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

United States of America, Complainant vs. Nu Look Cleaners of Pembroke Pines, Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100162.

ORDER DENYING RESPONDENT'S MOTION TO DISMISS DATED MARCH 13, 1990, AND GRANTING COMPLAINANT'S MOTION FOR FINDING OF INFERENCE DATED APRIL 17, 1990

Statement

1. On June or July 10, 1988, respondent filed with an appropriate Federal agency an ETA Form 750 captioned ``Application for Alien Employment Certification''; and signed, on respondent's behalf and ``under penalty of perjury,'' by Alan H. Rubin, who at least at that time was respondent's secretary. The application named Sherida Allen in the blank calling for ``Name of Alien,'' gave her address as Pembroke Lakes, Florida, and stated that she had a B-1 visa. Under the printed heading, ``The following information is submitted as evidence of an offer of employment,'' the form named the employer as ``Nu-Look Cleaners of Pembroke Pines,'' gave its address as ``9075 Taft Street/Pembroke Pines, Florida 33024,'' stated that the basic hourly rate of pay would be $4.90, and further stated, ``Employer has had difficulty finding U.S. workers to perform job duties. Employer will recruit under the supervision of the Florida Job Service.''[1] The application contained a certification by respondent that, inter alia, ``I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States . . . The job opportunity has been and clearly is open to any qualified U.S. worker.'' The application also contained representations, signed by Mrs. Allen on June or July 10, 1988, and ``under penalty of perjury,'' that her present address was in Pembroke Lakes, Florida; that her ``Prospective Employer'' was ``Nu-

[1]The application described the job to be performed as, ``Sort clothes, drapes and other fabrics, check machines for efficient operation, mix and apply spot removers, hang items to dry.''

Look Cleaners of Pembroke Pines/9075 Taft Street/Pembroke Pines, Florida 33024''; that her employer from June 1986 to ``Present'' was ``Pines Laundry,'' in ``Pembroke Pines, FL''; and that her employer between May 1985 and June 1986 was ``A & S Export, Inc.'' in ``Miami Lakes.'' Nothing on the face of this application indicates any relation whatever between respondent, ``Pines Laundry,'' and/or A & S.**\2** This application was accepted for processing on July 22, 1988, and was certified by the Employment and Training Administration of the Department of Labor on January 20, 1990, in a ``Final Determination'' naming ``Nu-Look Cleaners of Pembroke Pines/Pembroke Pines, FL 33024'' and sent to attorney Joel Stewart.

2. On the basis of this application, Walter Smith and David Levering, special agents of the Immigration and Naturalization Service (``the INS''), went to respondent's Taft Street premises on September 30, 1988, to question Mrs. Allen about her immigration status. After seeing her behind the counter and taking money from a customer, Messrs. Smith and Levering took her into custody. That same day, Walter Smith obtained a sworn statement from Mrs. Allen which included the following assertions: She is a citizen of St. Vincent and a resident of Trinidad. She last entered the United States on April 27, 1987, on a visa which authorized her to remain for 6 months (that is, until about a year before Mr. Smith took her statement) and which she knew was to be used as a visitor only and not to seek employment. The owner of ``Nu Look'' is a friend of hers, ``Jeffrey Claverie,'' who lives in Trinidad. She asked him for a job if she came to the United States. Her intention in coming to the United States was ``to try to get into a legal situation to work.'' She works at ``Nu Look Cleaners/9075 Taft Street Pembroke Fla.'' She was hired for her present position by ``the secretary,'' Alan Rubin, who is her foreman or immediate supervisor, and began working there in June 1987. She is being paid $8 an hour (cf. rhetorical paragraph 1, supra). She had no social security card; her employer gave her no forms to complete when she was hired; she had never had to fill out a job application or an I-9 form; and she presented no documents to her employer when she was hired. She asked Mr. Rubin to file a labor certification ``so I could be legal,'' because Mr. Claverie referred her to him so she could gain legal status. Mr. Claverie knew she was not authorized to work in the United States. When she asked Mr. Rubin to file a labor certification, he asked her if she was a citizen or legal resi-

dent of the United States and about her immigration status in the United States. She told him what country she was from and, ``I would think,'' he knew that she was an alien unauthorized to work in the United States. She was sometimes paid by check, which she cashed at ``Financial Federal,'' and sometimes in cash.[2]

3. On the basis of this statement, an administrative subpoena was issued by Walter Smith, and a notice of inspection was issued by INS deputy director Richard B. Smith. Both of those documents are dated October 4, 1988; both of them name ``Alan H. Rubin, 21336 W. Dixie Highway, North Miami, Florida''; and neither of them names respondent, which at least at that time was operating a business on Taft Street in Pembroke Pines, Florida. The Dixie Highway address is the address of the office of Mr. Rubin, who at that time (at least) was respondent's secretary. The subpoena stated, ``File No. MIA274-1208'' and ``In re MIA274-1208''; and directed Mr. Rubin to appear before Walter Smith on October 7, 1988, at the Dixie Highway address, at 1 p.m. The subpoena further stated, in part (the underlined portions being typewritten and the rest being printed with no omissions from the quoted material):

> to give testimony in connection with all employees hired after Nov. 6, 1988 [sic] proceeding being conducted under authority of the Immigration and Nationality Act, relating to the enforcement of Section 274A of the INA of 1952 as amended concerning,
>
> You are further commanded to bring with the following books, papers, and documents, viz:
>
> All employment records, including forms W-4, employment application payroll records, cancelled payroll checks, employee time sheets, and employee work schedules of all employees hired after November 6, 1986 [sic].

The ``Notice of Inspection/Employment Eligibility Verification Forms I-9'' bore the numbers ``MIA274-1208'' and stated, in part:

> [Under] Section 274A of the Immigration and Nationality Act . . . [e]mployers must verify employment eligibility of persons hired after November 6, 1986, using the Employment Eligibility Verification Form.
>
> You have been selected for an inspection by the Immigration and Naturalization Service (INS on October 7, 1988 at 1 p.m. Please contact this office . . . if another time would be more convenient, or if you should prefer to present your I-9 forms at our office . . .

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[2] This application authorizes Joel L. Stewart to act as an agent for both respondent and Mrs. Allen. By letter to me dated May 9, 1990, Mr. Stewart stated that he had ``no further objection'' to the inference that the copy of this Form 750 in my file is a true copy of an application filed by respondent with an appropriate Federal agency. Cf. rhetorical paragraphs 20, 30-33, infra.

> During this review Special Agent Walter Smith will . . . inspect your I-9 Forms. The purpose of this review is to assess your compliance with the provisions of the law.
>
> This Service will make every effort to conduct the review of records in a timely manner so as not to impede your normal routine.

4. An affidavit dated August 22, 1989, by Walter Smith, avers as follows: On October 7, 1988, Mr. Smith met with Mr. Rubin at the Dixie Highway address. Mr. Rubin presented an I-9 for his office secretary at that address, but presented no I-9's or employment records for respondent's employees. When Mr. Smith asked Mr. Rubin for respondent's I-9's and employment records, Mr. Rubin advised Mr. Smith that he needed to speak to attorney Stewart, and then handed Mr. Smith a letter from Mr. Stewart dated October 5, 1988. This letter stated, inter alia:

> The Immigration Reform and Control Act requires employers to make I-9 Forms available for inspection, but the Act does not provide additionally for an INS `review' to assess employers' compliance with the provisions of the law. Mr. Rubin has agreed to comply with IRCA fully by providing you an opportunity to inspect his I-9 Form . . .
>
> . . . I have advised Mr. Rubin not to comply with the Subpoena, as compliance with requests for documents and testimony is not required by the Immigration Reform and Control Act . . .
>
> . . . Mr. Rubin has requested that I represent him in all matters arising before the Immigration and Naturalization Service . . . Therefore I request that all further communication be directed to me in writing and not to Mr. Rubin. I request and expect that no INS agents will visit or call Mr. Rubin . . .
>
> This is to inform you that permission for INS agents to enter Mr. Rubin's workplace is specifically denied . . .

Attached to this alleged letter was a purported notice of entry of appearance by Mr. Stewart on Mr. Rubin's behalf, purportedly signed by Mr. Rubin on October 7, 1988.

This alleged letter contains no reference to respondent, to the failure of the notice or subpoena to mention respondent, or to the fact that at one point the subpoena directed Mr. Rubin to give testimony about employees hired after November 6, 1988. Walter Smith's affidavit is silent as to whether the November 6, 1988, date was mentioned during his alleged October 7, 1988, conversation with Mr. Rubin. However, Mr. Smith's affidavit avers that he told Mr. Rubin the inspection and subpoena related to ``Nu-Look Cleaners.''

A document filed by Mr. Stewart as respondent's attorney, dated September 16, 1989, and captioned ``Alternative Motions: Motions to Dismiss/Motion for Protective Order/Motion for Enlargement of Time,'' states, without supporting affidavits or other supporting

material, ``Mr. Rubin was available in his office on October 7, 1988, at 1:00 P.M., to meet with INS. No one from INS appeared.''

5. On October 17, 1988, special agent Walter Smith personally served on attorney Stewart's office a subpoena and notice of inspection dated October 17, 1988. The subpoena was directed to ``Nu Look Cleaners of Pembroke Pines/9078 Taft Street/Pembroke Pines, Florida 33024''; the notice of inspection was directed to ``Nu Look Cleaners of Pembroke Pines c/o Alan H. Rubin'' at the Dixie Highway address. These documents were otherwise virtually identical (including the references to ``MIA274-1208'') to the documents served on Mr. Rubin on October 4, 1988, except that the October 17 subpoena called for appearance at the INS' district office in Miami and both October 17 documents specified 9 a.m. on October 20, 1988, as the hour and date. Neither respondent nor Mr. Stewart appeared for the inspection or gave any reasons why they could not attend. At about 10 a.m. that day, Mr. Smith telephoned Mr. Stewart's office to find out the reasons for respondent's failure to appear and failure to submit the requested documents. Mr. Smith was informed by Mr. Stewart's office that he was busy at the moment but would return Mr. Smith's call as soon as Mr. Stewart was free. So far as I am aware, neither respondent nor Mr. Stewart has ever given an explanation for their failure to appear for the October 30, 1988, inspection. At least as of April 13, 1990, the requested documents had not been submitted.

6. Respondent's ``Alternative Motions'' dated September 16, 1989, and signed by Mr. Stewart, averred (1) that the October 17, 1988, subpoena could not be complied with on its face because ``the date was defective'' (referring to the November 6, 1988 date in connection with the testimonial aspects of the subpoena); (2) the subpoena and the notice ``did not describe the business entity with sufficient particularity to know the subject'' thereof; and (3) the notice was void on its face ``because an Employer can not be required to appear at the INS District Office for an I-9 inspection. The Immigration and Nationality Act and the Regulations provide that the I-9 Inspection shall be held at the Employer's place of business unless the Employer prefers to bring the I-9's to the INS District Office'' (emphasis in original). As previously noted, attorney Stewart's alleged letter dated October 5, 1989, had stated that he requested and expected that no INS agents would visit Mr. Rubin, and that permission for INS agents to enter ``Mr. Rubin's workplace is specifically denied.''

7. On November 9, 1988, a ``Notice of Intent to Fine'' was issued against ``Nu Look Cleaners of Pembroke Pines/9075 Taft Street, Pembroke Lakes, Florida,'' with the file number ``MIA274-1208.''

This notice alleged that ``respondent'' had unlawfully hired Sherida Allen or unlawfully retained her in employment, and had failed to ``verify'' her ``on a Form I-9.'' This notice assessed a penalty of $1500 (not $500, as alleged in respondent's ``Alternative Motions''), and was personally served on attorney Stewart on November 10, 1988. By letter to the INS dated December 8, 1988, ``Re: File Number 274A-1208,'' and under his professional letterhead, Mr. Stewart stated, in part:

> The stated ``Notice of Intent to Fine'' does not describe the Respondent with sufficient particularity to allow an identification of the Respondent. I can not determine if the named Respondent is a Corporation, a Partnership, an Individual, or other form of business entity and I can not determine who you intend to fine. Without knowing who the Respondent is, I can not determine if I represent the Respondent and I can not determine if the ``Notice'' has been properly executed and served.
>
> . . . In order to initiate an action against a Respondent, the Respondent must be properly named. Therefore I am returning the ``Notice of Intent to Fine'' to you as I can not accept service of the document.

A letter to the INS from Mr. Rubin, which is also dated December 8, 1988, and gives as his address his Dixie Highway office, is substantially the same as Mr. Stewart's letter, except that it states that Mr. Rubin had received the ``Notice of Intent to Fine'' on November 18, 1988; and instead of the last sentence in the first quoted paragraph, the following appears (emphasis in original):

> Without knowing who the Respondent is, I can not determine if I represent the Respondent and I can not determine if the `Notice' has been properly executed and served on me. I can not even determine if I am the Respondent.

8. Thereafter, on January 30, 1989, the INS issued a notice to intent to fine which began with a printed form filled out to state that the respondent was ``Nu-Look Cleaners of Pembroke Pines, Inc.,'' but which was otherwise identical (except for the issuance date) to the November 9, 1988, notice.

9. A letter from Mr. Stewart to the INS dated March 1, 1989, states in part:

> Re: Notice of Intent to Fine
> MIA 274-1208
>
> * * * * * * *
>
> This is to inform you that pursuant to a Notice of Intent to Fine served on January 31, 1989, the named respondent, Nu-Look Cleaners of Pembroke Pines, Inc., hereby gives written notice of a request for a hearing . . .

10. On March 29, 1989, the INS issued a complaint whose caption named as respondent ``Nu-Look Cleaners of Pembroke Pines, Inc.,'' and further said ``Case No. 89100162/INS File No. 89-1208.'' This document incorporated the January 30, 1989, notice of intent to

fine. Attached to this letter was a notice of hearing whose caption named the respondent as ``Nu-Look Cleaners of Pembroke Pines, Inc.'' and gave the docket number of Case No. 89100162.

11. On May 5, 1989, my office received, in an envelope bearing Mr. Stewart's return address, an answer whose caption named the respondent as ``Nu-Look Cleaners of Pembroke Pines, Inc.''; bore the docket number Case No. 89100162; began with the words ``Now comes the Respondent through and by its attorney''; admitted the complaint allegations that the January 30, 1989, notice of intent to fine had been served on respondent and that respondent had timely requested a hearing by means of Mr. Stewart's March 1, 1989, letter; and was signed by Mr. Stewart. This answer was undated but was enclosed in an envelope postmarked May 2, 1989; as discussed infra, respondent allegedly sold its entire interest in its business at 9075 Taft Street on April 30, 1989, but did not advise me of this alleged sale until late February 1990. Service of this answer on me was consistent with the instructions in the notice of hearing attached to the complaint. In the same envelope, I received a notice of entry of appearance as attorney or representative on behalf of ``Nu-Look Cleaners of Pembroke Pines, Inc.,'' whose address was given as ``21336 West Dixie Hwy, North Miami, FL 33180.'' This document is dated April 26, 1989, and bears Mr. Stewart's at least purported signature. Over the at least purposed signature of Alan H. Rubin, this document states (italics added to the typewritten material only, the rest being a printed part of the form),

> Pursuant to the privacy act of 1974, I hereby consent to the disclosure to the following named attorney or representative of any record pertaining to me which appears in any immigration and naturalization service system of records: Joel Stewart, Esq.
>
> * * * * * * *
>
> The above consent to disclose is in connection with the following matter: Anything pending before INS and EOIR.

12. On June 9, 1989, complainant mailed to Mr. Stewart a set of interrogatories whose caption named as respondent ``Nu-Look Cleaners of Pembroke Pines, Inc.'' and gave the docket number ``Case No. 89100162.'' The caption to the answers to these interrogatories named the respondent as ``Nu-Look Cleaners of Pembroke Pines, Inc.'' and gave the docket number ``Case No. 89100162.'' In response to interrogatory number 20-``What is the name, address and job title of the person who is answering these Interrogatories on behalf of Respondent?'' the answers replied ``Alan Rubin, Secretary, 2136 W. Dixie Highway, North Miami Beach, Florida 33180.'' In response to interrogatory number 25-``Has the name or busi-

ness title of Respondent in this action changed since November 6, 1986? If so, list all of the names under which Respondent has done business since that date,'' the answers replied, ``Objection. The name of the Respondent is a matter of public record, and the information can be obtained from the Secretary of State. The name of the Respondent is not in dispute and therefore is irrelevant.'' In reply to interrogatory number 30_``If Respondent is a corporation'' state the state in which, the place where and the date when, it was incorporated_the answers replied Florida; Miami, Florida; and November 15. 1982. In reply to interrogatory number 1-``State whether Sherida Allen is now or has been in your employ since November 6, 1986''_the answers replied no. Interrogatory number 2 asked, inter alia, ``As to Sherida Allen, state . . . Date of employment . . . Date employee first began working in your employ . . . Whether said employee is still in your employ.'' The answers replied ``N/A.'' These answers were signed under oath by Alan Rubin, ``Secretary,'' on July 12, 1989.

13. On September 15, 1989, complainant served on attorney Stewart a ``Request for Admission'' which read as follows:

> Complainant, THE UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, pursuant to 28 C.F.R. § 68.17, requests the Respondent, Nu-Look Cleaners of Pembroke Pines, Inc., within 30 days after service of this request, to make the following admissions for the purpose of this action:
>
> 1. That each of the following documents, exhibited with this request, is an accurate, true and complete representation of the original documents, and was photocopied from the original documents:

DOCUMENT(S)	DESCRIPTION(S)
Government form ETA 750 (Exhibit 1A).	(a) Government Form 750, Application for Labor Certification, field by the respondent on behalf of Ms. Sherida Allen.

> 2. That each of the following statements are true:
>
> (a) That respondent did not present form I-9 for Ms. Sherida Allen during the I-9 inspections conducted by the Immigration Service on October 7, 1988 and on October 20, 1988.
>
> (b) That respondent filed Government Form 750 Application for Labor Certification, attached hereto as Exhibit 1A on behalf of Ms. Sherida Allen.

Attached to this ``Request'' was a photocopy, marked ``Exhibit 1A,'' of the Form 750 referred to supra, rhetorical paragraph 1.[3] On top of this form was a document, under the official seal of the Department of Justice, which stated:

[3] In the photocopy sent to me, page 4 was incompletely copied. Because complainant's counsel later advised me that his copy was similarly deficient and he would have to obtain a complete copy of the page from the Department of Labor, I infer that the copy forwarded to respondent on September 15, 1989, was similarly deficient. However, respondent has never referred to that deficiency. Complainant has not yet supplied me with a completely photocopied page 4, which includes Sherida Allen's signature.

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

September 15, 1989

CERTIFICATION

BY VIRTUE of the authority vested in me by Title 8, Code of Federal Regulations, Part 103 a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I HEREBY CERTIFY that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to:

Nu Look Cleaners of Pembroke Pines, Inc. No. MIA-274A-1208, of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

[s] Douglas M. Kruhm
Douglas M. Kruhm
Acting Deputy District [Director]

14. On September 13, 1989, after denying respondent's motion for summary judgment dated July 31, I signed a subpoena duces tecum which bears the docket number ``Case No. 89100162'' and is directed to ``Nu Look Cleaners of Pembroke Pines Respondent/9075 Taft Street, Pembroke Lakes, FL 33024.'' Over date of September 16, 1989, Mr. Stewart as ``Respondent's attorney,'' filed a motion to (inter alia) rescind this subpoena; the caption of this document filed by Mr. Stewart named the respondent as ``Nu Look Cleaners of Pembroke Pines, Inc.'' and gave the docket number as ``Case No. 89100162.''

15. Meanwhile, under a covering letter to me dated September 14, 1989, with a courtesy copy to Mr. Stewart, complainant's counsel forwarded to me for signature two proposed subpoenas duces tecum, both of them captioned ``In re: Nu Look Cleaners of Pembroke Pines, Inc.'' and bearing the docket number 89100162. One of these was directed to Sherida Allen, and the other was directed to Alan H. Rubin, 21336 W. Dixie Highway, North Miami, Florida 33026. Because subsequent procedural events prevented at least temporarily the conduct of the depositions which Mrs. Allen and Mr. Rubin were to give, these proposed subpoenas where never signed. The subpoena directed to Mr. Rubin did not identify him as an officer or former officer of respondent.

16. Over date of September 16, 1989, Mr. Stewart filed a document, headed ``Alternative Motions,'' which included a motion to

rescind the subpoena dated September 13, 1989. The document filed by Mr. Stewart names as respondent in the caption ``Nu Look Cleaners of Pembroke Pines, Inc.,'' bears the docket number ``Case No. 89100162,'' and is signed by Mr. Stewart as ``Respondent's Attorney.'' As to the subpoena issue, Mr. Stewart contended that its issuance constituted harassment. He relied partly on the issuance of an October 1988 subpoena addressed to ``Nu Look Cleaners of Pembroke Pines/9078 Taft Street/Pembroke Pines Florida 33024,'' which ``did not describe the business entity with sufficient particularity to know who was the subject of the subpoena''; and on the November 1988 issuance of a notice of intent to fine on ``Nu Look Cleaners of Pembroke Pines/9075 Taft Street/Pembroke Lakes, Florida 33024,'' which was not accepted for service because it ``did not describe the Respondent.'' This September 16, 1989, document prepared by Mr. Stewart made no claim that the September 13, 1989, subpoena was not directed to respondent Nu Look Cleaners of Pembroke Pines, Inc., or that it erred in giving its address as 9075 Taft Street, Pembroke Lakes, Florida 33024. Mr. Stewart's harassment contention also relied in part on certain allegations in a document signed by Mr. Stewart, and received by the INS district office on October 3, 1988. This document stated, inter alia, that ``Nu Look Cleaners'' and Sherida Allen were requesting a review of certain alleged conduct by special INS agents Levering and Walter Smith on September 30, 1988, at ``the premises of Nu-Look Cleaners at 9075 Taft Street, Pembroke Pines, Florida.'' The document went on to allege that Messrs. Levering and Smith ``Detained and interrogated Ms. Sherida Allen on the premises and interfered with the normal business of Nu-Look Cleaners''; that the agents ignored an inquiry from ``a employee of Nu-Look Cleaners . . . Thus no one at Nu Look Cleaners was permitted to know by whom Ms. Allen had been arrested''; and that Mr. Smith had spoken in a ``loud and offensive voice'' on the premises of ``Nu Look Cleaners.'' The document went on to allege that Mr. Smith ``asked Ms. Allen's attorney if he represented Nu-Look Cleaners and improperly remarked to Ms. Allen's attorney that is was a conflict of interest for him to represent Ms. Allen and the Employer simultaneously''; cf. fn. 2 supra, fns. 4, 5, 14, infra. Further, the document alleged that Messrs. Smith and Levering had gone ``to Nu-Look Cleaners . . . with the intention of arresting Sherida Allen'' (emphasis in original). Mr. Stewart's Alternative Motions'' also objected to complainant's reliance on Mrs. Allen's sworn statement (see supra, rhetorical paragraph 2) ``to establish evidence of noncompliance by the Respondent,'' on the ground that her statement had allegedly been

obtained by harassing and/or coercive conduct directed at her.[4]Partly on the basis of the foregoing allegations, Mr. Stewart asked me to dismiss the complaint. This motion was denied on November 28, 1989.

17. Respondent's September 16, 1989, ``Alternative Motions'' included a motion for an order rescinding a subpoena duces tecum dated September 13, 1989, and directing that ``no further subpoenas be issued.'' The subpoena in question requires respondent to produce all original immigration form I-9 documents; all payroll records such as pay check stubs and/or receipts; all time cards, sign in attendance sheets, and/or any other related documents; and records relating to contributions for social security and for unemployment compensation, federal income tax withholdings, all job applications, and all W-2 and W-4 forms. On November 28, 1989, I denied this motion on the following grounds.

> Laying to one side respondent's unsupported (and contradicted by affidavit) allegations regarding the INS' treatment of Sherida Allen, respondent's request for an order rescinding the subpoena dated September 13, 1989, and directing that no further subpoenas be issued, appears to rest on the issuance of the subpoenas dated October 4, 1988, and October 17, 1988; respondent appears to contend that the prior issuance of such subpoenas rendered subsequent issuance of the September 13, 1989, subpoena a harassing tactic. As to the October 17, subpoena, any such contention would be wholly misplaced, in view of respondent's contention (not advanced until 10 months later) that its initially unexplained failure to comply was due to an error in one of the dates specified therein (although respondent does not allege that it was misled by the error) \2\ and to the omission of ``Inc.'' from respondent's name (although respondent does not allege that Rubin has any connection with, or that Steward is the attorney for, any other entity whose street address is in the 9000 block of Taft Street in Pembroke Pines and whose name also begins with ``Nu Look Cleaners of Pembroke Pines''). If respondent is warranted in contending that for those reasons the October 17 subpoena, which is ignored, imposed no duty upon respondent, respondent is in no position to rely upon that October 17, 1988, subpoena as a basis for harassment contention as to the September 1989 subpoena; on the other hand, a harassment contention would hardly be forwarded by reliance on a subpoena, for the same material, which respondent unjustifiably ignored. As to the October 4, 1988, subpoena, the same analysis would apply accepting complainant's affidavits in connection with the events on October 7, 1988. While respondent's motion gives a different version of such events, such allegations are unsupported by affidavits or other acceptable

[4]These representations were based solely on representations by attorney Stewart, which do not include any representations by him that he had any personal knowledge of the events. Complainant submitted affidavits by Mr. Smith and Mr. Levering which contradicted Mr. Stewart's representations. Mr. Stewart represented, inter alia, that ``at no time was [Mrs. Allen] informed of her constitutional rights.'' Certain constitutional rights are set forth in a printed entry toward the beginning of the statement which she signed on that day, after an interview conducted in English. Mr. Stewart admits that Mrs. Allen telephone him that day before the termination of her contacts with the INS.

material and, moreover, respondent does not claim that the material would have been supplied if INS special agent Walter Smith had come to Rubin's office that day (as Smith affirms he did, although respondent's counsel asserts otherwise).\3\

\2\ At one point, both October 1988 subpoenas request testimony relating to employees hired after ``November 6, 1988.'' However, the request for documentation in the next paragraph of both subpoenas requests the production of records for all employees hired after November 6, 1986. Respondent's ``Alternative Motions'' state that the first of these subpoenas contained an order to appear on ``October 7, 1988.''

\3\ I need not and do not consider whether a different result would be warranted by a showing that [Mrs.] Allen's statement was obtained in the manner claimed by respondent and/or that the documents in question were available to Smith on October 7, 1988.

However, in that November 28 order, I granted respondent's request for an enlargement of time to file any additional objections thereto, ``provided that any such objection has not been raised in respondent's `Alternative Motions' dated September 16, 1989, or discussed in this Order.''

18. Meanwhile, on October 10, 1989, attorney Stewart requested an enlargement of time to respond to complainant's request for admission (see rhetorical paragraph 13, supra) unless and until I issued a decision regarding respondent's alternative motions. On October 13, 1989, I extended the due date for such response until 15 days after the issuance of my disposition of such alternative motions.

19. On November 7, 1989, Mrs. Allen appeared before Immigration Judge Daniel Meisner for a continued deportation hearing, at which she was represented by attorney Stewart. At this hearing, Mrs. Allen was charged by the INS with being deportable for remaining in the United States beyond October 26, 1987, the time permitted by her visa, without authority from the INS, and for working for ``Nu Look Cleaners, Inc., d/b/a Nu Look Cleaners'' in violation of her immigration status. During the hearing, Mr. Stewart admitted such allegations on Mrs. Allen's behalf.[5]Based on these concessions, Judge Meisner found Mrs. Allen to be deportable, and in lieu of entering an order of deportation, granted her the privilege of leaving the United States voluntarily on or before November 7, 1990, or any extensions granted by the district director of the INS. This decision was not appealed and became a final order. My file fails to show whether she is still in the United States.

[5]This statement is, of course, not binding on respondent here. Cf. fns. 2 and 4, supra, and fn. 14, infra.

20. On December 11, 1989, attorney Stewart supplied the following ``Response to Request for Admission'' dated September 15, 1989 (see supra, rhetorical paragraph 13):

> 1. The Respondent cannot truthfully admit or deny the identification of the documents listed in Item Number One. The Respondent lacks information or knowledge as to the matter in question. A reasonable inquiry has not provided the Respondent with information, nor is information known or readily obtainable sufficient, to enable the Respondent to admit or deny the allegation.
>
> 2. The Respondent denies the truth of statement (a) and the Respondent cannot truthfully admit or deny the truth of statement (b). The Respondent lacks information or knowledge as to the matter in question. A reasonable inquiry has not provided the Respondent with information, nor is information known or readily obtainable sufficient, to enable the Respondent to admit or deny the allegation.

21. Also over date of December 11, 1989, Mr. Stewart filed the following statement, under a caption naming ``Nu Look Cleaners of Pembroke Pines, Inc.'' as the respondent and giving the docket number ``Case No. 89100162:''

> The Respondent is in possession of a Subpoena Duces Tecum dated September 13, 1989, addressed to ``Nu Look Cleaners of Pembroke Pines,'' Respondent, 9075 Taft Street, Pembroke Lakes, FL 33024.''
>
> The person or entity named in the Subpoena does not appear to be a party to this suit and, as I do not represent the person or entity named in said Subpoena, I can not provide a response to the Complainant.

The statement was received by my office on December 12, 1989, but was not seen by me until Thursday, December 14, when I returned from a business trip commencing December 10.

22. On December 18, 1989, I forwarded to Mr. Stewart a copy of the only subpoena in my file which answered his description. In an attached letter I stated, inter alia, ``If the subpoena of which a copy is attached was in fact the subject of both your September 16 `Alternative Motions' and your December 11 statement, I do not understand why you filed on respondent's behalf a September 16 motion for its rescission and stated on December 11 that the person or entity named in the subpoena is not represented by you and is not a party to the proceeding.'' I do not know when Mr. Stewart received this letter. By letter to me dated and postmarked January 2, 1990, but not received by our office until the afternoon of January 9, Mr. Stewart stated in part:

> According to your decision of November 28, 1989, I was obliged to respond within 15 days with objections to the subpoena of September 13, 1989. After receiving your order dated November 28, 1989, I examined the subpoena in order to prepare objections. At that time I observed that the subpoena is inapposite. I do not represent the person or entity named in the Subpoena, nor, to my knowledge, is that person or entity named as a Party to this suit.

> I have previously objected to the careless delivery and/or service of subpoenas, notices, and other documents by the Complainant, and of the unfair burden which this has placed on the respondent, but this court found no merit in my objections.
>
> I represent Nu-Look Cleaners of Pembroke Pines, Inc., 21336 West Dixie Highway, North Miami, Florida 33180. I do not represent Nu-Look Cleaners of Pembroke Pines, 9075 Taft Street, Pembroke Lakes, Florida 33024.
>
> The subpoena dated September 13, 1989, is the only subpoena which I have received, but I cannot respond because I do not represent the person or entity named in the subpoena.

23. Neither the 1987 nor the 1989 edition of the National Five-Digit Zip Code and Post Office Directory lists a Pembroke Lakes, Florida. Under the listing of Pembroke Pines, Florida, both directories refer the reader to Hollywood, Florida. The listing for 9075 Taft Street in Hollywood, Florida, contains the ``33024'' zip code which is the only zip code specified in the Taft Street addresses relevant here.

24. On January 29, 1990, I issued an ``Order Requiring Respondent to Comply with Subpoena Forthwith.'' This order stated, in part:

> The foregoing sequence of events, taken as a whole, persuades me that the September 13 subpoena is directed to respondent, who is admittedly Mr. Stewart's client, and that Mr. Stewart has at all material times been aware of that fact. In finding such awareness, I particularly rely upon Mr. Stewart's September 1989 action in filing a motion to rescind the subpoena in question, in a document which, read as a whole, assumed that the subpoena was directed to respondent. In addition, I rely upon (1) Mr. Stewart's objection in that same document to complainant's use of Ms. Allen's sworn statement of September 30, 1988, on the ground that it was obtained by harassment and/or coercion of her, as evidence of noncompliance ``by the Respondent''; (2) his reliance in that same September 1989 document on an October 1988 document, signed by him, which strongly implies that he is counsel for ``Nu Look Cleaners'' at ``9075 Taft Street, Pembroke Pines, Florida''; (3) his January 1989 acceptance, on respondent's behalf, of a notice of intent to fine which gave the respondent's address as 9075 Taft Street, Pembroke Lakes, Florida 33024 and at one point named it as ``Nu Look Cleaners of Pembroke Pines,'' and which gave the file number ``MIA 274A-1208''; (4) his use of that file number in his request for a hearing with respect to the notice; (5) the incorporation of that notice in, and the attachment of that request to, the complainant herein, whose caption named both the file number 1208 and the docket number (used on all subsequent documents in this case) 89100162; (6) Mr. Stewart's receipt in connection with this case, no later than the end of July 1989, of a document which appears on its face to constitute at the very least an application by Sherida Allen (whom the complaint names as an unlawfully employed and undocumented alien) for employment with, and an offer of employment by, ``Nu-Look Cleaners of Pembroke Pines'' at 9075 Taft Street, Pembroke Pines, Florida; (7) Mr. Stewart's simultaneous receipt of a sworn statement by Sherida Allen which stated that as of September 30, 1988, she worked at ``Nu Look Cleaners/9075 Taft St. Pembroke, Fla''; and (8) Mr. Stewart's simultaneous receipt of an affidavit that a notice of intent to fine issued on January 30, 1989 (the date on the

> notice accepted by Stewart on respondent's behalf had been based partly on the documents described in (6) and (7).
>
> Accordingly, I reject Mr. Stewart's representation dated January 2, 1990_more than 3 months after the issuance of the September 13, 1989, subpoena_that he cannot respond thereto because does not represent the person or entity named in the subpoena. Respondent is hereby ordered to comply with that subpoena forthwith.

25. On the same day as, but after, I issued the foregoing order, I received from complainant an envelope, postmarked January 23, 1990, which contained, inter alia, a ``Motion to Compel/Motion for Sanctions'' dated January 18, 1990. This motion requested me to issue an order requiring respondent to respond to the September 13, 1989, subpoena within 10 days of that order, and imposing certain specified sanctions should respondent fail to comply with the order to compel. By letter dated January 29, 1990, to complainant, I stated:

> I believe your motion to compel dated January 18, 1990, is sufficiently disposed of, at least for the time being, by my January 29, 1990, order requiring respondent to comply with subpoena forthwith . . . Accordingly, I shall not rule on your January 18 motion unless I receive a subsequent request from you for such a ruling.

26. On January 30, 1990, attorney Stewart requested an additional time of ten days to respond to complainant's motion to compel. By letter to Mr. Stewart dated February 9, 1990, I stated that this request had been disposed of, at least for the time being, by my order of January 29, 1990, requiring compliance forthwith with the September 13, 1989, subpoena. Further, I extended to February 15, 1990, the time within which Mr. Stewart might file any additional response to that motion. No response was received.

27. On February 12, 1990, complainant filed a motion that I rule on complainant's January 18, 1990, motion to compel and motion for sanctions. That motion averred that as of that date, respondent had neither submitted the employment records requested in the September 13, 1989, subpoena nor informed complainant as to when respondent intended to comply with my January 29, 1990, order requiring respondent to comply with that subpoena.

28. On March 1, 1990, I issued the following Order:

> . . . respondent is hereby order to respond to the [September 13, 1989] subpoena within 15 days of the date of this Order. If respondent fails to comply with this subpoena within this period, and pursuant to 54 F.R. 48601, § 68.21 and Rule 37(b) of the Federal Rules of Civil Procedure, I shall infer as follows:
>
> A. That if produced, such documents would have shown that after November 6, 1986, respondent hired Sherida Allen for employment, and continued to employ her, in the United States knowing before hiring her and at all times thereafter that she was an alien not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act, as amended, or the Attorney General to accept employment; and

b. That if produced, such documents would have shown that respondent, after November 6, 1986, failed to properly verify Sherida Allen on a verification form I-9.

29. Meanwhile, on January 29, 1990, I signed a subpoena duces tecum, prepared by complainant, which required Mr. Rubin to appear before complainant's counsel on February 28, 1990, to give deposition testimony, and to bring ``All original employment records showing that Ms. Sherida Allen was employed by Nu Look Cleaners of Pembroke Pines, Inc.'' Also on January 29, 1990, I signed a subpoena duces tecum, also prepared by complainant, required Mrs. Allen to appear before complainant's counsel on February 28, 1990, to give deposition testimony and to bring ``Passport showing entry visa(s) and/or entry and exit stamps,'' and ``all original employment records showing that your were employed by Nu Look Cleaners of Pembroke Pines, Inc.'' By letter dated January 30, 1990, attorney Stewart requested 10 days' additional time to reply to these subpoenas. By letter dated February 9, 1990, I extended the time to February 15, 1990. No reply was received before that date. However, on March 1, 1990, I received a letter from attorney Stewart dated February 26, 1990, and enclosing the following letter from Alan Rubin (under a letterhead bearing the 21336 West Dixie Highway address), dated February 26, 1990:

> To Whom It May Concern:
>
> I was the Secretary of Nu-Look Cleaners, Inc., with corporate offices at 21336 West Dixie Highway, North Miami, Florida 33180.
>
> The business entity known as Nu-Look Cleaners of Pembroke Pines, Inc., owned and operated a business known as Nu-Look One Hour Cleaners at 9075 Taft Street, Pembroke Pines, Florida, but their entire interest was sold on April 30, 1989.
>
> On August 15, 1989, I resigned my position as Secretary of the Corporation, and I am no longer in the employ of Nu-Look Cleaners of Pembroke Pines, Inc., and am no longer in possession of any records pertaining to same.

The foregoing letter was my first information about either the alleged sale or Mr. Rubin's alleged resignation as secretary. So far as I am aware, until receiving his courtesy copy of Mr. Stewart's letter, complainant's counsel had not received any such claims either. Complainant's April 13, 1990, answer to my order to show cause dated March 26, 1990, attaches a `Memorandum of Investigation' stating that on April 12, 1990, the Florida Department of State, Division of Corporate Records, advised the investigator by telephone that, inter alia, ``Alan Rubin is Secretary and registered agent, address is 21336 W. Dixie Highway/N. Miami, Florida./Jeffrey Claverie is President and Treasurer, address is

9075 Taft Street/Pembroke Pines, Florida.''[6] As discussed infra (Analysis, Part A), on April 27, 1990, and again on May 9, 1990, attorney Stewart forwarded to me various documents identifying Mr. Rubin as Respondent's ``Registered Agent,'' and giving the Dixie Highway address as the address of both of them. Mr. Rubin's July 12, 1989 responses to complainant's interrogatories stated that he was respondent's registered agent, that he was its secretary, and that his address was the Dixie Highway address (see answers to questions 20 and 33). The interrogatories concluded with the following language, in capital letters, ``**YOU ARE HEREBY CALLED UPON TO SUPPLEMENT YOUR ANSWERS TO THESE INTERROGATORIES AND REQUESTS TO PRODUCE AS ADDITIONAL KNOWLEDGE OR INFORMATION SHALL FROM TIME TO TIME COME TO YOUR ATTENTION.**'' The then-effective Rules and Regulations state (68 C.F.R. § 68.14(d)(2)(ii)):

> (d) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:
>
> * * * * * * *
>
> (2) A party is under a duty to amend timely a proper response if he/she later obtains information upon the basis of which:
>
> * * * * * * *
>
> (ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in effect a knowing concealment.[7]

Neither Mr. Rubin nor Mrs. Allen appeared before complainant's counsel on February 28, 1990, the scheduled date for the deposition.

30. On March 13, 1990, respondent filed a document captioned ``Response to Order.'' Relying in part on the application for alien employment certification described in rhetorical paragraph 1, supra, this document included both a response to my March 1, 1990, order to show cause in connection with complainant's motion for sanctions for noncompliance with the September 13 subpoena, and a motion to dismiss the complaint. The tendered bases for these motions are discussed in my Analysis, infra. The document also urged me ``to ask the Complainant to explain why a subpoena

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[6]As discussed infra (Analysis, Part A), respondent has produced no records, from the files of the Florida Department of State, which indicate otherwise; and certain records which respondent has produced are consistent with and partly corroborate the ``Memorandum of Investigation.''

[7]The present rules contain substantially the same provisions. See 54 F.R. 48600, § 68.16(d)(2)(ii) (November 24, 1989).

served on Alan Rubin, who is no longer an employee or [officer] of the Respondent, should be held as validly served.'' Complainant's April 13, 1990, response contended, inter alia, that respondent's failure to admit that respondent had filed an application for alien employment certification on behalf of Mrs. Allen precluded respondent from relying thereon.

31. On April 17, 1990, complainant filed a ``Motion for Finding of Inference in Accordance with this Honorable Court's March 1, 1990 Order Regarding Complainant's January 18, 1990 Motion to Compel and for Sanctions.'' This motion averred that respondent had failed to produce the employment records called for by the September 13, 1990, subpoena. An opposition to this motion, filed by attorney Stewart on April 27, 1990, stated, in part:

> . . . it is asserted that the Respondent failed to admit that Respondent had filed a labor certification on behalf of Ms. Sherida Allen and that this precludes Respondent from relying on the labor certification to indicate that she might have been a grandfathered employee. Unfortunately, Complainant misunderstands Respondent's response to request for admission. Respondent was asked to admit that a copy of a labor certification submitted by Complainant was a true copy of an original labor certification located in the records of the Immigration and Naturalization Service. In fact, an elaborate blue certificate with red ribbon was submitted with the request for admission. The certificate was signed by Douglas M. Kruhm, Acting Deputy District Director, dated September 15, 1989, and states,
>
> ``I hereby Certify that the annexed documents are originals or copies thereof from the records of the said Immigration and Naturalization Service, Department of Justice . . . . of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.''
>
> The truth is, however, that Complainant's certification is false, and that the copy was not made from an original document, as the Immigration and Naturalization Service would have no reason to have the original labor certification in its possession, nor is the Immigration and Naturalization Service the legal custodian by virtue of Section 103 of the Act.

32. By letter to Mr. Stewart dated April 30, 1990, I stated, inter alia, that absent a showing within 10 days of good cause otherwise, I would infer that the copy of the application for alien employment certification attached to complainant's request for admission dated September 15, 1989, is ``a true copy of an application filed by respondent with an appropriate Federal agency.'' My letter went on to state:

> I find it difficult to reconcile your April 27, 1990, response to motion for finding of inference with your December 11, 1989, response to request for admission that, inter alia, respondent had ``filed'' this form ``on behalf of Ms. Sherida Allen.'' Your response stated that ``A reasonable inquiry has not provided the Respondent with information, nor is information known or readily obtainable sufficient, to enable the respondent to admit or deny the allegation.'' I note that complainant's ``request for admission'' did not ask you to admit that the copy supplied was made

from an original document, or that the INS possessed the original, or that the INS is the legal custodian thereof by virtue of Section 103 of the Immigration and Nationality Act.Your files should contain a courtesy copy of a letter to me from Mr. Lahera, dated November 21,1989, stating that the original form is in the possession of the Department of Labor.

33. By letter to me dated May 9, 1990, attorney Stewart stated, in part (emphasis and ``sics'' in original):

2. You stated that you will infer that the copy of the application for alien employment certification is a true copy of an application filed by respondent with an appropriate Federal agency. I have no further objection to this inference.

3. You stated that you found it difficult to reconcile my April 27, 1990, response to motion for finding of inference with my December 11, 1989, response to request for admission, i.e., that the respondent did not have sufficient information to respond to the admission. You noted that the ``request for admission'' did not ask me to admit that the copy supplied was made from an original document, or that the INS possessed the original, or that the INS is the legal custodian thereof by virtue of Section 103 of the Immigration and Nationality Act.

Nevertheless, my interpretation of the request for admission is that the request for admission did require the Respondent to admit that the copy supplied was made from an original document and that the INS possessed the original and that the INS is the legal custodian.

In review, the request for admission asked the Respondent to admit,

``That each of the following documents, exhibited with this request, is an accurate, true and complete representation of the original documents (sic), and was photocopied from the original documents (sic):

That respondent filed Government Form 750 Application for Labor Certification, attached hereto as Exhibit 1A on behalf of Ms. Sherida Allen.

(Exhibit 1A states, ``I hereby certify that the annexed documents are originals or copies thereof from, from the records of the said Immigration and Naturalization Service Department of Justice, relating to . . . , etc.''[8]

THE RESPONDENT BELIEVES THAT THE ANNEXED DOCUMENT IS NEITHER AN ORIGINAL NOR A COPY THEREOF FROM THE RECORDS OF THE SAID IMMIGRATION AND NATURALIZATION SERVICE.

THE RESPONDENT ALSO BELIEVES THAT THE ATTORNEY GENERAL IS NOT THE LEGAL CUSTODIAN BY VIRTUE OF SECTION 103 OF THE IMMIGRATION AND NATIONALITY ACT.

4. Your letter also states that my file should contain a courtesy copy of a letter to me from Mr. Lahera, dated November 21, 1989, stating that the original form is in the possession of the Department of Labor. First, I doubt the veracity of that statement, and I do not believe that the original form is in the possession of the Department of Labor. Second, even if the form were in the possession of the Department of Labor, it could not be said that the form was in the possession of the Immigration and Naturalization Service, Department of Justice, pursuant to Section 103 of the Immigration and Nationality Act. In fact, Section 103 of the Immi-

[8] As previously noted, only Form 750 is marked as Exhibit 1A. The quoted language is from the attached Kruhm certification.

> gration and Nationality Act has nothing to do with the Labor Department or labor certifications.
>
> The Respondent would like to take this opportunity to object to the irresponsible actions of the Complainant whose statements and certifications regarding the labor certification are untruthful.

34. Meanwhile, on May 2, 1990, as to the subpoena directed to Mr. Rubin dated January 29, 1990, I issued the following ruling:

> Although the subpoena in question bears the caption of the instant case, is headed ``In re Nu Look Cleaners of Pembroke Pines, Inc.,'' and seeks employment records showing Ms. Allen's employment by that corporation, the subpoena is addressed to Mr. Rubin personally, and nowhere avers that it is served on him in any capacity which he occupies or may have occupied as an officer of that corporation. Accordingly, I conclude that the subpoena was validly served on Mr. Rubin personally, and imposes an obligation on him to comply personally, but does not on its face impose any obligation on respondent.

So far as I am aware, after receiving this ruling complainant has made no effort to procure Mr. Rubin's compliance with the subpoena.

Analysis

A. Respondent's March 13, 1990, Motion to Dismiss the Complaint

As previously noted, the ETA Form 750 application for alien employment certification, filed by respondent with an appropriate Federal agency in June or July 1988, states, inter alia, (1) that Mrs. Allen's employer between May 1985 and June 1986 was ``A & S Export, Inc.''; (2) that her employer between June 1986 and ``Present'' was ``Pines Laundry''; and (3) that her ``prospective employer,'' which had made her an ``offer of employment,'' was ``Nu Look Cleaners of Pembroke Pines.'' Respondent's March 13, 1990, motion to dismiss the complaint is based on the contention that ``Pines Laundry'' is the same as ``Pines Coin Laundry''; that ``Pines Coin Laundry was a division of the A & S Export Company, operated as a d/b/a/ of the same''; and that the ``A & S Export Company, Inc.'' and ``Nu Look Cleaners of Pembroke Pines, Inc.,'' are ``one and the same'' because A & S allegedly changed its corporate name to Nu Look. Accordingly, respondent contends, ``Even if the purported labor certification is taken at face value as being true [cf. supra, rhetorical paragraphs 1, 13, 20, 30-33], i.e., that Sherida Allen was employed there within the meaning of the Immigration Reform and Control Act, one can only conclude that her employment began prior to November 6, 1986.'' I regard this motion as governed by the following portions of the Rules and Regulations, 54 F.R. 48604, § 68.36(a)(b) (November 24, 1989):

> (a) Any party may . . . move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may . . . serve supporting or opposing papers with affidavits if appropriate . . .
>
> (b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.
>
> (c) The Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue of material fact and that a party is entitled to summary decision. The Administrative Law Judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.
>
> * * * * * * *
>
> (e) Hearings on issue of fact. Where a genuine question of material fact is raised, the Administrative Law Judge shall, and in any other case may, set the case for an evidentiary hearing.

The complaint herein alleges that respondent violated 8 U.S.C. § 1324a(a)(1)(2) by hiring, or continuing to employ, Sherida Allen after November 6, 1986; and violated 8 U.S.C. § 1324a(a)(1)(B), after November 6, 1986, by failing to verify her on a Form I-9. The complaint should likely be dismissed if there is no genuine factual issue as to the truth of a claim that Mrs. Allen was continuously employed by the same corporate employer for a period which began before November 6, 1986, and continued until her apprehension in September 1988. See 101(a)(3)(A)(B) of Public Law 99-603. However, and laying to one side complainant's motion for a finding of inference based on respondent's continuing failure to comply with a subpoena duces tecum (see infra), I find that there is a genuine factual issue as to this matter. Thus, Sherida Allen's September 1988 sworn statement avers that she began working at ``Nu Look Cleaners/9075 Taft St./Pembroke Fla'' in June 1987. Further, the statement in respondent's June or July 1988 application for alien employment certification, that respondent was offering employment to Mrs. Allen, is difficult to square with any contention that she had been working for respondent since 1985 and continued to work for respondent at all times thereafter until the date of the application. Moreover, such a contention is inconsistent with the representations in Mr. Rubin's July 1989 sworn answers to interrogatories that she had not been in respondent' employ at any time since November 6, 1986; and with his ``N.A.'' answers to the questions (nos. 21-24) about which of respondent's employees are claimed to be

exempt from the INA and why. Also, the evidence submitted by Mr. Stewart on April 27, 1990, tending to show that respondent's name was changed from A & S Export, Inc. to the present name in May 1988, is difficult to square with the response by Mr. Rubin to the question, ``Has the name or business title of Respondent in this action changed since November 6, 1986? If so, list all of the names under which Respondent has done business since that date.'' To this question number 25, Mr. Rubin replied, ``Objection. The name of the Respondent is a matter of public record, and the information can be obtained from the Secretary of State. The name of the Respondent is not in dispute and therefore is irrelevant.'' Further, Mr. Rubin's reply to question 48_``State each and every reason why Respondent denies that it violated . . . 8 U.S.C. § 1324a, as set forth in the Complaint and in paragraph(s) of the Notice of Intent to Fine''_made no claim that respondent had hired Mrs. Allen before November 6, 1986.

Moreover, the documents which respondent has filed in connection with its claim of a material relationship between A & S Export, Inc., Pines Laundry, and respondent Nu-Look Cleaners are internally inconsistent and of questionable probative value. Thus, respondent has filed an April 27, 1990, affidavit by Anthony M. Allen, Mrs. Allen's husband and a manager of A & S Export between January 1985 and at least May 1987,[9] which states, inter alia, ``A & S Export, Inc., including the divisions known as Pines Laundry and New [sic] Look Cleaners have always been registered in the public records of the city of Pembroke Pines, the County of Broward, and the State of Florida.'' However, as previously noted, attorney Stewart alleged on March 13, 1989, that Nu-Look is the same corporation as A & S after the name was changed. Moreover,

[9] This April 1990 affidavit states, inter alia, that Mr. Allen was ``presently in the United States as a temporary visitor''; that on January 7, 1985, he received an L-1 work visa to travel to the United States as a manager of A & S; and that when he came to the United States, Mrs. Allen accompanied him as an L-2 non-immigrant. Her September 30, 1988, sworn statement avers that she last entered the United States in April 1987. As previously noted, respondent's June or July 1988 application for alien employment certification stated that she had a B-1 visa. A ``record of deportable alien'' form I-213, prepared by INS special agent Walter Smith on September 30, 1988, states, inter alia, that her status at entry was ``B2/visitor,'' and that she had ``a husband and (3) children, all natives and citizens of Trinidad, in the United States (all B-2 overstays).'' The form further states, ``Equities: Owns home, (2) vehicles, joint checking account.'' Mr. Allen's affidavit at least arguably states that she worked in the Untied States continuously between April 1985 and May 1989.

respondent has produced no city or county records of any kind.[10]Further, Although Mr. Stewart's March 13, 1990, ``Response to Order'' asked me to take judicial notice of the records of the State of Florida, in response to my request for copies he submitted only a one-page document signed in June 1988 by the Florida Secretary of State and certifying that ``the attached is a true and correct copy of'' Nu-Look articles of incorporation and a similar one-page document as to ``A & S Export Inc.'' signed in November 1982, with the former stating the Nu-Look's `'document number'' is G 10739 and the latter giving this as A & S's `'charter number.[11]On April 27, 1990, attorney Stewart did submit certain documents, which appear to be computer-generated, from ``corp info services,'' and which stated that the name of ``A & S Export, Inc.,'' was changed to ``Nu-Look Cleaners of Pembroke Pines, Inc.'' on May 31, 1988. However, these documents say nothing at all about ``Pines Laundry,'' Mrs. Allen's employee between June 1986 and `'present'' according to respondent's June or July 1988 application for alien employment certification; and, furthermore, repeatedly state, ``This is not official record; see documents if question or conflict.'' In addition, although these `'corp info services'' documents state that the name change was effective in May 1988, attorney Stewart's April 27, 1990, response to motion for finding of inference enclosed an August 1988 letter from an officer of the Internal Revenue Service which includes an acknowledgment of the addressee's address change but is addressed to ``A & S Export Inc.''

For the foregoing reasons, respondent's motion to dismiss is denied entirely apart from respondent's disregard of a pending subpoena for its records. In any event, that motion is denied on the

[10]Further, as discussed infra, Mr. Stewart has failed to provide complete copies of other documents which are allegedly on file with various government agencies and on which he has relied. Rule 1002 of the Federal Rules of Evidence states. ``To prove the content of a writing, . . . the original writing is required . . .'' Rule 1005 of the FRE states, ``The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, . . . may be provided by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original.'' As previously noted, the Rules and Regulations which govern the instant proceeding (§ 68.36(b)) state that affidavits submitted in support of a motion for summary decision ``shall show affirmatively that the affliant is competent to testify to the matters stated therein.'' Sec. 68.38(a) states, `` . . . the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.''

[11]Mr. Stewart's action in furnishing me with these two pages suggests that when he obtained them, he had equally ready access to the remainder of both documents. In any event, he likely has readier access to the records of the Florida Secretary of State from Mr. Stewart's office in Ft. Lauderdale, Florida, than I do from Washington, D.C.

ground that respondent has improperly failed to comply with that subpoena (see infra).

B. Complainant's April 17, 1990, Motion for Finding of Inference

Section 68.21(c)(1) of the current rules and regulations, 54 F.R. 48601 (November 24, 1989), provides:

> (c) If a party or an officer or agent of a party fails to comply with an order . . . for . . . the production of documents, . . . or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:
>
> (1) Infer and conclude that the . . . documents . . . would have been adverse to the non-complying party.[12]

Respondent does not appear to question that the proposed inferences set forth in my order of March 1, 1990 (see supra, paragraph 28) fall within the scope of this language; more specifically, respondent does not appear to question that such proposed inferences could reasonably be based on an improper failure by it to provide the subpoenaed documents. See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 102 S.Ct. 2099 (1982); Interstate Circuit, Inc. v. United States, 306 U.S. 208, 226 (1939); Golden State Bottling Co. v. N.L.R.B., 414 U.S. 168, 714 (1973); Brown v. Cedar Rapids and Iowa City Railway Co., 650 F.2d 159, 162 fn. 3 (8th Cir. 1981); International Union, UAW v. N.L.R.B., 459 F.2d 1329, 1347 (D.C. Cir. 1972). Moreover, such proposed inferences gain some support from other material in the file. Thus, Mrs. Allen's sworn statement avers that respondent (through Mr. Rubin), hired her in June 1987, that she did not fill out an I-9 form, that ``I would think'' Mr. Rubin then knew that she was not authorized to work in the United State, and that she asked him to file the June or July 1988 application for certification ``so I would be legal.'' Furthermore, that application filed by respondent on its face attaches to Mrs. Allen an immigration classification which forbids the alien to work, and at least implies that she was not working for respondent before November 6, 1986.

Moreover, I find that complainant has made out at least a prima facie case for sanctions in this case. Thus, respondent has never questioned the critical importance of the information sought in the subpoena_namely, whether respondent's records support or refute the complaint allegations that respondents hired Mrs. Allen after November 6, 1986; that respondent hired her, or continued her in

[12]This language tracks the language of 28 C.F.R. § 68.20(c)(2) of the original rules, effective until November 24, 1989.

its employ, with knowledge that she was an unauthorized alien; and that respondent failed to verify her on a form I-9. Moreover, on September 16, 1989, respondent requested an order rescinding the subpoena, and directing that no further subpoena be issued, partly on the ground that the September 13, 1989, subpoena constituted ``harassment'' because of two other subpoenas, issued in October 1988, both of which at certain points requested the same materials specified in the September 13, 1989, subpoena, and both of which respondent had ignored. After my November 28, 1989, action in rejecting this specious contention, respondent persisted in its noncompliance, this time on the ground that after receiving that order, attorney Stewart ``examined the subpoena in order to prepare objections. At that time I observed that the subpoena is inapposite. I do not represent the person or entity named in the Subpoena, nor, to my knowledge, is that person or entity named as a Party to this suit'' (see Mr. Stewart's letter to me dated January 2, 1990, and a pleading filed by him on December 11, 1989). After my January 29, 1990, action in rejecting this belated and disingenuous contention (see supra, rhetorical paragraph 24),[13]and ordering respondent to comply with the September 13, 1989, subpoena ``forthwith,'' respondent continued its noncompliance. Upon being served with complainant's February 12, 1990, request that I rule on its January 18, 1990, motion to compel and for sanctions (to which January 18 motion Mr. Stewart did not reply, although at his request his time to reply was extended until February 15), Mr. Stewart claimed for the first time, on February 26, 1990 (1) that on April 30, 1989 (10 months earlier) respondent had sold its interest in ``the business entity known as Nu-Look Cleaners of Pembroke Pines, with offices at 9075 Taft Street Pembroke Pines, Florida''; and (2) that on August 15, 1989 (7 months earlier) Mr. Rubin had resigned as respondent's secretary; so far as I am aware, Mr. Rubin never made any effort to supplement his July 12, 1989, responses to interrogatories, which averred that he was respondent's secretary. After the issuance of my March 1, 1990, warning to respondent that I would make the findings of inference specified in rhetorical paragraph 28 supra, unless respondent complied with the subpoena, attorney Stewart reiterated on March 13, 1990, his contention that he does not represent the person or entity named in the subpoena, on the ground (which he had never spelled out before) that on April 30, 1989, respondent had sold its interest in the ``business

[13]I note that the June or July 1988 application for alien employment certification, which respondent admittedly filed, names respondent as ``Nu-Look Cleaners of Pembroke Pines/9075 Taft Street Pembroke Pines Florida 33024.''

entity known as Nu-Look Cleaners of Pembroke Pines, with offices at 9075 Taft Street, Pembroke Pines, Florida.'' Six weeks after advancing this contention, and without explaining why the alleged sale affected his status as respondent's counsel or why he had thereafter filed a number of documents on respondent's behalf, Mr. Stewart filed a document, dated April 27, 1990, which stated that as of that date, 9075 Taft Street was the address of Jeffrey Claverie, the president of Nu-Look Cleaners of Pembroke Pines, Inc., and that the secretary was Mr. Rubin, at the Dixie Highway address.[14]Furthermore, as discussed infra, on March 13, 1990, Mr. Stewart objected to the motion for finding of inference partly on the basis of factual assertions in respondent's June or July 1988 application for alien employment certification, although in December 1989 he had stated, in response to complainant's September 1989 request for admission, that he could not truthfully admit or deny its identification as an application ``filed by respondent on behalf of Ms. Sherida Allen.'' I conclude that respondent's persistent disregard of the September 13, 1989, subpoena constitutes a willful and bad faith withholding of highly relevant evidence called for by a valid subpoena, and warrants the finding of inference set forth in my order to show cause dated March 1, 1990 (see rhetorical paragraph 28, supra). See Cox v. American Cast Iron Pipe Co. 784 F.2d 1546, 1556 (11th Cir. 1986), cert. denied 479 U.S. 883; Buchanan v. Bowman, 820 F.2d 359, 361 (11th Cir. 1987) United States v. Sumimoto Marine & Fire Insurance Co., 617 F.2d 1365, 1369-1370 (9th Cir. 1980). I note that complainant sought more severe sanctions (entry of a final order against respondent, plus attorney's fees) than those set forth in my March 1 order, and that respondent has at no time suggested that only lesser sanctions would be appropriate even if (as I have found) some sanctions are called for.

Respondent opposes complainant's motion for finding of inference mostly on the ground that such an inference would not be ``just and rational'' because of certain documents attached to re-

[14]This document further asserted that respondent's corporate address is the Dixie Highway address, and that Mr. Rubin is its registered agent. Mr. Stewart has also forwarded an affidavit from Anthony Allen, likewise dated April 27, 1990, which states that the present address of ``A & S [Export], Inc.'' (which respondent has variously described as itself before a name change, and as a company of which respondent is a division) is ``c/o Jeffrey Claverie, Pearl Gardens, Digo, Marti, Trinidad, West Indies.'' These April 27 documents aside, Mr. Stewart has failed to reply to my inquiries (by letters dated March 23 and April 19, 1990) requesting his client's current address. Although Mr. Stewart is still accepting documents filed in this matter, presently pending before me is complainant's motion of March 15, 1990, to disqualify Mr. Stewart from continuing to represent respondent in this case. Cf supra fns. 2, 4, and 5.

spondent's April 27, 1990 opposition. Assuming arguendo that consideration of such documents would be appropriate notwithstanding respondent's continued failure to comply with the September 13, 1989, subpoena,[15] I note the deficiencies in these documents discussed supra, Part A. Moreover, it is appropriate to address one assertion in the April 27, 1990, affidavit of Mr. Anthony M. Allen, Sherida Allen's husband. That affidavit states, inter alia, that ``all salary was paid [between April 1985 and May 1989] by A. & S. [Export], Inc., to myself, Anthony M. Allen, and not to Sherida Allen. Although Sherida Allen worked for A. & S. Export, Inc., no employment relationship existed and no salary was paid to Sherida Allen.'' As previously noted Sherida Allen's sworn statement averred that she had sometimes been paid by check and that she had cashed such checks at ``Financial Federal.'' Accordingly, significant light on the accuracy of Anthony Allen's affidavit would likely have been cast by some of the subpoenaed records which respondent has failed to produce. This circumstance renders particularly inappropriate respondent's reliance on Mr. Allen's affidavit as a basis for opposing the motion for finding of inference.

A letter to me from Mr.. Stewart dated May 9, 1990, seeks to explain his December 11, 1989, response to request for admission on the ground that he interpreted it as requesting, as to the submitted documents, an admission that the attached Kruhm certification was accurate in stating that the supplied copy of ETA Form 750 was made form an original document which was in INS files. I believe this interpretation was so unreasonable as to impugn its good faith.[16] In any event, although § 68.19 of the rules and regulations, 54 F.R. 48600-48601 (November 24, 1989), at least arguably fails to deal with a situation where the responding party knows that the matter set forth in the request is partly true but cannot admit the truth of the rest, § 68.1 of the rules (54 F.R. 48597) states, ``The Rules of Civil Procedure for the District Courts of the United States shall be used as a general guideline in any situation not provided for or controlled by these rules, or by any statute, executive order, or regulation.'' Rule 36(A) of the Rules of Civil Procedure states, in part, ``. . . when good faith requires that a party . . . deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.'' Mr. Stewart's letter to me dated May 9, 1990,

[15] Cf. U.S. v. $239,500 in U.S. currency, 764 F.2d 771, 773 (11th Cir. 1985).

[16] Paragraph 1 of the request for admission does request on its face an admission that the attached copy of Form 750 was photocopied from the original. However, no such request is included on the face of paragraph 2(b), which seeks an admission that respondent filed the form in question on behalf of Mrs. Allen.

states that he had ``no further objection'' to the inference that the copy of the application for alien employment certification attached to complainant's request for admission ``is a true copy of an application filed by respondent with an appropriate Federal agency.'' I conclude that by failing to admit this much in respondent's December 11, 1989, response to complainant's request for admission, and by claiming ignorance as to the entire Form 750 matter encompassed by that request, respondent in effect engaged in misrepresentation which furnishes additional support to my imposition of sanctions by making a finding of inference.

Finally, I find unmeritorious respondent's apparent contention that no finding of inference can be drawn from its noncompliance with the September 13, 1989, subpoena, because it is directed to respondent corporation, and not to any individuals. See Insurance Corp. of Ireland, supra, 456 U.S. 694, 102 S.Ct. 2099; Griffin v. Swim-Tech Corp., 722 F.2d 677 (11th Cir. 1984); International Union, supra, 459 F.2d at 1338.

WHEREFORE, as to the documents called for in the September 13, 1989, subpoena, I make the following findings of inference:

A. That if produced, such documents would have shown that after November 6, 1986, respondent hired Sherida Allen for employment, and continued to employ her, in the United States knowing before hiring her and at all times thereafter that she was an alien not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act, as amended, or the Attorney General to accept employment; and

b. That if produced, such documents would have shown that respondent, after November 6, 1986, failed to properly verify Sherida Allen on a verification form I-9.

Dated: July 20, 1990.

NANCY M. SHERMAN
National Labor Relations Board