

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324c Proceeding
v.)	OCAHO Case Nos. 2020C00053
)	2020C00054
MARIA GREGORIO-GOMEZ, and)	
ELSA AGUILAR-PABLO,)	
Respondents.)	
)	

ORDER DENYING MOTIONS FOR SUMMARY DECISION

I. INTRODUCTION

The above-captioned case is a consolidated matter that 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. On December 1, 2020, Complainant filed a Motion for Summary Decision against the Respondents. Respondents timely filed responses to the motions on January 12, 2021. For the reasons set forth in this decision, Complainant’s Motions for Summary Decision are DENIED.

II. BACKGROUND

On February 14, 2020, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed the above-referenced complaint in this matter under Section 274C(a)(2) of the Immigration and Nationality Act of 1952 (as amended), 8 U.S.C. § 1324c(a)(2) (hereinafter, the INA), OCAHO Case No. 2020C00053. As described in the first complaint, the Department alleged that Respondent Maria Gregorio-Gomez was encountered by Homeland Security Investigations (HSI) agents on August 7, 2019, while they were effecting a criminal search warrant of Koch Foods, in Morton, Mississippi. Compl., OCAHO Case No. 2020C00053 (Compl. A) at 3. The complaint alleges that, during the enforcement action, Respondent Gregorio-Gomez was encountered and identified as a citizen and national of Guatemala, illegally present in the United States. *Id.* According to the complaint, Respondent Gregorio-Gomez was administratively arrested; the agents found in her possession an Arkansas State identification card and a Social Security card which the Department has alleged are fraudulent. *Id.* The Department further alleges that Gregorio-Gomez used these documents to obtain employment in the United States, in violation of Section 274C(a)(2) of the INA. *Id.* at 4. Gregorio-Gomez timely requested a hearing. *Id.* at 2.

Also, on February 14, 2020, the Department filed a complaint against Respondent Elsa Aguilar-Pablo. That complaint similarly alleges that during the execution of a criminal warrant at the same Koch Foods in Morton, Mississippi on August 7, 2019, Homeland Security Investigations agents encountered Respondent Aguilar Pablo. Compl., OCAHO Case No. 2020C00054 (Compl. B) at 3. The complaint alleges that, during the enforcement action, Aguilar-Pablo was also encountered as a citizen and national of Guatemala. *Id.* The complaint further alleged that Respondent Aguilar-Pablo had in her possession a Tennessee State identification card and Social Security Card which the Department describes as fraudulent. *Id.* The complaint alleges that Respondent Aguilar-Pablo used these documents to obtain employment in the United States, in violation of Section 274C(a)(2) of the INA. *Id.* at 4.

Respondents filed answers in which they denied all the material allegations in the complaints. Ans., OCAHO Case. No. 2020C00053 (Ans. A) at 1-2; OCAHO Case. No. 2020C00054 (Ans. B). Gregorio-Gomez asserted that she did not intend or know that she was violating the law because no translation certification was attested to and the documents were not translated to Respondent, who does not speak or write in English. *Id.* at 3. Respondents asserted that Complainant failed to state a claim upon which relief can be granted and that Complainant's claim is not supported by substantial evidence. *Id.*

On April 23, 2021, the Court consolidated these matters, pursuant to 28 C.F.R. §68.16.

III. LEGAL STANDARD

OCAHO's Rules of Practice and Procedure for Administrative Hearings provides that the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, 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). Furthermore, "[a]ny affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein." § 68.38(b). "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)).¹

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

A party seeking summary decision bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See, e.g., United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *United States v. Sihombing*, 7 OCAHO no. 944, 361, 363 (citation omitted). All facts and reasonable inferences are viewed “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).

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

United States v. Rubio-Reyes, 14 OCAHO no. 1349a, 4 (2020) (citing *United States v. Zapata-Cosio*, 5 OCAHO no. 822, 782 (1995)).

IV. DISCUSSION

The Government asserts that summary decision should be granted in its favor because there is no genuine issue of material fact with respect to the Respondents’ liability. The Government states that “[t]o date, [Respondents have] provided no evidence to support [their] denials of the violation alleged in the complaint. That is, [Respondents have] failed to offer any further proof that [t]hey did not violate section 274C(a)(2) of the Act and INA § 274c(a)(2)” *See* Mot. Summ. Dec. at 2. The Government did not introduce any supporting evidence alongside its motion; rather, it relies on the complaints and the documents attached to the complaints to support its motions.²

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>.

² The documents attached to both of the complaints include the following for each Respondent: a Notice of Intent to Fine, a Request for Civil Document Fraud Hearing and for Change of Venue, a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, a photocopy of an apparent identification card and a Social Security card, and an

The premise of the Government's motion is that Respondents at the first instance have the burden of demonstrating the presence of genuine issues of material fact. This misstates the burden of proof and the movant's obligations on a dispositive motion. OCAHO case law and the Federal Rules of Civil Procedure make clear that the party moving for summary decision bears the initial burden of demonstrating the absence of a genuine issue of material fact.³ See Four Seasons Earthworks, Inc., 10 OCAHO no. 1150 at 3 ("A party seeking a summary disposition bears the initial burden of demonstrating the absence of a genuine issue of material fact.") (citing Catrett, 477 U.S. at 323); Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment *if the movant shows* that there is no genuine dispute as to any material fact ...") (emphasis added). In Four Seasons Earthworks, Inc., the court held "[o]nce 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." Id. The burden shifts to the Respondents only after the Government has met its initial burden of proving the absence of material factual issues.

The Court must first determine whether the Government has met its burden of proving the absence of genuine issues of material fact by reference to admissible factual information. Complainant's motions fail to do so. Complainant's motions offers no affidavit, deposition transcript, discovery admission, or other form of potentially admissible evidence which supports the factual claims which Complainant advances — namely that Gregorio-Gomez and/or Aguilar-Pablo presented false identification at Koch Foods on August 7, 2019, and that a review of the company's Forms I-9 indicated that they had presented the same false information in order to gain employment. The false identification records which Complainant references in its motions do not speak for themselves.

Moreover, the admissions in the Respondents' answers do not bridge the gap by offering statements which might otherwise support the Complainant's motion. The answers offer general denials of almost all of the contentions in the Complaints except that the Respondents were born in Guatemala. See Ans. A at 1-3; Ans. B at 1-3. This is simply not enough for Complainant to establish liability. Complainant argues in its motions that these general denials should not be credited because Respondents cite to no evidence to support them. However, as stated previously, the adoption of Complainant's argument would invert the summary decision process by placing the initial burden of production on the non-moving party. The jurisprudence of this court does not support that legal conclusion.

Employment Eligibility Verification Form (Form I-9). See Compl. A Exh. A-D; Compl. B Exh. A-D.

³ Although the Federal Rules of Civil Procedure is not binding in this forum, it may be used as a general guideline in situations not specifically provided for in OCAHO's rules. 28 C.F.R. § 68.1. See also United States v. Autobuses Ejecutivos, LLC, 11 OCAHO no. 1220, 3 (2014) (citing Hsieh v. PMC Sierra, Inc., 9 OCAHO no. 1084, 4 (2002).

V. CONCLUSION

Complainant has failed to meet its burden of demonstrating the absence of any material questions of fact. Therefore, Complainant's Motions for Summary Decision are DENIED.

SO ORDERED.

ENTERED:

John A. Henderson
Administrative Law Judge

DATE: May 6, 2021