

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

August 21, 2020

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 19C00033
	)	
ALMA DELIA RUBIO-REYES	)	
Respondent.	)	
_____	)	

ORDER ON MOTIONS FOR SUMMARY DECISION

I. INTRODUCTION

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324c (2018). On June 10, 2019, the Department of Homeland Security Immigration and Customs Enforcement (Complainant or the Government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Alma Delia Rubio-Reyes (Respondent). The complaint reflects that on January 22, 2019, the Government served a Notice of Intent to Fine (NIF) under Section 274C of the Immigration and Nationality Act and Respondent requested a hearing that same day. Respondent filed an answer to the complaint on July 18, 2019.

Pending before the Court are cross-motions for summary decision filed by Complainant and Respondent, on July 14, 2020.

II. BACKGROUND AND PROCEDURAL HISTORY

Complainant asserts in its complaint that Respondent, a native and citizen of Mexico, is undocumented, that she purchased a fraudulent lawful permanent resident (“LPR”) card and a social security card, and used the cards to gain employment at Motel 6 in El Paso, Texas, on August 5, 2017. Compl. at 2-3. The complaint charges Respondent with violating Section 274C(a)(2) of the INA which renders it unlawful to use, attempt to use, possess, obtain, accept or receive or to provide any forged counterfeit, altered, or falsely made document in order to satisfy any requirement or obtain a benefit under the INA. Complainant seeks \$461.00 in penalties.

According to Complainant, Homeland Security Investigations (HSI) agents encountered Respondent and determined that she was illegally present in the United States. Compl. at 3. Complainant claimed that HSI searched Respondent's name in immigration databases and discovered that she entered the United States legally with a border crossing card and there were no pending petitions for Respondent. *Id.* When HSI encountered Respondent, on November 7, 2018, Respondent initially claimed that she was "Miriam Martinez." Complainant alleges that, once agents explained that they knew that Respondent's name was not "Miriam Martinez," Respondent admitted that she was "Alma Delia Rubio-Reyes" and that she did not have legal status in the United States. *Id.* Following the encounter, Complainant alleges that Respondent consented to a search of her residence for retrieval of documents. *Id.* As a result of the search, Respondent allegedly retrieved two documents: (1) a fraudulent lawful permanent resident (LPR) card containing a picture of Respondent, bearing the name Miriam Martinez, listing an Alien Registration Number 094-9xx-xxx, and stating that the bearer had obtained residency on September 26, 2016; and (2) a fraudulent Social Security Card bearing the name Miriam Martinez with social security number 532-1xx-xxx. *Id.* (citing Compl. Exhs. B, C). Complainant further alleged that, during a subsequent interview with HSI agents, Respondent admitted that she purchased the fraudulent LPR card and Social Security card for \$200.00.

Respondent denies all allegations in her answer, asserts that she was subject to an unreasonable search and seizure, and argues that she is not liable because working for a private company is not a benefit under the INA. Ans. 2-3.

On March 23, 2020, this Court issued an order denying Complainant's initial motion for summary decision. *See United States v. Rubio-Reyes*, 14 OCAHO no. 1349 (2020). The Court found that Complainant did not support its claim with evidence that Respondent attempted to use the documents named in the complaint with knowledge that the documents were false. *Id.* at 4. Upon filing the initial motion for summary decision, Complainant did not submit any affidavits, investigative reports, or a Record of Deportable/Inadmissible Alien (Form I-213). *Id.* However, since the case was still within the schedule set for dispositive motions, the Court permitted Complainant to refile the motion with supplemental filings in support of or in opposition to the motion for summary decision accompanied by reliable evidence. *Id.*

On July 14, 2020, Complainant filed a second motion for summary decision, along with several exhibits, including: (1) Notice of Intent to Fine, (2) Fraudulent Permanent Resident Card (I-551), (3) Fraudulent Social Security Card, (4) Consent to Search Form signed by Respondent, (5) Respondent's record of conviction for 18 U.S.C. § 1546(a), (6) Reports of investigation, (7) Respondent's birth certificate, and (8) I-9 Form Employment Eligibility Verification. Complainant's Mot. Summ Dec. ("Complainant's Mot.") Exhs. G-1 – G-8. Complainant argues it has presented sufficient evidence to establish Respondent's liability and that there is no genuine issue of material fact. Gov't Mem. of Law in Support of Mot. Summ. Dec. ("Gov't Mem.") at 6.

Respondent also filed a cross-motion for summary decision on July 14, 2020, along with Respondent's affidavit. Respondent argues that the Government violated her Fourth Amendment rights by conducting a warrantless search of her home and asserts that the Consent to Search Form was prepared after the search was conducted. Resp't Mot. Summ. Dec. ("Resp't Mot.") at 1-2. Respondent also argues that Complainant has failed to prove by a preponderance of the evidence that Respondent violated § 1324c. *Id.* at 1.

On August 3, 2020, both parties filed responses to the cross-motions. In response to Respondent's motion, Complainant argues that the exclusionary rule does not apply in this case, but even if it did, the elements of a violation of section 274C were satisfied before the search of her house. Complainant's Resp. to Mot. at 3. With the Response, Complainant submitted affidavits from the two Special Agents who conducted the investigation. *Id.*, Exs G-9-10.

### III. LEGAL STANDARDS

#### A. Summary Decision

Under the OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . 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).<sup>1</sup> "An issue of fact is genuine only if it has a real basis in the record" and "[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).<sup>2</sup>

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). "[T]he party opposing the motion for summary decision

<sup>1</sup> See Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2019).

<sup>2</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

‘may not rest upon the mere allegations or denials’ of its pleadings, but must ‘set forth specific facts showing that there is a genuine issue of fact for the hearing.’” *United States v. 3679 Commerce Place, Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). The Court views all facts and reasonable inferences “in the light most favorable to the non-moving party.” *United States v. Prima Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

#### B. Civil Money Penalties

Unlike section 1324a, which contains five (5) criteria to be considered in determining civil penalties in employer sanction cases, 8 U.S.C. § 1324a(e)(5), section 1324c does not provide similar guidance, 8 U.S.C. § 1324c(d)(3). Prior OCAHO rulings have 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. Remileh*, 6 OCAHO no. 825, 28 (1995).

The applicable penalty range depends on the date of the violations and the date of assessment. *See* § 274a.10(b)(2); 28 C.F.R. § 85.5. For violations that occur after November 2, 2015, the adjusted penalty range as set forth in § 85.5 applies. *See* § 85.5. If the penalty is assessed between January 29, 2018, and June 16, 2020, the minimum penalty is \$461 and the maximum is \$3,695. *Id.*

### IV. DISCUSSION

#### A. Liability

Complainant contends that Respondent knowingly used and possessed two fraudulent documents – an LPR card and a Social Security card – after November 29, 1990, in order to obtain a benefit under the INA. Compl. at 3-4.

In order to establish liability under § 1324c(a)(2), Complainant must prove by a preponderance of evidence that Respondent:

- (1) used or possessed a fraudulent document;
- (2) with knowledge of its fraudulent nature;
- (3) after November 29, 1990; and
- (4) for the purpose of satisfying any requirement of the INA or obtaining a benefit under the INA.

*See United States v. Zapata-Cosio*, 5 OCAHO no. 822, 782 (1995).

Respondent argues that the documents that the Government seized – the LPR card and Social Security card – should be suppressed because they were the product of an illegal search of her home. Accordingly, Respondent argues that, if those documents are suppressed, then the Government cannot establish Respondent’s liability by a preponderance of the evidence.

The Court finds that, even if the documents recovered from Respondent’s residence are not considered, the Government has demonstrated that there is no genuine issue of material fact as to the Respondent’s liability. The evidence submitted by the Government that it collected before the search satisfies its burden of proving Respondent’s liability. Thus, the Court will not address whether the exclusionary rule applies to OCAHO proceedings in this case.

The Government’s evidence demonstrates that in June of 2018, HSI agents served an Immigration Enforcement Subpoena to Office Assistant Manager Margie Gomez of the Motel 6 where Respondent was employed. Complainant’s Mot. Exhs. G-6 at 4; G-9 at 1-2, G-10 at 2. The subpoena requested employment applications, employment records, I-9 forms and supporting documentation along with identification documents of all current employees. *Id.* Ms. Gomez provided a copy of an I-9 form that was completed and signed by “Miriam Martinez” on August 5, 2017. Complainant’s Mot. Exhs. G-6 at 4, G-8 at 1, G-9 at 2, G-10 at 2. Ms. Gomez also provided copies of a Social Security Card #532-1x-xxx and an LPR card #A094-9xx-xxx with the name of “Miriam Martinez,” which Respondent had submitted to the Hotel as proof of her authorization to work in the United States. Complainant’s Mot. Exhs. G-6 at 4, G-8 at 4; G-9 at 2, G-10 at 2. HSI agents investigated the A number on the LPR card and the number on the Social Security card that were provided by Respondent and concluded that neither belonged to an individual by the name of “Miriam Martinez.” Complainant’s Mot. Exhs. G-6 at 4, G-9 at 2, G-10 at 2. Both of the numbers belonged to two different people. *Id.* Respondent has not challenged the introduction of this evidence or raised any doubt as to its veracity. Therefore, the Court finds that the uncontroverted evidence submitted by the Government proves by a preponderance of the evidence that these documents were fraudulent.

Furthermore, the Government has proven that it was Respondent who, in fact, used and possessed these documents. When HSI agents initially confronted Respondent, prior to the allegedly illegal search, they asked her to identify herself and she twice identified herself as “Miriam Martinez.” Complainant’s Mot. Exh. G-6 at 4, G-9 at 2-3, G-10 at 2. Also, Respondent’s name-tag on her housekeeping uniform listed the name “Miriam.” *Id.* When the HSI agents explained to Respondent that they knew her name was not Miriam, Respondent admitted that her name was actually “Alma Delia Rubio-Reyes” and that she did not have permission to live and work in the United States. *Id.* Again, Respondent has not disputed the veracity of this evidence or challenged its introduction. She also admitted that she still had the documents, and they were at her residence. *Id.* The fact that Respondent had repeatedly identified herself as “Miriam Martinez,” that the fraudulent documents that she submitted to Motel 6 in order to prove her authorization to work in the United States listed the name “Miriam Martinez,” and that she admitted she had the documents, demonstrates by a preponderance of the

evidence that Respondent used those fraudulent documents, knowing of their fraudulent nature, in order to secure employment.<sup>3</sup>

The Government has also met its burden in proving that Respondent used the fraudulent documents after November 29, 1990. The employment records that Ms. Gomez provided to the Government indicated that Respondent signed an I-9 form and provided supporting documentation – including the fraudulent documents – on August 7, 2017. Complainant’s Mot. Exhs. G-6 at 4, G-8 at 1.

The Government has also established by a preponderance of evidence that Respondent’s use of the fraudulent documents was to satisfy a requirement of the INA. “[S]ection 1324a implicitly imposes a requirement on the employee to provide valid documents to an employer as part of the verification process.” *United States v. Morales-Vargas*, 5 OCAHO no. 732, 72 (March 13, 1995). Respondent provided a fraudulent Social Security card and LPR card to Motel 6 to prove that she was authorized to work in the United States for her I-9 form. Both of the parties agree that Respondent is not authorized to work in the United States. *See* Resp’t Ans. at 2, ¶ 3; Resp’t Resp. to Complainant’s Interrogatories at 2, ¶ 6; Complainant’s Mot. Exh. G-6 at 1.

Respondent argues that, since Respondent was working for a private company, she was not intending to obtain an immigration benefit under the INA. The Court finds that, as a matter of law, an individual that is unauthorized to work in the United States who knowingly presents fraudulent documents in order to obtain employment at a private company does so with the purpose of satisfying a requirement of the INA. *See United States v. Chavez-Ramirez*, 5 OCAHO no. 774, 5 (1995) (“[R]espondent’s act of presenting the fraudulent documents to prove identity and employment eligibility in order to gain employment is sufficient to satisfy the last element of a Section 1324c(a)(2) violation, specifically that the documents were presented in order to satisfy any requirement of the INA.”). In *Morales-Vargas*, 5 OCAHO no. 732 at 68, the Chief Administrative Hearing Officer (CAHO) modified a decision by an ALJ which held that providing false information on an employment eligibility verification form (Form I-9) does not constitute a violation of section 1324c. The CAHO held that “[t]he document fraud provisions of section 1324c provide a means of imposing a civil penalty on those employees who attempt to circumvent the employment eligibility verification system through the use of fraudulent documents.” *Id.* at 73. The CAHO reasoned that section 1324c(a)(2) explicitly prohibits document fraud undertaken “in order to satisfy *any* requirement” of the INA. *Id.* (emphasis added). This means that “actions of both the employer and the employee in the verification process are undertaken to satisfy a requirement of the INA.” *Id.* Accordingly, “the actions of an employee in presenting fraudulent documents are undertaken to satisfy th[e] requirement [under section 1324a] and thus gain illegal employment.” *Id.*

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<sup>3</sup> The record also reflects that Respondent was convicted, through a guilty plea, of Fraud and Misuse of Documents, to wit a social security card and a permanent resident card, under 18 U.S.C. § 1546(a). Complainant’s Mot. Ex. 5.

Therefore, the Court finds that Respondent is liable for one count of violating § 1324c(a)(2).

#### B. Penalties

The Government requests a penalty of \$461 for the one violation of § 1324c. As stated previously, OCAHO determines whether to apply the Government's requested penalty amount based on its reasonableness. *See Remileh*, 6 OCAHO no. 825 at 28. Here, the Government has requested the minimum possible penalty under § 85.5 for one document. Neither party addressed the penalty calculation and, accordingly, the Court will impose the Government's requested penalty of \$461 for a violation of § 1324c. However, the statute provides that if the Administrative Law Judge finds that a person has violated the statute, "the administrative law judge shall...cause to be served on such person...an order described in [§1324c(3)]." Section 1324c(3), in turn, states in mandatory language that "the order...shall require the person" to, in relevant part, pay an amount that is not less than \$461 "for each document that is the subject of a violation." In this case, there are two documents, the social security card, and the permanent resident card. While this Court has discretion to set the penalty within the range specified by Congress and the regulations, the Court finds that it does not have discretion to set a penalty for only one document when the Order finds a violation involving two documents. Accordingly, the Court will impose a penalty of \$461 for each violation, for a total of \$922.

#### V. CONCLUSION

The Court finds that Respondent is liable for one count of violating § 1324c(a)(2) because she was unauthorized to work in the United States and she used a fraudulent Social Security card and a fraudulent LPR card to obtain employment in the United States. The Court also finds that the Government's requested penalty of \$461 for each violation is reasonable.

#### VI. FINDINGS OF FACT

1. On January 22, 2019, the Department of Homeland Security, Immigration and Customs Enforcement served Alma Delia Rubio Reyes with a Notice of Intent to Fine.
2. On June 10, 2019, the Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer against Alma Delia Rubio-Reyes.
3. Alma Delia Rubio-Reyes used a fraudulent Social Security card and a fraudulent Lawful Permanent Resident card on August 5, 2017, to prove her identity and employment eligibility on a Form I-9 in order to secure employment, knowing that these documents were fraudulent

4. Alma Delia Rubio-Reyes used a fraudulent Social Security card and a fraudulent Lawful Permanent Resident card on August 5, 2017, for the purpose of satisfying the employment eligibility verification requirement of the INA.

## VII. CONCLUSIONS OF LAW

1. All conditions precedent to the institution of this proceeding have been satisfied.
2. Alma Delia Rubio-Reyes is liable for one violation of § 1324c(a)(2).
3. An Administrative Law Judge “shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . 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).
4. “An issue of fact is genuine only if it has a real basis in the record” and “[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit.” *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).
5. “Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution.” *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).
6. “[T]he party opposing the motion for summary decision ‘may not rest upon the mere allegations or denials’ of its pleadings, but must ‘set forth specific facts showing that there is a genuine issue of fact for the hearing.’” *United States v. 3679 Commerce Place, Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)).
7. The Court views all facts and reasonable inferences “in the light most favorable to the non-moving party.” *United States v. Prima Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).
8. The applicable penalty range depends on the date of the violations and the date of assessment. *See* § 274a.10(b)(2); 28 C.F.R. § 85.5.
9. For violations that occur after November 2, 2015, the adjusted penalty range as set forth in § 85.5 applies. *See* § 85.5.



10. If the penalty is assessed between January 29, 2018, and June 16, 2020, the minimum penalty is \$461 and the maximum is \$3,695. *See* § 85.5.

11. In order to establish liability under § 1324c(a)(2), Complainant must prove by a preponderance of evidence that Respondent: (1) used or possessed a fraudulent document; (2) with knowledge of its fraudulent nature; (3) after November 29, 1990; and (4) for the purpose of satisfying any requirement of the INA or obtaining a benefit under the INA. *See United States v. Zapata-Cosio*, 5 OCAHO no. 822, 782 (1995).

12. Section 1324a implicitly imposes a requirement on the employee to provide valid documents to an employer as part of the verification process. *United States v. Morales-Vargas*, 5 OCAHO no. 732, 72 (March 13, 1995).

13. Respondent's act of presenting the fraudulent documents to prove identity and employment eligibility in order to gain employment is sufficient to satisfy the last element of a Section 1324c(a)(2) violation, specifically that the documents were presented in order to satisfy any requirement of the INA. *United States v. Chavez-Ramirez*, 5 OCAHO no. 774, 5 (1995).

#### ORDER

The Government's motion for summary decision is GRANTED. Respondent's motion for summary decision is DENIED. Respondent is directed to pay civil penalties in the total amount of \$922. Respondent is also directed to cease and desist from further violations of 8 U.S.C. § 1324c(a)(2).

SO ORDERED.

Dated and entered on August 21, 2020.

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Jean C. King  
Chief Administrative Law Judge

### Appeal Information

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

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324c(d)(5) and 28 C.F.R. § 68.56.