

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. 92A00221
JOHNNY NG LIM &)
CHRISTINA LIM GO,)
d.b.a., THE NEW ORIENT,)
Respondents.)
_____)

ORDER AND NOTICE OF HEARING PROCEDURES

On Friday April 16, 1993, pursuant to my order of April 6, 1993, I conducted a telephonic conference call with both parties to discuss settlement and general procedures for the evidentiary hearing to be held on May 17-18 1993. This case is currently set for an evidentiary hearing to be held on May 17-18, 1993, at San Francisco, California. I have previously issued a decision finding Respondents are liable on all counts of the complaint. The purpose of the hearing is to determine an appropriate civil penalty. See Decision Granting Partial Summary Decision dated March 22, 1993. Order of April 6, 1993.

At the evidentiary hearing, Respondent should be prepared through testimony of witnesses, including themselves, and documents to provide proof in mitigation (to show that the reasons why they violated the law was not intentional or part of a general policy to justify a minimum fine), including the reasons why they hired the four named employees in Count I, Angelina Batacan, Dante Batacan, Miguel Batacan and Esteban Castenada, who were aliens unauthorized for employment in the United States and why Respondents failed to properly prepare the Employment Eligibility Verification Forms ("Form I-9") as alleged in the complaint. Although Respondents have filed pleadings with this office suggesting the factors to consider in mitigation, the purpose of an evidentiary hearing is to provide the Administrative Law Judge ("ALJ") with an opportunity to determine the credibility of Respondent's statements by listening to and observing their conduct and demeanor on the witness stand.

Respondents should also testify about the size of their business, including submitting to the court a financial statement, prepared by a competent accountant or bookkeeper covering the past six-twelve months of business operations. See your response dated February 19, 1993, and filed with this office on February 22, 1993, for additional guidance and information.

Complainant will have the burden to prove mitigation. The government will have an opportunity to rebut any evidence provided by Respondent and submit any additional evidence to support the fine requests in the complaint. Since the Complainant is pro se, I intend on providing both parties with some direction on how this hearing shall be conducted. In my view, the purpose of this hearing is to develop the relevant and material facts of this case without significant delays caused by Complainant's lack of legal expertise. This is an administrative proceeding and I will not follow the strict rules of evidence applicable to cases heard before the federal district courts.¹ Therefore, I will assist Complainant in conducting direct examination of her witnesses.

The Respondents shall present their evidence to show mitigation first. Mr. Lim should be the first witness called to be followed by any other witnesses Respondents want to call to show mitigation. I will conduct the direct examination of Mr. Lim and any of his witnesses and provide guidance to Respondents on the introduction of evidence. Government counsel shall be given an opportunity to cross examine all of Respondent's witnesses.

After Respondent has had an opportunity to present its evidence in mitigation, I will allow complainant to present any evidence in rebuttal. It is important to note that there are four knowing counts alleged in the complaint and evidence on the reasons for Respondent's decision to hire these individuals will be important to determining the fine.

¹ In contrast to judicial proceedings, the rules of evidence governing administrative hearings are considerably more relaxed. The "technical rules for the exclusion of evidence applicable in jury trials do not apply to proceedings before federal administrative agencies in the absence of a statutory requirement that such rules are to be observed. See Opp Cotton Mills b. Adm'r of Wage and Hour Div. of Dep't of Labor, 312 U.S. 126, 155, 61 S. Ct. 524, 85 L.Ed. 624 (1941), and cases cited therein. Neither the statute nor the regulations applicable to this case require the following of the strict rules of evidence. Hearsay, if relevant and material and reliable, is admissible. See Calhoun v. Bailar, 626 F.2d 145 (9th Cir. 1980)

I discussed in general the trial procedures with both parties during the telephonic call held on April 16, 1993. During this telephonic conference call I suggested that the parties make one last attempt to settle this case including working out a reasonable payment plan for Respondents. I will permit the parties one more opportunity to settle this case.

Accordingly, it is hereby **ORDERED** that the parties shall make another effort at settlement of this case on or before May 3, 1993. If this office does not receive written settlement pleadings from the parties on or before May 3, 1993, I will not accept any settlement agreements for less than the demands of the complaint, unless for good cause.

It is further **ORDERED** that if settlement in this case cannot be reached on or before May 3, 1993, that Respondent shall file with this office on or before May 6, 1993, a list of all witnesses they intend on calling in their case and identify what exhibits they will want to introduce in evidence. The Complainant shall file the same pleading with this office on or before May 7, 1993.

SO ORDERED this 20th day of April, 1993.

ROBERT B. SCHNEIDER
Administrative Law Judge