(a)(6)(C)(i), and was grounds to refuse KI's L-1 petition. C-7, 11.
40. From her last departure from the United States on February 25, 2016 until at least November 5, 2018, KI did not return to the United States. C-7, 13.

FACTS RELATED TO COUNT II

41. Respondent failed to ensure proper completion of section 1 and/or failed to properly complete section 2 and/or section 3 of the Form I-9 for 48 employees.[14]
42. The HSI auditor noted the 48 submitted Forms I-9 lacked page 2. C-6, 2.
43. Page 2 of the Form I-9 contains section 2, where the employer attests to verifying the employee's employment authorization documents.[15]
44. Respondent provided photocopies of employee identification documents. C-6, 2.
45. The HSI auditor noted some Forms I-9 were backdated, as the hiring dates on the forms occurred before that Form I-9 version was released to the public. C-6, 2.

[13] L-1 A Intracompany transferee Executive or Manager, U.S. Citizenship and Immigration Services, https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager.

[14] With its Answer, Respondent included a letter from its counsel to the ICE attorney in which he acknowledges "the form I-9s my client submitted were not complete." Answer Ex. 1, 2. While this admission contradicts Respondent's blanket denial of the allegations in Count I made earlier in the Answer, it is in line with the reliable evidence presented by Complainant.

[15] Note that the current version of the Form I-9 contains both Section 1 and 2 on the first page.

46. Specifically, Respondent used the July 17, 2017 version of the Form I-9 for all 48 employees listed in Count I. C-8.
47. Of the 49 individuals employed by Respondent during the relevant period, 19 were hired prior to July 17, 2017. C-8, part 1, 1–5.
48. The attestation dates in section 1 for the 19 employees predate July 17, 2017. C-8.

VI. LAW & ANALYSIS

The Court "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue of material fact and that the party is entitled to summary decision." 28 C.F.R. § 68.38(c). "An issue of material fact is genuine only if it has a real basis in the record" and "[a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986), and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 284 (1986)).

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The Court views all facts and inferences "in the light most favorable to the non-moving party." *United States v. Primera Enters.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

The evidence submitted by both parties reveals there is no genuine issue of material fact. Respondent did not oppose factual assertions made by Complainant in its Motion for Summary Decision, and the Answer was consistent with the evidence presented by Complainant in its Motion. *See* Answer, 2–3. For these reasons, the Court finds no genuine issue of material fact exists and now turns to whether Complainant is entitled to judgment as a matter of law on liability.

A. Liability Law & Analysis

In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazzo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)).

Employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the I-9 Forms for inspection by the government upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii); *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014). Forms must be retained for current employees. *United States v H&H Saguaro Specialists*, 10 OCAHO no. 1144, 6 (2012) (first citing 8 U.S.C. § 1324a(b)(3); then citing 8 C.F.R. § 274a.2(a)(3); and then citing *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998)). With

respect to former employees, forms must be kept "only for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later."[16] *Id.*

Employers must also ensure employees complete section 1 of the Form I-9 and attest to citizenship or immigration status in the United States by signing and dating the Form I-9 no later than the first day of employment. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury), (b)(1)(i)(A). For employees employed for three business days or more, an employer must sign section 2 of the Form I-9 within three days of the employee's first day of employment to attest under penalty of perjury that it reviewed the appropriate documents to verify the individual's identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 8 (2021).

In Count I, Complainant alleges Respondent failed to prepare/present a Form I-9 for one employee employed during the relevant period. This employee was working for Respondent as early as December 2013. C-7, 6. Germane to this analysis, this employee was physically present and working in the United States from April 3, 2015 to February 25, 2016 (according to her I-94 record and her own admissions in visa interviews).[17] *Id.* at 5. As noted above, the retention period required is three years. HSI initiated an inspection on July 25, 2018. HSI anticipated receiving Forms I-9 for then-current employees as of July 2015. No Form I-9 was presented to HSI for this employee; thus, Respondent is liable for the violation alleged in Count I.[18]

In Count II, Complainant alleges Respondent failed to ensure that 48 individuals properly completed Section 1 of their Forms I-9 and/or failed to properly complete Sections 2 or 3 of the Form I-9 for those same 48 individuals. All 48 of the Forms I-9 Respondent submitted for these employees were missing the second page, which contains Sections 2 and 3 of the Form. C's Ex. C-6, 2; Ex. C-8.

"Section 2 of the I-9 Form is the 'Employer Review and Verification' section and is the very heart of the verification process initiated by Congress in IRCA. Failure to complete any part of section 2, including an employer's failure to sign his or her name is . . . a serious violation." *United States v. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989). "Failure to 'attest to the examination of an employee's employment verification documents . . . is a serious substantive error.'" *R&SL Inc.*,

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[16] When ICE conducts an inspection, the inspection typically covers all current and since-terminated employees employed during the three-year period prior to the NOI being issued.

[17] While Respondent notes in its answer that K.I's employment ended in September 2018 (after the inspection was initiated), this fact is irrelevant to a retention requirement analysis – the analysis which drives whether she would have had a Form I-9 on file with the employer.

[18] This employee departed the United States after overstaying her B-2 visa on February 25, 2016. From February 25, 2016 to November 2018, she was unable to re-enter the United States. It is unclear what her employment relationship was to Respondent while she was outside the United States. In any event, her presence in the United States and employment with Respondent in 2015-2016 triggered Form I-9 requirement, thus, the Court need not consider what, if any, liability implications arise from her status post-February 25, 2016.

13 OCAHO no. 1333b at 34 (quoting *United States v. Senox Corp.*, 11 OCAHO no. 1219, 8 (2014)). Because Respondent failed to complete section 2 for all 48 Forms I-9, it violated 8 U.S.C. § 274A(b)(1)(i)(A). Respondent is liable for all 48 violations alleged in Count II.

B. Penalty Law & Analysis

Because Respondent is liable, the Court must now consider the appropriate penalty. "The government has the burden of proof[19] with respect to the penalty . . . , and must prove the existence of any aggravating factor by a preponderance of the evidence . . .)." *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015) (citations omitted). The penalty range depends on the date of the violations and the date of assessment. *See* 28 C.F.R. § 68.52(c)(8); 28 C.F.R. § 85.5.[20] Further,

> there is . . . no single method mandated for calculating civil money penalties for violations of 8 U.S.C. § 1324a(a)(1)(B). *See United States v. Senox Corp.*, 11 OCAHO no. 1219, 4 (2014); *see also United States v. The Red Coach Rest., Inc.*, 10 OCAHO no. 1200, 3 (2013) (affirmance by the CAHO noting decisions using varied approaches to calculating penalties); *cf. United States v. Int'l Packaging, Inc.*, 12 OCAHO no. 1275a, 6 (2016) (noting that nothing in 8 U.S.C. § 1324a(e)(5) requires the five statutory factors to be considered exclusively on a binary scale); *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1232, 5 (2014) (affirmance by the CAHO) (noting a failure to establish a statutory factor as aggravating does not require that the factor necessarily be treated as mitigating).
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> *R&SL Inc.*, 13 OCAHO no. 1333b at 36 (quoting *Alpine Staffing, Inc.*, 12 OCAHO no. 1303 at 10).

"The civil penalties for violations of § 1324a are intended 'to set a meaningful fine to promote future compliance…'" *United States v. 1523 Ave. J Foods Inc.*, 14 OCAHO no. 1361, 3 (2020) (quoting *United States v. 3679 Com. Place, Inc.*, 12 OCAHO no. 1296, 7 (2017)).

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[19] Respondent was provided with an opportunity to be heard on penalties, and declined to submit evidence or argument for the Court's consideration.

[20] 28 C.F.R. § 68.52(c)(8) provides: "For civil penalties assessed after August 1, 2016, whose associated violations ... occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 C.F.R. 85.5." When a penalty is assessed after January 30, 2023, the minimum penalty is $272, and the maximum is the $2,701.

The Chief Administrative Hearing Officer recently clarified "for purposes of 28 C.F.R. § 85.5(d), OCAHO does assess civil money penalties, those penalties are assessed through the issuance of a final order, and the date of assessment is the date of the OCAHO final order." *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470e, 26 (2023). The Court issues this Order after January 30, 2023, making the appropriate penalty range between $272 and $2,701.

In determining an appropriate penalty, the Court must consider following statutory factors: 1) the size of the employer's business;[21] 2) the employer's good faith;[22] 3) the seriousness of the violations;[23] 4) whether or not the individual was an unauthorized alien; and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5).

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[21] Although "[p]rior ALJs have considered the 'general public policy of leniency toward small entities' ... as a non-statutory factor[,]" the undersigned finds that Congress already requires her to consider this policy with the statutory factor of business size. *Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, at 12 n.4 (citations omitted); *see generally United States v. Pegasus Fam. Rest.*, 12 OCAHO no. 1293, 10 (2016) (citation omitted) ("[I]t is well-settled that prior OCAHO ALJ decisions do not necessarily bind a different ALJ in a future case."). "Therefore, the undersigned will give weight to the small size of Respondent's business only as a statutory factor." *Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, at 12 n.4.

[22] A good faith analysis can encompass "the steps the employer took *before* the investigation to reasonably ascertain what the law requires and the steps it took to follow the law." *United States v. Exec. Cleaning Servs. of Long Island Ltd.*, 13 OCAHO no. 1314, 3 (2018) (emphasis in original); *see also United States v. Frio Cnty. Partners, Inc.*, 12 OCAHO no. 1276, 16 (2016).

Backdating may be indicative of bad faith. *See United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 8 (2015); *United States v. Imacuclean Cleaning Servs., LLC*, 13 OCAHO no. 1327, 9 (2019); *United States v. Integrity Concrete, Inc.*, 13 OCAHO no. 1307, 13 (2017); *United States v. Metro. Warehouse, Inc.*, 10 OCAHO no. 1207, 7 (2013); *United States v. Speedy Gonzalez Constr., Inc*. 11 OCAHO no. 1243, 6 (2015); *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 7 (2020).

A poor compliance rate alone may be insufficient to find bad faith. *See United States v. Maverick Constr.*, 15 OCAHO no. 1405a, 7 (2022); *United States v. Azteca Dunkirk, Inc.*, 10 OCAHO no. 1172, 4 (2013). A low compliance rate and additional culpable conduct may permit Court to make a finding of bad faith. *See Integrity Concrete, Inc.*, 13 OCAHO no. 1307 at 13–14 (additional culpable conduct of backdating); *United States v. Karnival Fashions, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (additional finding of knowing disregard for verification requirements).

"[T]he absence of bad faith does not show good faith." *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 8 (2020) (citing *United States v. Guewell*, 3 OCAHO no. 478, 814, 820 (1992)).

[23] "[N]ot all violations are equally serious[,]" and "the seriousness of violations may be evaluated on a continuum[.]" *Senox Corp.*, 11 OCAHO no. 1219, at 9 (citations omitted). "[V]iolations for failure to prepare I-9 forms . . . are more serious than are the paperwork violations . . . because the failure to prepare the forms completely subverts the purpose of the law." *Id.* (citing *United States v. Skydive Acad. of Hi. Corp.*, 6 OCAHO no. 848, 235, 246 (1996)); *see also Speedy Gonzalez Constr., Inc.*, 11 OCAHO no. 1243 at 5) (citation omitted) (holding that failure to ensure proper completion of Forms I-9 are serious but somewhat less serious than failure to prepare).

"ICE's penalty calculations are not binding in OCAHO proceedings, and the ALJ may examine the penalties de novo if appropriate." *Alpine Staffing, Inc.*, 12 OCAHO no. 1303, at 10 (citing *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

> Although 8 U.S.C. § 1324a(e)(5) "requires due consideration of the enumerated factors, it does not mandate any particular outcome of such consideration, and nothing in the statute or the regulations requires in OCAHO proceedings either that the same weight be given to each of the factors in every case, or that the weight given to any one factor is limited to any particular percentage of the total."
>
> *Id.* (quoting *Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, at 6–7).

The weight placed on each factor varies depending on the facts of case. *Id.* (citing *United States v. Raygoza*, 5 OCAHO no. 729, 48, 51 (1995)). The statute does not require mathematical offsetting, rather each statutory factor must receive "due consideration." 8 U.S.C. § 1324a(e)(5).

1. Statutory Factors Analysis

A penalty may be mitigated when the respondent is a small business. *See, e.g., United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355a, 5 (2020) (citing *United States v. Carter*, 7 OCAHO no. 931, 121, 162 (1997)). "OCAHO has generally considered companies with fewer than 100 employees[24] to be small businesses." *1523 Ave. J Foods, Inc.*, 14 OCAHO no. 1361, at 6 (citation omitted). Respondent is a small business, with 50 employees. *See* C-6, 1.

Here, there is clear evidence of bad faith. This employer took no steps to learn what the law requires. Respondent had a "poor" compliance rate and engaged in backdating.[25] Further, Respondent knew or should have known the Count I employee was unauthorized.[26] The Court will aggravate the penalty significantly for Respondent's bad faith.

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[24] The Court considers many factors when determining the size of a business (number of employees, revenue or income, payroll, nature of ownership, or length of time in business). *See United States v. Fowler Equip. Co., Inc.*, 10 OCAHO no. 1169, 6–7 (2013). While business size is mitigating here, it does not outweigh the other statutory factors.

[25] In Count II, Respondent failed to complete the second page of the Form I-9 in its entirety for 100% of the forms. Moreover, 19 Forms I-9 were backdated – as the version of the form Respondent used did not even exist when it was purportedly completed.

[26] In Count I, Complainant's evidence shows that, even when viewed in a light most favorable to the Respondent, Respondent took no steps to verify the individual's employment authorization. Respondent, through its Answer, admitted it knew of the specific visa (i.e. a B-2 visitor visa) used to authorize K.I's limited presence in the United States. Further, K.I. was unable to even enter the United States for a period of several years, a fact of which Respondent would (or should) have been aware as she remained on payroll through 2018.

The violations here are all serious violations. Respondent failed to prepare or present any Form I-9 for the employee named in Count I. As to Count II, "[s]ection 2 of the I-9 form . . . is the very heart of the verification process initiated by Congress in IRCA. Failure to complete any part of section 2 [is] . . . a serious violation." *United States v. Juan V. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989). Respondent failed to complete Section 2 of the Form I-9 for all 48 employees named in Count II. As a result, the penalty will be aggravated for Counts I and II.

The record clearly establishes the presence of an unauthorized employee – employee K.I. identified in Count I. Additional facts surrounding this employee raise concerns about the actions taken by Respondent in this case.[27] The Respondent knowingly employed someone on a B-2 visa, and continued to employ her even after she overstayed that visa. After she departed and remained abroad (unable to re-enter the United States), this Respondent chose to maintain her on payroll for a period of years. The knowing and continued employment of individuals without authorization in the United States is precisely the conduct 8 U.S.C. § 1324a seeks to prevent and punish. As a result, the penalty will be aggravated significantly for Count I.

The record does not indicate a history of violations. Mot. Summ. Dec. 10. "This factor neither mitigates nor aggravates the penalty." *United States v. Kodiak Oilfield Servs., LLC*, 16 OCAHO 1436b, 5 (2023); *see also United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6 (2010) ("[N]ever having violated the law before does not necessarily warrant additional leniency[.]").

2. Penalty Assessment

Complainant seeks a penalty of $2,081.10 for the violation in Count I and a penalty of $1,882.90 for each of the 48 violations in Count II, for a total penalty of $92,460.30.

The Court will impose a penalty of $2,500.00 for the violation in Count I. As to the 48 violations in Count II, the Court shall provide a penalty of $1,882.90 per violation, for a total penalty of $90,379.20 for Count II.

Therefore, the total penalty imposed for all counts will be $92,879.20.

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[27] While it is unclear how much of K.I's conduct at her consular interviews should be or could be attributed to the Respondent employer, the analysis of this factor can be completed by purely focusing on the actions of the Respondent employer. Of note, K.I.'s stated purpose for the tourist visa was to purchase a plane in the United States, yet she immediately began working for the Respondent company (who knew her visa would not authorize work) upon entering the country and continued to do so until she eventually departed in 2016. C-7, 11.

Moreover, at her interview for the L-1 visa she could not articulate in her native language what Respondent company's operations were in the United States nor the responsibilities of her role within the company, which paid her $60,000 annually according to Respondent's state wage reports. *See* C-7, 10, 15–16.

These facts demonstrate awareness and complicity on the part of Respondent business to employ an unauthorized worker.

3. Propriety of a Cease-and-Desist Order

In addition to civil monetary penalties, Complainant seeks an order requiring Complainant to "cease and desist from the violations set forth in the [NIF]," including for the paperwork violations. Compl. 3. For the reasons first identified in 1988, and reiterated in numerous subsequent decisions, the Court will not enter a cease-and-desist order for paperwork violations. *United States v. Elsinore Mfg., Inc.*, 1 OCAHO no. 5, 13, 16 (1988), *modified by the CAHO on other grounds*, 1 OCAHO no. 13, 44, 44–45 (1988); *see* 8 U.S.C. § 1324a(e)(4).

VII. CONCLUSION

Respondent is liable for all 49 paperwork violations alleged in Counts I and II and the Court has given each statutory factor due consideration in assessing a penalty.

The Court **ORDERS** Respondent to pay $92,879.20 for failing to prepare and/or present a Form I-9 for one individual and for failing to complete Section 2 of the Form I-9 for forty-eight individuals.

VIII. CONCLUSIONS OF LAW

1. Evidence and assertions made in the Answer are part of the record and may be considered by the Court. Fed. R. Civ. P. 56(c)(1)(A) (stating that a party may support or oppose a motion for summary judgment by "citing to particular parts of materials in the record, including depositions, documents . . .").

2. While the Motion for Summary Decision is unopposed, this fact alone does not create an obligation that this Court grant the Motion. *Lopez-Gomez v. Sessions*, 693 F. App'x 729, 731 (9th Cir. 2017).

3. To conduct this analysis, "[t]he Court must ensure that evidence is sufficiently reliable, and then it must consider what weight, if any, to assign the evidence based on its probative value." *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022).

4. For documentary evidence to be reliable, its proponent must "authenticate [the] document by evidence sufficient to demonstrate that the document is what it purports to be[.]" *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted).

5. Generally, documentary evidence that is complete, signed, sworn under penalty of perjury, dated, authenticated, laid down with foundation contain sufficient indicia of reliability. *See United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021).

6. "Probative value is determined by how likely the evidence is to prove some fact[.]" *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428d, 9 n.5 (2023) (citation omitted).

7. The Court finds all of Complainant's documentary evidence to be reliable, in that each document is signed, printed on the issuer's letterhead, or published by a government agency. In each case, it is clear "that the document is what it purports to be[.]" *United States v. Carpo-Lingan*, 6 OCAHO no. 914, 5 (1997).

8. Complainant's evidence is highly probative, as each is likely to assist the Court in making a factual determination relative to whether Respondent met its statutory obligations.

9. Respondent's documentary evidence includes evidence signed and dated by a person with personal knowledge of the facts of the case and evidence from the Customs and Border Patrol website, and the Court finds the evidence to have indicia of reliability.

10. Respondent's documentary evidence is highly probative.

11. Of the 49 I-9s received by DHS, the one I-9 that is not listed in Count II belongs to an individual with ownership interest, which would exclude it from inspection. C-5 at 2; C-8, part 5, at 22; *see United States v. Speedy Gonzalez Constr., Inc.,* 11 OCAHO no. 1228, 9 (2014); *United States v. El Camino LLC*, 18 OCAHO no. 1479, 7 (2023); *United States v. Alpine Staffing, Inc*., 12 OCAHO no. 1303, 11 (2017).

12. The Court takes official notice of the following: "Visitor visas are non-immigrant visas for persons who want to enter the United States temporarily for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2). Visitor Visa, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html.

13. The Court takes official notice of the following: "The L-1 nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States." L-1 A Intracompany transferee Executive or Manager, https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager.

14. The Court "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue of material fact and that the party is entitled to summary decision." 28 C.F.R. § 68.38(c).

15. "An issue of material fact is genuine only if it has a real basis in the record" and "[a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

16. "Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012).

17. The Court views all facts and inferences "in the light most favorable to the non-moving party." *United States v. Primera Enters.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

18. The evidence submitted by both parties reveals there is no genuine issue of material fact.

19. In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013).

20. Employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the I-9 Forms for inspection by the government upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii); *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014).

21. Forms must be retained for current employees. *United States v H&H Saguaro Specialists*, 10 OCAHO no. 1144, 6 (2012).

22. As to former employees, forms must be kept "only for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later." *Id*.

23. Employers must ensure employees complete section 1 of the Form I-9 and attest to citizenship or immigration status in the United States by signing and dating the Form I-9 no later than the first day of employment. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury), (b)(1)(i)(A).

24. For employees employed for three business days or more, an employer must sign section 2 of the Form I-9 within three days of the employee's first day of employment to attest under penalty of perjury that it reviewed the appropriate documents to verify the individual's identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 8 (2021).

25. The employee in Count I was physically present and working in the United States from April 3, 2015 to February 25, 2016 (according to her I-94 record and her own admissions in visa interviews). C-7, 5.

26. HSI initiated an inspection on July 25, 2018. HSI anticipated receiving Forms I-9 for then-current employees as of July 2015. No Form I-9 was presented to HSI for the employee listed in Count I; thus, Respondent is liable for the violation alleged in Count I.

27. All 48 of the Forms I-9 Respondent submitted for the employees list in Count II were missing the second page, which contains Sections 2 and 3 of the Form. C's Ex. C-6, 2; Ex. C-8.

28. "Section 2 of the I-9 Form is the 'Employer Review and Verification' section and is the very heart of the verification process initiated by Congress in IRCA. Failure to complete any part of section 2, including an employer's failure to sign his or her name is . . . a serious violation." *United States v. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989).

29. "Failure to 'attest to the examination of an employee's employment verification documents . . . is a serious substantive error.'" *R&SL Inc.*, 13 OCAHO no. 1333b at 34 (quoting *United States v. Senox Corp.*, 11 OCAHO no. 1219, 8 (2014)).

30. Because Respondent failed to complete section 2 for all 48 Forms I-9, it violated 8 U.S.C. § 274A(b)(1)(i)(A). Respondent is liable for all 48 violations alleged in Count II.

31. "The government has the burden of proof with respect to the penalty . . . and must prove the existence of any aggravating factor by a preponderance of the evidence . . . ." *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015).

32. The penalty range depends on the date of the violations and the date of assessment. *See* 28 C.F.R. § 68.52(c)(8); 28 C.F.R. § 85.5.

33. 28 C.F.R. § 68.52(c)(8) provides: "For civil penalties assessed after August 1, 2016, whose associated violations ... occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 C.F.R. 85.5." When a penalty is assessed after January 30, 2023, the minimum penalty is $272 and the maximum is the $2,701.

The Chief Administrative Hearing Officer recently clarified "for purposes of 28 C.F.R. § 85.5(d), OCAHO does assess civil money penalties, those penalties are assessed through the issuance of a final order, and the date of assessment is the date of the OCAHO final order." *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470e, 26 (2023). The Court issues this Order after January 30, 2023, making the appropriate penalty range between $272 and $2,701.

34. "[T]here is . . . no single method mandated for calculating civil money penalties for violations of 8 U.S.C. § 1324a(a)(1)(B). *R&SL Inc.*, 13 OCAHO no. 1333b at 36 (quoting *Alpine Staffing, Inc.*, 12 OCAHO no. 1303 at 10).

35. "The civil penalties for violations of § 1324a are intended 'to set a meaningful fine to promote future compliance…'" *United States v. 1523 Ave. J Foods Inc.*, 14 OCAHO no. 1361, 3 (2020).

36. In determining an appropriate penalty, the Court must consider following statutory factors: 1) the size of the employer's business; 2) the employer's good faith; 3) the seriousness of the violations; 4) whether or not the individual was an unauthorized alien; and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5).

37. A good faith analysis can encompass "the steps the employer took *before* the investigation to reasonably ascertain what the law requires and the steps it took to follow the law." *United States v. Exec. Cleaning Servs. of Long Island Ltd.*, 13 OCAHO no. 1314, 3 (2018)

38. Backdating may be indicative of bad faith. *See generally United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 8 (2015); *United States v. Imacuclean Cleaning Servs., LLC*, 13 OCAHO no. 1327, 9 (2019); *United States v. Integrity Concrete, Inc.*, 13 OCAHO no. 1307, 13 (2017); *United States v. Metro. Warehouse, Inc.*, 10 OCAHO no. 1207, 7 (2013); *United States v. Speedy*

Gonzalez Constr., Inc. 11 OCAHO no. 1243, 6 (2015); *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 7 (2020).

39. A poor compliance rate alone may be insufficient to find bad faith. *See United States v. Maverick Constr.*, 15 OCAHO no. 1405a, 7 (2022); *United States v. Azteca Dunkirk, Inc.*, 10 OCAHO no. 1172, 4 (2013).

40. A low compliance rate and additional culpable conduct may permit Court to make a finding of bad faith. *See Integrity Concrete, Inc.*, 13 OCAHO no. 1307 at 11–12 (additional culpable conduct of backdating); *United States v. Karnival Fashions, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (additional finding of knowing disregard for verification requirements).

41. "[T]he absence of bad faith does not show good faith." *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 8 (2020).

42. "[N]ot all violations are equally serious[,]" and "the seriousness of violations may be evaluated on a continuum[.]" *Senox Corp.*, 11 OCAHO no. 1219, at 9 (citations omitted).

43. "[V]iolations for failure to prepare I-9 forms . . . are more serious than are the paperwork violations . . . because the failure to prepare the forms completely subverts the purpose of the law." *Id.*

44. "ICE's penalty calculations are not binding in OCAHO proceedings, and the ALJ may examine the penalties de novo if appropriate." *Alpine Staffing, Inc.*, 12 OCAHO no. 1303, at 10 (citing *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

45. The statute does not require mathematical offsetting, rather it requires each statutory factor receive "due consideration." 8 U.S.C. § 1324a(e)(5).

46. "OCAHO has generally considered companies with fewer than 100 employees to be small businesses." *1523 Ave. J Foods, Inc.*, 14 OCAHO no. 1361, at 6 (citation omitted).

47. Respondent is a small business, with 50 employees. *See* C-6, 1.

48. Here, there is clear evidence of bad faith, because the employer had a poor compliance rate, backdated Forms I-9, and knew or should have known the Count I employee was unauthorized.

49. The Court will aggravate the penalty significantly for Respondent's bad faith.

50. Because failing to prepare or present a Form I-9 and failing to complete Section 2 of Forms I-9 are both serious violations, the penalty will be aggravated for Counts I and II.

51. The record clearly establishes the presence of an unauthorized employee – employee K.I. identified in Count I.

52. The Respondent knowingly employed someone on a B-2 visa, and continued to employ her even after she overstayed that visa.

53. The knowing and continued employment of individuals without authorization in the United States is precisely the conduct 8 U.S.C. § 1324a seeks to prevent and punish. As a result, the penalty will be aggravated significantly for Count I.

54. The record does not indicate a history of violations. Mot. Summ. Dec. 10. "This factor neither mitigates nor aggravates the penalty." *United States v. Kodiak Oilfield Servs., LLC*, 16 OCAHO 1436b, 5 (2023).

55. For the reasons first identified in 1988, and reiterated in numerous subsequent decisions, the Court will not enter a cease-and-desist order for paperwork violations. *United States v. Elsinore Mfg., Inc.*, 1 OCAHO no. 5, 13, 16 (1988), *modified by the CAHO on other grounds*, 1 OCAHO no. 13, 44, 44–45 (1988); *see* 8 U.S.C. § 1324a(e)(4).

SO ORDERED.

Dated and entered on January 23, 2024.

_____

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56