

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

June 6, 1995

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a Proceeding
) OCAHO Case No. 94A00113
KENT B. BURNS AND INTRA-)
CONTINENTAL ENTERPRISES,)
INC.,)
Respondents.)
_____)

ORDER DENYING COMPLAINANT'S MOTION TO RECONSIDER
ORDER GRANTING IN PART AND DENYING IN PART
COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

On May 22, 1995, complainant filed a Motion to Reconsider Order Granting in Part and Denying in Part Complainant's Motion for Summary Judgment (Motion). Complainant's Motion requests the undersigned to reconsider that portion of the May 9, 1995 Order Granting in Part and Denying in Part Complainant's Motion for Summary Judgment (Order) relating to respondent's liability as to Hector Azurmendi.

The May 9, 1995 Order granted summary judgment in complainant's favor as to 65 of 68 alleged violations of the employer sanctions provisions of the Immigration Reform and Control Act of 1986, as amended (IRCA), 8 U.S.C. § 1324a. The remaining allegations involved violations concerning two (2) individuals named in Count II of the Complaint, and one (1) individual, Hector Azurmendi, named in Count III. Complainant's Motion seeks reconsideration of the Order only as to the determination involving Hector Azurmendi.

Count III of the Complaint alleges that the respondent hired 27 named individuals in the United States after November 6, 1986, failing to ensure that those individuals timely complete section 1 of the Form I-9, and failing to complete section 2 of the Form I-9 within three (3) business days of hire. The May 9, 1995 Order granted summary judgment in complainant's favor on 26 of the 27 alleged violations, leaving at issue only that violation which involves Hector Azurmendi.

Summary decision concerning the alleged violation involving Hector Azurmendi was denied because the evidence presented in support of that alleged violations was found to be insufficient.

Specifically, the date of hire for Hector Azurmendi was listed as "June, 1993" and upon examining the evidence in the light most favorable to the respondent, the hire date was determined to have been Wednesday, June 30, 1993, for the purposes of the summary adjudication. The provisions of 8 U.S.C. § 1324a allow an employer three (3) days after the date of hire to complete section 2 of the employees Form I-9. Summary decision was denied because it was determined that three (3) business days following the date of hire would have been Monday, July 5, 1993 (Thursday, July 1 being day 1, and Friday, July 2 being the second day thereafter, and the day Hector Azurmendi's Form I-9 was completed).

Complainant seeks reconsideration, asserting that the day of hire, Wednesday, June 30, 1993, should be counted as day one (1) when determining the three (3) day period at issue. However, "[t]he employer has until the end of the third business day from the first day of employment to complete section 2 of the I-9 Form." United States v. Earl & Beverly McDougal, et al., 4 OCAHO 687, at 6 (1994) citing 8 C.F.R. § 274a.2(b)(1)(ii)(B) and (iv) (1994) (emphasis added). A rational interpretation of that regulatory wording would then allow that the employer be granted three (3) additional business days from the employment commencement date in which to complete section 2 of the pertinent Form I-9.

Complainant alternatively requests that the undersigned grant summary judgment as to that portion of the alleged Count III violation involving Hector Azurmendi which states that respondent did not ensure that Hector Azurmendi completed section 1 of the I-9 in a timely manner. Complainant elected to plead Count III as both the failure to ensure completion of section 1 in a timely manner, as well as the failure to complete section 2 within three (3) business days of hire. This count is not being severed and therefore complainant's request for summary

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judgment as to the failure to ensure the timely completion of section 1 of the I-9 on that ground is being denied.

Accordingly, complainant's Motion to Reconsider Order Granting in Part and Denying in Part Complainant's Motion for Summary Judgment is denied as it relates to the alleged Count III violation involving Hector Azurmendi.

JOSEPH E. MCGUIRE
Administrative Law Judge