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

February 9, 2023

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324c Proceeding OCAHO Case No. 2021C00033
BRIAN DE JESUS CORRALES-HERNANDEZ, Respondent.	)	

Appearances: Joey L. Caccarozzo, Esq., for Complainant
Brian De Jesus Corrales-Hernandez, pro se Respondent

ORDER ON COMPLAINANT'S 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 (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on May 19, 2021, alleging Respondent, Brian de Jesus Corrales-Hernandez, violated § 1324c(a)(2) when he knowingly used a fraudulent document to satisfy the employment eligibility verification requirements, and violated § 1324c(a)(5) when he prepared an application for a benefit under the INA with knowledge or in reckless disregard of the fact that the application was falsely made.

On August 30, 2021, Complainant filed a Motion for Summary Decision (MSD). On April 13, 2022, Respondent filed his Answer. On June 9, 2022, Complainant filed Complainant's Renewed Motion for Summary Decision (Renewed MSD). Respondent did not file a response to Complainant's Motion or Renewed Motion.

Complainant's Renewed Motion for Summary Decision is GRANTED in its entirety.

This is a final order pursuant to 28 C.F.R. § 68.52(e).

II. PARTIES' POSITIONS

A. Complainant

Complainant moves for summary decision, arguing there are no genuine issues of material fact, and Respondent is liable under §§ 1324c(a)(2) and (a)(5). Renewed MSD 1–3; MSD 1–2.

As to Count 1, Complainant asserts Respondent "presented a fraudulent Permanent Resident Card (I-551)" containing his photo and another individual's Alien Registration Number when completing an Employment Eligibility Verification Form (Form I-9) for employment at Eagle Eye Produce.[1] MSD 6–7. On January 16, 2019, Homeland Security Investigations (HSI) interviewed Respondent about his conduct. *Id.* at 8; *see id.* Ex. G-5. In the interview, Respondent admitted he purchased fraudulent documents at a Circle K gas station, and "used the documents listed on his Form I-9" until he was fired by Eagle Eye in 2017. *Id.* at 7. Further, Respondent "was issued a non-immigrant B-2 visa (Border Crossing Card) which did not allow him to work in the United States." *Id.* Complainant concludes Respondent "had knowledge of the fraudulent nature of the I-551 and Social Security number he used to gain employment . . . from March 2013 to December 2017." *Id.*

As to Count II, on June 7, 2018, Respondent filed a Form I-485, Application for Adjustment of Status.[2] *Id.* at 8 (citing MSD Ex. G-3). Respondent's Form I-485 contained at least three false statements. Specifically, Respondent answered "no" to the following questions:

> (1) "Have you EVER worked in the United States without authorization?";
> (2) "Have you EVER violated the terms or conditions of your nonimmigrant status?"; and
> (3) "Have you EVER lied about, concealed, or misrepresented any information on an application or petition to obtain . . . any other kind of immigration benefit?" *Id.*

Respondent affirmed his fraudulent answers under oath during an in-person interview with a United States Citizenship and Immigration Services (USCIS) officer and signed the document again confirming that his application was true and correct. *Id.* During his HSI interview, Respondent confirmed that he had provided fraudulent information on his I-485 application and during the USCIS interview. *Id.*

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[1] Complainant also asserts Respondent entered another individual's social security number in Section 1 of the Form I-9. MSD 6–7; *see infra* note 5.

[2] The application was based upon an approved visa petition by his United States citizen spouse. MSD 8 (citing MSD Ex. G-3).

Finally, Complainant defends its fine of $873.00; noting the fine amount for a first offense under INA § 274C(a)(2) in Tier 1 is $473 per offense, and the fine amount for a first offense under INA § 274C(a)(5) is $400. *Id.* at 9 (first citing Civil Monetary Penalty Adjustments for Inflation, 84 Fed. Reg. 66,13502 (Apr. 5, 2019), and then citing 8 C.F.R. § 270.3(b)(1)(ii)(A–D)).

B. Respondent

Respondent did not respond to Complainant's Motion for Summary Decision or Respondent's Renewed Motion for Summary Decision; however, he did file an answer.

In the Answer, Respondent does not contest liability under the statute; rather he provides an explanation for his decision to violate the law.

Respondent states "there is no excuse or right answer as to why I committed this fraudulent decision" and he "accept[s] and plead[s] guilty." Ans. 1. He was "a teen not thinking of consequences this could cause,"[3] and he "misuse[d his] tourist visa" to financially support his family in Mexico. *Id.* Respondent had two children (in 2014 and 2015) and he is financially responsible for them and his spouse. *Id.* Finally, he states: "My good moral conduct as to why I made the decision I made. I apologize to the Department of Homeland Security and US for not answering with the truth. I am a good person that made a bad decision due to his ignorance." *Id.* He requests "a second chance to show that [he is] a good person that only happened to make a wrong choice." *Id.* at 1–2.

Respondent does not opine on the penalty amount.

III. FINDINGS OF FACT[4]

1. On March 21, 2013, Respondent filled out a Form I-9 and presented a Permanent Resident Card (I-551) to Eagle Eye Produce to verify his identity and eligibility to work in the United States. *See* MSD Exs. G-2, G-5, at ¶ 5.[5]

[3] Respondent was nineteen at the time of signing the Form I-9 using the fraudulent documents in 2013, not a minor. *See* Compl. 2 (alleging that Respondent was born in Mexico in 1993).

[4] The findings of fact are drawn from the undisputed allegations in the Complaint as well as the evidence in the record. *See Brown v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379a, 2–3 (2022) (first citing 28 C.F.R. § 68.38(b),(c), and then citing Fed. R. Civ. P. 56(c)(4)).

[5] The record raises a question of whether Respondent possessed and presented other fraudulent documents, specifically a social security card. *See* Compl. 3 (alleging that Respondent "had knowledge of the fraudulent nature of the I-551 *and Social Security number* he used to gain employment" (emphasis added)); MSD Ex. G-5, at ¶¶ 5–6 (affidavit from HSI Agent attesting

2. The I-551 was fraudulent as the A-number assigned did not belong to Respondent, and the I-551 was not issued to Respondent. MSD Exs. G-2, G-5, at ¶ 5; Compl. 3.

3. Respondent was fired from Eagle Eye Produce in December 2017. MSD Ex. G-5, at ¶ 6.

4. On June 7, 2018, Respondent submitted a Form I-485, answering "No" to each of the following questions: (1) "Have you EVER worked in the United States without authorization?"; (2) "Have you EVER violated the terms or conditions of your nonimmigrant status?"; and (3) "Have you EVER lied about, concealed, or misrepresented any information on an application or petition to obtain . . . any other kind of immigration benefit?" *Id.* Ex. G-3.

5. Respondent did understand the contents of the Form I-485. *See generally id.*; *id.* Ex. G-4; Ans.

6. On September 18, 2018, Respondent was interviewed by a USCIS Officer, and Respondent signed an attestation certifying under penalty of perjury that the contents of his Form I-485 were complete, true, and correct. *Id.*

7. Respondent did understand the nature of the questions asked in his interview with the USCIS officer.

"[t]he Social Security Number and A-Number used on the Form I-9 did not belong to [Respondent]" and Respondent "stated that he purchased the fraudulent documents").

Complainant only charged Respondent for one violation of § 1324c(a)(2) for the I-551. *See* Compl. 4 ("The Respondent, therefore, used the fraudulent I-551 document to satisfy the employment eligibility and verification requirements of [INA § 274A]"); MSD 9 (noting that "[t]he NIF contains two counts, [but only one] based upon respondent obtaining and providing a fraudulent document." Because the Respondent did not present a fraudulent social security *card* when completing his Form I-9, the Court will only analyze whether Respondent is liable under § 1324c(a)(2) for possession and use of one document—a fraudulent I-551.

Finally, the date Respondent filled out his Form I-9 may raise an issue as to the statute of limitations. *See United States v. Davila*, 7 OCAHO no. 936, 16 (1997) (finding that the five-year statute of limitations in 28 U.S.C. § 2462 applied in the § 1324c context). However, this issue was not raised as an affirmative defense, and the record has not been adequately developed on this issue. *See United States v. Cityproof Corp.*, 15 OCAHO no. 1392a, 11 (2021) ("Failure to raise the statute of limitations results in its waiver, and a judge may not raise it sua sponte [on a Respondent's behalf]." (citing, inter alia, *Davila*, 7 OCAHO no. 936, at 16)).

8. On September 18, 2018, USCIS approved Respondent's application. *Id.* at 2.

9. On January 16, 2019, Respondent was interviewed by an HSI Special Agent. MSD 8; *id.* Ex. G-5.

10. In his HSI interview, Respondent explained he purchased the fraudulent I-551 from a man named "Choqui" for $50 at a Circle K gas station. *Id.* Ex. G-5, at ¶ 6; Compl. 3.

11. In his HSI interview, Respondent stated he failed to disclose that he had worked unlawfully on his Form I-485 application for adjustment of status. MSD Ex. G-5, at ¶6.

12. In his HSI interview, Respondent stated he failed to disclose that he had worked unlawfully to the USCIS interviewing officer. *Id.*

13. At the conclusion of his HSI interview, Respondent provided a sworn written statement. *Id.* at ¶ 7; *id.* Ex. G-4.

14. In Respondent's sworn written statement, Respondent confirmed that Respondent lied when he told the USCIS interviewing officer that the Respondent had never worked in the United States. *Id.* Ex. G-4, at 1.

15. In Respondent's sworn written statement, Respondent confirmed that Respondent knew that working without the proper documents is impermissible. *Id.*

16. On October 20, 2020, Complainant personally served a Notice of Intent to Fine (NIF) upon Respondent, alleging that Respondent violated 8 U.S.C. § 1324c. *See* Proof of Compliance with Service of Process, Ex. G-8, at 2; MSD Ex. G-1.

17. The NIF ordered Respondent to cease and desist from actions described in the document and separately assessed a fine of $ 873. MSD Ex. G-1.

18. Respondent timely requested a hearing on December 16, 2020. *Id.* at 4.

19. On May 19, 2021, Complainant filed its complaint with the Court. Compl.

20. On November 19, 2021, the Court issued an Order to Show Cause, ordering Respondent to submit a filing showing good cause explaining his failure to timely file an answer, and to file an answer pursuant to 28 C.F.R. § 68.9(c).

21. On March 8, 2022, the Court held a prehearing conference. *See* Order Memorializing Prehearing Conference.

22. Because the Court confirmed that Spanish is the language Respondent speaks and understands best, the Court secured a Spanish language interpreter for the conference. *Id.*

23. At the prehearing conference, Respondent confirmed he could hear and understand the Spanish language interpreter and he could understand the nature of the proceedings. and the consequences of failing to file an answer. *Id.*

24. The Court provided Respondent with an opportunity to file his answer by April 6, 2022. *Id.*

25. On April 13, 2022, Respondent filed his Answer. Ans.

26. On June 9, 2022, Complainant filed Complainant's Renewed Motion for Summary Decision. Renewed MSD.

27. To date, Respondent has not filed a response to Complainant's Renewed Motion for Summary Decision.

IV. LAW - ELEMENTS AND BURDENS OF PROOF

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). "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 citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). [6]

[6] 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.

"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. Prima Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

B. Civil Money Penalties

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

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 all violations that occurred after November 2, 2015, the adjusted penalty range as set forth in 28 C.F.R. § 85.5 applies. *See United States v. Bhattacharya*, 14 OCAHO no. 1380a, 4, 7 (2021).

"[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).

For civil penalties assessed for violations of § 1324c(a)(1)–(4) after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the minimum penalty is $481 and the maximum is $3,855. *See* 28 C.F.R. § 85.5; *Civil Monetary Penalties Inflation Adjustments for 2023*, 88 Fed. Reg. 19,5780–81 (Jan. 30, 2023).

For civil penalties assessed for violations of § 1324c(a)(5)–(6) after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the minimum penalty is $407 and the maximum is $3,251. *See id.*

V. LAW & ANALYSIS

A. Liability

i. Count I: 8 U.S.C. § 1324c(a)(2)

"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.'" *United States v. Rubio-Reyes*, 14 OCAHO no. 1349a, 4 (2020) (citing *United States v. Zapata-Cosio*, 5 OCAHO no. 822, 774, 782 (1995)). The Court finds that Complainant has met its burden of showing that there is no genuine issue as to any material fact as to these elements, and that it is entitled to summary decision.

As to the first element, Respondent possessed an I-551 Permanent Resident Card and presented it as his List A document when filling out his Form I-9. *See* MSD Ex. G-2 (Form I-9 signed by Respondent on March 21, 2013 listing a Permanent Resident Card under "List A"). It is undisputed that this card included his photo and another individual's Alien Registration Number. *Id.* Ex. G-5, at ¶¶ 5–6; MSD 6.

As to the second element, Respondent had knowledge of the fraudulent nature of the document. Respondent purchased this document at a gas station (not the manner in which, or the location where one customarily receives identity documents from the federal government). *See United States v. Zuniga Torentino*, 15 OCAHO no. 1397, 3 (2021) ("Social Security cards and LPR cards are issued only by the government of the United States and are never available for 'purchase' from a private entity."). Respondent also admitted he had knowledge of the fraudulent nature of the documents, stating he was a "teen not thinking of the consequences" in 2013 and apologizing for "misus[ing his] tourist visa." *See* Ans. 1; MSD Ex. G-5, at ¶ 6; *see also United States v. Diaz Rosas*, 4 OCAHO no. 702, 985, 990 (1994) (finding a respondent had actual knowledge that his Employment Authorization Card was not valid when that respondent admitted obtaining it in a bus station after his valid work authorization card expired).

As to the third element, Respondent presented the fraudulent I-551 when he filled out a Form I-9 on March 21, 2013, which is after November 29, 1990. *See* MSD Ex. G-2 (Form I-9 signed by Respondent on March 21, 2013 listing Permanent Resident Card information and social security number); *id.* Ex. G-5, ¶ 5 (affidavit from HSI Special Agent attesting that Respondent "presented documents"[7] to Eagle Eye Produce on March 21, 2013).

[7] *See supra* Note 3 (discussing the ambiguity regarding how many fraudulent documents Respondent used/possessed).

Finally, as to the fourth element, Respondent, used the fraudulent I-551 as his List A document when filling out a Form I-9. *Id.* Ex. G-2.

Under INA § 274a.2(b)(1)(ii), (v), within three business days of a hire, an employer must examine the documentation presented by an employee establishing identity and employment authorization and attest that it has done so on section 2 of the Form I-9, and an employee may meet this requirement by "present[ing] an original document which establishes both employment authorization and identity"—a List A document.

OCAHO precedent hold that presenting documents to gain employment without authorization is "for the purpose of satisfying any requirement of the INA or obtaining a benefit under the INA." *See Zuniga Torentino*, 15 OCAHO no. 1397, at 5 n.3 ("Employment authorization is a benefit under the INA." (citing *United States v. Dominguez*, 7 OCAHO no. 972, 782, 807 (1997)); *United States v. Morales-Vargas*, 5 OCAHO no. 732, 734 (1995) (modification by CAHO) ("It has been held that providing documents for the purpose of gaining illegal employment constitutes an action undertaken 'in order to satisfy any requirement of the Act.'"); *Rubio-Reyes*, 14 OCAHO no. 1349a, at 6 ("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."). [8] This element is met because Respondent provided the fraudulent document in order to obtain the benefit or work authorization. *See* Ans. 1; MSD Ex. G-5, at ¶ 6; Compl. 3.

Respondent is liable for violating § 1324c(a)(2).

ii. Count II: 8 U.S.C. § 1324c(a)(5)

To establish a violation of 8 U.S.C. § 1324c(a)(5), Complainant must prove Respondent "prepar[ed], file[d], or assist[ed] another in preparing or filing, any application for benefits under [the INA], or any document required under [the INA], or any document submitted in connection

[8] The Complainant did not submitted copies of the fraudulent document that Respondent purchased and presented when filling out his Form I-9. The record contains the Form I-9 at issue, an affidavit from the investigating officer, and a sworn statement from Respondent regarding his conduct. This evidence, coupled with Respondent's admission, permit the Court to conclude there is sufficient evidence as to Complainant's burden of production. *Cf., e.g.*, *United States v. Gregorio-Gomez*, 14 OCAHO no. 1359a, 4 (2021) (finding the complainant had not met its burden of proving the absence of genuine issues of material fact by reference to admissible factual information when its motion contained "no affidavit, deposition transcript, discovery admission, or other form of potentially admissible evidence which supports the factual claims which Complainant advances").

with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made . . . "

Respondent filed a Form I-485 Application to Register Permanent Residence or Adjust Status. MSD Ex. G-3.[9] The application contained several false statements. *See id.* at 10; Compl. 3. Respondent had actual knowledge that his application contained false statements. He stated in his HSI interview and in his sworn written statement that he "lied when [he] said that [he] had never worked in the United States because [he knew] that working without documents is not allowed," and wrote in in his answer that he "apologize[s] to the [Complainant] for not answering with the truth." MSD Ex. G-4, at 1; Ans. 1.

Respondent is liable for violating § 1324c(a)(5).

B. Penalties

Complainant requests a penalty of $473 for one violation of § 1324c(a)(2), and $400 for one violation of § 1324c(a)(5). *See* Compl. Attach. A. Here, Complainant characterizes these as the minimum possible penalty for each violation, citing to 8 C.F.R. § 270.3(b)(1)(ii)(A)–(D) in calculating its penalties, and specifically, to the penalty ranges provided in 8 C.F.R. § 270.3(b)(1)(ii)(A) and (B) for first-time violations of §1324c(a)(2) and (a)(5) occurring after November 2, 2015.[10]

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[9] The Court notes that someone other than Respondent prepared Respondent's Form I-485, *see* MSD Ex. G-3, at 16, and Respondent has identified Spanish as the language he speaks and understands best, *see* Order Memorializing Prehearing Conference 1. However, given that the Form I-485 was interpreted into Spanish for Respondent, *see* MSD Ex. G-3, at 16, and Respondent's admission that he lied to the USCIS officer, *see id.* Ex. G-4, and no evidence in the record suggesting that Respondent did not understand the Form I-485, the Court does not find that this raises a question of material fact as to Respondent's liability under § 1324c(a)(5).

[10] Complainant also cites to *Civil Monetary Penalty Adjustments for Inflation*, 84 Fed. Reg. 66,13502 (April 5, 2019). However, "'[t]hese 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. Velarde*, 14 OCAHO no. 1384, 5 (2020) (quoting *United States v. Messineo*, 14 OCAHO no. 1367, 2 (2020)).

The Court notes that Respondent presented the fraudulent I-551 document on March 21, 2013, *see* MSD Ex. G-2, so there is question as to whether that the violation in Count I occurred prior to November 2, 2015. However, absent briefing from the parties on this issue, and given that Respondent continued to work at Eagle Eye Produce pursuant to that fraudulent document until December 2017, the Court will treat the violation as occurring after November 2, 2015.

For violations that occurred after November 2, 2015, the adjusted penalty amounts in 28 C.F.R. § 85.5 apply. *See* 28 C.F.R.§ 85.3 ("For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the adjusted penalty amounts in section 85.5."); *Bhattacharya*, 14 OCAHO no. 1380a, at 4 ("For violations that occurred after November 2, 2015, the adjusted penalty range as set forth in § 85.5 applies.").

Both violations were assessed when Complainant served Respondent with the NIF: October 20, 2020. *See* Proof of Compliance with Service of Process, Ex. G-8, at 2; MSD Ex. G-1. Therefore, using the adjusted penalty ranges in § 85.5, the penalty range for Count I is no less than $481 and no more than $3,855, and the penalty range for Count II is no less than $407 and no less than $3,251. *See* 28 C.F.R. § 85.5; *Civil Monetary Penalties Inflation Adjustments for 2023*, 88 Fed. Reg. 19,5780–81 (Jan. 30, 2023).

The Court finds Complainant's request for the statutory minimum reasonable and the Respondent provided no analysis as to penalty, therefore the Court will impose the minimum statutory penalty, which (after application of the adjustments under the regulation) is $481 for Count I and $407 for Count II.

C. ORDER TO CEASE AND DESIST FROM FURTHER VIOLATIONS

Complainant also requests Respondent be ordered to cease and desist from further violations of 8 U.S.C. §§ 1324c(a)(2), (5). An order finding violations of § 1324c(a) must require the person or entity to cease and desist from such violations. *See* 8 U.S.C. § 1324c(d)(3); *see also* 8 C.F.R. § 270.3(b)(1)(i); *Zuniga Torentino*, 15 OCAHO no. 1397, 7–8 ("8 U.S.C. § 1324c(d)(3) mandates a cease and desist order upon a finding of a violation of section 1324c(a).").

The Court will therefore order Respondent to cease and desist from further violations of §§1324c(a)(2) and (5).

VI. CONCLUSION

Complainant's motion for summary decision is GRANTED in its entirety.

Respondent is directed to pay civil penalties in the total amount of $888.

Respondent is also directed to cease and desist from further violations of 8 U.S.C. §§ 1324c(a)(2), (5).

VII. CONCLUSIONS OF LAW

1. 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).

2. "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." *Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, at 3.

3. 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.

4. For all violations that occurred after November 2, 2015, the adjusted penalty range as set forth in 28 C.F.R. § 85.5 applies. *See Bhattacharya*, 14 OCAHO no. 1380a 4, at 7.

5. "[T]he date of assessment is the date that ICE serves the NIF on a respondent." *Farias Enterprises LLC*, 13 OCAHO no. 1338, at 7.

6. For civil penalties assessed for violations of § 1324c(a)(1)–(4) after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the minimum penalty is $481 and the maximum is $3,855. *See* 28 C.F.R. § 85.5; *Civil Monetary Penalties Inflation Adjustments for 2023*, 88 Fed. Reg. 19,5780–81.

7. For civil penalties assessed for violations of § 1324c(a)(5)–(6) after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the minimum penalty is $407 and the maximum is $3,251. *See id.*

8. "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.'" *Rubio-Reyes*, 14 OCAHO no. 1349a, at 4 (citing *Zapata-Cosio*, 5 OCAHO no. 822, at 782).

9. Complainant met its burden of showing that there is no genuine issue as to any material fact as to the elements of its claim under § 1324c(a)(2) claim, and that it is entitled to summary decision.

10. Respondent used and possessed a fraudulent I-551 document.

11. Respondent possessed an I-551 Permanent Resident Card and presented it as his List A document when filling out his Form I-9, *see* MSD Ex. G-2, and that this card included his photo and another individual's Alien Registration Number. *Id.* Ex. G-5, at ¶¶ 5–6; MSD 6.

12. Respondent had knowledge of the fraudulent nature of the document.

13. An I-551 card is only issued by the government of the United States, and is not available for purchase from a private entity. *Zuniga Torentino*, 15 OCAHO no. 1397, at 3 ("Social Security cards and LPR cards are issued only by the government of the United States and are never available for 'purchase' from a private entity.").

14. Respondent presented the fraudulent I-551 after November 29, 1990. *See* MSD Ex. G-2; *id.* Ex. G-5, ¶ 5.

15. Respondent's presentation of a fraudulent I-551 to obtain employment without authorization was for the purpose of satisfying any requirement of the INA or obtaining a benefit under the INA.

16. Under INA § 274a.2(b)(1)(ii), (v), within three business days of a hire, an employer must examine the documentation presented by an employee establishing identity and employment authorization and attest that it has done so on section 2 of the Form I-9, and an employee may meet this requirement by "present[ing] an original document which establishes both employment authorization and identity"—a List A document.

17. Presenting documents to gain employment without authorization is "for the purpose of satisfying any requirement of the INA or obtaining a benefit under the INA." *See Zuniga Torentino*, 15 OCAHO no. 1397, at 5 n.3; *Morales-Vargas*, 5 OCAHO no. 732, at 734 (1995); *Rubio-Reyes*, 14 OCAHO no. 1349a, at 6.

18. Complainant met its burden of production even though it did not submit a copy of the fraudulent I-551 document, because the record contains the Form I-9 at issue, an affidavit from the investigating officer, and a sworn statement from Respondent regarding his conduct, and Respondent admits the allegations in the complaint in his answer.

19. To establish a violation of 8 U.S.C. § 1324c(a)(5), Complainant must prove Respondent "prepar[ed], file[d], or assist[ed] another in preparing or filing, any application for benefits under [the INA], or any document required under [the INA], or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made . . . "

20. Complainant has met its burden - showing no question of material fact as to its claim under § 1324c(a)(5).

21. Respondent filed a Form I-485 Application to Register Permanent Residence or Adjust Status. MSD Ex. G-3.

22. The I-485 application contained three false statements. *See id.* at 10; Compl. 3.

23. Respondent acted with knowledge that his I-485 application contained false statements because he stated in his HSI interview and in his sworn written statement that he "lied when [he] said that [he] had never worked in the United States because [he knew] that working without documents is not allowed," and wrote in in his answer that he "apologize[s] to the [Complainant] for not answering with the truth." MSD Ex. G-4, at 1; Ans. 1.

24. For violations that occurred after November 2, 2015, the adjusted penalty amounts in 28 C.F.R. § 85.5 apply. *See* 28 C.F.R.§ 85.3 ("For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the adjusted penalty amounts in section 85.5."); *Bhattacharya*, 14 OCAHO no. 1380a, at 4 ("For violations that occurred after November 2, 2015, the adjusted penalty range as set forth in § 85.5 applies.").

25. Both violations were assessed when Complainant served Respondent with the NIF: October 20, 2020. *See* Proof of Compliance with Service of Process, Ex. G-8, at 2; MSD Ex. G-1.

26. Complainant's request for the statutory minimum was reasonable, and the Respondent provided no analysis as to penalty, therefore the Court will impose the minimum statutory penalty according to the penalty ranges set forth in 28 C.F.R. § 85.5.

27. An order finding violations of § 1324c(a) must require the person or entity to cease and desist from such violations. *See* 8 U.S.C. § 1324c(d)(3); *see also* 8 C.F.R. § 270.3(b)(1)(i); *Zuniga Torentino*, 15 OCAHO no. 1397, 7–8 ("8 U.S.C. § 1324c(d)(3) mandates a cease and desist order upon a finding of a violation of section 1324c(a).").

SO ORDERED.

Dated and entered on February 9, 2023.

_____

Honorable Andrea R. Carroll-Tipton
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.