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

January 29, 2021

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324c Proceeding
v.	)	OCAHO Case No. 2020C00020
SANCHITA BHATTACHARYA, Respondent.	)	

ORDER ON SUPPLEMENTAL MOTION FOR SUMMARY DECISION

I. INTRODUCTION

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. The U.S. 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) on November 25, 2019, alleging Respondent, Sanchita Bhattacharya, violated § 1324c when she forged, counterfeited, altered, or falsely made documents to satisfy the employment eligibility verification requirements. The Complaint reflects that on July 23, 2019, the government served a Notice of Intent to Fine (NIF) upon Respondent. The Notice of Intent to Fine alleged fifty-seven violations of section 274C(a)(1) of the INA, and sought a fine of $21,375.00.

On November 19, 2020, this Court granted in part Complainant's Motion for Summary Decision, finding that Complainant had met its burden of proof to establish that Respondent falsely made thirty-six documents knowing the information in the documents was false to obtain a benefit under the Act, namely to obtain employment authorization on behalf of non-citizens, in violation of section 274C(a)(1). Ord. Mot. Summ. Decision 8. The undersigned found that Complainant had not met its burden as to the remaining twenty-one purchase orders because they were not authenticated, and were not introduced in such a way as to satisfy the Court as to their reliability. Ord. Mot. Summ. Decision 6. The Court requested further briefing on the remaining allegations.

On December 10, 2020, Complainant filed a Supplemental Briefing in Support of Motion for Summary Judgment, and on December 24, 2020, Respondent filed a Letter in Response to Order on Motion for Summary Decision (Resp. to Ord.).

II. BACKGROUND

The facts of the case were set forth in the Court's Order on Motion for Summary Decision. Respondent was employed as an IT Staffing Operations Manager for a Virginia-based company called EcomNets. Mot. Summ. Dec. at 3. Raju Kosuri was the owner and operator of EcomNets. *Id.* at 3, 5. Complainant alleges that EcomNets, along with several affiliated shell companies including Unified Systems, United Software Solutions, and United Technologies, Inc., purported to be staffing companies, but had no legitimate business. *Id.* at 3. Instead, the companies filed H-1B petitions for the benefit of individuals who would not otherwise have work authorization falsely claiming that the beneficiaries would work at a data center in Danville, Virginia, owned by EcomNets. *Id.* at 3–4. At the time of the filing of the H-1B petitions, there were no actual end clients; the search for employment for the beneficiaries occurred after the petitions were approved. *Id.* at 4.

Complainant asserted that Respondent forged and falsely made thirty-five H-1B petitions with supporting documents on behalf of EcomNets and the shell companies, as well as twenty-two purchase orders. Mot. Summ. Decision 4. Complainant asserted that Respondent signed the petitions and supporting documents, which contained fraudulent information, under her own name or used fictitious names. *Id.*

In support of its supplemental motion, Complainant submitted a Declaration of Elizabeth Goyer, Supervisory Special Agent for the Immigration and Customs Enforcement, Homeland Security Investigations seeking to authenticate the twenty-two alleged fraudulent purchase orders labeled Exhibit 15, 1-22.

In her response to the Motion for Summary Decision (Opposition), Respondent disputed the version of events set forth by Complainant, and also noted that these allegations were the subject of a federal lawsuit, which was dismissed as to Respondent. Opp'n 1. In her response to the Order on Summary Decision, Respondent again submitted the decision from the Eastern District of Virginia dismissing the indictment. Resp. to Ord. Ex. 1.

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." Rules of Practice and Procedure, 28 C.F.R. § 68.38(c) (2020). "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)).[1]

"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 Com. 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. Civil Money Penalties

In order to establish liability under § 1324c(a)(1), Complainant must prove by a preponderance of evidence that: "1. respondent knowingly forged, counterfeited, altered, or falsely made the [fifty-seven] immigration documents . . . ; 2. after November 29, 1990; and 3. for the purpose of satisfying a requirement of the INA." *United States v. Noriega-Perez*, 5 OCAHO no. 811, 680, 690 (1995). Falsely make is defined as, "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 misrepresentation[.]" 8 U.S.C. § 1324c(f).

Unlike 8 U.S.C. § 1324a, which contains five criteria to be considered in determining civil penalties in employer sanction cases, § 1324a(e)(5), § 1324c does not provide similar guidance. *See* 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, 24, 28 (1995) (citations omitted).

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[1] 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.

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 occurred between March 27, 2008 and November 2, 2015, the penalty range is not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity. § 274a.10(b)(ii)(A). For violations that occurred after November 2, 2015, the adjusted penalty range as set forth in § 85.5 applies. *See* § 85.5. "[T]he date of assessment is the date that ICE serves the NIF on a respondent." *United States v. Farias Enterprises LLC*, 13 OCAHO no. 1338, 7 (2020). If the penalty is assessed between January 29, 2018, and June 19, 2020, the minimum penalty is $461 and the maximum is $3,695. § 85.5.

IV. DISCUSSION

A. Evidence

"In administrative proceedings, the strict technical rules of evidence are somewhat relaxed. 5 U.S.C. § 556(d) excludes only evidence which is irrelevant, immaterial, or unduly repetitious. Thus, if the evidence is reliable, probative, and substantial, it will generally be admitted." *United States v. Tinoco-Medina*, 6 OCAHO no. 890, 720, 738 (1996). The applicable OCAHO rule provides that "[a]ll relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence." 28 C.F.R. § 68.40(b). Evidence provided "to support or resist a summary decision must be presented through means designed to ensure its reliability." *Parker v. Wild Goose Storage, Inc.*, 9 OCAHO no. 1081, 3 (2002). Under the OCAHO rules, "[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1.

"[T]he proponent of documentary evidence must still authenticate a document by evidence sufficient to demonstrate that the document is what it purports to be, even in administrative proceedings." *United States. v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted).

In the prior Order, this Court found that the purchase orders at issue in the case contained no markings indicating what they were attached to, or indication of when or whether they were filed, and therefore were not authenticated nor sufficiently reliable. Ord. Mot. Summ. Decision

6. The Court found that one purchase order, Ex. 15, 16,[2] had been authenticated by testimony given at the trial of Richa Narang and provided at Exhibit 18. Order Mot. Summ. Decision 6.

In her Declaration, Special Agent Goyer states that based on her personal knowledge, participation in the investigation, and information reviewed in the Department files and databases, the purchase orders were located in files maintained by U.S. Citizenship and Immigration Services (USCIS), and handed over to the investigation team, who maintained them during the course of the investigation. Ex. 21, ¶¶ 3–4, 11–12. The files were Form I-129 Petitions for Non-Immigrant workers filed by Respondent's employer, Mr. Raju Kosuri, supporting documents, and documents submitted in response to requests for additional evidence (RFE) sent by USCIS. *Id.* at ¶¶ 7,13. The purchase orders were found in the files, and were submitted in response to RFEs. ¶ 14. The purchase orders were submitted to show that the company EcomNets, Inc. had contracted with United Technologies, Inc. to employ the visa petition beneficiary on a certain project in Danville, Virginia, at a certain time. *Id.* The purchase orders were signed with the name "Sonia Basu." *Id.* at ¶ 16; Ex. 15. The Special Agent's affidavit identifies the documents, describes the chain of custody of the documents, as well as the context in which the documents were presented. The Court will consider the remaining twenty-one purchase orders.

B. Analysis

In this Court's prior order, this Court found that Complainant had met its burden to demonstrate that Respondent knowingly forged and falsely made H-1B visa petitions and supporting documents through circumstantial evidence. Ord. Mot. Summ. Decision 6. As noted in the order, Richa Narang testified in a court proceeding to observing Respondent signing documents in support of H-1B petitions as the person authorized to sign for Unified Systems under her own name, Sam Bose for United Software Solutions, and Sonia Basu for United Technologies. Ex. 3 at 425–26. Ms. Narang testified that Respondent signed as Sonia Basu on behalf of United Technologies and that Respondent was the person to provide Sonia Basu's signature. Ex. 3 at 444–45. Ravinder Kaur's testimony further supports that Respondent signed as Sam Bose and Sonia Basu. Ex. 18 at 163, 177.

The Statement of Facts from *United States v. Kosuri*, No. 16-CR-00043 LMB (E.D.V.A. October 13, 2017) states that petitions submitted by United Technologies were signed by Sonia Basu, one of two fictional names Respondent used to sign documents submitted to USCIS. Ex. 5 at 12. In the Memorandum of Opinion from the case of *United States v. Richa Narang*, No. 16-CR-00043 LMB (E.D.V.A. Aug. 21, 2019), the judge found that Respondent would also sign forged documents "used to mislead government adjudicators in response to [Requests for Information,]"

[2] The Complaint designated exhibits with letters, while the Motion for Summary Decision incorporated those exhibits, but referenced to the exhibits with numbers and, in some cases, sequential page numbers. The Court will rename the exhibits using numbers.

including "purchase orders designed to convince USCIS officials that there was a bona fide business relationship between the 'shell' company that acted as the I-129 petitioner and EcomNets." Ex. 7 at 13.

A number of emails from Respondent also support the finding that Respondent signed documents using false names on behalf of the fictitious companies. *See* Exs. 8, 10–12. Respondent documents her work as signing on behalf of the various fictitious companies, Ex. 8, and asks which name she should using in signing a document, referring to herself, Sonia Basu or Sam Bose. Ex. 12. Exhibits 11, 12 and 16 likewise show that she was working on paperwork for various individuals, including purchase orders.

The evidence shows that the documents contained false and fabricated information. The evidence also shows that Respondent misrepresented the company she worked for (EcomNets), signing instead on behalf of three companies that did not exist, with positions that she did not hold, and signed under fictitious names. Exs. 2; 5 at 2, 6–7; 3 at 425–26, 443. Each of the Form I-129 applications contained a description of either Unified Systems, Unified Software Solutions, or United Technologies, signed by Respondent or one of the aliases, Ex. 15, 23–57, when these companies did not exist.

While there is no direct testimony or affidavits to show that Respondent signed the purchase orders in the record, the purchase orders are signed by Sonia Basu. Ex. 15, 1–22. The evidence shows that Respondent was the authorized signer for Sonia Basu and United Technologies, and only Respondent signed for that company. Accordingly the Court finds that Complainant has met its burden of proof, by circumstantial evidence, to show that Respondent assisted in preparing and providing a document with knowledge that the documents contained false statements and material misrepresentations. § 1324c(f).

The purchase orders were used to satisfy a requirement under the INA – namely they were submitted to support H-1-B visa petitions filed on behalf of persons seeking to be employed in the United States. *See* 8 C.F.R. § 214.2(h)(2)(i)(A).

This Court previously found that Respondent's opposition did not create a genuine issue of material fact. Order Mot. Summ. Decision 8. *See Four Seasons Earthworks*, 10 OCAHO no. 1150 at 3 (citing *Celotex*, 477 U.S. at 323) ("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."). In her Response, Respondent merely repeats her statement that her case was dismissed before the district court.[3] Therefore, there is no genuine issue of material fact.

[3] Insofar as Respondent is arguing res judicata and claim preclusion because of the district court's dismissal of her indictment based on the gvoernment's violation of its discovery

Accordingly, the Court finds that summary judgment is GRANTED and the Complaint met its burden of proof to show that Complainant violated § 1324c(a)(1) as to the remaining twenty-one purchase orders.

C. Penalty

Complainant is seeking a penalty of $21,375. Ex. 1 at 1. Complainant has not indicated how it arrived at the penalty amount, but dividing the amount by fifty-seven, it appears that Complainant is seeking a penalty of $375 per document. The documents were signed by Respondent and submitted to USCIS between 2014 and early 2016. All but four of the violations occurred before November 3, 2015, Ex. 15, 1–53, and the applicable penalty range is between $375 and $3200. Thus, it appears that Complainant is seeking the minimum penalty. However, four violations occurred after November 2, 2015, and the date of assessment, the date the NIF was served, is July 23, 2019. Accordingly, the minimum penalty for those four violations is $461. *See* Ex. 15, 54-57. Therefore, Complainant is subject to a penalty of $21,719.

V. CONCLUSION

The Court finds that Respondent is liable for one count of violating § 1324c(a)(1) because she falsely made twenty-one documents knowing the information in the documents was false to obtain a benefit under the Act, namely to obtain employment authorization on behalf of non-citizens. The Court previously found Respondent liable for violating § 1324c(a)(1) when she falsely made thirty-six documents knowing the information in the documents was false to obtain a benefit under the Act. All fifty-seven violations occurred after November 29, 1990. Complainant is subject to a penalty of $21,719.

VI. FINDINGS OF FACT

1. On July 23, 2019, the Department of Homeland Security, Immigration and Customs Enforcement served Sanchita Bhattacharya with a Notice of Intent to Fine.

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obligations, Ex. 7 at 4, the Court will address such arguments. Prior OCAHO case law has held that "collateral estoppel and judicata a[re] inapplicable to a subsequent IRCA proceeding that had been initiated after earlier criminal charges had been commenced, but then later dismissed." United States v. Noriega-Perez, 6 OCAHO no. 859, 355, 360 (1996); accord United States v. Alvarez-Suarez, 4 OCAHO no. 655, 565, 572–79 (1994). Therefore, res judicata and collateral estoppel do not foreclose this litigation.

2. On November 25, 2019, the Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer against Sanchita Bhattacharya.

3. Sanchita Bhattacharya was employed as an IT Staffing Operations Manager for a company called EcomNets.

4. Unified Systems, United Software Solutions and United Technologies, Inc. purported to be staffing companies, but had no legitimate business.

5. Complainant signed Form I-129 Petitions for Non-Immigrant Workers and supporting documentation for the Form I-129 as an employee of Unified Systems, United Software Solutions and United Technologies, Inc. that were submitted to the United States Citizenship and Immigration Service.

6. Complainant signed purchase orders that were submitted to support Form I-129 Petitions for Nonimmigrant Workers in response to requests for information from United States Citizenship and Immigration Services.

7. Complainant used the name Sam Bose to sign petitions on behalf of United Software Solutions.

8. Complainant used the name Sonia Basu to sign petitions on behalf of United Technologies, Inc.

9. Complainant knew the information provided on the purchase orders was false.

VII. CONCLUSIONS OF LAW

1. All conditions precedent to the institution of this proceeding have been satisfied.

2. 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).

3. "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) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); and then *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

4. "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)).

5. "[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)).

6. 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).

7. Complainant met its burden of proving, by a preponderance of the evidence, that Respondent: 1. Knowingly forged, counterfeited, altered, or falsely made a total of fifty-seven immigration documents; 2. after November 29, 1990; and 3. for the purpose of satisfying a requirement of the INA. 8 U.S.C. § 1324c(a)(1).

VIII. ORDER

The government's supplemental motion for summary decision is GRANTED. Respondent is directed to pay civil penalties in the total amount of $21,719. 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 January 29, 2021.

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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.