

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

May 22, 2023

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 2020A00050
	)	
EDGEMONT GROUP, LLC,	)	
Respondent.	)	
_____	)	

NOTIFICATION OF ADMINISTRATIVE REVIEW

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The United States Department of Homeland Security, Immigration and Customs Enforcement (DHS or Complainant) filed a complaint against the Respondent on February 14, 2020, charging Respondent with violating 8 U.S.C. § 1324a by failing to timely prepare and/or present employment eligibility verification forms (Forms I-9) for forty-six individuals. On December 22, 2022, Chief Administrative Law Judge (Chief ALJ) Jean King issued an order finding Respondent liable for forty-six violations of 8 U.S.C. § 1324a(a)(1)(B). In that order, the Chief ALJ bifurcated the issues of liability and penalty assessment and invited the parties to submit further information relevant to penalties.

On May 18, 2023, the Chief ALJ issued a Final Order on Penalties (“Final Order”). In the Final Order, the Chief ALJ considered the five statutory factors set out in 8 U.S.C. § 1324a(e)(5) and ultimately determined that penalties near the middle of the statutory penalty range were appropriate. In determining the appropriate penalty ranges, the Chief ALJ noted that “[t]he applicable penalty range depends on the date of the violations and the date of the assessment.” Final Order at 2. Because the violations at issue occurred after November 2, 2015, the Chief ALJ observed that the adjusted penalty ranges set forth in 28 C.F.R. § 85.5 applied to the violations at issue. *See id.* at 3. The Chief ALJ determined that three different penalty ranges were applicable to the violations at issue, providing as follows:

If the penalty was assessed between August 1, 2016, and February 3, 2017, the minimum penalty is \$216, and the maximum penalty is \$2,156. § 85.5. If the penalty was assessed between February 3, 2017 and January 29, 2018, the minimum penalty is \$220, and the maximum is \$2,191. *Id.* If the penalty was assessed between January 29, 2018 and June 19, 2020, the minimum penalty is \$224 and the maximum is \$2,236. *Id.*

*Id.*

Ultimately, the Chief ALJ found that twenty-four of the violations had an applicable penalty

range of \$216 to \$2,156; that twenty of the violations had an applicable penalty range of \$220 to \$2,191; and that two of the violations had an applicable penalty range of \$224 to \$2,236. *Id.* at 13, 16. The Chief ALJ then assessed the penalties at the mid-range of each purportedly-applicable penalty range for each set of violations.

However, previous OCAHO case law has found that the date a penalty is “assessed” is the date DHS serves the Notice of Intent to Fine (“NIF”) on the Respondent. *See United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 9 (2021); *United States v. Farias Enters. LLC*, 13 OCAHO no. 1338, 7 (2020). In this case, the record appears to show that all forty-six violations at issue were included on the same NIF, which was served on the Respondent on October 17, 2019. *See* Compl. at 2, C’s Mot. Summ. Dec. at 25 (both attaching the NIF at issue).

Therefore, the undersigned will review whether the Chief ALJ applied the correct penalty ranges for the violations at issue, considering both the date of the violations and the date the penalties were deemed to be “assessed” under OCAHO precedent.

This administrative review will be conducted in accordance with the provisions of 28 C.F.R. § 68.54(b)-(d). Accordingly, within twenty-one days of the date of entry of the Chief ALJ’s order, the parties may submit briefs or other written statements addressing the issue presented above. *See* 28 C.F.R. § 68.54(b)(1). The deadline for submitting such briefs or other written statements is **June 8, 2023**. Parties must file and serve their briefs by expedited delivery, in accordance with the provisions of 28 C.F.R. § 68.54(c) and § 68.6(c).

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James McHenry  
Chief Administrative Hearing Officer