

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

UNITED STATES OF AMERICA,	)
Complainant,	)
	)
v.	) 8 U.S.C. §1324a Proceeding
	) CASE NO. 92A00257
	)
BUSY CORNER SPORTSWEAR,	)
Respondent.	)
_____	)

FINAL DECISION AND ORDER  
GRANTING COMPLAINANT'S REQUEST  
FOR RELIEF

E. MILTON FROSBURG, Administrative Law Judge

Representation: Jason Raphael, Esquire  
for Complainant

I. Procedural History

On March 3, 1993, I issued my Order Granting Complainant's Motion For Default Judgment. The detailed procedural history of this case, up to that time, is included in that Decision. In that Order, I bifurcated the issue of the appropriate amount of civil penalties and directed Complainant, and Respondent if it wished, to submit a statement, on or before March 12, 1993, regarding the application of the five factors enumerated in 28 C.F.R. 68.52(c)(iv).

On March 11, 1993, for good cause shown, I granted Complainant's March 9, 1993 request to extend time to submit its statement regarding the appropriateness of the requested civil penalties. On April 4, 1993, Complainant filed its Motion For Approval of Complain-

ant's Proposed Penalty Amounts accompanied by a signed declaration by Special Agent Wai Tak Ng, the principal case agent assigned to the inspection, investigation and presentation of this case.

To date, Respondent has not filed any statement regarding the appropriateness of the requested civil penalties.

## II. Facts

In my previous Decision and Order, I found Respondent liable for two (2) violations of knowing hire and/or continuing to employ, in violation of 8 U.S.C. 1324a(a)(1)(A) and/or 8 U.S.C. 1324a(a)(2), as set forth in Count I of the Complaint. I also found Respondent liable for two (2) violations of failing to prepare and/or make available for inspection the employment eligibility verification form (Form I-9) and for three (3) violations of failing to properly complete section 2 of the employment eligibility verification form (Form I-9). 8 U.S.C. 1324a(a)(1)(B). These violations were set out in Counts II and III of the Complaint. Complainant has requested total civil penalties of five thousand six hundred dollars fifteen dollars (\$5,615) for these violations.

## III. Civil Penalties

With respect to the determination of the amount of civil penalties to be set for violations of the paperwork requirements of 8 U.S.C. 1324a, Section 274A(e)(5) of the Immigration and Nationality Act (Act), which corresponds to 28 C.F.R. 68.52(c)(iv), states:

(T)he order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien and the history of previous violation.

In contrast, when considering the amount of civil penalties to set for knowing hire/continuing to employ violations of the Act, the statute is silent as to any mandatory or discretionary considerations. 8 U.S.C. 1324a(a)(1)(A), (a)(2). Thus, it is left to my sound discretion to set the civil penalty amount for those violations.

### A. Factors

1. Size of the Business of the Employer Being Charged

Complainant asserts that Respondent, incorporated since 1990, employed thirty-three (33) individuals at the time of the March 17, 1993 compliance inspection. Complainant has not presented any other information that relates to the size of this Respondent and Respondent has made no argument on this issue.

Based on the limited information before me, I find that Respondent is a small business. As such, I will mitigate with respect to this factor in Counts II and III and, in my sound discretion, will consider this factor when determining the appropriateness of the requested civil penalties for Count I.

2. Good Faith of the Employer

Complainant asserts that Respondent did not show good faith in its compliance with the requirements of 8 U.S.C. 1324a. Complainant supports its position with the following facts:

- (1) Respondent not only had the ability to comply with 8 U.S.C. 1324a, but also had the knowledge to comply, by virtue of, both an in-person and a telephonic educational visit by the Service;
- (2) Respondent did complete Forms I-9 for all its authorized employees, but did not do so for any of its unauthorized employees;
- (3) Respondent admitted to the INS inspector, Mr. Ng, that it did not have the unauthorized employees complete the Forms I-9; and,
- (4) the unauthorized employees were paid substandard wages of \$2.00 or \$3.33 per hour.

Respondent has made no argument regarding this factor.

I agree with Complainant that the facts indicate that there was no good faith effort on Respondent's part to comply with the requirements of 8 U.S.C. 1324a. As such, I find that it would not be appropriate to mitigate based on this factor in Counts II and III. Further, in my discretion, I have determined that Respondent's good faith in complying with the paperwork requirements of 8 U.S.C. 1324a is irrelevant in this case when considering the civil penalties for the knowing hire/continuing to employ violation. However, Respondent's apparent blatant disregard for the prohibition against hiring unauthorized aliens will be considered.

3. Seriousness of the Violation

Complainant argues that Respondent's violations are all serious. Previous case law has found that a serious violation is one which "render(s) ineffective the Congressional prohibition against employment of unauthorized aliens". U.S. v. Valladares, 2 OCAHO 316 (4/15/91).

Respondent has made no argument regarding this factor.

I agree with Complainant's position that the facts in this case meet the standard for considering the violations alleged in Counts II and III as serious. Therefore, in my sound discretion, I will consider the seriousness of the violation when determining the appropriate civil penalty for Count II and III.

4. Whether or not the Individual was an Unauthorized alien

I have previously found, as Complainant has alleged, that Respondent has employed two (2) unauthorized aliens. Respondent has made no argument regarding this factor. As such, I will not mitigate in Counts II and III based on this factor. Obviously, this factor is a consideration when considering the civil penalty for Count I. I also find Count I to be a serious violation.

5. History of Previous Violations of the Employer

Neither Complainant nor Respondent has asserted that there were previous violations of Section 274A by this Respondent. Therefore, I infer that there were none. As such, in my sound discretion, I will mitigate in Counts I and II based on this factor and I will consider it when considering the civil penalties in Count I.

B. Amount of Civil Penalty

Complainant has requested that I assess a total civil penalty in this case of five thousand six hundred fifteen dollars (\$5,615), which reflects a civil penalty of one thousand one hundred ninety-five dollars (\$1,195.00) for each of the two violations in Count I, seven hundred eighty dollars (\$780.00) for each of the two (2) violations in Count II and five hundred fifty-five dollars (\$555.00) for each of the three (3) violations in Count III.

After a review of the record, Complainant's arguments and Respondent's nonresponse, I find that, using a judgmental approach, the

3 OCAHO 511

amount of civil penalties requested by Complainant is reasonable and appropriate. Therefore, I direct Respondent to pay to Complainant, on or before thirty (30) days from the date of this Order, a total of five thousand six hundred fifteen dollars (\$5,615).

Under 28 C.F.R. 68.53(a) a party may file with the Chief Administrative Hearing Officer, a written request for review of this Decision and Order together with supporting arguments. Within thirty (30) days of the date of the Administrative Law Judge's Decision and Order, the Chief Administrative Hearing Officer may issue an Order which modifies or vacates this Decision and Order.

**IT IS SO ORDERED** this 20th day of April, 1993, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge