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

July 2, 1997

UNITED STATES OF AMERICA, Complainant,	)
	) 8 U.S.C. 1324c Proceeding
v.	)
	) OCAHO Case No. 97C00052
LAMBOK SIHOMBING, Respondent.	)

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

I. *Background*

On September 9, 1995, complainant, acting by and through the Immigration and Naturalization Service (INS), issued and served upon Lambok Sihombing (respondent) Notice of Intent to Fine (NIF) SAC 274C–95–0008. That single-count citation alleged one (1) violation of the document fraud provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §1324c, for which a civil penalty of $450 was proposed.

In Count I, complainant alleged that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made document described therein, namely a Social Security Card (611–50–3457), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, 8 U.S.C. §1324c(a)(2).

Respondent was advised in the NIF of his right to request a hearing before an Administrative Law Judge assigned to this Office if he filed such a request within 60 days of his receipt of that NIF.

On November 1, 1995, Cesar R. Fumar, Esquire, filed a written request for a hearing on behalf of respondent.

On January 14, 1997, complainant filed the single-count Complaint at issue, reasserting the one (1) alleged violation contained in the NIF, as well as the requested civil money penalty of $450.

On February 10, 1997, a Notice of Hearing on Complaint Regarding Civil Document Fraud, along with a copy of the Complaint at issue, were served upon respondent and also upon respondent's counsel of record, Cesar R. Fumar, Esquire.

On February 26, 1997, Cesar R. Fumar, Esquire, filed a Motion for Extension of Time to File Answer, in which he requested an extension of 45 days in which to file an answer.

On March 3, 1997, the request for an extension of time was granted.

On April 10, 1997, respondent's answer was filed, in which he denied having knowingly used forged documents and requesting that the Complaint be dismissed for lack of merit.

On May 7, 1997, complainant filed a pleading captioned Motion for Summary Decision requesting that summary decision be granted in its favor because "[t]here are no issues of material fact as to liability." Complainant also urges that the appropriate civil penalty for the cited violation in Count I is $450.

Respondent has not filed a response to that dispositive motion.

II. *Standards of Decision*

The pertinent procedural rule governing motions for summary decision in document fraud cases provides that "[t]he Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, and material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. §68.38(c) (1996).

Section 68.38(c) is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal court cases. For this reason, federal case law interpreting Rule 56(c) is instructive in determining whether summary decision under section 68.38 is appropriate in proceedings before this Office. *United States v. Limon-Perez*, 5 OCAHO 796, at 5, *aff'd*, 103 F.3d 805 (9th Cir. 1996).

The purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact and is properly regarded "not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as an inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

An issue of material fact is genuine only if it has a real basis in the record and, under the governing law, it might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *United States v. Primera Enters., Inc.*, 4 OCAHO 615, at 2 (1994).

The party seeking summary decision assumes the initial burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. In determining whether the complainant has met its burden of proof, all evidence and inferences to be drawn therefrom are to be viewed in a light most favorable to the respondent. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

Once the movant has carried this burden, the opposing party must then come forward with "specific facts showing that there is a genuine issue for trial." *Id.*; Fed. R. Civ. P. 56(e). The procedural rule governing motions for summary decision in OCAHO proceedings explicitly provides that "a party opposing the motion may not rest upon the mere allegations or denials of such pleading . . . [s]uch response must set forth specific facts showing that there is a genuine issue for trial." 28 C.F.R. §68.38(b) (1996).

III. *Discussion*

In Count I, complainant alleged that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made document described therein, namely a Social Security Card

(611–50–3457), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, 8 U.S.C. §1324c(a)(2).

In order to prove the violation alleged in Count I, complainant must show that:

(1) respondent used, attempted to use, possessed, or provided the forged, counterfeit, altered or falsely made document described therein,

(2 knowing the document to be forged, counterfeit, altered or falsely made,

(3) after November 29, 1990, and

(3) for the purpose of satisfying a requirement of the INA.

United States v. Limon-Perez, 5 OCAHO 796 (1995), *aff'd*, 103 F.3d 805, 809 (9th Cir. 1996).

Enacted in 1986, the Immigration Reform and Control Act (IRCA) established an employment verification system which requires that all of the nation's employers verify the employment eligibility of all persons hired after November 6, 1986, by viewing certain combinations of documents and completing an Immigration and Naturalization Service (INS) Form I–9 within three (3) days of hire. 8 U.S.C. §1324a(b); 8 C.F.R. §274a.2(a); *Costigan v. NYNEX*, 6 OCAHO 918, at 6 (1997).

The preparation of the Form I–9, officially known as the INS Employment Eligibility Verification Form, is a single-page, two-sided document which is utilized by the hiring person or entity to determine the work eligibility of job applicants.

IRCA imposes civil money penalties for both employers who knowingly hire undocumented workers and for individuals who knowingly use fraudulent documents to unlawfully gain employment in the United States. *See* 8 U.S.C. §1324a and §1324c; *United States v. Palominos-Talavera*, 6 OCAHO 896, at 8 (1996).

Complainant's May 7, 1997 Motion for Summary Decision contains several exhibits, marked A through M, supporting its factual contentions.

From those evidentiary sources, the following facts have been made available.

Respondent, who is a citizen of Indonesia, was admitted to the United States at Los Angeles, California on October 31, 1991, as a nonimmigrant visitor with a class B2 visa, exhibit A, Record of Deportable Alien dated March 1, 1995 and exhibit B, Nonimmigrant Information System (NIIS) Basic Data Display for Lambok Sihombing.

On March 1, 1995, respondent was apprehended at his place of residence by agents of the INS, exhibit C, affidavit of Special Agent Barbara Morihara, and exhibit E, affidavit of Special Agent Karl Lee.

While in custody, respondent admitted having obtained and used a counterfeit Alien Registration Receipt Card and a counterfeit Social Security Card, for the purpose of securing employment, exhibit D, Record of Sworn Statement of Lambok Sihombing, dated March 1, 1995.

In particular, respondent admitted that he had purchased the false documents, including the Social Security Card at issue, from a vendor in Los Angeles for $100. He further admitted that he presented those documents to his employer, Care West Sierra (also known as Sierra Nursing and Rehabilitation Center), for Form I–9 employment verification purposes.

Carol De Petris, Care West Sierra's personnel administrator, states under oath that the respondent was hired on February 16, 1993 and that he had provided a California state-issued identification card, a Social Security Card (611–50–3457), and a Resident Alien Card for Form I–9 employment verification, exhibit H.

Two (2) versions of that Form I–9 were completed by respondent, a Form I–9 issued by the INS in 1987 and a revised Form I–9 issued in 1991. Complainant has provided copies of those Forms I–9, including copies of the underlying documents, demonstrating that re-

spondent had presented the Social Security Card (611–50–3457) at issue to Care West Sierra as proof of his identity, exhibit G.

It is well settled that a respondent's act of presenting fraudulent documents to prove identity and/or employment eligibility in order to gain employment in the United States is sufficient to satisfy the last element of a section 1324c(a)(2) violation, specifically that the documents were used in order to satisfy any requirement of the INA. *Limon-Perez*, 103 F.3d at 811 ("employees violate section 1324c(a) by using false documents to verify their employment eligibility"); *United States v. Morales-Vargas*, 5 OCAHO 732, at 5–6 (1995).

In order to show that the document named in the Complaint was counterfeit, complainant has submitted a copy of the March 14, 1996 report from the INS Forensic Document Laboratory in McLean, Virginia confirming that the Social Security Card (611–50–3457) was counterfeit, exhibit L.

Based on the foregoing evidentiary presentation, it is found that complainant has met its burden of demonstrating that respondent knowingly used and possessed the forged, counterfeit, altered and falsely made document described in Count I namely, a Social Security Card (611–50– 3457), and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, and in doing so, has violated the provisions of 8 U.S.C. §1324c(a)(2).

As noted earlier, respondent has not filed a response to complainant's dispositive motion and has thus failed to offer specific facts showing that there is a genuine issue of material fact with regard to his liability for the one (1) violation set forth in Count I. Accordingly, complainant's May 7, 1997 Motion for Summary Decision is hereby granted.

All that remains at issue, therefore, is a determination of the appropriate civil money penalty to be assessed for that single violation.

IRCA provides for civil money penalties for individuals who violate the document fraud provisions of 8 U.S.C. §1324c, and for first-time offenders those fines range from a statutorily mandated minimum of $250 to a maximum of $2,000 for each instance of use, acceptance, or creation. 8 U.S.C. §1324c(d)(3)(a).

Complainant has requested a penalty of $450 for the one (1) proven violation, and after carefully reviewing the record and complainant's argument in favor of that sum, it is found that complainant has appropriately recommended that penalty amount, having moved upwardly only some 11.43% on its discretionary $1,750 penalty spectrum in having done so.

Order

It is ordered that the appropriate civil money penalty assessment for the one (1) established violation in Count I is $450.

It is further ordered that respondent cease and desist from further violations of 8 U.S.C. §1324c(a)(2).

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

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