

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. 94C00115
MOHAMMED NOOREALAM,)
Respondent.)
_____)

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

On September 8, 1995, the Honorable Marvin H. Morse, the Administrative Law Judge (ALJ) assigned to *United States v. Noorealam*, issued a Final Decision and Order against Mohammed Noorealam, hereinafter the Respondent.

Count I of the Complaint in the instant case charges Respondent with obtaining and using the following forged, counterfeited, and falsely made documents: (1) an envelope bearing a Bangladeshi postage stamp and a cancellation date of August 8, 1973, (2) a "New York Telephone" letter with the caption "a NYNEX Company," dated August 18, 1975, (3) an installation/maintenance visit charge by "New York Telephone," "a NYNEX Company," dated February 15, 1976, (4) a telephone bill from "New York Telephone," "a NYNEX Company," dated November 5, 1976, (5) a telephone bill of "New York Telephone," "a NYNEX Company" dated February 4, 1977, (6) a telephone bill of New York Telephone," "a NYNEX Company," dated October 5, 1977, and (7) a telephone bill of "New York Telephone," "a NYNEX Company," dated March 5, 1970, all in violation of 8 U.S.C. § 1324c(a)(2).¹

¹ Title 8 U.S.C. § 1324c(a)(1994) provides, in pertinent part, as follows:
It is unlawful for any person or entity knowingly-(1) to forge, counterfeit, alter or falsely make any document for the purpose of satisfying a requirement of this chapter, (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter,

Count II charges that Respondent knowingly forged, counterfeited, and falsely made (1) an application for Permanent Residence (Form I-485) and (2) an application for employment authorization (Form I-765) in violation of 8 U.S.C. § 1324c(a)(1). The documents listed in Counts I and II were all filed with the Immigration and Naturalization Service (INS) by the Respondent at the same time, with the documents listed in Count I used to substantiate the Form I-485 application listed in Count II. (Tr. at Ex. A.)

In the September 8, 1995, Final Decision and Order (ALJ Order), the ALJ found that the Respondent knowingly used, attempted to use, and possessed the forged, counterfeited, and falsely made documents, as alleged in Count I of the Complaint, for the purpose of satisfying a requirement of the INA in violation of 8 U.S.C. § 1324c(a)(2), and that Respondent, as alleged in Count II of the Complaint, knowingly forged, counterfeited, and falsely made the Form I-485 and the Form I-765 for the purpose of satisfying a requirement of the INA in violation of 8 U.S.C. § 1324c(a)(1).

Count II, based directly on the Respondent's completion of the Forms I-485 and I-765, alleges a section 1324c(a)(1) violation on the ground that the Respondent forged, counterfeited, and falsely made the application for permanent residence (I-485) and the application for employment authorization (I-765) when he provided false information on these forms. The ALJ rejected an argument by Respondent that the holding in *United States v. Remileh*, 5 OCAHO 724 (1995) precludes a finding of liability for Count II. (ALJ Order at 4-5.) The ALJ sought to distinguish the instant case from *Remileh* on the following grounds: (1) *Remileh* is limited to false entries on Forms I-9, (2) *United States v. Thoronka*, 5 OCAHO 772 (1995) distinguished *Remileh* in cases where the allegation is forgery, counterfeiting, altering and/or false making, as distinguished from "false making" alone, and (3), the Respondent has stipulated that the Forms I-485 and I-765 were forged, counterfeited, and falsely made as alleged in Count II. *Id.* I have determined that it is necessary to modify the ALJ's Order with regard to Count II for the reasons set forth below.²

² The Attorney General's authority to review an ALJ's decision and order is set out 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. As is well established, when reviewing a final decision from an ALJ, the CAHO has *de novo* review authority and may consider any facts or issues of law which were previously before the ALJ. *See Mester Mfg. Co. v. INS*, 879 F.2d 561, 565 (9th Cir. 1989) and *Maka v. INS*, 904 F.2d 1351, 1355 (9th Cir. 1990).

THE INCLUSION OF FALSE INFORMATION IN THE COMPLETION OF AN INS FORM DOES NOT CONSTITUTE THE CREATION OF A "FALSELY MADE" DOCUMENT IN VIOLATION OF 8 U.S.C. § 1324c.

Remileh held that "the attestation of an employee to false information on a Form I-9 (employment eligibility verification form) does not constitute the creation of a 'falsely made' document in violation of 8 U.S.C. § 1324c." *United States v. Remileh*, 5 OCAHO 724, at 2-3. Rather, "(i)t is the underlying fraudulent documents submitted to an employer to establish identity and/or work authorization, which is the proper basis of a section 1324c violation against an employee in the context of the employment eligibility verification system of 8 U.S.C. §1324a." *Id.* at 3 (footnote omitted.)

I. *Remileh Is Not Limited to False Entries on Forms I-9.*

Remileh reviewed the relevant case law and concluded that:

The term "falsely made" has repeatedly been found to refer to the false execution of a document, not a valid document containing false information [T]he common law definition of "falsely made" . . . supports the view that this term is not intended to include documents which contain false information, but which have been validly executed. A Form I-9, executed by the employer and employee containing false information, is not falsely made, but simply false.

Remileh 5 OCAHO 724, at 5.

Under this line of reasoning, there is no substantive distinction between the inclusion of false information in completion of a Form I-9, a Form I-485, or a Form I-765. If one is dealing with a genuinely executed INS form that contains false information, it comes within the ambit of *Remileh*. Although *Remileh* was limited to its facts and did not include dicta discussing broader ramifications, it is a misinterpretation of the reasoning behind the holding in that case to infer that the supplying of false information in the completion of a Form I-9 is not a "false making" for purposes of section 1324c, but the providing of false information on a different INS form would constitute a false making.

II. *United States V. Thoronka Is Not Relevant to the Situation Presented Here.*

United States v. Thoronka, 5 OCAHO 772 (1995) did not revisit the substantive issue in *Remileh*. *Thoronka* affirmed an ALJ's interlocutory order holding that a complaint alleging a false making of a Form I-9 survived a motion to dismiss for failure to state a claim upon which relief can be granted because the Complaint *also* alleged forgery,

counterfeiting, and altering the Form I-9. At that early procedural juncture of the *Thoronka* case, it was at least possible that the Complainant INS could come forward at the appropriate time with evidence that the Respondent forged, counterfeited, or altered a Form I-9, and that was all that was necessary to survive a motion to dismiss for failure to state a claim upon which relief can be granted. The holding in *Thoronka* was restricted to this narrow procedural issue.

III. *Stipulations the Respondent Made, as to Whether the Form I-485 and Form I-765 Were Forged, Counterfeited, and Falsely Made, Are Not Controlling.*

In April of 1995, the parties entered into a Stipulation of Facts that included admissions by the Respondent that the documents were forged, counterfeited, and falsely made because the documents contained false information. The Respondent's stipulation appears to be both a stipulation of fact and a conclusion of law. While the Respondent's portion of the statement that he provided false information on a form appears to be a stipulation of fact, the portion of the statement that claims that the providing of false information makes the application forged, counterfeited and falsely made is a conclusion of law. The Chief Administrative Hearing Officer cannot be bound by a stipulation of conclusions of law made by a party in any proceeding.

ACCORDINGLY,

For the above-stated reasons, the ALJ's Final Decision and Order as to Count II of the Complaint against the Respondent, Noorealam is hereby MODIFIED in that:

Count II is dismissed because the providing of false information on a Form I-485 and Form I-765 does not constitute the creation of a falsely made document in violation of section 1324c, nor does it constitute the forging or counterfeiting of a document in violation of the INA.

The Final Decision and Order in regard to Count I is hereby AFFIRMED in that Respondent is liable for knowingly using forged, counterfeited, altered, and falsely made documents described above, knowing the documents to be falsely made, after November 29, 1990, for the purposes of satisfying a requirement of the INA, in violation of the provisions of 8 U.S.C. § 1324c(a)(2). Accordingly, the civil money penalty assessed against the Respondent is \$1,750.

It is **SO ORDERED**, this 10th day of October, 1995.

JACK E. PERKINS
Chief Administrative Hearing Officer

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FINAL DECISION AND ORDER
(September 8, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: William F. McColough, Esq., for Complainant
Robert A. Murtha, Jr., Esq., for Respondent

I. Procedural History

On June 9, 1994, the Immigration and Naturalization Service (INS or Complainant) filed its Complaint in the Office of the Chief Administrative Hearing Officer (OCAHO). The one-count Complaint alleges that Mohammed Noorealam (Noorealam or Respondent) knowingly used, attempted to use, possessed, obtained seven forged, counterfeited, and falsely made documents in violation of § 274C of the Immigration and Naturalization Act (INA), as amended, 8 U.S.C. § 1324c. Exhibit A to the Complaint is the underlying Notice of Intent to Fine (NIF) issued by INS on August 24, 1993.

The Complaint charges Respondent with obtaining and using the following falsely made and counterfeit documents: (1) an envelope bearing a Bangladeshi postage stamp and a cancellation date of August 8, 1973, (2) a "New York Telephone" letter captioned "a NYNEX Company," dated August 18, 1975, (3) an installation/maintenance visit charge by "New York Telephone," "a NYNEX Company," dated

February 15, 1976, (4) a telephone bill of "New York Telephone," "a NYNEX Company," dated November 5, 1976, (5) a telephone bill of "New York Telephone," "a NYNEX Company," dated February 4, 1977, (6) a telephone bill of "New York Telephone," "a NYNEX Company," dated October 5, 1977, and (7) a telephone bill of "New York Telephone," "a NYNEX Company," dated March 5, 1980. Complainant demands a civil money penalty in the amount of \$1,750 (\$250 for each violation) and requests an order directing Respondent to cease and desist from violating § 1324c.

On June 10, 1994, OCAHO issued a Notice of Hearing which transmitted to Respondent a copy of the Complaint.

On July 12, 1995, Respondent filed its Answer to the Complaint in which he "[a]dmits that he is a native and citizen of Bangladesh, illegally present in the United States . . ." but [d]enies each and every allegation made in Count I. . . ." Answer at 1.

On November 14, 1994, Complainant issued a second NIF, alleging additional violations of § 1324c against Respondent. Respondent filed a letter on December 7, 1994, denying the allegations.

On December 12, 1994, Complainant filed a Motion to Amend Complaint to include as a second count the allegations specified in the second NIF. Absent objection by counsel for Respondent during the third telephonic prehearing conference on December 20, 1994, I granted Complainant's Motion. As amended, the Complaint includes Count II which alleges that Respondent knowingly forged, counter-feited and falsely made (1) an application for Permanent Residence (Form I-485) and (2) an application for employment authorization (Form I-765). Complainant requests an additional civil money penalty of \$500 (\$250 for each violation). The total civil money penalty requested by Complainant (including both counts) is \$2,250.

On April 27, 1995, an adversarial evidentiary hearing was held in New York, New York. Both parties filed post-hearing briefs; Complainant's was filed on July 31, 1995 and Respondent's on August 14, 1995.

II. *Discussion*

A. Liability Established

In order to establish a violation of § 1324c, INS must establish by a preponderance of the evidence "that 1) the respondent used the forged,

counterfeit, altered or falsely made documents, 2) knowing the documents to be forged, counterfeit, altered or falsely made 3) after November 29, 1990, . . . 4) for the purpose of satisfying any requirement of the INA." United States v. Morales-Vargas, 5 OCAHO 732 at 3 (1995) (Modification by the Chief Administrative Hearing Officer of the Administrative Law Judge's Decision) (footnote omitted).

As to the first, third and fourth requirements, Respondent admits that he used the forged, counterfeit, altered or falsely made documents after November 29, 1990 in order to satisfy a requirement of the INA. Tr. at 77-90; Resp. Br. at 1-2. Respondent stipulated that the applications for permanent residence and employment authorization as well as all the underlying documents used to substantiate the applications contained false information. Exh. A (Stipulations of Fact). However, Noorealam asserts that Count I should be dismissed because he lacked knowledge of the violation. Specifically, Respondent asserts that he had no "mens rea or intent to defraud" and that "[t]he document fraud was committed by Shah Islam [Islam], not by Dr. Noorealam. . . ." Resp. Br. at 1 & 3. In effect, Respondent contests the second of the four elements comprising a § 1324c charge, *i.e.*, "knowledge" that the documents were forged, counterfeit, altered or falsely made.

According to Respondent, he responded to a Bengali language newspaper advertisement for immigration status application processing of forms by Islam, "the boss" of an organization designed to help people obtain residence status. Tr. at 77-82; Resp. Br. at 2. Noorealam contends that Islam informed him that, for a fee, he could obtain documents establishing his employment eligibility in the United States. Id. The purpose of the documents was to establish that Noorealam had maintained continuous residence in the United States for a time specified, *e.g.*, since before January 1, 1972. If Noorealam established that he had been in the country since then, he would have been eligible to obtain permanent resident status despite having entered without inspection. Tr. at 30-33. By submitting documents which evidenced residence at United States addresses since July, 1972, Respondent made a prima facie showing of such eligibility. Exh. A. In contrast, the INS examiner responsible for review of Respondent's permanent resident application testified that, had Noorealam stated his correct date of entry into the United States (which Noorealam now concedes was April, 1987), his application would have been rejected. Patently, Respondent could not lawfully "submit documentation to substantiate that he's been here prior to January 1st, 1972." Tr. at 33.

Whether or not, by employing Islam's services, Respondent had the initial intent to perform the acts which constitute a § 1324c violation is irrelevant. Noorealam admits that, at the time of his INS interview which he knew was for the purpose of confirming his eligibility to obtain employment authorization and permanent residence status, he knew that the documents were fraudulent. Tr. at 90-2; Resp. Br. at 3. Respondent argues that such knowledge is not a violation of § 1324c but rather is "the kind of misrepresentation prohibited [by] INA § 212(a)(6)(c)(i), an exclusion statute, which renders classes of aliens ineligible to receive visas and excludable from the United States." Resp. Br. at 3. Whatever other INA violation Respondent's knowing use of false documents may establish, I find from his own testimony that Noorealam knew that the documents presented to the INS were not bona fide. He concedes that, upon learning before the INS interview that the documents were false, he realized that he "had made a mistake" but at that point, "had paid Mr. Shah Islam this huge amount of the money which . . . [he had] borrowed from other friends . . ." and therefore decided to go ahead with the deception. Tr. at 91-2. In so many words, Noorealam admits that he was untruthful to INS when he relied during his interview on the counterfeit documents. *Id.* at 92. Furthermore, Noorealam admits that, had he not been faced with a hearing in this case, he probably would have continued to lie in order to remain in the United States. *Id.* at 93.

Respondent's testimony obliges me to find that he knowingly used the documents at issue in order to satisfy a requirement of the INA. The effort to satisfy the INA requirement to establish residence in the United States by submitting fake documents violates 8 U.S.C. § 1324c. The uncontested testimony is that these documents were false. Exh. A. The dates on the purported telephone bills predate the existence and operation of NYNEX. It is uncontroverted and a public fact that the enterprise whose service Noorealam claimed to have obtained had not come into existence on the dates shown on the "NYNEX" paperwork. The Bangladesh postage stamp was not issued by the Bangladesh postal authorities until years after its supposed postmark. See Exh. G. These are frauds, known to be such by Noorealam at the time he relied on them in his interview in support of his application specified in Count II.

Respondent defends against Count II, relying on United States v. Remileh, 5 OCAHO 724 (1995) (Modification by the Chief Administrative Hearing Officer of Administrative Law Judge's Order). In Remileh, the Chief Administrative Hearing Officer held that "the attestation of an employee to false information on a Form I-9 [employment eligibility

verification form] does not constitute the creation of a 'falsely made' document in violation of 8 U.S.C. § 1324c." Id. at 2-3. Rather, "[i]t is the underlying fraudulent document, submitted to an employer to establish identity and/or work authorization, which is the proper basis of a section 1324c violation against an employee in the context of the employment eligibility verification system of 8 U.S.C. § 1324a." Id. at 3 (footnote omitted).

Respondent argues that

[a]s in Remileh, in the instant case we have false information on a form. The false information is substantiated by fraudulent documents and, as in Remileh, the evil is in the fraudulent substantiating [sic] documents rather than in the form itself. There can be no rational justification for distinguishing between the form in Remileh and the form in the instant case.

Resp. Br. at 8.

Respondent's argument fails to take into account, however, that Remileh is limited to false entries on Forms I-9. Beyond the Remileh situation, knowing use of any fraudulent document to satisfy a requirement of the INA can constitute a violation of § 1324c. Respondent's argument is unavailing. The Count II allegations that Noorealam forged and counterfeited applications for permanent residence and for employment authorization do not fit within Remileh. Respondent is plain wrong in claiming that submission of the Forms I-485 and I-765, like the Form I-9, amount to nothing more than "false information on a form." Resp. Br. at 8. Rather, like any document listed in § 1324a(b), the forms at issue in Count II provide a predicate to obtaining permanent resident status and employment in the United States; Noorealam admits to obtaining them for such a purpose. Tr. at 78-9.

Moreover, Noorealam's argument overlooks United States v. Thoronka, 5 OCAHO 772 (1995) which distinguished Remileh in cases where the allegation is forgery, counterfeiting, altering and/or false making, as distinct from "false making" alone. Here, Noorealam admits to use of the two forms to obtain a benefit of the INA, knowing the entries to be false and the underlying documents to be counterfeit. See Moskal v. United States, 498 U.S. 103 (1990). He has stipulated that the documents which are the subject of Count I, attached to and in support of the I-485, were forged, counterfeited and falsely made. The concededly counterfeit and forged documents were consequently merged into the Form I-485. He has stipulated also that the I-485 and I-765 were forged, counterfeited and falsely made as alleged in Count II. Respondent's admission that the I-485 and I-765 are forged and counterfeit, as well as falsely made, is reason to conclude that this case

fits squarely within Thoronka and not Remileh. I find Respondent liable for the violations of § 1324c, as alleged in Counts I and II.

B. Civil Money Penalty Adjudged

In determining the appropriate amount of civil money penalties in a document fraud case under 8 U.S.C. § 1324c, I utilize a judgmental approach under a reasonableness standard and consider the factors relied on by Complainant, relevant mitigating factors provided by Respondent, and other relevant information of record. United States v. Villatoro-Guzman, 4 OCAHO 652 at 7 (1994) (Final Decision and Order Granting Complainant's Motion for Summary Decision and Order Denying Complainant's Alternate Motion of Abandonment). As with cases involving § 1324a violations, I generally consider only an amount between the statutory minimum³ and that assessed by INS. However, as Complainant has demanded a civil money penalty for both counts at the statutory minimum, there is no need to search for mitigating circumstances. Accordingly, Respondent is liable for the statutory minimum of \$250 for each violation specified in Counts I and II.

III. Ultimate Findings, Conclusions And Order

I have considered the Complaint, Answer, evidence submitted at hearing, motions, briefs and documentary materials submitted by the parties. All motions and other requests not previously disposed of are denied. Accordingly, as previously found and more fully explained above, I determine and conclude the following:

1. that Respondent knowingly used, attempted to use, and possessed the altered and falsely made documents, as alleged in Count I of the Complaint, for the purpose of satisfying a requirement of the INA in violation of 8 U.S.C. § 1324c;
2. that Respondent knowingly forged, counterfeited and falsely made documents, as alleged in Count II of the Complaint, for the purpose of satisfying a requirement of the INA in violation of 8 U.S.C. § 1324c;
3. that Respondent shall pay a civil money penalty in the following amount:

Count I, seven violations at \$250 each, for a total of \$1,750
 Count II, two violations at \$250 each, for a total of \$500

for a total civil money penalty of \$2,250;

³ See 8 U.S.C. § 1324c(d)(3)(a).

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4. that Respondent is hereby ordered to cease and desist from further violating 8 U.S.C. § 1324c.

This Final Decision and Order "shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order. . . ." 8 U.S.C. § 1324c(d)(4).

"A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324c(d)(5).

SO ORDERED.

Dated and entered this 8th day of September, 1995.

MARVIN H. MORSE
Administrative Law Judge