

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

April 1, 2016

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 15A00037
)	
GOLDEN EMPLOYMENT GROUP, INC.,)	
Respondent.)	
_____)	

ORDER RESOLVING MOTION FOR PARTIAL SUMMARY DECISION
AND SCHEDULE FOR SUPPLEMENTAL FILINGS

Appearances:

Terry M. Louie
for the complainant

Patrick W. Ledray
for the respondent

I. PROCEDURAL HISTORY

The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint in eight counts with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 11, 2015, alleging that Golden Employment Group, Inc. (Golden Employment or the company) engaged in 505 violations of the employment eligibility verification provisions of 8 U.S.C. § 1324a(b) and 8 C.F.R. § 274a.2(b). The government seeks civil money penalties of \$305,525.00. The matter arises under 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).

Count I alleges that Golden Employment failed to timely prepare and/or present I-9 forms for 125 employees, and Count II alleges that Golden Employment failed to prepare or present the

forms at all for 265 employees. Count III asserts that the company failed to ensure that Jonathon Christensen, Miguel Colunga, Lawrence Floyd, Maria Guzman, and Casey Craig Larsen properly completed section 1 of Form I-9, and failed itself to properly complete section 2 and/or 3 of their forms. Count IV alleges that the company failed to ensure that twenty-two named employees properly completed section 1 of their I-9s, and Count V alleges that the company failed itself to properly complete sections 2 and/or 3 of the form for seventy-three named employees.

Count VI asserts that I-9s were not timely prepared or presented for Alma R. Dominguez, Rosalio Garcia-Castro, Manuel Andres LaVariega, and Domingo Sosa Ortega, and that the company also failed to ensure that each properly completed section 1 of the form. Count VII asserted that I-9 forms were not timely prepared or presented for Michael Corey Allen Jr., Marisol Avelar, Lorenzo Estrada-Ocana, Jason Jeffrey Fortine, Carlos Calixto Lopez, Lenale Todd Minor, Sergio Navarro Juarez, Perla Salinas, and Jonathan Torres, and that the company in addition failed to properly complete section 2 and/or 3 of their forms. Count VIII asserted that the company failed to timely prepare or present I-9s for Eddy Guarcas-Ajcalon and Susan Hughes, failed to ensure that these individuals properly completed section 1, and failed itself to properly complete section 2 and/or 3.

Golden Employment filed an answer denying the material allegations and raising various affirmative defenses. Prehearing procedures have been completed. Presently pending and in need of resolution is the government's motion for partial summary decision as to liability, in response to which Golden Employment filed a memorandum in opposition.

II. BACKGROUND INFORMATION

Golden Employment is a temporary help service, incorporated in the state of Minnesota in 1996. The company is owned and operated by its president, Paul Hughes, who states that Golden Employment accepts approximately 2000 to 3000 applications a year, and currently has over 20,000 people in its database. The company has been using the E-Verify system since April 2008.¹

ICE served Golden Employment with a Notice of Inspection (NOI) on April 9, 2013. The NOI stated that the I-9 forms and additional documentation were due by April 12, 2013; however, on

¹ The E-Verify program is an internet-based employment eligibility verification system operated by DHS's Citizenship and Immigration Services (CIS) in cooperation with the Social Security Administration (SSA). The program provides a way to compare information from an employee's I-9 form against data in DHS, SSA, and Department of State records to determine whether the information matches government records and whether a new hire is authorized to work in the United States.

April 10, 2013, Hughes contacted ICE to advise that the company had just received the NOI that day. In order to provide the company three full business days to respond, ICE gave Golden Employment until April 15, 2013, to provide the I-9s and the company presented four boxes of I-9s and supporting documentation on April 15, 2013. The company subsequently presented ICE with another box of I-9s and documents on May 21, 2013, and an additional box on June 10, 2013.² The government treated the I-9s presented in May, June, and thereafter as untimely.

On March 7, 2013, ICE served Golden Employment with a request for missing I-9s for twenty-seven named employees. On April 1, 2014, ICE served Golden Employment with a Notice of Suspect Documents (NSD) for 433 employees. Golden Employment contested the status of seven of the individuals named in the NSD, but ICE determined that all were unauthorized to work in the United States, and Golden Employment terminated them. Their status is no longer contested.

On October 9, 2014, ICE served Golden Employment with a Notice of Intent to Fine (NIF). The company filed a timely request for a hearing and ICE filed the instant complaint on March 11, 2015. All conditions precedent to the institution of this proceeding have been satisfied.

III. THE POSITIONS OF THE PARTIES

A. The Government's Motion

ICE's motion contends that there is no genuine issue of material fact and that its evidence establishes Golden Employment's liability for all the violations alleged in Counts I through VIII. The government first asserts that Golden Employment failed to timely prepare and/or present I-9 forms for the employees named in Count I whose I-9s were not produced until after the adjusted deadline of April 15, 2013. ICE says as well that Golden Employment never did prepare and/or present I-9s for the 265 employees listed in Count II.

ICE's brief spells out with specificity the particular paperwork violations it contends appear on the I-9s for each of the 115 individuals named in Counts III through VIII, and says that visual examination substantiates its assertions with respect to these violations. The government says in addition that all the violations can be characterized as substantive, rather than technical or procedural. The Declaration of ICE Auditor Melissa Bodsgard accompanied ICE's brief, and pointed to the specific exhibits the government filed in support of each count in the complaint. *See Exhibits G-11 through G-17.*

Although the government's motion is itself addressed only to issues of liability, ICE's evidence also includes a Memorandum to Case File, Determination of Civil Money Penalty (Ex. G-9).

² Some additional forms were presented after March 7, 2014. *See Appendix A, Count I.*

The exhibit reflects that ICE set a baseline penalty of \$605 for each violation based on an error rate of 35%. ICE then treated the size of the company as a mitigating factor, and the seriousness of the violations as an aggravating factor. The government treated the remaining factors of good faith, the absence of unauthorized workers, and the lack of history of previous violations, as neutral. The government's final calculation accordingly was \$605 for each violation.

B. Golden Employment's Position

Golden Employment argues at the outset that the government's motion for partial summary decision is premature because discovery has not yet been completed. Specifically, the company asserts that it did not make copies of the documents it provided to ICE, and it believes that review of those documents could reveal additional defenses to the government's allegations. Golden Employment says it served ICE a discovery request on October 20, 2015, seeking an opportunity to inspect, review, and copy the documents it gave the government since the start of the investigation. The company's memorandum does not expressly say whether it did or did not receive a response to this request.

Although Golden Employment acknowledges that the NOI requested that all documentation be presented to ICE no later than April 15, 2013, the company says it believes an extension was granted by the investigator/auditor, and that the April 15, 2013, deadline is accordingly precluded. The company contends in addition that due to the extensive nature of the requests and the archiving of records, any delays were unfortunate but reasonable, and the I-9s presented in May, June, or thereafter should be viewed as timely submitted. The company's memorandum identifies the basis for its belief that an extension was granted as being conversations and email correspondence between the company's owner and ICE's auditor that left the owner with the belief and conviction that documents after April 15, 2013, would be treated as timely. The declaration of Paul Hughes states that the declarant "was led to believe that submissions could continue after April 15, 2013 to demonstrate compliance with the regulations," and that he "was very surprised to learn that submissions after April 15, 2013 would not satisfy the requirement for timely submission of I-9s."

Golden Employment argues that two employees named in Count I, Odemaris Mercado (no. 57) and Johnny Fra Ryan Nickerson III (no. 99), as well as forty-eight named employees listed in Count II, worked for twenty-four hours or less and the company was accordingly not required to complete I-9s for them. The company contends in addition that because it used E-Verify to confirm their employment eligibility electronically, there should be no penalties for failure to timely prepare and/or present I-9 forms for six other employees named in Count II, Mohamoud Abdi (no. 1), David Aleman (no. 8), Francisco Aroche (no. 18), Jose Banderas (no. 22), Yadira Castro (no. 45), and Pedro Saquic (no. 232). The declaration of Paul Hughes asserts further that the declarant believes "that there are partial I-9's, prepared on the same individual that, taken together, satisfy the I-9 requirements," but no such individuals are named either in the declaration or in the company's memorandum.

Golden Employment did not respond specifically to the governments allegations with respect to Counts III-VIII, other than to repeat that the company “believes that review of the April 15, 2013, submissions in four cartons, together with a review of the submissions made on three subsequent deposit (sic) (through the discovery requested), may demonstrate that additional I-9s will reduce the Respondent’s liability even further.” Finally, Golden Employment contends that while the government’s exhibit G-9 recommends a fine based on a violation percentage of 1427 forms that should have been provided, ICE’s calculation erroneously leaves out the I-9 submissions the company made after April 15, 2013. Based upon the company’s own calculations and the government’s rationale, Golden Employment says the total liability should at most be \$63,250.

IV. EVIDENCE CONSIDERED

ICE’s motion was accompanied by exhibits consisting of the following: G-1) Notice of Inspection (7 pp.); G-2) Request for Missing Forms I-9 (5 pp.); G-3) Notice of Suspect Documents (10 pp.); G-4) Response to Notice of Suspect Documents (4 pp.); G-5) Employer’s Information in Response to Subpoena (2 pp.); G-6) Employer’s Employee List (179 pp.); G-7) Articles of Incorporation (22 pp.); G-8) Reports of Investigation (22 pp.); G-9) Memorandum to Case File, Determination of Civil Monetary Penalty (4 pp.); G-10) Notice of Intent to Fine and Request for Hearing (15 pp.); G-11) chart and I-9s for Count I; G-11a) chart for Count II; G-12) chart and I-9s for Count III; G-13) chart and I-9s for Count IV; G-14) chart and I-9s for Count V; G-15) chart and I-9s for Count VI; G-16) chart and I-9s for Count VII; G-17) chart and I-9s for Count VIII.

Golden Employment’s opposition to ICE’s motion was accompanied by exhibits consisting of: R-1) Receipt for Property, dated April 15, 2013; R-2) Respondent’s calculations; and R-3) Declaration of Paul Hughes.

V. STANDARDS APPLIED

OCAHO rules provide that a complete or partial summary decision may issue if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that the moving party is entitled to summary decision. 28 C.F.R. § 68.38(c) (2014). The party seeking summary decision bears the initial burden of showing the absence of a material factual dispute. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261

(1994).³ Once the moving party satisfies its burden, the burden shifts to the nonmoving party to come forward with evidence that a genuine issue of material fact does exist. *See Primera Enters.*, 4 OCAHO no. 615 at 261 (citing Fed. R. Civ. P. 56(e)). An issue of material fact is genuine only if it has a real basis in the record. *See Cormia v. Home Care Giver Servs., Inc.*, 10 OCAHO no. 1160, 5 (2012) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

VI. DISCUSSION AND ANALYSIS

Golden Employment suggests, but does not say, that ICE did not respond to its October 20, 2015, request to view and copy the documents it provided, but the remedy for any failure to comply with a discovery request is to file a timely motion to compel pursuant to 28 C.F.R. § 68.23,⁴ not to stonewall all further proceedings. The record in any event reflects that on May 11, 2015, the government served Golden Employment with its prehearing statement, together with the government's exhibits G-1 through G-17, which include copies of the documents Golden Employment submitted to ICE. I accordingly conclude that the company has had a more than ample opportunity to review these documents, and that ICE's motion for partial summary decision is ripe for resolution.

A. Count I

Regulations impose an affirmative duty upon employers to prepare and retain I-9 forms for their employees and to make those forms available for inspection on three days notice. 8 C.F.R. § 274a.2(b)(2)(ii). OCAHO case law states that absent an extension of time, the employer cannot avoid liability by submitting I-9 forms at some later point in the process. *See United States v. Horno MSJ, Ltd.*, 11 OCAHO no. 1247, 7 (2015); *United States v. A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, 7 (2013) (noting that late-produced I-9s did not absolve employer of liability for failure to present them initially); *United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 5 (2013) (observing that the violations occurred at the time of the inspection).

³ 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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

⁴ *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2014).

Because of a delay in the company's receipt of the NOI, the government adjusted the original deadline to April 15, 2013, and accepted as timely only the four boxes of documentation the company presented that day.

Although the declaration of Paul Hughes asserts that the declarant "was led to believe that submissions could continue" and that he was surprised to learn that the May and June submissions would not satisfy the timeliness requirement, Hughes did not name the person who led him to believe that late submissions would be treated as timely, nor did he identify any specific conversation providing a reasonable basis for such a belief. While Golden Employment's memorandum makes a cursory reference to "conversations and email correspondence" with the auditor, no details are provided as to when these alleged conversations or emails occurred, who was present, what alternate agreement the parties allegedly reached, or for how long a period late submissions would continue to be deemed timely.⁵ No copies of any such emails requesting or granting an extension were proffered, and Hughes' vague belief that the documents submitted one or two months after the deadline would be treated as timely is not sufficiently anchored to specific facts to establish that any such extension was ever granted.

The company also identified no statute, regulation, or case law to support its proposition that I-9s need not be prepared and presented for employees that work for twenty-four or fewer hours. OCAHO case law has declined to find an employer liable for failure to prepare forms where employment was terminated on the first day, *United States v. DuBois Farms, Inc.*, 2 OCAHO no. 376, 601, 628-29 (1991), or where the individual was hired for continued employment but quit shortly thereafter, frustrating the company's efforts to comply with the requirements, *United States v. ABC Roofing & Waterproofing*, 2 OCAHO no. 358, 435, 464 (1991). *See also A&J Kyoto*, 10 OCAHO no. 1186 at 5-6. But avoidance of liability under those circumstances has at best only a tangential relationship with the number of hours an individual worked, and is related instead to whether or not the individual reached a third day of employment, triggering the requirement for the employer to complete section 2.

An I-9 form is timely completed when the employee completes section 1 of the I-9 form at the time of hire, and the employer attests within three business days of hire that the employee's documents were physically examined and that they appear to be genuine and to relate to the individual. 8 C.F.R. § 274a.2(b)(1)(ii). Where an individual is hired with the expectation of continued employment, but the employment ends before the third day is reached, the employer will not have had an adequate opportunity to complete section 2 and in fairness should not be held to an impossible standard. *See generally, United States v. Speedy Gonzalez Constr., Inc.*, 11 OCAHO no. 1228, 6-7 (2014).

⁵ A few I-9s were not received until after March 7, 2014.

The record reflects, however, that Odemaris Mercado was hired on May 19, 2005, and terminated on February 7, 2013. *See* exhibit G- 11. Regardless of how many hours this individual actually worked, Golden Employment had ample opportunity to complete section 2 of his I-9. Similarly, Johnny Fra Ryan Nickerson III was hired on May 25, 2012, and terminated on June 7, 2012; he was employed for a matter of weeks, not just hours or days. Absent any showing that an extension was granted, or that preparation of the form was excused for these two employees, Golden Employment is liable for the 125 violations alleged in Count I.

B. Count II

The E-Verify program does not purport to insulate an employer from the necessity of proper I-9 completion. *See United States v. Golf Int'l*, 10 OCAHO no. 1214, 6 (2014). The E-Verify Memorandum of Understanding, which employers must sign as a condition of participation in the program, expressly provides that participation in the program does not exempt an employer from the requirements to complete, retain, and produce I-9 forms for its employees. *See USCIS, E-Verify Memorandum of Understanding For Employers* at 2 (last revised June 1, 2013). I accordingly conclude that use of the E-Verify program does not excuse Golden Employment from the requirement to complete I-9 forms for Mohamoud Abdi, David Aleman, Francisco Aroche, Jose Banderas,⁶ Yadira Castro, and Pedro Saquic.

Golden Employment pointed to no evidence in support of its contention that forty-eight employees named in Count II worked less than twenty-four hours, and the number of hours an employee worked is not in any event determinative of the duration of an individual's employment. Because the company did raise an issue as to the duration of these employees' employment, however, I examined the record for evidence respecting that issue. While Golden Employment did not present such evidence, the government did. *See* Exhibit G-11a, Count II. Review of the hire and termination dates for the employees named in Count II reflects that for twenty-nine of them, Golden Employment did not have an adequate opportunity to complete section 2 of their I-9s and the company should not be held liable for the failure to do so. These individuals include Abraham Analco (no. 14), who was hired and terminated on September 22, 2012; Jose Banderas (no. 22), who was hired and terminated on August 15, 2010; Armando Benitez Garcia (no. 32), hired December 6, 2012 and terminated on December 7, 2012; Efrain Bonilla (no. 35), hired and terminated on July 25, 2012; Janet Chavarria (no. 48), hired and terminated on May 21, 2012; Adrian Chiman-Torres (no. 49), hired and terminated on January 31, 2013; Sandra DeJesus (no. 57), hired on January 11, 2011 and terminated on January 12, 2011; Juan C. Dina-Gonzalez (no 63), hired and terminated on November 12, 2012; Elizabeth Dominguez-Rodriguez (no. 65), hired and terminated on September 4, 2012; Roberto Galicia-Maceda (no. 81), hired and terminated on December 18, 2012; Jose Juan Garcia (no. 83), hired

⁶ While the use of E-Verify does not excuse the failure to prepare an I-9 for Jose Banderas, as is more fully explained in the succeeding paragraph, Banderas was not employed long enough to require the company to complete section 2 of his I-9.

and terminated on September 8, 2012; Carmen Hernandez (no. 108) hired and terminated on September 4, 2012; Hermina Sepulveda Hernandez (no. 109), hired on January 4, 2012 and terminated on January 5, 2012; Jose Adolfo Landa (no. 127), hired and terminated on October 3, 2012; Remedios Leon-Cervantes (no. 131), hired and terminated on August 14, 2012; Eric Linares-Amatitla (no. 133), hired and terminated on June 9, 2010; Luis Martinez (no. 147), hired and terminated on July 23, 2012; Ana A. Melgar (no. 152), hired on November 29, 2012 and terminated on November 30, 2012; Agustin Enrique Millan (no. 158), hired and terminated on September 5, 2012; Jesus Morelos-Barreno (no. 166), hired on September 18, 2012 and terminated on September 19, 2012; Antonio Navarro-Espana (no. 171), hired and terminated on December 6, 2012; Wendell Alexander Olson (no. 173), hired and terminated on September 4, 2012; Enrique Peralta (no. 183), hired and terminated on November 28, 2012; Rosario Romero-Avitia (no. 210), hired and terminated on April 27, 2010; Esther Romero-Chavez (no. 211), hired September 27, 2012 and terminated September 28, 2012; Jose Luis Ruiz (no. 218), hired and terminated on December 13, 2012; Marcelo Saldivar-Martinez (no. 222), hired and terminated on December 12, 2012; Ezequiel Valverde (no. 248), hired on December 13, 2012 and terminated on December 14, 2012; and Julio Segundo Zambrano (no. 265), hired on May 30, 2012 and terminated on May 31, 2012.

Golden Employment is accordingly liable for 236 of the 265 violations alleged in Count II, and the allegations respecting the I-9s for the twenty-nine individuals who never reached the third day of employment will be dismissed.

C. Count III

Count III asserts that the company failed to ensure that Jonathon Christensen, Miguel Colunga, Lawrence Floyd, Maria Guzman, and Casey Craig Larsen properly completed section 1 of Form I-9, and failed itself to properly complete section 2 and/or 3 of their forms. The government's brief details the specific errors and omissions that appear on each form, but the evidence offered in support of this count, exhibit G-12, which purports to provide the evidence supporting Count III, reflects instead a chart and the I-9s for Alma R. Dominguez, Rosalio Garcia-Castro, Manuel Andres LaVariega, and Domingo Sosa Ortega, all of whom are named in Count VI, and no chart or I-9s for the individuals named in Count III. Exhibit G-12 appears to be a duplicate of exhibit G-15. Because no evidence has been presented to support the allegations in Count III, they will be dismissed and no liability is found for Count III.

D. Counts IV and V

Count IV says there are substantive violations in section 1 of the I-9s for twenty-two named individuals, and Count V says there are substantive violations in sections 2 and/or 3 for seventy-three individuals. Visual inspection of the forms for the individuals named in Count IV in fact confirms the existence of the specific errors and omissions ICE identified. *See* Exhibit G-13 and Appendix A, Count IV.

Inspection of the forms for the individuals named in Count V confirms most, but not all, of the violations alleged in that count.⁷ *See* Exhibit G-14 and Appendix A, Count V. There are two violations in Count V that are not disclosed solely from review of the I-9s themselves, but also require examination of the chart showing the employees' termination dates. Edwin E. Gonzalez (no. 21) and Lakena Sry (no. 66) continued to work after their work authorizations expired on March 9, 2009, and October 2, 2002, respectively. Gonzalez was not terminated until 2013, and Sry was not terminated until 2012.

With respect to six other violations alleged in Count V, however, visual inspection of the forms does not confirm the government's assertions. Specifically, ICE asserts that the I-9 for Juan Manuel Benitez-Casique (no. 3) is missing certain information and that no copy of a document is attached, but examination of his I-9 reflects that he presented an Employment Authorization Card, that the proper information is entered on the form under List A, and that a copy of the card, together with his E-Verify confirmation, accompanies the I-9. The I-9s for Maura Martinez (no. 43) and Roberto Montes (no. 50), reflect that each presented an Alien Registration Card with a photograph, and the appropriate information for each is entered under List A. No substantive violations are found on these I-9s.

The I-9s for James Harmon (no. 24) and Cordney Wade Locke (no. 38) reflect that each presented a state issued identification card or driver's license, together with a social security card. The document numbers and expiration dates for the state IDs or licenses are entered on the I-9s. These are proper List B and C documents and there is accordingly no substantive violation found for these two employees. Finally, on the I-9 for Maria Yanez (no. 73), the signature of an employer representative, Maritza Dominguez, appears on the section 2 attestation, contrary to ICE's assertion, albeit in the box for the employer's print name.

ICE is accordingly entitled to summary decision for twenty-two violations in Count IV, and sixty-seven of the seventy-three violations alleged in Count V, or eighty-nine violations in these two counts. The remaining six allegations in Count V will be dismissed.

E. Counts VI-VIII

Golden Employment also failed to timely present I-9s for Alma R. Dominguez, Rosalio Garcia-Castro, Manuel Andres LaVariega, and Domingo Sosa Ortega, named in Count VI; for Michael Corey Allen Jr., Marisol Avelar, Lorenzo Estrada-Ocana, Jason Jeffrey Fortine, Carlos Calixto Lopez, Lenale Todd Minor, Sergio Navarro Juarez, Perla Salinas, and Jonathan Torres, named in Count VII; and for Eddy Guarcas-Ajcalon and Susan Hughes, named in Count VIII. *See*

⁷ Some of these violations are described less than precisely; for example, identification cards issued by the DMV are referred to as driver's licenses. But the descriptions are generally adequate for purposes of this assessment.

Exhibits G-15, G-16, G-17 and Appendix A. Additional paperwork violations appear on the I-9s for each of these fifteen individuals. Although each of the forms contains multiple violations, only one penalty will be assessed for each I-9. The company is accordingly liable for fifteen violations in Counts VI-VIII.

Golden Employment's opaque assertion that there are partial I-9s for the same individual that together would satisfy the requirements is unavailing for two reasons. First, no such individual is identified, and no I-9s are proffered that can be so characterized. Second, regulations and case law provide otherwise. Regulations require the employer to fully complete section 2 of the I-9 form. 8 C.F.R. § 274a.2(b)(3). As pointed out in *Ketchikan Drywall Services, Inc. v. Immigration & Customs Enforcement*, 725 F.3d 1103, 1111 (9th Cir. 2013), "[f]ully' means 'fully,' and not . . . 'partially.'" The court noted that section 2 provides evidence that the employee's documents were examined, and "aggregation of all of the relevant information onto one form allows for easier review of that information by ICE."

CONCLUSION

Golden Employment is liable for all 125 violations alleged in Count I, for 236 of the violations alleged in Count II, for the twenty-two violations alleged in Count IV and sixty-seven of the violations alleged in Count V, for the four violations alleged in Count VI, for the nine violations alleged in Count VII, and the two violations alleged in Count VIII, or 465 violations in all.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Golden Employment Group, Inc. is a temporary help service, incorporated in the state of Minnesota in 1996.
2. Golden Employment Group, Inc. is owned and operated by its president, Paul Hughes, who states that Golden Employment accepts approximately 2000 to 3000 applications a year, and currently has over 20,000 people in its database.
3. The Department of Homeland Security, Immigration and Customs Enforcement served Golden Employment with a Notice of Inspection on April 9, 2013.
4. The Notice of Inspection served on Golden Employment Group, Inc. stated that the I-9 forms and additional documentation were due by April 12, 2013.

5. On April 10, 2013, Paul Hughes contacted the Department of Homeland Security, Immigration and Customs Enforcement, and advised the government that the company had just received the Notice of Inspection that day.
6. The Department of Homeland Security, Immigration and Customs Enforcement adjusted the due date to April 15, 2013, in order to provide Golden Employment Group, Inc., with three full business days to respond to the Notice of Inspection.
7. Golden Employment Group, Inc. presented four boxes of I-9s and supporting documentation to the Department of Homeland Security, Immigration and Customs Enforcement on April 15, 2013.
8. Golden Employment Group, Inc. presented a box of I-9s and supporting documents to the Department of Homeland Security, Immigration and Customs Enforcement on May 21, 2013, and an additional box of I-9s and supporting documents on June 10, 2013.
9. The Department of Homeland Security, Immigration and Customs Enforcement treated I-9s presented after April 15, 2013, as untimely.
10. On October 9, 2014, the Department of Homeland Security, Immigration and Customs Enforcement served Golden Employment Group, Inc. with a Notice of Intent to Fine.
11. Golden Employment Group, Inc. filed a request for hearing on or about November 4, 2014.
12. The Department of Homeland Security, Immigration and Customs Enforcement filed a complaint in eight counts with the Office of the Chief Administrative Hearing Officer on March 11, 2015.
13. Golden Employment Group, Inc. tendered the I-9s for the individuals named in Count I to the Department of Homeland Security, Immigration and Customs Enforcement after the established deadline of April 15, 2013.
14. Golden Employment Group, Inc. never tendered the I-9s for the individuals named in Count II to the Department of Homeland Security, Immigration and Customs Enforcement.
15. The Department of Homeland Security, Immigration and Customs Enforcement tendered no evidence to support its allegations with respect to the I-9s for the individuals named in Count III.
16. Visual examination of the I-9s for the individuals named in Counts IV and V reflects the errors and omissions alleged by the Department of Homeland Security, Immigration and Customs Enforcement.

17. Golden Employment Group, Inc. tendered the I-9s for the individuals named in Counts VI-VIII to the Department of Homeland Security, Immigration and Customs Enforcement after the established deadline of April 15, 2013.

18. Visual inspection of the I-9s for the individuals named in Counts VI-VIII reflects additional errors and omissions, but only one penalty will be assessed for each I-9, regardless of the number of paperwork violations.

B. Conclusions of Law

1. Golden Employment Group, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2014).

2. All conditions precedent to the institution of this proceeding have been satisfied.

3. Golden Employment Group, Inc. is liable for 465 violations of 8 U.S.C. § 1324a(a)(1)(B) (2014).

4. The Department of Homeland Security, Immigration and Customs Enforcement failed to carry the burden of proof for twenty-nine of the allegations in Count II, for all five allegations in Count III, and for six violations in Count V, and those forty allegations will be dismissed.

5. Employers are obligated to prepare and retain Employment Eligibility Verification Forms (I-9s) for new employees and to make those forms available for inspection on at least three business days' notice. 8 C.F.R. § 274a.2(b)(2)(ii).

6. Absent an extension of time, an employer cannot avoid liability for failure to timely present I-9 forms by submitting the forms at some point later in the process, whether in the course of the inspection itself or later during the ensuing litigation. *See, e.g., United States v. A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, 7 (2013).

7. When an employee quits unexpectedly, an employer may avoid liability for failure to prepare that employee's I-9 only where there is evidence that the individual was hired for continued employment, but quit or was terminated shortly thereafter, frustrating the company's efforts to comply with the employment eligibility verification requirements. *See, e.g., United States v. Two for Seven, LLC*, 10 OCAHO no. 1208, 4 (2014); *United States v. A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, 5-6 (2013); *United States v. DuBois Farms, Inc.*, 2 OCAHO no. 376, 599, 625-29 (1991).

8. Employers are obligated to sign the attestation portion of section 2 to attest under penalty of perjury that the hiring entity reviewed appropriate documents to verify the individual's identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

ICE's motion for partial summary decision is granted in part and denied in part. As more fully set forth herein, liability is established for 465 of the violations alleged in the complaint, and the remaining forty allegations are dismissed. Although both parties have already addressed the penalty issue, they may have until April 15, 2016, to supplement their previous filings should they so wish.

SO ORDERED.

Dated and entered this 1st day of April, 2016.

Ellen K. Thomas
Administrative Law Judge

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

April 6, 2016

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 15A00037
)	
GOLDEN EMPLOYMENT GROUP, INC.,)	
Respondent.)	
_____)	

ERRATUM

In the Order Resolving Motion for Partial Summary Decision and Schedule for Supplemental Filings issued on April 1, 2016:

On page 3, the text reading “On March 7, 2013, ICE served Golden Employment with a request for missing I-9s for twenty-seven named employees” is hereby corrected to read “On March 7, 2014, ICE served Golden Employment with a request for missing I-9s for twenty-seven named employees.”

SO ORDERED.

Dated and entered this 6th day of April, 2016.

Ellen K. Thomas
Administrative Law Judge