

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

May 27, 2014

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 13A00007
)	
CENTURY HOTELS CORPORATION, D/B/A)	
SCOTTSDALE THUNDERBIRD SUITES)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

Appearances:

Gilda Terrazas
for the complainant

M. Steven Mattia
for the respondent

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a four-count complaint alleging that Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites (Century or the company) engaged in ninety-one violations of 8 U.S.C. § 1324a(a)(1)(B).

Count I alleged that Century failed to ensure that Aurelia Guevera properly completed section 1 of Form I-9, and/or that Century itself failed to properly complete section 2 or 3 of her form; Count II alleged that Century failed to ensure that twenty-eight named employees properly completed section 1 of Form I-9, and/or that Century itself failed to properly complete section 2

or 3 of their forms; Count III alleged that Century failed to ensure that eleven named employees properly completed section 1 of Form I-9, and/or that Century itself failed to properly complete section 2 or 3 of their forms; and Count IV alleged that Century failed to prepare and/or present Forms I-9 for fifty-one named employees after being requested by the government to do so. The total penalty sought was \$89,806.75.

Century filed an answer with affirmative defenses and prehearing procedures were completed, after which Century filed a motion for partial summary decision based on its affirmative defenses, and the government filed a response. ICE filed its own motion for summary decision and Century filed a response. The government then filed a reply in support of its motion, and Century filed a surreply.

Century's motion for partial summary decision was previously granted in an order dated January 28, 2014, and the allegations in Count IV that Century failed to prepare or present I-9 forms for Xochitl Aldama, Gorgonio Angulo Meza, April Bell, Laura Brooks, Elvia Canizales, Danny Chao, Esmeralda Cruz, Josefina De Anda, Otoniel Diaz, Kimberly Fuller Nurudeen, Sara Garcia, Teresa Garcia Bringas, Maria Gonzalez, Perla Gutierrez, Erin Haleen, Keith Hickey, Griselda Juarez, Reyna Lopez, Ruben Luna, Devorah Martinez, Penny Peterson, Yadira Rascon, Alba Rocha, Michael Roper, Lisa Schatz, Delia Soto, Kevin Southland, Bruce Stoops, Philip Synder, Carrie Wales, Robert Wanta, and Peggy Zeffer were dismissed.

Presently pending is the government's motion for summary decision as to its remaining allegations. Century's response to the motion conceded liability for the forty violations alleged in Counts I, II, and III, as well as for the nineteen remaining violations in Count IV.¹ In light of Century's concessions and the previous order, the sole issue to be decided is the appropriate penalty to be imposed for the fifty-nine violations established.

II. BACKGROUND INFORMATION

Century Hotels is a 120-room hotel located in Scottsdale, Arizona that does business as Scottsdale Thunderbird Suites. Danny Chao, the company's president, owns 100% of the capital stock of this subchapter S corporation. Chao's first affidavit reflects that Century purchased the hotel in 2001 and is currently in the process of trying to obtain a Best Western franchise for it. Chao's supplemental affidavit explains that getting the franchise is contingent on the company's

¹ The violations remaining in Count IV involve the failure to prepare or present I-9s for Isabel Alcaraz, Irma Cardona, Maria Contreras, Rebecca Garcia, Alejandra Gonzalez, Marcus Housewright, Bernadette Lira, Maria Lopez, Gerrado Luna, Maria Martinez, Georgia Meyer, Analili Modesto, Juan Morales, Natalya Munro, Guadalupe Nieto, Ryan Rucker, Chavella Sambrano, Ashley Wanta Grimes, and Anna Wolfe.

meeting the conditions set forth in Best Western's Design Property Improvement Plan dated May 1, 2012, which will require capital expenditures in excess of a million dollars by the time all the improvements are made. According to Chao's supplemental affidavit, the business is a seasonal one, having about fourteen employees in the off season from April to September, when temperatures can reach 118 degrees, and up to thirty employees in the high season from October through March. Chao says that he resides in California and visits the hotel several times annually to review conditions and determine what expenditures and capital improvements are needed, but is not involved with the daily operations, which are managed by Optimizm Hospitality Management Company. Chao says that he manages the assets and finances of the company, but hires managers or management companies to run the hotel and does not actually work there himself.

ICE served Century with a Notice of Inspection (NOI) and administrative subpoena on September 6, 2011. In response, Century submitted Forms I-9 for fifty-nine active and terminated employees, as well as the company's payroll records, and other relevant documents. ICE served the company a Notice of Technical or Procedural Violations and a Notice of Discrepancies dated October 5, 2011. The government also served the company with a Notice of Suspect Documents on October 17, 2011. ICE served a Notice of Intent to Fine on Century on June 27, 2012, after which the company made a request for hearing on July 25, 2012. ICE filed a complaint with this office on October 17, 2012. All conditions precedent to the institution of this proceeding have been satisfied.

III. STANDARDS APPLIED

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is \$110, and the maximum is \$1100. In assessing an appropriate penalty, the following factors must be considered: 1) the size of the employer's business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5). Because the government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012),² it must

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at

prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121, 159 (1997).

The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000). While the government bears the burden of proof with respect to the statutory factors, a party seeking consideration of a nonstatutory factor, such as ability to pay the penalty, bears the burden of showing that the factor should be considered as a matter of equity and that the facts support a favorable exercise of discretion. *Cf. United States v. M & D Masonry, Inc.*, 10 OCAHO no. 1211, 11 (2014).

Permissible penalties for the fifty-nine violations in this case range from a low of \$6490 to a high of \$64,900. ICE's motion says that the government seeks a total adjusted penalty of \$59,811.50.³

IV. PENALTY ASSESSMENT

A. ICE's Penalty Calculations

The government calculated a baseline penalty of \$935 for each violation based on the company's error rate of 54.5 percent. ICE says that the penalties for all the violations were mitigated by five percent based on the small size of Century's business, but aggravated based on the seriousness of the violations, except for the violation in Count I involving the I-9 of Aurelia Guevara. ICE treated the statutory factors of good faith and history of previous violations as neutral across the board, but aggravated the penalties for the violations in Count III because the individuals were unauthorized for employment.

In support of its contention that eleven individuals in Count III were unauthorized, ICE points to

<http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders>.

³ The government's final figure does not accord with the methodology it describes in exhibit G-17, which contains the total penalties for each count. The total shown for Count I is accurately stated as \$888.25 for the only violation entered. The total shown for Count II is \$27,489, based on twenty-eight violations at \$935 each, but \$935 times twenty-eight is actually \$26,180. The total shown for Count III is accurately stated as \$10,799.25, based on eleven violations at \$981.75 each. The total shown for Count IV is \$18,700, but this includes a penalty for a violation that has been dismissed (Danny Chao), so the actual total for Count IV should be \$17,765, based on nineteen violations at \$935 each. The government says that it seeks a grand total of \$57,876.50, but based on the correct totals for each count, the penalty adds up to \$55,632.50.

two affidavits by its auditor, Vance Johnson. The first says that the government ran searches of the employees' alien registration numbers, state-issued identification card numbers, driver's licenses numbers, passport numbers, and social security numbers through various databases, including "Department of Homeland Security databases," "a secure database that interfaces with state motor vehicle departments, and state and federal criminal record databases," the "U.S. Department of State," and "multiple law enforcement and government databases," as well as "private commercial databases," and that eleven employees were determined to be unauthorized.

Auditor Johnson's second affidavit acknowledges, however, that the penalty should not have been aggravated for Andrea Sturino because she was determined to be an "authorized employee." ICE argues that the numerous record checks establish that employees had provided fraudulent documents, and the fact that only one employee challenged his or her inclusion in the Notice of Suspect Documents, raises a "reasonable inference" that these individuals were aliens unauthorized for employment in the United States. Johnson's first affidavit also states that the only employee to challenge his or her inclusion on the list "was subsequently cleared."⁴

The government contends that the company has a "positive business prognosis" and is able to pay the penalty because it showed profits in 2010 and 2011, and, despite the company reporting a loss of \$74,930 in 2012, Century's officer salaries jumped from \$39,000 in 2011 to \$80,135 the following year. The company also earmarked \$140,129 as "cash on hand" in 2012. The government says that Century has not submitted any evidence that it was actually accepted into the Best Western Chain, or evidence of any construction bids or contractor estimates to corroborate Danny Chao's assertion that improvements will cost more than \$1 million.

The government identified the following exhibits, not all of which it tendered with its motion: G-1) Complaint and Notice of Intent to Fine; G-2) Certificate of Service; G-3) Notice of Inspection and Administrative Subpoenas (5 pp.); G-4) Notice of Suspect Documents (3 pp.); G-5) Notice of Technical or Procedural Failures (3 pp.); G-6) Notice of Discrepancies (2 pp.); G-7) Receipt for Property (2 pp.); G-8) Affidavit of Special Agent Anthony Muffo; G-9) Affidavit of Auditor Vance Johnson (7 pp.); G-10) Scottsdale Thunderbird Suite's Forms I-9 and attachments; G-11) Copies of Arizona Department of Economic Security Unemployment Tax and Wage Reports for Scottsdale Thunderbird Suites (33 pp.); G-12) Arizona Corporation Commission documents for Century Hotels Corporation (20 pp.); G-13) Form I-9 related to Count I; G-14) Forms I-9 related to Count II (28 pp.); G-15) Forms I-9 related to Count III (11 pp.); G-16) Answer; G-17) Penalty Assessment Summary for Century Hotels (3 pp.); G-18) Email from M. Steven Mattia dated May 20, 2013, and attached list of employees (3 pp.); G-19) Century's responses to the government's first set of interrogatories nos. 6-17 (9 pp.); G-20) Century's responses to the government's first set of interrogatories nos. 21-61(21 pp.); G-21) Century's response to the government's interrogatory no. 19 (2 pp.); and G-22) Century's responses to the government's request for production nos. 4-8 (94 pp.). Finally, ICE submitted additional exhibits with its response to

⁴ The individual is not named, which causes some confusion *infra*.

Century's motion for partial summary decision and reply on issues of "unauthorized alien" and penalties: G-23) Affidavit of ICE Auditor Vance Johnson (2 pp.) and G-24) Printouts from USCIS Central Index System (11 pp.).

B. Century's Response

Century does not challenge ICE's assertion that the violations are serious, but vigorously takes issue with the government's contentions that the individuals in Count III were unauthorized for employment, that the penalty requested is reasonable, and that the company has the ability to pay the penalty proposed. Century says instead that the penalty ICE seeks is excessive and unduly punitive, representing as it does approximately ninety-one percent of the maximum permissible penalty, and that penalties so close to the maximum should be reserved for more egregious violations than have been shown here. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

Century also asserts that Auditor Johnson's findings and conclusions are unreliable. Century complains that Johnson did not identify specific databases beyond the general listing and says that the government's response to interrogatories requesting specific information consisted only of a reference to the affidavit and the statement that "[s]earches were conducted in conformity with authority granted under 8 U.S.C. § 1360(a)." Century states that, without specific information about the databases, the company was unable to verify the government's results. ICE stresses that the government's "reasonable inference" that the employees in Count III are unauthorized is not proof and that a Notice of Suspect Documents alone does not establish unauthorized status. *See United States v. Platinum Builders of Cent. Fla., Inc.*, 10 OCAHO no. 1199, 9 (2013). The company points out that Hermelinda Perez, an individual whose name appears in the Notice of Suspect Documents, but not in Count III, may be the unidentified individual that Auditor Johnson referred to as having been "cleared." Century points out that Johnson's affidavits don't even mention the names of the individuals in Count III, and says that until Sturino submitted an affidavit attesting to her status as a permanent resident since 2006, Johnson was saying her alien number did not exist or was not associated with her. The company says that such mistakes in Johnson's affidavits undermine the thoroughness and accuracy of the government's searches, and cast doubt on the weight to be given to the affidavits.

Century also says that the penalty sought would have a devastating impact on the company's ability to properly complete renovations of the hotel, as required by the Best Western Design Property Improvement Plan. Danny Chao notes in his second supplemental affidavit that the loan shown on the 2010 tax return came from his mother, Lucy Chao, in 2005, and that the \$450,000 paid-in capital on the 2012 return also came from his mother to keep the business afloat. Century states that its cash shortage has caused the company's debt coverage ratio to fall below 1.0 in three out of the last five years, causing it to be in default on its loan agreement with its primary lender, National Bank of Arizona (NBAz). As a consequence of the default, Century says that it was required to obtain various subordination agreements from all significant

company creditors, and agree not to incur any more debt until approved by NBAz. Century says that it could not go to an institutional lender to borrow the needed funds because of its agreement with NBAz.

Century says that the government erroneously puts a positive “spin” on the company’s business prognosis, and that the company has in fact suffered financially over the past five years. Citing to its federal income tax returns and its internal financial statements for the tax years 2008 through 2012, the company says that its last “reasonably good business year” was in 2008. The company stresses that it is currently experiencing a severe cash shortage and says that it began renovating the property in 2012 using all of the \$80,000 net profit earned during 2011, but only made minimal progress on the renovations during 2013.

Century’s response to the government’s motion was accompanied by exhibits: R-9)⁵ The government’s Responses to First Set of Interrogatories (15 pp.); R-10) Notice of Suspect Documents, dated October 5, 2011 (3 pp.); R-11) Affidavit of Andrea Sturino, dated September 23, 2013, with accompanying copies of Sturino’s Permanent Resident Card and Social Security card (5 pp.); R-12) Supplemental Affidavit of Danny Chao, dated September 23, 2013 (9 pp.); R-13) Century Hotels Corporation’s Federal Income Tax Returns, 2008-2012 (145 pp.); R-14) Century Hotels Corporation Annual/Monthly Income, Expense and Cash Reserve Analysis; R-15) Emails between Gilda M. Terrazas and M. Steven Mattia, dated August 29, 2013 (4 pp.); R-16) Best Western Design Property Improvement Plan, CV-plus (20 pp.); and R-17) Schedule of values and costs for Best Western PIP (4 pp.). Century’s surreply was accompanied by exhibit R-18) Danny Chao’s second supplemental affidavit (2 pp.).

C. Discussion and Analysis

It is undisputed that Century is a small business, that there are no indications of bad faith, and that the company has no history of previous violations. These are favorable factors for the company. While the parties here agree that the violations are serious, seriousness may be evaluated on a continuum because not all violations are equally serious. *United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 8 (2010) (citing *Carter*, 7 OCAHO no. 931 at 169). Errors in completing an I-9 are ordinarily viewed as less serious than the failure to prepare or present the form at all, and OCAHO case law firmly establishes that failure to prepare or present an I-9 is one of the most serious violations because it frustrates the national policy intended to ensure that unauthorized aliens are excluded from the workplace. *See United States v. Super 8 Motel*, 10 OCAHO no. 1191, 14 (2013).

The government’s evidence respecting the unauthorized status of the individuals named in Count III is less than persuasive. Quite apart from the fact that both Andrea Sturino and Hermelinda

⁵ Exhibits R-1 through R-8 were presented with the company’s own motion for partial summary decision.

Perez were evidently authorized, it is also notable that for two other employees, Lidia Chacon and Miriam Hernandez, the A numbers appearing on the individuals' I-9 forms differ by one digit from the numbers appearing in the government's printouts. The government's reply says that the employees' alien registration numbers were checked against the Department of Homeland Security Central Index System (CIS) database, and that the printouts in exhibit G-24 reflect the results. The A number in section 1 of Chacon's I-9 shows the last four digits as 2305, but the number searched in the CIS database for her appears to have been transposed because the last four digits in the printout are shown as 3052. The I-9 for Miriam Hernandez shows the last four digits of Hernandez's A number as 1554, but the number that was searched for her in the database also appears to have been incorrectly entered because the last four digits are shown in the printout as 1584. The numbers actually searched in the CIS database, as shown in printouts that comprise exhibit G-24, thus do not appear to correspond to the numbers shown on the employees' I-9s. The CIS printouts do not inspire confidence and fail to carry the burden of showing that the individuals named in Count III were unauthorized for employment.

While factual allegations made in a brief or a memorandum are not evidence and need not be credited as such, *United States v. Hotel Martha Washington, Corp.*, 6 OCAHO no. 846, 215, 225 n.5 (1996), I am obligated for purposes of considering the instant motion to accept as true any un rebutted facts established by documentary evidence or affidavit. *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1110, 3 (2004). Thus I am not at liberty to simply disbelieve the factual allegations in Danny Chao's affidavits describing the company's financial position and obligations. I am, in fact, required to draw reasonable inferences in favor of the nonmoving party. While the parties' reply and surreply are in large part devoted, moreover, to debating whether Century has the ability to pay the fine that the government requested, the more salient question to be asked is whether the penalty sought is reasonable to begin with. *See United States v. New Star at Niagara Fall, Inc.*, 10 OCAHO no. 1192, 4-5 (2013) (observing that the question is not whether a respondent can pay whatever the government asks for, it is whether an appropriate penalty has been assessed in the first instance, considering the record as a whole and the statutory factors in particular).

The penalties sought here amount to ninety-one percent of the maximum permissible. Our case law suggests that penalties close to the maximum should be reserved for the most egregious violations, *see Fowler Equip.*, 10 OCAHO no. 1169 at 6, and ought not to be imposed for everyday garden-variety violations. OCAHO case law has often observed that proportionality is the key to assessing penalties. *See, e.g., United States v. Monadnock Mountain Spring Water, Inc.*, 10 OCAHO no.1193, 4 (2013) (explaining that penalties near the maximum are typically reserved for the most egregious violations); *United States v. A&J Kyoto Japanese Rest.*, 10 OCAHO no. 1186, 8 (2013) (rejecting proposed penalty as out of proportion to the nature of the business and the degree of culpability). There needs to be some rational relationship between the magnitude of an offense and the penalty to be assessed. *See United States v. New Sun Transit, Inc.*, 10 OCAHO no. 1194, 3-4 (2013) (in determining a penalty, one guideline is the relationship between the fine and the nature of the offense). A penalty should be sufficiently meaningful to

accomplish the purpose of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being “unduly punitive” in light of the respondent’s resources, *United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993). Quite apart from the question of whether or not Century can pay it, the penalty requested is excessive in light of these standards.

The deterrent effect to be achieved here appears to be minimal inasmuch as management of the hotel has been turned over to a professional management company. *Cf. United States v. Red Coach Rest., Inc.*, 10 OCAHO no. 1195, 4-5 (2013) (reducing the penalty to the low end of the mid-range where respondent had difficulty accessing cash, and operation was in the hands of another company), *aff’d by CAHO*, 10 OCAHO no. 1200 (2013). Century’s cash shortage is interfering with the company’s ability to cover its operating expenses, including maintenance and upkeep, and I credit that the company’s cash-poor status will present difficulties in paying a penalty. Considering the record as a whole and the statutory factors in particular, the penalties in this case will be assessed at the rate of \$500 each for the nineteen violations remaining in Count IV, totaling \$9500, and \$400 each for the forty paperwork violations in Counts I, II, and III, totaling \$16,000. The total penalty is \$25,500. The parties are encouraged to enter a payment schedule.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites is a hotel located in Scottsdale, Arizona.
2. Danny Chao is the owner and president of Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites, a subchapter S corporation.
3. The Department of Homeland Security, Immigration and Customs Enforcement served Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites with a Notice of Inspection (NOI) and administrative subpoena on September 6, 2011.
4. The Department of Homeland Security, Immigration and Customs Enforcement served Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites with a Notice of Suspect Documents on October 17, 2011.
5. The Department of Homeland Security, Immigration and Customs Enforcement served Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites with a Notice of Intent to Fine on June 27, 2012.

6. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites made a request for hearing on July 25, 2012.
7. The Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer on October 17, 2012.
8. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites admitted that it failed to ensure that Aurelia Guevera properly completed section 1 of Form I-9, and/or that Century itself failed to properly complete section 2 or 3 of her form.
9. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites admitted that it failed to ensure that Maricruz Alvarado, Juan Antunez, Katherine Bartholomew, Michael Chiccarello, Jason Collins, Kyle Cordasco, Madelyn Crow, Araceli Cruz, Jenifer Escalante, Lucia Flores, Mindy Gonzales, Kelly Grande, Brenda Fuentes Sazveta Guadalupe, James Hughes, Lauren Krizan, Steven LaChance, Mellors Miranda, Brenda Mogler, Beatriz Montes Ortega, Mirna Morales, Scott Neff, Ted Ortega, Tomasa Parra, Nancy Richmond, Alia Sawalqah, Kacey Walker, Virginia Walton, and Samantha Whitright, named in Count II of the complaint, properly completed section 1 of Form I-9 and/or that Century itself failed to properly complete section 2 or 3 of their forms.
10. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites admitted that it failed to ensure that Carmen Alejo, Sugey Alejo, Gina Barragan, Lidia Chacon, Miriam Hernandez, Rosa Hernandez, Claudia Miranda, Teresita Sanchez Leon, Rosa Saucedo Nararro, Lucia Segundo, and Andrea Sturino, named in Count III of the complaint, properly completed section 1 of Form I-9 and/or that Century itself failed to properly complete section 2 or 3 of their forms.
11. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites admitted that it failed to prepare and/or present upon request I-9 forms for Isabel Alcaraz, Irma Cardona, Maria Contreras, Rebecca Garcia, Alejandra Gonzalez, Marcus Housewright, Bernadette Lira, Maria Lopez, Gerrado Luna, Maria Martinez, Georgia Meyer, Analili Modesto, Juan Morales, Natalya Munro, Guadalupe Nieto, Ryan Rucker, Chavella Sambrano, Ashley Wanta Grimes, and Anna Wolfe, named in Count IV.
12. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites' cash reserves have steadily declined since 2008, and the company has had difficulty accessing cash to maintain and improve its facilities.

B. Conclusions of Law

1. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).
2. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites filed a timely request for hearing.
3. All conditions precedent to the institution of this proceeding have been satisfied.
4. Century Hotels Corporation, d.b.a. Scottsdale Thunderbird Suites is liable for fifty-nine violations of 8 U.S.C. § 1324a(a)(1)(B).
5. The government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), and must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121, 159 (1997).
6. In assessing an appropriate penalty, the following factors must be considered: 1) the size of the employer's business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5).
7. 8 U.S.C. § 1324a(e)(5) neither requires that equal weight be given to each statutory factor, nor rules out consideration of additional factors, such as a company's ability to pay the proposed penalty. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).
8. A party seeking consideration of a nonstatutory factor, such as ability to pay the penalty, bears the burden of showing that the factor should be considered as a matter of equity and that the facts support a favorable exercise of discretion. *Cf. United States v. M & D Masonry, Inc.*, 10 OCAHO no. 1211, 11 (2014).
9. A penalty should be sufficiently meaningful to accomplish the purpose of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being "unduly punitive" in light of the respondent's resources, *United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993).
10. Penalties close to the maximum should be reserved for the most egregious violations. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

ORDER

Century Hotels is liable for fifty-nine violations of 8 U.S.C. § 1324a(a)(1)(B) and is ordered to pay penalties in the total amount of \$25,500. The parties are encouraged to enter a schedule for installment payments to minimize the impact on Century's business.

SO ORDERED.

Dated and entered this 27th day of May, 2014.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.