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

United States of America, Complainant v. American McNair, Inc., Respondent; 8 U.S.C. 1324a Proceeding, Case No. 89100507.

FINAL DECISION AND ORDER

E. MILTON FROSBURG, Administrative Law Judge

Appearances: **PAUL MOSLEY**, Esquire and
DANA JAMES, Esquire for Complainant,
Immigration and Naturalization Service
EDWARD BELL, Pro se Respondent.

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I. PROCEDURAL HISTORY

On June 28, 1989, the United States of America, Immigration and Naturalization Service (INS), served a Notice of Intent of Fine (NIF) on American McNair, Inc., Respondent. The NIF, in Counts numbered I and II, alleged violations of Section 274A(a)(2), and 274A(a)(1)(B) of the Immigration and Nationality Act (the Act). In a letter dated July 5, 1989, Respondent, through its Secretary Angeline J. Bell, requested a hearing before an Administrative Law Judge.

The United States of America, through its Attorney John B. Bartos, filed a Complaint incorporating the allegations in the NIF against Respondent on September 29, 1989. On October 6, 1989, the Office of the Chief Administrative Hearing Officer issued a Notice of Hearing on Complaint Regarding Unlawful Employment, assign-

ing me as the Administrative Law Judge in this case and setting the hearing place at or around Los Angeles, California, on a date to be scheduled.

Respondent answered the Complaint on October 30, 1989, relying on a ``good faith'' defense for each allegation. On October 31, 1989, I issued an Order Directing Procedures for Pre-hearing. On December 20, 1989, I issued an Order confirming the pre-hearing telephonic conference held on December 13, 1989, in which the hearing date of April 10, 1990, was assigned.

On February 23, 1990, Complainant, through its Attorney, Donna Rusnak, filed a Motion For Summary Decision, stating that no genuine issues of material fact existed. During the pre-hearing telephonic conference held on March 13, 1990, I granted Respondent's request to extend the time for filing a response to the Motion for Summary Decision, and continued the hearing date to May 1, 1990.

On March 20, 1990, Respondent filed a Motion for Telephonic Conference and a response in Opposition to Motion for Summary Decision, asserting the existence of genuine issues of material fact. On March 30, 1990, the third pre-hearing telephonic conference was held. I scheduled the hearing in this matter for May 1-3, 1990, in Santa Ana, California.

On April 9, 1990, Complainant, through its Attorney Donna Rusnak, filed a Reply to Respondent's Opposition to Motion For Summary Decision. Respondent filed an undated Motion For Extension of Hearing Date, which I received on April 17, 1990. I granted Respondent's request to extend the hearing date and scheduled the hearing for July 10-12, 1990, in Santa Ana, California. Respondent again filed a Motion For Continuance of Hearing on April 25, 1990. On May 5, 1990, Respondent filed an Amendment to Opposition to Motion for Summary Decision, including an Affidavit of Angeline J. Bell.

After considering all of the documents provided, I concluded that no genuine issue of material fact existed as to Count II and that Complainant was entitled to partial summary decision as to liability on Count II as a matter of law. I granted Complainant's Motion for Summary Decision as to Count II in my Decision and Order of May 9, 1990. I determined at that time that an issue of material fact remained with respect to Count I, therefore a hearing was to be held on that Count only. I did not rule on the issue of an appropriate civil penalty, but left it open, to be addressed at the hearing.

The hearing dates of August 21-22, 1990, were set during the pre-hearing telephonic conference on July 24, 1990. On August 17, 1990, I received Complainant's Index of Exhibits and a Stipulation of Facts Between Complainant and Respondent. The hearing re-

garding the alleged violation of Count I of the Complaint was held on August 21, 1990, during which I heard testimony from one witness for Complainant, and two witnesses for Respondent. I received three Complainant's exhibits and one Respondent's exhibit. A hearing record of 94 pages exclusive of exhibits, was compiled.

I issued an Order on September 25, 1990, informing the parties that the post-hearing briefs would be due October 26, 1990. On October 12, 1990, Complainant moved for an enlargement of time in which to submit its brief. Complainant requested the date of November 9, 1990, and indicated that Respondent had been contacted and offered no objection to this requested delay. I granted Complainant's request on October 19, 1990, permitting both parties to submit their briefs on November 9, 1990.

On October 23, 1990 I received a Motion for Leave to File Brief Amicus Curiae of the Mexican American Legal Defense and Educational Fund (MALDEF). Complainant filed a motion in opposition to MALDEF's request on November 2, 1990. On November 5, 1990 I denied MALDEF's motion because: (1) its tardiness in filing its request placed all parties at a disadvantage, especially since a representative of MALDEF attended the August hearing in the matter and could have become involved much sooner; (2) MALDEF did not state how its expertise could benefit me in my consideration of this case; (3) MALDEF cited no legal authority for its proposal to act as amicus; and (4) MALDEF's interest in the specific issue it wished to brief was already being represented before the Ninth Circuit Court of Appeals.

On November 9, 1990 I received post-hearing briefs from Complainant and Respondent.

II. FINDINGS OF FACT

The parties entered into a stipulation prior to hearing, agreeing upon certain facts. This stipulation was admitted into evidence as Complainant's exhibit C-2. These stipulated facts are listed below, incorporated with the additional factual findings I have gleaned from my review of the record, pleadings, arguments, and briefs submitted by the parties. I will record my findings in a chronological sequence, rather than utilizing the corresponding stipulation numbers. The stipulation numbers will be noted, however, after the appropriate findings, as will the sources for other findings of fact.

1. American McNair, Incorporated is a corporation that is incorporated in the State of California and a legal entity within the definition of 8 C.F.R. Section 274a.1(b). (Stip. #1)

2. The primary business activity of American McNair, Inc. consists of engineering and manufacturing specialized packaging utilizing polyurethane foam materials. (Stip. #2)

3. The Respondent employs on a monthly basis approximately 50 workers. (Stip. #3)

4. During the year 1988, Respondent's total gross receipts of sales after returns and allowances came to Two Million, Five Hundred Eight Thousand, Eight Hundred Eighty Four dollars ($2,508,884.00). (Stip. #4)

5. Edward M. Bell is the President of Respondent, American McNair, Inc., and has been duly approved and authorized by Respondent to act as its designated representative in this proceeding. (Stip. #5)

6. Edward M. Bell has been responsible for all personnel records of Respondent since at least after April 1, 1987. (Stip. #6)

7. Edward M. Bell, President, and Angeline J. Bell, Secretary, of American McNair, Inc. have been responsible for examining employment eligibility documentation and completing Employment Eligibility Verification Forms (Forms I-9) for workers on behalf of Respondent since at least April 1, 1987 through the date of hearing. (Stip. #7)

8. On or about August 19, 1987, Respondent hired Marciano Landrove Alvarez (Alvarez) for employment in the United States. (Stip. #8)

9. When Alvarez was first hired by Respondent in August of 1987, he did not present documents supporting his authorization to work in the United States. (C-1 Ex. #37)

10. In July of 1987, Respondent hired Miguel Lopez Melendez (Melendez) for employment in the United States; and Melendez was subsequently terminated from Respondent's employment on or about May 24, 1989. (Stip. #11)

11. Edward M. Bell was aware that June 1, 1988 was a ``magic date'' by which his workforce was to be comprised of workers authorized for employment in the United States. Prior to that date he informed his employees that if they did not have work authorization or amnesty their jobs would be terminated. (Tr. at 73)

12. In June of 1988 Respondent terminated the employment of at least six or seven employees who could not provide appropriate documentation supporting their work authorization. (Tr. at 71)

13. Respondent hired Sergio Garcia-Torres, Dona Lou Strader, and Thomas J. Singleton for employment in the United States on or about October 3, 1988, June 19, 1987, and February 2, 1989, respectively. (Stip. #18)

14. On March 22, 1988, Edward M. Bell, President of and on behalf of Respondent, signed an Application for Alien Employment (Form ETA-750) on behalf of Alvarez. Alvarez had approached Edward Bell and informed him that he was ineligible for amnesty because he had not resided in the United States for the requisite five year period. Alvarez told Edward Bell that he had hired an attorney, Richard Miranda, at the Latin American Law Center, who prepared the Form ETA-750. (Stip. #9; Tr. at 73-74)

15. In June 1988, Edward M. Bell, President and on behalf of Respondent, signed an Application for Alien Employment (Form ETA-750) on behalf of Melendez. This form was also prepared by the Latin American Law Center for Bell's signature. (Stip. #12; Tr. at 74)

16. On or about January 13, 1989, Edward M. Bell, President of and on behalf of Respondent, signed a Petition for Prospective Immigrant Employee (Form I-140) on behalf of Alvarez. This form was prepared by the Latin American Law Center. (Stip. #10; C-1 Ex. #13)

17. On March 31, 1989, Edward M. Bell, President of and on behalf of Respondent, signed a Petition for Prospective Immigrant Employee (Form I-140) on behalf of Melendez. (Stip. #13)

18. Prior to March of 1989, Edward M. Bell and Angeline Bell knew of IRCA, first hearing of it through the media in 1987. They had not, however, been educated as to its specific requirements. Angeline Bell attempted to obtain information about IRCA through telephone calls to INS in the spring of 1988, but was not successful. One of Respondent's clerical employees went to the INS office to obtain information regarding IRCA in the spring of 1988 and obtained forms I-9. (Tr. at 49-50)

19. The INS opened a case file pertaining to Respondent corporation in March of 1989 in response to the filing by Alvarez of the Form I-140. Special Agent James M. Chapparro was assigned to this case on or about March 16, 1989. (Tr. at 7-10)

20. Respondent was visited by Agent Chapparro of INS on March 17, 1989 to receive education regarding IRCA. Respondent received a Handbook for Employers (M-274) on that date. (Stip. #14-#15)

21. Agent Chapparro met with Edward M. Bell and Angeline Bell for approximately 30 minutes, explaining the requirements for employers in accordance with the IRCA laws. Agent Chapparro reviewed several forms I-9 prepared by Respondent and indicated deficiencies which would require correction. He explained that a formal inspection of Respondent's forms I-9 might take place the following month. Agent Chapparro stated that he would not require forms I-9 for those employees who had been terminated by or

left the employ of Respondent prior to the March 17, 1989 educational visit. (Tr. at 10-11, 44)

22. Subsequent to Agent Chapparro's educational visit, Respondent prepared a notice which was provided to all employees, requesting them to fill out forms I-9 and to present the documentation necessary to complete the forms. (Tr. at 34; R-1)

23. Based upon his failure to prove eligibility to work, Sergio Garcia-Torres' employment was terminated on April 21, 1989 by Respondent. (Tr. at 66)

24. Respondent was served with a Notice of Inspection by an Agent of the Immigration and Naturalization Service on April 24, 1989. Agent Chapparro also arrested Alvarez based upon INS' determination that Alvarez was not legally residing or working in the United States. (Stip. #16; Tr. at 12)

25. Alvarez worked continuously for Respondent from August 1987 until his arrest on April 24, 1989. (Tr. at 12-14, 73-74; C-1 Ex. #24)

26. On May 1, 1989, Agent Chapparro of the INS conducted an inspection of Respondent's Forms I-9. Respondent provided Agent Chapparro with 25 Forms I-9, along with payroll and tax documents showing dates of hire for its employees. Among the Forms I-9 presented were I-9's for Sergio Garcia-Torres, Dona Lou Strader, and Thomas J. Singleton. (Stip. #17,#19; Tr. at 15)

27. The Form I-9 presented by Respondent for Sergio Garcia-Torres was signed on March 27, 1989, but not properly completed. Angeline Bell attempted to telephonically contact Agent Chapparro after the inspection to inform him that Garcia-Torres had been fired, but could not reach him. (Tr. at 58)

28. On May 22, 1989, a Notice of Inspection Results was served on Respondent by Agent Chapparro of the INS advising Respondent that five of Respondent's employees had presented fraudulent or false documents to establish their employment eligibility. (Stip. #20).

29. On May 31, 1989, Respondent submitted to an Agent of the INS a letter reflecting that the five individuals identified in the Notice of Inspection Results were no longer employed by Respondent. (Stip. #21)

30. Agent Chapparro believed that Respondent acted in a cooperative manner throughout the inspection process. (Stip. #31, 46)

III. LEGAL ANALYSIS

As stated above, I previously granted summary decision regarding the paperwork violations found in Count II of the Complaint. Based upon the testimony at the hearing I find it necessary to

review my decision pertaining to the Form I-9 submitted by Respondent for Sergio Garcia-Torres, one of the three violations found in Count II.

The Form I-9 in question is obviously deficient, as parts of Section 1 and 2 of the form are incomplete. However, the questioning of Agent Chapparro raises the issue of whether or not Respondent was even required to present a form for him.

Agent Chapparro told Respondent in his educational visit that the would not require Respondent to present Forms I-9 in a subsequent inspection for those employees who had left Respondent's employ prior to the date of his visit_March 17, 1989. Garcia-Torres' Form I-9 is dated March 27, 1989 in Section 1. He was subsequently terminated on April 21, 1989. Both dates are clearly after the March 17, 1989 educational visit.

Respondent was, therefore, required to present a completed Form I-9 to Agent Chapparro on May 1, 1989. The fact that he was no longer employed on that date does not excuse Respondent from its obligation under IRCA. My previous ruling granting partial summary decision stands.

As to Count I, Respondent, as an entity, is charged with hiring Alvarez for employment, and then for continuing to employ him in the United States, knowing that Alvarez was, or had become an unauthorized alien with respect to such employment, a violation of 8 U.S.C. Section 1324a(a)(2). Complainant argues that each of the elements required to be satisfied have been proven by a preponderance of the evidence.

I agree that Respondent is an ``entity'' as defined by 8 C.F.R. Part 274a.1(b), pursuant to Exhibit C-2, Stipulation #1. I further agree with Complainant that the record is abundantly clear that Alvarez was employed by Respondent for wages or other remuneration in Santa Ana, California. This employment commenced on or about August 19, 1987. At the time of his hire and throughout his period of employment with Respondent, Alvarez was unlawfully in the United States and unauthorized for employment, as Complainant contends. None of these elements are denied by Respondent.

The ultimate issue in this matter focuses on whether Respondent ``knew'' that Alvarez was an unauthorized alien and continued to employ him despite this knowledge.

Although the statutes and regulations applicable to this proceeding do not specifically define ``knowledge'', several cases previously decided in this forum have interpreted the knowledge element.

In the case of the United States v. Mester Manufacturing Co., OCAHO Case No. 87100001, (June 17, 1988), aff'd, Mester Manufacturing Co. v. INS, 879 F.2d 561 (9th Cir. 1989), the ALJ stated that

``[k]nowledge or notice of an employee's unauthorized status which provides the scienter necessary to find a violation of 8 U.S.C. 1324a(a)(2) in knowingly continuing to employ an unauthorized alien can come to the employer from any source. The law is indifferent as to how that knowledge is acquired.'' Mester at 20. The ALJ pointed out that the burden falls on the employer to ``make timely and specific inquiry'' as to the eligibility of the employee for work in the United States. Mester at 23. The employer is liable not only for failing to ``know'' the status of the employee, but also for failing to take steps necessary to learn the status of the employee. Thus, what the employer ``should know'' can be construed as knowledge sufficient for a violation of IRCA.

In the case of United States v. New El Rey Sausage Co., OCAHO Case No. 88100080, (July 7, 1989), the ALJ explained that the employer had reason to know that its employees were unauthorized aliens after receiving communication from INS representatives to that effect. The ALJ pointed out what steps the employer should have taken in light of that information. The ALJ explained that the employer should have suspended its employees until it received confirmation that the employees were authorized to work in the United States. By permitting the employees to continue to work subsequent to being contacted by the INS, the employer was liable for an IRCA violation.

In New El Rey, the ALJ equated ``constructive knowledge'' with ``actual knowledge'' for purposes of satisfying the knowledge element of 8 U.S.C. Section 1324a(a)(2). The ALJ explained that constructive knowledge can be found where the employer had reason to know of the employee's unauthorized status.

> An employer shall be deemed to have reason to know that an employee is [unauthorized] if it can be shown by a preponderance of the evidence that the employer was in possession of such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question . . . or to infer, on the basis of reliable warnings, that such officially questioned employees are not, in fact, authorized to be employed in the United States.

New El Rey at 32 (emphasis in original).

I also used the constructive knowledge standard in the case of United States v. Valdez, OCAHO Case No. 89100014, (Sept. 27, 1989). I decided that the employer, Valdez, was acting with a ``high probability'' of the fact that the employee was unauthorized. I stated that ``[d]eliberate ignorance cannot reasonably be a defense.'' Valdez at 11. I reasoned that an employer cannot avoid his obligations under IRCA by simply avoiding any inquiries which could lead to a discovery of an employee's unauthorized status. I stated that, ``[e]very employer has the affirmative duty, by law, to inquire

into each employee's employment eligibility and to complete a Form I-9 to reflect the results of that inquiry.'' Valdez at 11.

I continued my analysis of constructive knowledge in the case of United States v. Collins Foods Int'l, Inc., OCAHO Case No. 89100084, (Jan. 9, 1990), where I stated, ``it is not necessary to find that [the employee] had expressly informed [the employer] of his unauthorized status. It is sufficient that [the employer] should have known.'' Collins at 11 (emphasis in original). I explained the basis behind my decision to apply the constructive knowledge standard by stating:

> there is a strong policy argument in favor of an administrative law judge relying on circumstantial evidence which gives the employer notice of an employee's status as an illegal alien. The argument is that to do otherwise would encourage an employer to consciously avoid acquiring knowledge of the employees (sic) immigration status whenever the employer suspects, from the circumstantial evidence before him, that his employee is an illegal alien.

Collins at 13.

In the case of United States v. Buckingham Limited Partnership, OCAHO Case No. 89100244, (Apr. 6, 1990), the ALJ explained knowledge this way: ``Federal case law instructs that failure to know what could have been known in the exercise of due diligence amounts to knowledge in the eyes of the law.'' Buckingham at 9. He further explained, ``[t]o hold that liability attaches only when it is proven that an employer specifically intended to continue to employ an unauthorized alien would minimize the Act's effectiveness by providing a loophole with which to escape liability under 8 U.S.C. Section 1324a(a)(2).'' Id. (emphasis in original).

Using the above cited cases as guides, I agree with Complainant that there is sufficient evidence of knowledge on the part of Respondent to prove this element of the charge in Count I. Respondent was provided with information from Alvarez in February or March of 1988 which should have led him to believe that Alvarez was not authorized for employment in the United States. Edward Bell testified that Alvarez approached him with the information that he was ineligible for amnesty, which Bell knew to be a method of gaining work authorization in this country. See Tr. at 73. Prior to that time, Bell had never requested Alvarez to present documents demonstrating his work authorization, and no Form I-9 had been prepared for him until March 1989. See Tr. at 85. A close review of the I-9 which was prepared shows that no document identification numbers or expiration dates were inserted in Section 2 of the form. C-1, Ex. #14.

Bell knew Alvarez originated from Mexico and believed he was in the process of being legalized. It follows that Bell knew he was

not yet legal. Respondent's motivation was ``to get [Alvarez] legalized.'' Tr. at 75. Alvarez presented Bell with the ETA-750 for his signature on March 22, 1988, and the I-140 on January 13, 1989. Bell testified that he did not examine them closely and became immediately leery of them. Tr. at 74-75. Regardless of Bell's knowledge as to the specifics of these two forms, he had sufficient information in his possession which gave him reason to know of Alvarez' unauthorized status. Much of that information was contained on those two forms. See C-1, Ex. ##11,13.

Edward Bell stated that he spoke with an individual who represented himself as an attorney, Richard Miranda, who told him that he was permitted to employ Alvarez during the labor certification process. This is not a sufficient defense. Respondent had the affirmative duty to inquire into the work authorization of Alvarez, especially since Alvarez had never presented any documents demonstrating such eligibility. Respondent failed in that duty, resulting in the continuity of Alvarez' employment until his arrest by the INS, in violation of 8 U.S.C. Section 1324a(a)(2).

Respondent appeared to be motivated more by how it could avoid the requirements of IRCA and retain those employees who were trained in skilled positions and not easily replaced, than by fulfilling its obligations as an employer. Bell did not seem overly concerned whether or not he was adhering to the employment dictates in IRCA, because, if caught violating the law for a first offense, his business would not be fined. See Tr. at 71, 75-76. His misplaced reliance on business colleagues, who provided him with that information, shall not shield Respondent from liability. As Complainant correctly contends, ``ignorance of the law is not a viable defense whether the law is a statute or a duly promulgated regulation.'' C's Closing Brief at 12.

Respondent, with due diligence, could have known of Alvarez' status and then suspended or terminated his employment until such time as Alvarez was able to produce documents proving his eligibility to work in the United States. Respondent was aware of the June 1, 1988 deadline for compliance with IRCA and that its workforce would have been legal by that time. Several employees were fired because they could not demonstrate work authorization. Alvarez should have been one of them.

Respondent claims it relied on the mistaken notion that those ``in the process'' of becoming legal were exempt from IRCA. Rather than take the affirmative steps to determine the legality of its actions in continuing to employ Alvarez, Respondent chose to remain ignorant as to the law, as well as to the facts surrounding Alvarez' status.

Accordingly, Respondent is in violation of 8 U.S.C. Section 1324a(a)(2) as alleged in Count I of the Complaint.

IV. ASSESSMENT OF CIVIL PENALTY

It is my judgment that Respondent has violated sections 274A(a)(2) and 274A(a)(1)(B) of the Act. I must, therefore, assess a civil money penalty pursuant to sections 274A(e)(4) and 274A(e)(5) of the Act. The statute states, in pertinent part, that:

> [w]ith respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection_(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of (i) not less that $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either subsection occurred, . . . [and] with respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less that $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

8 U.S.C. Sections 1324a(e)(4) and 1324a(e)(5).

Complainant assessed a civil penalty for the violation in Count I at $1,000.00 (one thousand) in the NIF and has also requested that I order Respondent to cease and desist from hiring or continuing to employ unauthorized aliens. In its post-hearing brief Complainant asked me to consider a penalty of $2,000.00 (two thousand) for this violation. For Count II Complainant has assessed a civil penalty of $200.00 (two hundred) for each of the three violations. The combined civil penalty assessed for Count II is $600.00 (six hundred).

In assessing penalties for Count II, I have determined that Respondent's business is financially stable and that it employs an average of 40-50 employees per month. I find this to be in the small to mid-range class of businesses. I consider this to be a somewhat mitigating factor.

Respondent asserts a showing of good faith regarding its obligations under IRCA. It contends that its efforts to obtain information about IRCA, its termination of unauthorized employees, its consultation with an individual it believed to be an immigration attorney, and its cooperativeness with the INS investigative agent all demonstrate its good faith.

Complainant argues, on the other hand, that Respondent's good faith is questionable because Respondent procrastinated in its efforts to come into compliance. After being educated, it still did not demonstrate full compliance because it allowed personal affairs to take higher priority than business operations.

Despite Respondent's assertions of good faith, I do not find sufficient evidence of good faith to mitigate the penalty. Respondent was indeed cooperative in all its contacts with INS. It is also a favorable reflection upon Respondent that it took steps to obtain Forms I-9 prior to receiving an educational visit.

The testimony of Respondent's witnesses, however, supports Complainant's argument that Respondent put off completing its Forms I-9 until the inspection was imminent. Agent Chapparro gave Respondent ``a break'' by not requesting I-9's for employees hired after November 6, 1986, who left Respondent's employ prior to the March 17, 1989 educational visit. Respondent was told that an inspection could be expected in April and a notice was served on April 24 for the originally scheduled date of April 28, 1989. Respondent was given extra time due to INS' schedule conflict, and Respondent was still unable to produce complete I-9's for three of its employees by May 1. Angeline Bell also stated that her personal family obligations took a higher priority than the completion of I-9's at that time.

Although I do not believe Respondent's actions warrant aggravation of the penalty, neither do I find that there is enough to mitigate the penalty.

Record keeping violations are serious in the framework of IRCA. Each of the three I-9's in question lacked the employer's attestation that he had examined the identification and work authorization documents presented by the employees. One of the three employees, Garcia-Torres, was eventually terminated because he was unable to demonstrate work authorization, and was shown to be an unauthorized alien. This factor is aggravating, coupled with the fact that Respondent employed another unauthorized alien, Alvarez.

Finally, I found no evidence that Respondent was previously warned or cited for similar IRCA violations. I consider Respondent's lack of history with INS pertaining to IRCA to be a mitigating factor.

Accordingly, I approve Complainant's assessment of $600.00 (six hundred) for the three paperwork violations. I find this amount to be quite reasonable in light of the factors requiring my consideration.

After much consideration, I also approve Complainant's original request of $1,000.00 (one thousand) for Count I. I will not consider doubling this amount to the maximum permitted penalty, because I believe the original amount is fair and reasonable. In the alternative, a lower fine would not be appropriate considering the seriousness of this violation.

V. ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I have carefully considered the record in this case, all documents presented by the parties, and all arguments advanced by the parties. Accordingly, and in additon to the findings of fact and conclusions of law previously made, I make the following ultimate findings of fact and conclusions of law.

1. I conclude, by a preponderance of the evidence, that Respondent did violate 8 U.S.C. Section 1324(a)(2) as alleged, by continuing to employ Marciano Landrove Alvarez, knowing that he was unauthorized for employment in the United States.

2. As discussed in my May 9, 1990 Decision and Order, Respondent has violated 8 U.S.C. Section 1324a(a)(1)(B) by hiring for employment in the United States, Sergio Garcia-Torres, Dona Lou Strader, and Thomas J. Singleton, without complying with the verification requirements of 8 U.S.C. Section 1324a(b)(1) and 8 C.F.R. Part 274a.2(b)(1)(ii).

3. That it is just and reasonable to require Respondent to pay a civil penalty in the amount of $1,600.00 (one thousand six hundred) for these violations.

4. That Respondent shall cease and desist from violating the prohibitions against hiring or continuing to employ unauthorized aliens, in violation of Sections 274A(a)(1)(A) and 274A(a)(2) of the Act.

5. This Decision and Order is the final action of the Administrative Law Judge in accordance with 28 C.F.R. Part 68.51(a). As provided by that section, this action shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Decision and Order, the Chief Administrative Hearing Officer, upon request for review, shall have modified or vacated it.

IT IS SO ORDERED: This 8th day of January, 1991, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge
Executive Office for Immigration Review
Office of Administrative Review
950 Sixth Avenue, suite 401
San Diego, California 92101