

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. 1324c Proceeding
) Case No. 94C00200
MARIA TERESA de JESUS)
MORALES- MARTINEZ,)
Respondent.)
_____)

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

On January 18, 1995, the Honorable Marvin H. Morse, the Administrative Law Judge (ALJ) assigned to United States v. Morales-Martinez, issued a Final Decision and Order giving effect to a stipulation by the respondent admitting to the allegations of document fraud as contained in the complaint.

The complaint, as filed by the Immigration and Naturalization Service, included two separate and independent counts alleging violations of 8 U.S.C. § 1324c. Count I alleged that the respondent forged, counterfeited, altered, and falsely made an employment eligibility verification form (Form I-9), in violation of 8 U.S.C. § 1324c(a)(1). Count II charged the respondent with knowingly using, attempting to use and possessing a forged alien registration receipt card, Form I-551, in violation of 8 U.S.C. § 1324c(a)(2).

On January 17, 1995, a fully executed stipulation was filed by the respondent withdrawing the request for a hearing, admitting the allegations of document fraud as presented in the complaint, and requesting that a final order be entered by the ALJ. The ALJ, after failing to find a reason not to give effect to the intent of the parties as

reflected in the stipulation, issued a final decision and order finding liability for both counts of violations as alleged in the complaint. Additionally, the ALJ ordered the respondent to cease and desist from further violations under authority of 8 U.S.C. § 1324c(d)(3), and ordered the respondent to pay \$500 in civil money penalties (\$250 for each count). See 8 U.S.C. § 1324c(d)(3)(A).

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 8 U.S.C. § 1324c(d)(4), and delegated to the Chief Administrative Hearing Officer (CAHO) in section 68.53(a) of 28 C.F.R.; it is necessary, upon review, to modify the ALJ's January 18, 1995, order in light of a legal interpretation contained in a subsequent CAHO order, as set forth below.

In view of the February 7, 1995, CAHO modification of the ALJ's Order Granting Complainant's Motion for Summary Decision in United States v. Remileh, 5 OCAHO 724 (1995), there is no liability as a matter of law for the alleged violation of 8 U.S.C. § 1324c(a)(1) in count I, concerning the false making of a Form I-9, irrespective of any stipulations by the parties. As was established in Remileh, "The attestation of an employee to false information on an Form I-9 does not constitute the creation of a falsely made document in violation of 8 U.S.C. § 1324c." 5 OCAHO 724, at 9.

Since the respondent has admitted the allegations as contained in the complaint, there is no reason to re-evaluate the respondent's liability for the Count II violation regarding the forged alien registration card.

ACCORDINGLY, the ALJ's Final Decision and Order is hereby MODIFIED; in that:

1. The allegation as contained in Count I of the complaint is dismissed in accordance with the CAHO decision in United States v. Remileh; and
2. The civil money penalty is to be reduced by \$250 reflecting the dismissal of Count I.

Additionally, the Final Decision and Order of the ALJ is hereby AFFIRMED; to the extent of:

3. The finding of liability for Count II;
4. The order to cease and desist from further violations of 8 U.S.C. § 1324c; and
5. The order for the respondent to pay a civil money penalty of \$250 for the violation in Count II.

5 OCAHO 727

It is **SO ORDERED**, this 13th of February, 1995.

JACK E. PERKINS
Chief Administrative Hearing Officer

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ERRATA TO FINAL DECISION AND ORDER
(January 19, 1995)

The reference at the end of the first paragraph on page 1 of the Final Decision and Order dated January 18, 1995, to "8 U.S.C. § 274C" is corrected to read "8 U.S.C. § 1324c."

SO ORDERED.

Dated and entered this 19th day of January, 1995.

MARVIN H. MORSE
Administrative Law Judge

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FINAL DECISION AND ORDER

(January 18, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Anne M. Tanke, Esq., for Complainant.
Ernest A. Hoidal, Esq., for Respondent.

On November 25, 1994, the Immigration and Naturalization Service (INS or Complainant) filed its complaint alleging violations of Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324c, enacted by the Immigration Act of 1990, Pub. L. No. 101-649 (1990) 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 Maria Teresa de Jesus Morales-Martinez (Respondent or Morales-Martinez) on April 4, 1994. Respondent is charged in Count I with allegedly forging, counterfeiting, altering, and falsely making an employment eligibility verification form (Form I-9) dated June 11, 1991, in violation of 8 U.S.C. § 1324c(a)(1). Count II charges her with knowingly using, attempting to use and possessing a forged alien registration receipt card, Form I-551, bearing #A098767890 in the name of Teresa Morales-Martinez, in violation of 8 U.S.C. § 1324c(a)(2). INS assessed a civil money penalty of \$250 for each Count, a total of \$500, and requested that Respondent be ordered to cease and desist from violations of 8 U.S.C. § 274C.

On January 5, 1995 counsel for Respondent filed a copy of a proposed Stipulation bearing his signature and advised that the Stipulation had been forwarded to counsel for Complainant for execution and filing in OCAHO. On January 17, 1995, counsel for Complainant filed the fully executed Stipulation. By the Stipulation, Respondent, with concurrence of Complainant, undertakes that:

- (1) the allegations in the complaint concerning document fraud are admitted;
- (2) the request for hearing is withdrawn; and
- (3) requests that "the final order be entered in this matter."

There is no reason not to give effect to the intent of the parties as reflected in their Stipulation. Accordingly, considering the statutory requirements upon a finding of liability pursuant to § 1324c, I find and conclude that:

- A. Respondent is found to have violated the provisions of 8 U.S.C. § 1324c(a) as more fully alleged and described in the complaint;
- B. Respondent shall cease and desist from further violations of 8 U.S.C. § 1324c. See 8 U.S.C. § 1324c(d)(3);
- C. Respondent shall pay a civil money penalty in the sum of \$250 for each Count, for a total penalty of \$500. See 8 U.S.C. § 1324c(d)(3)(A); and
- D. The hearing in this case is canceled.

SO ORDERED.

Dated and entered this 18th day of January, 1995.

MARVIN H. MORSE
Administrative Law Judge