

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

December 17, 2020

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 2020C00040
	)	
LETICIA VELARDE,	)	
Respondent.	)	
_____	)	

ORDER ON SUPPLEMENTAL MOTION FOR SUMMARY DECISION

This case arises under the document fraud provisions of § 274C of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324c. On January 30, 2020, Complainant filed a complaint with the Office of the Chief Administrative Hearing Office (OCAHO) alleging that Respondent violated section 274C(a)(2) when she sold two counterfeit documents, a Social Security card, and a Lawful Permanent Resident card, which were to be used to obtain employment in the United States. On September 3, 2020, this Court issued an order denying Complainant’s motion for summary decision but permitting the parties to supplement the motion. Order on Summ. Decision. Complainant filed a Supplemental Motion for Summary Decision on September 23, 2020. Respondent did not file a response to Complainant’s supplemental motion.

I. COMPLAINANT’S SUPPLEMENTAL MOTION

The facts of the case were set forth in the prior order. Order on Summ. Decision 1. In that order, this Court found that Complainant had not authenticated the evidence submitted in support of the motion, Respondent’s admission in her answer was unreliable, and accordingly, Complainant had not met its burden of production. Given the lack of participation by Respondent, however, and what appeared to be solely a challenge to the amount of the fine, this Court permitted Complainant to supplement the motion.

Complainant supplemented the motion with five exhibits: a certified copy of the Notice of Intent to Fine (Suppl. Mot. Ex. G-1); a certified copy of the counterfeit documents (Suppl. Mot. Ex. G-2); a certified copy of the Record of Investigation (ROI), which appears to be the same report as submitted previously, but now includes the names of the Special Agent who compiled the Report and the approving official, and has significantly fewer redactions (Suppl. Mot. Ex. G-3); a sworn

affidavit of the Special Agent who compiled the Report (Suppl. Mot. Ex. G-4); and a certified copy of the Central Database Index extract regarding Respondent's immigration history (Suppl. Mot. Ex. G-5).

## II. EVIDENCE

In the prior order, this Court noted OCAHO caselaw holding that the proponent of documentary evidence must "authenticate a document by evidence sufficient to demonstrate that the document is what it purports to be . . ." *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted).<sup>1</sup> As in *United States v. Villegas-Valenzuela*, 5 OCAHO no. 784, 487, 490 (1995), Complainant has now provided certified copies of the evidence, as well as an affidavit from the Special Agent who prepared the ROI. The Special Agent avers that the ROI is an accurate account of the events. Suppl. Mot. Ex. G-4. The Court finds that the evidence is authenticated and is sufficiently reliable to support a motion for summary decision.

The ROI details an investigation conducted by the Special Agent-in-Charge from Homeland Security Investigations (HSI). Suppl. Mot. Ex. G-3. The ROI consists of a series of descriptions of meetings and phone calls with Respondent and unidentified persons. *Id.* The meeting and phone calls were recorded and summarized in the ROI, or the unidentified persons debriefed the author of the ROI who then summarized what was said. *Id.* The ROI indicates that a person approached Respondent and arranged to purchase documents for a fictitious person. *Id.* at 2. This person told Respondent that the fictitious person needed the documents urgently to work at a restaurant. *Id.* at 3. According to the ROI, Respondent asked a person next to her if she knew someone who made fraudulent documents, and that person made a phone call. *Id.* Respondent took \$100 as a down payment, a photograph, and information with a date of birth, and told the person the documents would be ready the next day. *Id.* Respondent subsequently called the person and told this person the documents were ready. *Id.* at 6. The person met Respondent, and Respondent gave the person a Lawful Permanent Resident card and Social Security card with the name and photograph provided. *Id.* at 7. In the prior motion, the last page of the ROI included a notation about a records check against the Lawful Permanent Resident card and Social Security

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<sup>1</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>.

card numbers, but this section is redacted in the supplemental motion and will accordingly not be considered. *Compare* Mot. Summ. Decision Ex. G-3 at 8 with Suppl. Mot. Ex. G-3 at 8.

### III. STANDARDS

#### A. Summary Judgment

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>2</sup> “An issue of material 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) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

“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 ‘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. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

#### B. Document Fraud and Civil Money Penalties

In order to establish a violation of § 274C(a)(2), Complainant must show that Respondent: (1) used, attempted to use, possessed, obtained, accepted, or received or provided; (2) a forged, counterfeit, altered, or falsely made document; (3) knowing the document to be forged, counterfeit, altered, or falsely made; (4) in order to satisfy a requirement of the INA or obtain a benefit under the INA; and (5) did so after November 29, 1990. § 1324c(a)(2).

Unlike § 1324a, which contains five (5) criteria to be considered in determining civil penalties in employer sanction cases, § 1324c does not provide similar guidance. *Compare* 8 U.S.C. §

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<sup>2</sup> See Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2019).

1324a(e)(5), with 8 U.S.C. § 1324c(d)(3). In § 274C cases, 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, 24, 28 (1995) (citations omitted).

The applicable penalty range depends on the date of the violations and the date of assessment. See 8 C.F.R. § 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 19, 2020, the minimum penalty is \$461 and the maximum is \$3,695. *Id.*

#### IV. ANALYSIS

##### A. Liability

The Court finds that liability is established. First, the record establishes that Respondent provided the documents to the other person. “Provide” is defined as, “the document is sold, given or otherwise furnished to another person or entity.” *United States v. Dominguez*, 7 OCAHO no. 972, 789, 814 (1997), *modified on other grounds*, 7 OCAHO no. 972, 782 (1997). Here, the ROI documents establish that Respondent arranged to sell the documents, procured them, and handed them in exchange for \$200.

Second, the documents meet the definition of falsely made or counterfeit. Section 1324c(f) provides, in pertinent part, that “the term ‘falsely make’ means to prepare or provide an application or document with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact . . . .” “‘Counterfeited’ has been defined as meaning imitated, simulated, feigned or pretended, and ‘[a] counterfeit must be of such falsity as to fool an honest, sensible, and unsuspecting person of ordinary observation and care.’” *Dominguez*, 7 OCAHO no. 972 at 800 n.11 (quoting *United States v. Ross*, 844 F.2d 187, 189 (4th Cir. 1988)). In this case, the agents provided a name, birthdate, and photograph to Respondent who then gave the buyer a Lawful Permanent Resident and Social Security card with corresponding numbers not provided by the buyer. While it does not appear that Respondent knew the name was fictitious, she did not ask for and was not provided with an alien registration number and a Social Security number. Further, the circumstances were such that a reasonable person would believe the documents to be counterfeit. Respondent was told the buyer needed to purchase documents, and she asked a person standing next to her if she knew someone who could make fraudulent documents. Moreover, the documents were provided in one day with only a photograph, a name and a birthdate. As Respondent has been through the process of obtaining a permanent resident card, she would know that the process for acquiring these documents requires quite a few more

documents and takes more time than a day. *See generally Green Card*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/green-card> (last visited Nov. 18, 2020). A visual inspection of the documents reveals them to appear, on their face, genuine. Accordingly, the documents meet the definition of counterfeit because the record reflects that they are not genuine but appear to be so, and falsely made as the documents contain false numbers and/or have no basis in law or fact.

Third, Respondent demonstrated knowledge of the fact that the documents were false because of her statement to the person next to her asking whether she knew someone who could make fraudulent documents, and because of the circumstances of the exchange wherein she took a few pieces of information, passed them onto another person, and within a day, provided the documents with new information. Finally, OCAHO precedent has found that documents provided through intermediaries so that a person could work in the United States, satisfies the requirement that the document must be provided in order to satisfy a requirement of the Act. *Dominguez*, 7 OCAHO no. 972 at 815–16, and she did so after November 29, 1990.

#### B. Penalty

The violations for which Respondent is liable occurred after November 2, 2015, and the Notice of Intent to Fine was served on January 12, 2020. Therefore the \$461-\$3,695 penalty range applies. *See United States v. Farias Enter. LLC*, 13 OCAHO no. 1338, 7 (2020).

ICE fined Respondent \$3,788 per offense, for a total of \$7,576. Complainant does not specify how it arrived at this figure, but Complainant levied the Department of Homeland Security’s regulations’ maximum fine. *See Civil Monetary Penalty Adjustments for Inflation*, 84 Fed. Reg. 13499 (April 5, 2019). “These regulations do not apply to the Department of Justice,” and are more than authorized by the regulations applicable to the Department of Justice. *United States v. Messineo*, 14 OCAHO no. 1367, 2 (2020). Nor did Complainant appear to consider that there is a range.

In her answer, Respondent states, “I did do what is being accused and what is wrong is I don’t sell forged documents.” Answer. She also indicates that she wants to repay, perhaps by doing community service, because her monthly income is \$900. *Id.* The record reflects that she has been a lawful permanent resident since 2010. Mot. Summ. Decision Ex. G-4.

Given that Congress provided a range, the undersigned begins with a mid-range penalty. The Court considers the sale of fraudulent documents to be serious. Respondent indicated that she was trying to help a person in need and that she does not ordinarily engage in this activity. There appears to be some support for this assertion as Respondent asked of others who could provide fraudulent documents. Further, Complainant did not provide any other evidence that Respondent sold any other documents, other than a general statement in the ROI that she was suspected of doing so. In addition, there is no evidence that Respondent has a criminal record. The Court

will aggravate the penalty based upon the seriousness of the offense, but not as much as if Respondent were regularly selling documents.

Lastly, Respondent provided a statement that she is not able to pay a large fine. Respondent did not provide any evidence of her income or financial situation, and accordingly the Court does not consider this equity. *See United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355a, 7 (2020). Accordingly, the Court adjusts the penalty to \$2,886 per document, for a total of \$5,772.

## V. FINDINGS OF FACT

1. On January 12, 2020, the Department of Homeland Security, Immigration and Customs Enforcement served Leticia Velarde with a Notice of Intent to Fine.
2. On January 30, 2020, the Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer against Leticia Velarde.
3. Leticia Velarde procured a Social Security card and a Lawful Permanent Resident card for another person knowing the documents were counterfeit and/or falsely made.
4. The only information provided to Respondent was a fictitious name, photograph and birthdate.
5. Leticia Velarde was paid \$200 to obtain the documents.

## VI. CONCLUSIONS OF LAW

1. All conditions precedent to the institution of this proceeding have been satisfied.
2. Leticia Velarde 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 material 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) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); and then citing *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. Primera 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* 8 C.F.R. § 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 28 C.F.R. § 85.5 applies. *See* 28 C.F.R. § 85.5.
10. If the penalty is assessed between January 29, 2018, and June 10, 2020, the minimum penalty is \$461 and the maximum is \$3,695. *See* 28 C.F.R. § 85.5.
11. Complainant proved by a preponderance of evidence that Respondent: (1) used or possessed a counterfeit or falsely made 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, 774, 782 (1995).
12. Documents provided through intermediaries so that a person could work in the United States, satisfies the requirement that the document must be provided in order to satisfy a requirement of the Act. *United States v. Dominguez*, 7 OCAHO no. 972, 789, 815 (1997), *modified on other grounds*, 7 OCAHO no. 972, 782 (1997).

## ORDER

Complainant’s Supplemental Motion for Summary Decision is GRANTED. Respondent is directed to pay civil penalties in the total amount of \$5,772. 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 December 17, 2020

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Jean 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.

UNITED STATES DEPARTMENT OF JUSTICE  
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January 22, 2021

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 2020C00040
	)	
LETICIA VELARDE,	)	
Respondent.	)	
_____	)	

ERRATA

The Order on Supplemental Motion for Summary Decision issued on December 17, 2020, is hereby amended to correct the following error:

1. On page 7, conclusion of law number 11 is corrected to read, “Complainant proved by a preponderance of evidence that Respondent: (1) provided a counterfeit or falsely made 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, 774, 782 (1995).”

SO ORDERED.

Dated and entered on January 22, 2021.

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Jean King  
Chief Administrative Law Judge