

6 OCAHO 825

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

December 5, 1995

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324c Proceeding
)	OCAHO Case No. 94C00139
MOURAD ABU REMILEH,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

Appearances: Terry M. Louie, General Attorney, Immigration and Naturalization Service, United States Department of Justice, St. Paul, Minnesota, for Complainant; Richard L. Breitman, Esquire, Minneapolis, Minnesota for Respondent.

Before: Administrative Law Judge McGuire.

Procedural History

On July 27, 1994, complainant filed the two (2)-count Complaint at issue, alleging in Count I that after November 29, 1990, respondent had knowingly and falsely made a Form I-9 for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA), in violation of the provisions of 8 U.S.C. §1324(c)(a)(1). Complainant requested a civil money penalty of \$500 for that alleged violation.

In Count II, complainant asserted that after November 29, 1990, also, respondent had knowingly used, attempted to use, and possessed the allegedly forged, counterfeited, altered and falsely made document described therein, a Minnesota Department of Health,

6 OCAHO 825

Section of Vital Statistics, Certificate of Live Birth, in the name of Zachary Mohamed Armeli, for the purpose of satisfying a requirement of the INA, and thus violated the provisions of 8 U.S.C. §1324c(a)(2). Complainant asked for a civil money penalty of \$500 for that alleged infraction, also.

On December 6, 1994, complainant filed a Motion for Summary Decision, in which it requested that summary decision be granted on the facts of violation alleged in Counts I and II of the Complaint.

On January 9, 1995, the undersigned granted complainant's Motion for Summary Decision after determining that there was no genuine issues of material fact with regard to the violations alleged in Counts I and II, and further that the only issues remaining for determination were the appropriate civil money penalties to be assessed for those two (2) violations.

On February 7, 1995, the Chief Administrative Hearing Officer (CAHO) issued a Modification of the undersigned's January 9, 1995 Order Granting Complainant's Motion for Summary Decision. That Modification dismissed Count I of the Complaint because the CAHO found that "[i]t is the underlying fraudulent document, submitted to an employer [by an employee] to establish identity and/or work authorization, which is the proper basis of a section 1324c violation[,] and that "the attestation of an employee to false information on a Form I-9 does not constitute . . . [a] violation of 8 U.S.C. §1324c". *United States v. Remileh*, 5 OCAHO 724, at 9 (1995), *modified*. In addition, that Modification affirmed the granting of summary decision concerning the allegations contained in Count II.

In view of that ruling, the only remaining issue is that of determining the appropriate civil money penalty, of not less than \$250 and not more than \$2,000, to be assessed for the Count II violation. The parties were instructed that, in lieu of a hearing, they were to file written briefs addressing that sole remaining issue.

On March 9, 1995, respondent's counsel of record, Richard Breitman, Esquire, filed a pleading captioned Respondent's Application for Attorney's Fees and Costs Under the Equal Access to Justice Act (EAJA), requesting that he be awarded attorney fees and other costs in the amount of \$11,061 because respondent had prevailed over complainant in Count I in the CAHO's February 7, 1995 Modification.

6 OCAHO 825

On March 20, 1995, complainant filed its written brief regarding the civil money penalty, requesting that a civil penalty of \$500 be assessed for the Count II violation.

On March 23, 1995, respondent filed a Petition for Review with the United States Court of Appeals for the Eighth Circuit, requesting that the Eighth Circuit review the "final decisions by the Chief Administrative Hearing Officer (CAHO) dated February 7, 1995, 5 OCAHO 724 (1995) (Modification Decision) modifying the decision of the Administrative Law Judge (ALJ) in the case of *United States v. Remileh*, Case No. 94C00139 (January 9, 1995)." That tribunal, after reviewing the administrative record, dismissed respondent's appeal on July 12, 1995, for lack of jurisdiction pending the issuance of a final decision and order by this Office.

On April 4, 1995, respondent filed his civil money penalty brief, requesting that the undersigned impose the minimum statutory penalty of \$250 for the Count II violation.

On April 13, 1995, the undersigned issued an Order Denying Respondent's Application for Attorney Fees Under the Equal Access to Justice Act [hereinafter April 13, 1995 Order], on the grounds that "the CAHO's February 7, 1995 Modification was not a 'final disposition in the adversary adjudication', as required by...5 U.S.C. Section 504(a)(2)", and concluded that respondent's EAJA application had been prematurely filed. Apr. 13, 1995 Order at 5.

On May 5, 1995, complainant filed a Supplemental Response to February 17, 1995 Order for Briefs on Civil Money Penalty [hereinafter Complainant's May 5, 1995 Supplemental Response] in which it "request[ed] the Administrative Law Judge to consider the enclosed Motion to Reopen Record [in the Respondent's deportation proceeding] to Receive Evidence that the Respondent Committed Fraud upon the Tribunal filed on May 3, 1995 with Immigration Judge Margaret Burkhart." Complainant's May 5, 1995 Supplemental Resp. at 1. Included with and in support of that pleading was a copy of a Motion to Reopen Record to Receive Evidence that the Respondent Committed Fraud Upon the Tribunal, which had been previously submitted to the Office of the Immigration Judge (OIJ).

On May 22, 1995, this Office received Complainant's Second Supplemental Response to February 17, 1995 Order for Briefs on

6 OCAHO 825

Civil Money Penalty [hereinafter Complainant's May 22, 1995 Second Supplemental Response].

On May 25, 1995, respondent filed a Motion to Conduct Penalty Hearing [hereinafter Respondent's May 25, 1995 Motion] in which respondent "move[d] the Administrative Law Judge . . . to conduct a hearing on the penalty to be assessed . . . [or i]n the alternative, respondent request[ed] a period of 90 days in which to obtain evidence to submit which addresses the issues raised by complainant." Resp't's May 25, 1995 Mot. at 1.

On June 6, 1995, complainant filed a pleading captioned Requests for Admissions and Requests for Production of Documents which addressed factual issues concerning the veracity of respondent's statements about his alleged hospitalization stays in 1990 and again in 1992.

On June 30, 1995, respondent filed a pleading captioned Evidence Submitted in Response to INS Evidence in Second Supplemental Response to February 17, 1995 Order for Briefs on Civil Money Penalty (Dated May 17, 1995) and Motion for Protective Order and Objections to June 5, 1995 Requests for Admissions and Requests for Production of Documents [hereinafter Respondent's June 30, 1995 Motion].

In the initial portion of that pleading, respondent moved for the exclusion of evidence regarding respondent's purported hospitalization, or alternatively, an evidentiary hearing because "the Office of District Counsel has been under investigation for 18 months by the Justice Department's Office of Professional Responsibility for fabricating documents." Resp't's June 30, 1995 Mot. at 1. In support of its position, respondent's counsel submitted an affidavit of one Houd Wazwaz, who has known respondent for about seven (7) years, and whose affidavit contradicts INS's contentions that respondent had not been hospitalized. Respondent's counsel further requested a protective order to shield his client from the complainant's allegedly improper discovery requests dated June 5, 1995.

Civil Money Penalty

Section 1324c of the Immigration and Reform Control Act (IRCA) provides that first time offenders of that statute be ordered to cease

6 OCAHO 825

and desist from future violations of 1324c and to pay a civil money penalty ranging from \$250 to \$2,000. 8 U.S.C. §1324c(d)(3)(A).

Unlike Section 1324a of IRCA, which contains five (5) criteria to be considered in determining civil penalties, 8 U.S.C. §1324a(e)(5), Section 1324c does not provide similar guidance. 8 U.S.C. §1324c(d)(3). Administrative Law Judges have previously utilized “a judgmental approach under a reasonableness standard and consider[ed] the factors set forth by Complainant, any relevant mitigating factors provided by Respondent, and any other relevant information of record.” *United States v. Diaz-Rosas*, 4 OCAHO 702, at 7–8 (1994); *United States v. Villatoro-Guzman*, 4 OCAHO 652, at 15 (1994).

Factors Set Forth by Complainant

In its March 20, 1995 Response to February 17, 1995 Order for Briefs on Civil Money Penalty, complainant requests that the following pleadings be considered in support of its request for a civil money penalty in the amount of \$500: Memorandum in Support of Civil Money Penalty; Complainant’s Renewal of Motion in Limine; Complainant’s Memorandum Regarding Discovery of Death Warrant; Complainant’s Prehearing Statement for February 16, 1995 Hearing; Complainant’s Memorandum in Opposition to Respondent’s Motion for Continuance, in Support of Complainant’s Motion for Prehearing Conference, and in Support of Assessment of Fine Without an Evidentiary Hearing [hereinafter January 30, 1995 Memorandum in Opposition to Respondent]; INS’s 45-page group exhibit filed on February 10, 1995 [hereinafter Complainant’s February 10, 1995 Exhibit]; and INS’s 23-page group exhibit filed on February 9, 1995 [hereinafter Complainant’s February 5, 1995 Exhibit].

Later pleadings filed by complainant on the subject of civil money penalties include: Complainant’s May 5, 1995 Supplemental Response; its May 5, 1995 Motion to Reopen filed with OIJ; and Complainant’s May 22, 1995 Second Supplemental Response.

Complainant considers the following factors in its January 5, 1995 Memorandum in Support of Civil Money Penalty: respondent’s age; the seriousness of the violation; respondent’s history of previous criminal/civil violations; respondent’s immigration status; respondent’s purpose for the document fraud; respondent’s admission that

he altered the birth certificate of Zachary Armeli before providing it to Valleyfair; and the fact that respondent is an alien without valid work authorization. Complainant's Mem. Supp. Civil Money Penalties at 1.

1. *Respondent's Age.* Complainant avers that respondent is 21 years old and was "about" 20 years old when he committed the acts in question. *Id.*

2. *The Seriousness of the Violation.* Complainant argues that respondent's violation is

extremely serious because the Respondent impersonated someone else in obtaining employment in the United States. [Respondent's] use and signing of someone else's name in completing and signing the Form I-9, including using someone else's social security number and indicating that he was a citizen of the United States, along with producing proof of that citizenship in the form of an altered birth certificate in someone else's name can not be condoned.

Id. Complainant also observes that, in using the birth certificate to obtain employment, respondent has succeeded in frustrating the primary purpose of the employment eligibility verification system. *Id.*

3. *Respondent's History of Previous Criminal/Civil Violations.* Complainant states that respondent has admitted that "he is a deportable alien in that he failed to maintain his status as an F-1 student and worked without authorization." *Id.* (citing Resp't's Resp. Req. Admis. at 1, *in* Complainant's Mem. Supp. Mot. Summ. Decision at 4). Complainant also provides documentation in support of its contention that respondent "fraudulently obtained a driver's license [identification card] receipt form in the name of . . . Zachary Armeli". *Id.* Complainant also attaches a record disclosing that respondent was convicted of "fail[ure] to provide insurance info[rmation]" on July 5, 1993, resulting in revocation of respondent's driver's license, pending his meeting the requirements for reinstatement. *Id.* at 2 & Ex.

4. *Respondent's Immigration Status.* Complainant contends that because of his conduct respondent has failed to maintain his status as a non-immigrant F-1 student. *Id.* at 2.

5. *Respondent's Purpose for the Document Fraud.* Complainant avers that respondent, in his September 23, 1994 Affidavit, stated that his purpose in "committ[ing] the civil document fraud violations [was] to obtain work at Valleyfair". *Id.*

6 OCAHO 825

6. *Respondent's Admission that He Altered the Birth Certificate of Zachary Armeli Before Providing It to Valleyfair.* Complainant cites response 16 of Respondent's Response to Request for Admissions for the proposition that respondent "entered his own birth date on the birth certificate of Zachary Armeli before providing it to his employer." *Id.*

7. *Respondent is an Alien Without Valid Work Authorization.* Complainant states that "Respondent is an illegal alien unauthorized for employment in the United States." *Id.* Complainant argues that respondent's fine should thus be increased, as in Section 274A cases, 8 U.S.C. §1324a, because the authorization, or lack thereof, of the individual employee is one of the factors considered in determining an appropriate civil money penalty in 274A cases, 8 U.S.C. §1324a(e)(5), and thus should also be considered in 274C cases.

Complainant, in its Supplemental Memorandum in Support of Civil Money Penalties, has provided an eighth factor:

8. *Respondent Also Worked Without Authorization at the University of Minnesota.* Complainant documents that respondent was previously employed at the University of Minnesota, and that respondent "indicated in Section 1 of the Form I-9 that he was an alien authorized to work in the United States." Supplemental Mem. Supp. Civil Money Penalties at 1. Complainant additionally alleges that "there is no evidence that the Respondent obtained proper work authorization before working at the University of Minnesota. The attached Form I-20 . . . indicates no record of employment authorization." *Id.*

The second document relied upon by complainant in support of its proposed civil money penalty is Complainant's Renewal of Motion in Limine. In that pleading, complainant insists that "another compelling reason to not permit the Respondent to make his asylum claim an excuse for the commission of Section 274C violations is that the Respondent has not produced the original of the . . . alleged death warrant against him." Complainant's Renewal Mot. Limine at 1. Complainant argues that that document may be fraudulent and also that "[t]he Service is entitled to an original in order to subject it to forensic testing and analysis." *Id.* Absent such an opportunity to test the original, complainant asks that it be excluded from consideration. *Id.*

The third pleading which complainant presents is Complainant's Memorandum Regarding Discovery of Death Warrant, in which com-

6 OCAHO 825

plainant reiterated its earlier discovery request for the original of the alleged death warrant.

Complainant's fourth supporting document is Complainant's Prehearing Statement for February 16, 1995 hearing. In that statement, complainant indicated that it would call the following two (2) witnesses at that hearing:

Judy Farber, Supervisory Special Agent, . . . to testify on the factors supporting imposition of a fine above the minimum, including the fact that it is extremely deleterious to immigration enforcement when illegal aliens use assumed names.

Mohamed Armeli . . . to testify that it was his son's birth certificate that was stolen and altered by the Respondent. If the Complainant's Renewal of Motion in Limine is denied, he will also testify that the Respondent never told him that he feared harm from Islamic fundamentalists in the Twin Cities area or that he experienced persecution or harm from them in Israel.

Complainant's Prehr'g Statement at 1.

The fifth document offered by complainant in support of its requested civil money penalty of \$500 is its January 30, 1995 Memorandum in Opposition to Respondent. Concerning the proposed penalty, the Memorandum argues that respondent's assertion that "he assumed another person's name to evade his persecutors" is, "at best dubious insofar as it rests on a critical document (the Hamas death warrant), the original of which Respondent has yet to produce", and, at worst, irrelevant because "no nexus exists between the document fraud and [respondent's] asylum claim." Jan. 30, 1995 Mem. Opp'n Resp't at 2. Complainant states further:

Using an alias or assuming another person's identity [is a technique] in this case to thwart the INS's detection of an illegal alien who violated his student status and to work without proper authorization. . . . It should be noted that Respondent's affidavit which alleges that he changed his name to elude Islamic fundamentalists is extremely vague as to any evidence underlying his alleged fears.

Id.

Complainant's sixth offering consists of a 45-page group exhibit filed with this Office on February 10, 1995, which includes: INS penalty memorandum dated July 20, 1994; INS penalty memorandum dated September 24, 1993; affidavit of respondent dated September 23, 1993; Form I-213 dated September 23, 1993; declaration of Mohamed Armeli, uncle to respondent, dated December 22, 1994; declaration of Kevin Magyar, Director of General Services at Valleyfair, dated December 19, 1994; declaration of Mary Alice Heap, Personnel Clerk at Valleyfair, dated December 30, 1994; letter from

6 OCAHO 825

Mohamed Armeli (undated); Valleyfair Personnel File of respondent, including employment application, Form I-9, birth certificate for Zachary Armeli, Minnesota driver license receipt, and employee identification card; conviction printout for failure to provide insurance information; and respondent's passport and Form I-94.

That exhibit also contains a copy of an affidavit executed by respondent on September 23, 1993 at Bloomington, Minnesota, which states in part:

My true name is Mourad Abu Remileh. I have used the name Zachary Armeli at Valley Fair [sic], Shakope, Mn. to obtain work there. I entered the United States as a student. I am a citizen of Israel . . . I got a job at Valley Fair [sic] on about the 14th of June 1993 as a ride host for \$4.65 per hour. I presented a birth certificate in the name of Zachary Armeli which I obtained from the house of Arlene Armeli . . . I took the birth certificate from a drawer without Arlene knowing it. I erased the birth date and typed in my own birth date of June 28, 1973. I also noted the social security card number that was located in the same place. At Valley Fair [sic] I filled out a form and claimed to be a citizen of the United States. I used the social security number of Zachary on all the forms that I filled out. I presented the birth certificate that I stole from Arlene's house to my employer, Valley Fair [sic]. I didn't know that I was doing anything wrong because of my unknowing [sic] in laws of INS.

Complainant's Feb. 10, 1995 Ex. at 4.

Respondent's uncle, Mohamed Armeli, stated in his December 22, 1994 Declaration that he "sponsored [respondent's] travel to the United States. [Respondent] lived with [Mr. Armeli] from November 1992 to April 1993. [Mr. Armeli] spoke to [respondent] on many occasions but [respondent] has never told [him] that he feared persecution from the Hamas or any Islamic militants." *Id.* at 6.

The other relevant portions of that exhibit have been discussed earlier.

Complainant's seventh document offered in support of its position is a 23-page group exhibit filed with this Office on February 9, 1995, and is composed of excerpts from a separate civil action involving Mohamed and Arlene Armeli. There does not appear to be any information in this exhibit which is relevant to determining an appropriate civil money penalty.

The eighth pleading presented to this Office is Complainant's May 5, 1995 Supplemental Response, in which complainant asserts that "[t]he U.S. Consulate in Jerusalem, Israel, has conducted an investi-

gation into a medical note which the respondent proffered as evidence at the [OIJ] hearing on April 17 and 18, 1995 to support his asylum claim. The proffered medical note was determined to be fabricated by the respondent's sister who worked at the hospital." Complainant's May 5, 1995 Supplemental Resp. at 1. Complainant urges the undersigned to consider its enclosed Motion to Reopen Record to Receive Evidence that the Respondent Committed Fraud upon the Tribunal [hereinafter OIJ Mot. Reopen], which was filed with OIJ on May 3, 1995, as further justification for its requested \$500 civil money penalty.

The OIJ Motion to Reopen presents various affidavits which purportedly disclose that the "medical note" supplied by respondent in support of his petition for asylum was fraudulent:

Exhibit 1 is a copy of the April 21, 1995 facsimile transmission to the U.S. Consulate, Jerusalem, Israel, requesting that an expedited investigation be conducted of the medical note.

Exhibit 2 is a copy of the May 3, 1995 facsimile transmission from the U.S. Consulate, Jerusalem, Israel, to the Service trial attorney which reports that the medical note was fabricated by the respondent's sister (Sumayyah) who worked at the hospital, that the respondent was not hospitalized at Makassed Hospital in either August 1990 or August 1992, that Dr. Dima Z. Anani denies any knowledge of the respondent, that Dr. Dima Z. Anani did not work at Makassed Hospital in either 1990 or 1992, and the Dr. Dima Z. Anani is a pediatrician who does not treat patients over age 12. . . .

The Service submits that Exhibits 1 and 2 are evidence of a fraud upon the tribunal. . . The respondent lied at the April 18, 1995 hearing when he testified that he was hospitalized for a short period in August 1990 and for two weeks in August 1992. Respondent gave false testimony to obtain an immigration benefit. . . .

This giving of false testimony and the proffering of a fabricated medical note is consistent with the respondent's altering and use of a fraudulent birth certificate in the name of a U.S. citizen. It also tends to prove that the August 1992 incident when the Hamas allegedly beat him is fabricated and that the death warrant, Exhibit 2c, is also fabricated.

OIJ Mot. Reopen at 1-2.

The tenth and final document proffered is Complainant's May 22, 1995 Second Supplemental Response, complainant reiterates its request that the undersigned consider the evidence indicating that respondent fabricated his proffered medical note and further offers the affidavit of Dr. Dima Z. Anani, whose name stamp and initials/signature appear on respondent's medical note from Makassed Islamic Hospital, Jerusalem. Complainant's May 22, 1995 Second Supplemental Resp. at 1; *see also* OIJ Mot. Reopen at 6 (respon-

6 OCAHO 825

dent's purported medical note). That note reads: "This is to confirm that Mr. Murad [sic] Fahri Abu Remileh born 28 June 1973 was hospitalized due to injuries at 8/1990 and again 8/1992." OIJ Mot. Reopen at 6. Dr. Anani's affidavit discloses that she was "not employed by Makassed Hospital in Jerusalem in 1990 or in 1992" and that she does "not treat patients over the age of 12". Complainant's May 22, 1995 Second Supplemental Resp. at 5. Further, Dr. Anani confirms that:

the statement regarding the hospitalization of Murad [sic] Abu Remlieh [sic] is typed on a form that I use only for prescriptions. To my knowledge, such confirmations from Makassed hospital [sic] handwritten and prepared on a numbered form. The language in the statement is not mine and the signature on the form does not appear to be mine. I am not acquainted [sic] with Mr. Mourad Abu Remileh.

Id. Complainant asserts that "[t]his additional evidence in the form of Dr. Anani's affidavit further demonstrates that the \$500.00 penalty in this case is fully justified." *Id.* at 1.

Mitigating Factors Presented by Respondent

In response to complainant's arguments addressing the proposed civil money penalty, as well as in support of his request that respondent's civil penalty be set at the minimum amount of \$250, respondent's counsel has filed with this Office two (2) pleadings: a Memorandum Regarding Penalty, filed on April 4, 1995, and Respondent's June 30, 1995 Motion.

In his Memorandum Regarding Penalty, respondent presents counterarguments to those set forth by complainant in its penalty brief:

1. *Respondent's Age.* Respondent's counsel agrees with complainant that respondent is 21, notes that he came to the United States to study, and states that respondent's "youth should be a significant factor in mitigating any penalty." Mem. Regarding Penalty at 1.

2. *Seriousness of the Violation and Respondent's Purpose for His Actions.* Respondent's counsel contends that "INS paints Remileh as an evil-doer. In fact, he came to the U.S. to study, he did study, and he did lawfully work on campus." *Id.* Respondent offers documentation in support of his assertion that respondent attended the

University of Minnesota's English Program for International Students, from January 6, 1993 to March 12, 1993 and then again from March 31, 1993 to June 5, 1993.

As to respondent's authorization to work on-campus at the University of Minnesota, respondent observes: "the INS repeatedly tried to sway this Court to believe that Remileh worked illegally on campus. . . . When the INS recognized that its own code allows students to work on campus . . . it then withdrew this allegation." *Id.* at 2 (citing complainant's February 3, 1995 Memorandum in Response to January 31, 1995 Pleadings Submitted by Respondent, at 1, which stated that "the testimony of Theresa Ganglghassemlouei, International Student Advisor [at the University], may no longer be necessary as the Service is no longer contending that Respondent worked at the University of Minnesota without authorization.").

Respondent's counsel avers that

[respondent's] one and only immigration error was to seek work in his cousin's name. Remileh has explained his fear of persecution from Hamas, a radical fundamentalist organization in Israel and the West Bank. This Court has not had an opportunity to test Remileh's credibility, and nothing in INS submitted documents counters Remileh's fear and motivation in using his cousin's name at ValleyFair [sic].

Id. (citing Affidavit of Respondent, at 2, in respondent's Memorandum in Opposition to Motion for Summary Decision, in which respondent states that "I was concerned about working at Valley Fair [sic] in my own name because there are many people from the middle east in the Minneapolis-St. Paul area who are sympathetic to Hamas and might very well be a threat to my safety" and that "[b]ecause of this fear, I decided that I would use my cousin's name in applying for such public work at Valley Fair [sic].").

Respondent's counsel also offers the affidavit of Elizabeth Streefland, as evidence that "members of the Middle-East [sic] community do have a fear of Hamas and radical fundamentalists, even in Minnesota." *Id.* Ms. Streefland identifies herself as "an attorney assisting respondent in his request for asylum." Resp't's Mem. Opp'n Mot. Summ. Decision at B. In that affidavit, Ms. Streefland describes her attempts to have the Hamas death warrant translated, and the problems she encountered because the three (3) translators contacted, alternately, (1) would not certify his translation, (2) didn't "feel right" about translating the document because he supported Hamas and "feared repercussions in his community if it were discovered that he

6 OCAHO 825

translated the document”, and (3) was not at home, but whose wife indicated they had been “receiving disturbing phone calls in the past few months from such fundamentalists which [was] caus[ing] them to consider changing their phone number.” *Id.* at B to B-2.

Respondent’s counsel requests that this Office consider respondent’s stated motivation for using his cousin’s name and identification at Valleyfair, and to consider also the fact that “Remileh very well would have qualified for the pilot program that would have allowed him to work at Valleyfair; but, he would have had to use his own name.” Mem. Regarding Penalty at 2 (citing Complainant’s Feb. 10, 1995 Ex. at 7, affidavit of Kevin Magyar, Director of General Services, Valleyfair, which states that “[i]f Mourad Abu Remileh had applied to Valleyfair with an F1 visa status using his true name he would have been denied employment unless he met the requirements set forth in the pilot program that allows employers to hire people with F1 visa status” and respondent’s own supporting exhibit C, a memorandum from Kevin Magyar, which states that respondent “would have been eligible to work at Valleyfair with an F1 visa under the pilot program established in 1992, provided he had met the guidelines set up by the U.S. Department of Labor.”).

3. *No Criminal History Nor Any Prior Immigration Violations.* Respondent asserts that he has no criminal history and no prior immigration violations. *Id.* He further submits proof that he arranged for vehicle insurance on July 5, 1993, the very next day after he had been cited for failure to provide insurance information on July 6, 1995. *Id.* at 2, D to D-2.

4. *Existence of Death Warrant.* Respondent’s counsel denies any suggestions by complainant that respondent has attempted to conceal or secret the original of the Hamas death warrant, and avers that respondent did not receive the original until late January, and has since then acted expeditiously to locate an expert competent to evaluate the document. *Id.* at 2.

5. *Valleyfair did Not Legally Complete the I-9 Form.* Respondent’s counsel charges that Valleyfair committed a *prima facie* violation of Section 274A of the INA, 8 U.S.C. §1324a, yet complainant has “favored this employer by not seeking any penalties against ValleyFair [sic]”. *Id.* Respondent contends that

[t]he significance of ValleyFair [sic] not completing the I-9 form properly is that it corroborates their [sic] other failures, including failure to provide to

6 OCAHO 825

Remileh the instructions [regarding completion of the Form I-9] they [sic] are required to provide . that they [sic] failed to require Remileh to produce a photo-ID, and that they [sic] failed to timely complete the I-9 form.

Indeed, the I-9 form was never lawfully completed. While Remileh does not expect that to justify his use of his cousin's birth certificate, the scales of justice have been tipped disproportionately against him in that he has never had an opportunity to provide this Court with in-person [sic] testimony that his motivation for using his cousin's name was a concern for his safety.

Id. at 3. In support, respondent's counsel again refers the undersigned to the affidavit of Ms. Streefland. *Id.*

In conclusion, respondent's counsel requests this Office to consider that

respondent is not a bad guy. He sought to work using his cousin's name and did present a birth certificate from his cousin where he altered the date.

But his motivation for this action is not simply that he wanted to work. He had worked using his own name in a less public position at the University of Minnesota, and that work was legal.

In this case, he sought to work and to protect his identity.

Id. Accordingly, respondent reiterates his request that he be fined the minimum civil money penalty of \$250.

The second and final pleading presented in support of this Office's assessment of the minimum fine is Respondent's June 30, 1995 Motion.

Directly contradicting complainant's evidence that respondent's medical note was fraudulent, respondent's counsel proffers the affidavit of Houd Wazwaz, as noted previously, who stated that he had visited respondent at Makassed Hospital in Jerusalem, Israel in August, 1992, and further that respondent's physical appearance indicated that he had been beaten, as evidence by bruises on his face and arms. Resp't's June 30, 1995 Mot. at 3-4 (Ex. A). Respondent's counsel argues:

the INS is saying that respondent's credibility is not good because the INS has found affidavits that say respondent wasn't hospitalized when respondent said he was . . . [w]e submit[] . . . the attached Affidavit of Houd Wazwaz who visited respondent in the hospital, which proves respondent was hospitalized."

Id. at 1.

6 OCAHO 825

In spite of its offered evidence, Respondent's counsel additionally posited that he did not think any of the evidence concerning the medical note's authenticity should be considered by the undersigned, and moved for its exclusion. *Id.* Alternately, respondent requested a hearing because "the Office of District Counsel has been under investigation for 18 months by the Justice Department's Office of Professional Responsibility for fabricating documentation", and while Mr. Wazwaz was available for cross-examination, INS had "not made available those purported makers of purported affidavits." *Id.*

Other Relevant Information of Record

Owing to the parties' extensive pleadings and offers of proof, there does not appear to be any other relevant information of record which has not already been exhaustively addressed by them.

Discussion of Complainant's and Respondent's Arguments Regarding the Appropriate Civil Money Penalty to be Assessed

Two (2) previous Section 274C document fraud decisions have assessed civil money penalties in excess of the \$250 statutory minimum. *United States v. Diaz-Rosas*, 4 OCAHO 702 (1994); *United States v. Villatoro-Guzman*, 4 OCAHO 652 (1994).

In *Diaz-Rosas*, Administrative Law Judge Robert B. Schneider also using the judgmental approach, considered a number of factors, including: (1) respondent purchased a fraudulent Employment Authorization Card, thus contributing to the criminal conduct of fraudulent document suppliers; (2) respondent was an illegal alien without valid work authorization, a factor considered in assessing penalties for Section 274A cases and thus logically relevant to Section 274C penalty assessments; (3) respondent used the card in order to gain employment, thus undermining the employment verification system employed by Congress specifically to avoid such unlawful employment; (4) respondent used the alien A-number assigned to him by INS on the fraudulent card, thus "suggesting that he was extensively involved in the creation of the card"; and (5) respondent had previously and repeatedly violated U.S. immigration law. 4 OCAHO 702, at 7-10.

In contrast to the instant facts, Diaz-Rosas did not respond to complainant's motion for summary decision, nor did he present any mitigating factors on his behalf; however, respondent's position had

to be gleaned from his earlier pleadings and requests. *Id.* at 4, 12–13.

Similarly, in *Villatoro-Guzman*, Administrative Law Judge E. Milton Frosburg considered (1) respondent’s age, including that he was a widower with children; (2) the seriousness of the violation, which ALJ Frosburg agreed with complainant was serious in that it “interfere[d] with Congress’s scheme to deter illegal immigration”; (3) respondent’s lack of previous criminal/civil violations; (4) respondent’s initially legal B–2 visa immigration status; (5) respondent’s purpose for the document fraud, namely to gain employment; and (6) other aggravating factors, which were negligible. 4 OCAHO 652, at 10–16.

1. *Respondent’s Age.* The undersigned has taken into account respondent’s age, and finds his youth to be *somewhat* of a mitigating factor, but certainly not a “significant factor” as respondent urges.

2. *Seriousness of the Violation/Respondent’s Immigration Status/Respondent’s Work Authorization.* The undersigned agrees with ALJ Schneider’s determination in *Diaz-Rosas* that “use of fraudulent document by [an] unauthorized alien is conduct that should be treated as serious.” 4 OCAHO 702, at 9. Because respondent was a student with an F–1 visa, he was not authorized to work off-campus unless he complied with the statutory procedures for doing so. *See generally* 8 C.F.R. §214.2(f)(9) (describing the circumstances in which and procedures by which foreign students in language programs with F–1 visas can obtain lawful on- and off-campus employment).

Complainant’s argument that the authorization of an employee is considered in Section 274A cases and should thus logically also be considered in Section 274C cases is well taken. Complainant asserts that respondent is an alien without valid work authorization.

Respondent’s counsel disagrees and refers to the memorandum of Mr. Magyar, the Director of General Services at Valleyfair, provided to respondent’s counsel which indicates that respondent “would have been eligible to work at Valleyfair with an F1 visa under the pilot program”; however, that conclusion is clearly premised on the circular stipulation that, “had [respondent] met the guidelines set up by the U.S. Department of Labor [then he would be eligible to work].” Mem. Regarding Penalty at C. Respondent offers no evidence that he would have been able to comply with those requirements, in the ab-

6 OCAHO 825

sence of which he would *not* have been eligible. Other than respondent's counsel's unsupported assertion that "Remileh very well would have qualified for the pilot program that would have allowed him to work at ValleyFair [sic]", it is not at all clear that respondent was authorized to engage in off-campus employment. *Id.* at 2.

3. *Respondent's Purpose for His Actions.* Respondent counsel correctly asserts that respondent's motivation for the document fraud is properly considered as a possible mitigating factor. *Villatoro-Guzman*, 4 OCAHO 652, at 11.

Respondent contends that he used his cousin's name, birth certificate and other information in applying at Valleyfair because of his fear of a radical, fundamentalist Islamic group known as Hamas. Mem. Regarding Penalty at 2. In partial support of the bases for his fear, respondent provided an affidavit in which he detailed purported incidents of violence perpetrated by the Israeli government against his family; violence perpetrated by the Hamas in his home town of Shurat, Jerusalem; specific violent incidents against respondent himself, including one (1) in August, 1990, and another in August, 1992, which allegedly led to his hospitalization; and the purported issuance of a death warrant "with instructions to kill [respondent]." Mem. Opp'n Mot. Summ. Decision, Resp't's Aff. at 5-10. Other supporting documents include, but are not limited to, a copy of the death warrant; an alleged translation of that document; and an affidavit from respondent's self-professed asylum attorney, Ms. Streefland, documenting her experience with fear of the Hamas among the Minneapolis-St. Paul Islamic community. *See* Mem. Regarding Penalty at 2 (referring to these documents and detailing the location of each within the pleadings).

Complainant questions respondent's alleged reasons for his actions, asserting that respondent's motivation was not fear but rather to obtain employment. *See* Complainant's Feb. 10, 1995 Ex. at 4 (documenting statement by respondent that "I have used the name Zachary Armeli at Valley Fair [sic] . . . to obtain work there."). It further questions the authenticity of the death warrant and respondent's medical note indicating he was hospitalized in August of 1990 and in August of 1992. Complainant presents several affidavits indicating that the medical note was fraudulent, which respondent counters with an affidavit from a family friend, who states that he visited respondent in the Makassed Hospital in Jerusalem in August, 1992 during one of his visits to Israel.

Respondent's counsel himself admits that respondent's "motivation for this action [his document fraud] is not simply that he wanted to work. . . . In this case, he sought to work and to protect his identity." Mem. Regarding Penalty at 3.

Further, respondent's uncle, Mohamed Armeli, who is listed on respondent's INS Form I-20, along with "[f]amily & Arlene . . . Armeli", as a provider of "[f]unds from another source" in the amount of \$10,000, Supplemental Mem. Supp. Civil Money Penalties at 6, indicated in an undated, handwritten note that he was withdrawing his sponsorship of respondent. Complainant's Feb. 10, 1995 Ex. at 10. Mr. Armeli also stated that respondent, whom he asserted had lived at his home in Eagan, Minnesota, for six (6) months while attending school at University of Minnesota, was no longer living there and would not be returning, per a court order. *Id.* While undated, that letter is accompanied by an envelope which is postmarked May 31, 1993. *Id.* at 11.

It can be seen that prior to May 31, 1993, respondent apparently lost one of his stated sources of \$10,000 in funds for his educational training, as well as access to the residence in which he had been living while attending school, which undoubtedly caused some financial repercussions.

Respondent's counsel contends that "nothing in INS submitted documents counters Remileh's fear and motivation in using his cousin's name at ValleyFair [sic]." Mem. Regarding Penalty at 2. Despite respondent's counsel's contentions about respondent's purpose for the document fraud, respondent himself has admitted that at least one (1) reason for his actions was to gain employment. Viewed in conjunction with respondent's apparently concurrent loss of financial support from his uncle, it is not necessary that the undersigned rule on the validity of respondent's fear nor the authenticity of his presented evidence. It is sufficient to determine that at least one (1) reason for respondent's document fraud was that of employment and monetary gain. Such a purpose, even if partially mitigated by unquestionable proof of respondent's fear of persecution or harm by the Hamas, is not a convincing reason for violating the INA. Had respondent not sought unauthorized employment in what he terms a "public" place, he would not have had to be concerned about exposure of his identity. A logical conclusion from the facts presented is that respondent would not have sought employment

6 OCAHO 825

had not monetary gain been involved. As such, his alleged fear cannot serve as a mitigating consideration.

4. No Criminal History Nor Any Prior Immigration Violations; One (1) Single Civil Violation. Other than facts and circumstances in the instant proceeding, respondent has no *prior* criminal nor immigration violations. A single misdemeanor traffic violation is not of sufficient culpability to warrant a heightened civil money penalty in a document fraud case and therefore mitigates in respondent's favor.

5. Valleyfair Did Not Legally Complete the Form I-9. Because Valleyfair has not supplied any proof regarding the appropriate civil money penalty to be assessed, other than Kevin Magyar's affidavit—which is cited by *respondent* as support of its arguments for a minimum civil money penalty—the fact that Valleyfair did not legally complete respondent's Form I-9 is completely irrelevant to these proceedings. Respondent's counsel's strained attempts to somehow argue that Valleyfair's apparent failure to comply with the law regarding the applicable employment verification system is a factor in assessing respondent's civil money penalty amount are inapposite.

The actions of Valleyfair, and its timely and proper completion of respondent's Form I-9, or failure thereof, as indicated by the record, are entirely immaterial to the calculation of an appropriate civil money penalty to be assessed against respondent for his actions involving document fraud, and are therefore not being considered.

6. Respondent's Admission that He Altered the Birth Certificate of Zachary Armeli Before Providing It to Valleyfair. In comparison to *Diaz-Rosas* and *Villatoro-Guzman*, respondent did not purchase or otherwise obtain his fraudulent document, but rather admittedly stole the birth certificate in question and then *personally* altered its birth date to coincide with his. *Diaz-Rosas*, 4 OCAHO 702, at 8 (1994); *Villatoro-Guzman*, 4 OCAHO 652, at 16 (1994); Complainant's Feb. 10, 1995 Ex. at 4 (disclosing respondent's statement that he "erased the birth date [of Zachary Armeli] and typed in [his] own birth date . . . [at Valleyfair he] presented the birth certificate that [he had] stolen from Arlene [Armeli]'s house").

It might be suggested that this action should be viewed as favorable to respondent's motion for the minimum civil money penalty of \$250 because, unlike Diaz-Rosas and Villatoro-Guzman, respondent at least did not encourage or contribute to the illegal actions of others. Nonetheless, the undersigned perceives respondent's actions of stealing his cousin's birth certificate and then admittedly altering that document, to be equally egregious conduct, if not more so.

7. *Respondent's Allegedly Unauthorized Employment at the University of Minnesota.* Due to complainant's apparent withdrawal of this as a factor for consideration, the undersigned will not examine this allegation. See Mem. Resp. Jan. 31, 1995 Pleadings Submitted Resp't at 1 (indicating the University of Minnesota's International Student Advisor's testimony about respondent's authorization to work on-campus would no longer be necessary "as the Service is no longer contending that Respondent worked at the University... without authorization.").

8. *Respondent's Allegations that INS has Fabricated Documents.* While the issue regarding respondent's documentation of his fear has already been resolved, it is vital to the integrity of these proceedings that the undersigned address respondent's counsel's allegations that complainant's documentation is inherently suspect because of an internal "investigation" being conducted at the Office of District Counsel.

The only evidence which can be gathered from this record in support of respondent's counsel's contention that "the Office of District Counsel has been under investigation for 18 months by the Justice Department's Office of Professional Responsibility for fabricating documentation" is a letter from Michael E. Shaheen, Jr., Counsel, on U.S. Department of Justice, Office of Professional Responsibility letterhead, to respondent's counsel, Mr. Richard L. Breitman. Mem. Opp'n Complainant's Mot. Disc. Death Warrant at 2 (letter from Shaheen to Breitman of 8/15/94, at 1). That letter contextually appears to be in response to a prior complaint—*filed by Mr. Breitman himself*—alleging document fraud. *Id.* No other evidence is offered to support Mr. Breitman's contention.

For respondent's counsel to rely on his *personal* previous allegations regarding document fraud, contained in a July 6, 1994 letter to the Department of Justice's Office of Professional Responsibility,

6 OCAHO 825

as support for a blanket statement that the Office of District Counsel is under internal investigation for that fraud *that he is in fact alleging* is self serving, to say the least, if not disingenuous. Absent corroboration from another and preferably unbiased source, or other indicia of reliability, such evidence cannot and will not be accorded any weight.

In both of the prior cases which dealt with increased penalties for first-time offenders, each ALJ found complainant's requested civil money penalty of \$500 to be reasonable and well within the statutory parameters for fines. *Diaz-Rosas*, 4 OCAHO 702, at 10 (1994); *Villatoro-Guzman*, 4 OCAHO 652, at 15-16 (1994). Thus, even though Villatoro-Guzman had no prior criminal, civil or immigration violations, and even though his presence in the United States was initially legal, as was respondent's in the instant case, \$500 was found to have been a reasonable assessment for his violation of Section 274C of the INA. *Villatoro-Guzman*, 4 OCAHO 652, at 17. Similarly, Diaz-Rosas, whose conduct could be perceived as more egregious than Villatoro-Guzman's, in that he had previously violated United States immigration laws, was also assessed a \$500 civil money penalty, which was found to have been "fair and reasonable." *Diaz-Rosas*, 4 OCAHO 702, at 10.

Considering the foregoing discussion and analysis of each factor presented by the parties, and in light of the pertinent caselaw, as well as the fact that Congress provided for penalties up to \$2,000, 8 C.F.R. §1324c(d)(3)(A), the undersigned finds the civil money penalty of \$500 proposed by complainant to be both fair and reasonable and hereby orders respondent to pay that sum to complainant as the appropriate civil money penalty for the single violation alleged in Count II of the Complaint.

Respondent is further ordered to cease and desist from future violations of Section 274C of the INA, 8 U.S.C. §1324c(a).

JOSEPH E. MCGUIRE
Administrative Law Judge

6 OCAHO 825

Appeal Information

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