

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

July 1, 1996

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324c Proceeding
) Case No. 96C00038
FELICIANO LEON-GUTIERREZ,)
Respondent.)
_____)

**FINAL DECISION AND ORDER GRANTING
COMPLAINANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS**

MARVIN H. MORSE, Administrative Law Judge

Appearances: *Ann M. Tanke, Esq.*, for Complainant
Feliciano Leon-Gutierrez, pro se

I. Procedural History

On April 19, 1996, the Immigration and Nationalization Service (INS or Complainant) filed its Complaint alleging violation of 8 U.S.C. §1324c in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint includes an underlying Notice of Intent to Fine (NIF), served by INS on Feliciano Leon-Gutierrez (Respondent) on June 9, 1995.

Count I of the Complaint, the only count of the Complaint, charges Respondent with knowing use of forged documents, i.e., that Respondent knowingly used, attempted to use and possessed a forged, counterfeited, altered and falsely made Alien Registration Receipt Card, Form I-151, bearing number A091562251 in the name

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of Leon Feliciano, and Social Security Card, number 655-09-7631, bearing the name Leon Feliciano. INS requests a civil money penalty in the amount of \$250 per document, for a total of \$500 in civil money penalties, and requests that I direct Respondent to cease and desist from violating 8 U.S.C. §1324c(a)(2). Exhibit B to the Complaint is Respondent's request for hearing dated June 12, 1995, in which Respondent admits to the alleged §1324c(a)(2) violations. Exhibit A is the NIF.

On April 24, 1996, OCAHO issued a Notice of Hearing (NOH), which transmitted to Respondent a copy of the Complaint and a copy of OCAHO rules of practice and procedure (Rules). On May 13, 1996, Respondent filed his timely Answer to the Complaint in which he made the following admissions: (1) "Respondent . . . admits paragraph A" of the Complaint which states that Respondent used a "forged, counterfeited, altered and falsely made" Alien Registration Receipt Card and Social Security Card; (2) "Denies paragraph B [of the Complaint] as he stopped using these documents two years ago[;]" (3) "Admits paragraph C" of the Complaint which states that Respondent used the Alien Registration Receipt and Social Security Cards "knowing that such documents were forged, counterfeited, altered and falsely made[;]" and (4) "Admits that portion of paragraph D [of the Complaint] that states he knew documents were fraudulent. . . ."

On June 13, 1996, Complainant filed a Motion for Judgment on the Pleadings.

II. Discussion

A. *Lack of Genuine Issue as to Material Fact*

Motions for Judgment on the Pleadings are not specifically provided for in the Rules. OCAHO Rules, however, expressly refer to the Federal Rules of Civil Procedure (Fed. R. Civ. P.) for guidance "in any situation not provided for or controlled by these [R]ules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. §68.1 (1995). A Motion for Judgment on the Pleadings, Fed. R. Civ. P 12(c), "is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Herbert Abstract Co. v. Touchstone Properties, Ltd.*, 914 F.2d 74, 76 (5th cir. 1990). A Motion for Judgment on the Pleadings is granted "when the moving party clearly establishes on the face of the

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pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner and Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

Respondent’s Answer explains that he knowingly used fraudulent documents to provide for his family and to keep them from starving. Respondent’s underlying motivation for violating §1324c(a)(2) cannot be considered a defense to the violations. Additionally, Respondent’s denial of paragraph B of the Complaint is in fact an admission of violation. Because paragraph B, reflecting the underlying law, states that use must be conducted “on or after November 29, 1990” to constitute a violation, Respondent’s admission that he ended such use in 1994 satisfies the statutory requirement. Having failed to adequately deny any of the allegations of the Complaint and having totally failed to contest any material fact alleged in the Complaint, Respondent is deemed to have admitted all of the allegations in the Complaint. 28 C.F.R. §68.9(c)(1).

Respondent presents no defenses to the violations alleged. Obviously, there is no genuine issue as to any material fact alleged. Accordingly, I find and conclude that Complainant is entitled to judgment as a matter of law.

INS asserts entitlement to “the full amount of civil money penalties requested in the Complaint,” \$500. Even though the Motion incorrectly recites that the penalty is \$250, the statutory minimum civil penalty is “not less than \$250 . . . for each document used. . . .” 8 U.S.C. §1324c(d)(3)(A). Because the Complaint alleges and Respondent’s Answer admits using two documents, the statutory minimum for violation is \$500 in civil money penalties.

Unlike *United States v. Gloria Fashions, Inc.*, 6 OCAHO 839 (1996) (granting in part, and taking under advisement in part, Complainant’s Motion for Judgment on the Pleadings) and *United States v. Chum Corp.*, 6 OCAHO 842 (1996) (granting in part, and denying in part, Complainant’s Motion for Judgment on the Pleadings), Respondent explicitly acknowledges culpability in the instant case. Moreover, in contrast to *Gloria Fashions*, here, INS seeks civil money penalties at the statutory minimum; thus, further inquiry into the calculation or justification of penalties sought is unnecessary.

B. Liability Established and Motion Granted

On the basis of un rebutted allegations, I find that Respondent violated 8 U.S.C. §1324c(a)(2). Respondent’s admissions clearly and con-

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clusively establish the violations alleged in the Complaint. Having admitted to the violations alleged in the Complaint, Respondent is disabled from protesting that the allegations of the Complaint are not established as alleged by a preponderance of the evidence. Moreover, Respondent failed to respond to Complainant's Motion For Judgment on the Pleadings. The Motion is granted.

III. *Ultimate Findings, Conclusions and Order*

I have considered the Complaint and subsequent pleadings. For the reasons already stated, I find and conclude that:

1. Complainant's Motion for Judgment on the Pleadings is granted;
2. As alleged in Count I, the only Count of the Complaint, Respondent is in violation of 8 U.S.C. §1324c(a)(2) for having knowingly used forged documents;
3. Respondent shall pay civil money penalties in the amount of \$500 for the violations listed in Count I of the Complaint;
4. Respondent shall cease and desist from violating 8 U.S.C. §1324c;
5. The hearing is canceled.

This Final Decision and Order granting Complainant's Motion for Default Judgment "shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order. . . ." 8 U.S.C. §1324c(d)(4). Moreover, "A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. §1324c(d)(5).

SO ORDERED:

Dated and entered this 1st day of July, 1996.

MARVIN H. MORSE
Administrative Law Judge