

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. 93A00105
JESUS SATARAIN,)
INDIVIDUALLY,)
Respondent.)
_____)

MODIFICATION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER OF THE ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER

On August 30, 1993, the Administrative Law Judge (hereinafter ALJ) issued a decision and order granting the complainant's motion for a default judgment and assessing civil money penalties against the respondent in the above captioned proceeding. The complaint alleged violations of the employer sanctions provisions of the Immigration Reform and Control Act (IRCA), codified at section 1324a of Title 8, U.S. Code. Complainant alleged that respondent had failed to prepare the Employment Eligibility Verification form (Form I-9) for two named individuals in violation of section 1324a (a)(1)(B) of Title 8, U.S. Code, and requested a civil money penalty of \$545.00 for the alleged violations. As respondent never responded to the ALJ's Order to Show Cause and had offered no explanation for its non-response, the ALJ entered a default judgment against respondent and directed the respondent to pay " . . . on or before 30 days from the date of this Order, a total of \$545.00 . . ." ALJ's Decision and Order at 2.

The Chief Administrative Hearing Officer's Review Authority

Pursuant to the Attorney General's authority to review an ALJ's decision and order; as provided in section 1324a(e)(7) of Title 8, U.S. Code, and delegated to the Chief Administrative Hearing Officer in section 68.53(a) of Title 28, Code of Federal Regulations; I find it

necessary to modify the ALJ's August 30, 1993, order in the above captioned proceeding for the reasons set forth below.

Time Period for Payment of Civil Money Penalties

As previously noted, the ALJ directed respondent to pay complainant "on or before thirty (30) days from the date of this Order, the total of \$545.00 for the violations . . ." ALJ's Decision and Order at 3. As cited above, section 1324a(e)(7) of Title 8, U.S. Code, and section 68.53(a) of Title 28, Code of Federal Regulations, provide for administrative review of an ALJ's decision and order. Section 68.53(a) provides in pertinent part that:

(1) . . . within thirty (30) days from the date of the decision, the Chief Administrative Hearing Officer may issue an order which modifies or vacates the Administrative Law Judge's decision and order.

(2) If the Chief Administrative Hearing Officer issues an order which modifies or vacates the Administrative Law Judge's decision and order, the Chief Administrative Hearing Officer's decision and order becomes the final agency decision and order of the Attorney General on the date of the Chief Administrative Hearing Officer's decision and order. If the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's decision and order, then the Administrative Law Judge's decision and order becomes the final agency order of the Attorney General thirty (30) days after the date of the Administrative Law Judge's decision and order.

28 C.F.R. §68.53(a).

Pursuant to section 1324a(e)(8) of Title 8, U.S. Code, and section 68.53(a)(3) of Title 28, Code of Federal Regulations, one adversely affected by a final agency order may file a petition for review of the final agency order with the appropriate circuit court of appeals within forty-five (45) days after the date of the final agency order.

Given this legislative and regulatory framework for administrative and/or judicial review, it was inappropriate for the ALJ to direct respondent to pay the civil money penalty by a date certain that falls before it is clear that the ALJ's order has become the final agency order.

ACCORDINGLY,

I hereby MODIFY the sentence containing the above quoted language requiring payment "on or before thirty (30) days from the

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date of this Order" to read as follows: "I direct Respondent to pay to Complainant a total of five hundred forty five dollars (\$545.00)."

Modified this 20th day of September, 1993.

JACK E. PERKINS
Chief Administrative
Hearing Officer

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FINAL DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR A DEFAULT JUDGMENT AND CIVIL MONEY PENALTIES

On August 2, 1993, I issued an Order to Show Cause why a Default Judgment should not issue against the Respondent in this matter. In the Order to Show Cause, I stated that the Respondent's Answer to the OSC should comply with 28 C.F.R. §§ 68.7 and 68.9 and that such Answer would be considered only if it is received by my office within fifteen calendar days from receipt of the Order to Show Cause. I also indicated that if Respondent does not answer the Order to Show Cause, I would consider the Complainant's Motion for Judgment by Default and may find that the Respondent has violated 8 U.S.C. § 1324a as alleged in the Complaint and award Complainant the requested amount of civil penalties.

The Respondent never responded to the Order to Show Cause and has offered no explanation to the non-response.

In its Complaint, Complainant alleged that Respondent violated § 274A(a)(1)(B) of the Immigration and Nationality Act by failing to prepare the Employment Eligibility Verification form (Form I-9) for

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two individuals and assessed a civil money penalty of \$545.00 for the alleged violations.

It is normally my practice to order the Complainant to address 28 C.F.R. § 68.52(c)(iv), so that I might have the benefit of how the Complainant arrived at the assessed civil money penalty. However, in this case I do not feel it is necessary since the amount of the fine is well within the parameters of 8 U.S.C. § 1324a, § 274A(e)(5) of the Immigration and Nationality Act.

Thus, after a careful review of the award, the parties' arguments or lack of arguments, and the relevant law, I find that, using a judgmental approach, the amount of civil money penalties requested by Complainant is appropriate and fair.

As such, I direct the Respondent to pay, on or before 30 days from the date of this Order, a total of \$545.00 for the violations as set out in the First Count of the Complaint filed by the Complainant.

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, the Chief Administrative Hearing Officer may issue an Order which modifies or vacates this Decision and Order.

Dated this 30th day of August, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge