

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

April 6, 2017

In re Investigation of:)	
)	
CREATIVE RESOURCE PERSONNEL, INC.)	OCAHO Investigatory Subpoena
)	No. 17S00028
_____)	

ORDER GRANTING IER’S APPLICATION FOR AUTHORIZATION TO SEEK
ENFORCEMENT OF SUBPOENA

On April 5, 2017, the United States Immigrant and Employee Rights Section (IER) filed an application for authorization to seek enforcement of investigatory subpoena no. 17S00028. On December 14, 2016, I issued subpoena no. 17S00028 at IER’s request in aid of its investigation of Creative Resource Personnel, Inc. (Creative Resource),¹ which IER served on December 21, 2016. IER asserts that it did not receive the documents and responses requested in the subpoena by the January 6, 2017 deadline. In a letter dated January 11, 2017, IER requested Creative Resource to provide the requested documents and information by January 17, 2017, and advised Creative Resource it would seek enforcement of the subpoena if it did not receive the documents by that date. IER’s Application for Authorization, Ex. 10. According to IER, on January 19, 2017, Creative Resource submitted “several hundred sheets uncollated and unorganized Forms I-9 completed in calendar years 2005 and 2009 through 2015,” many of which did not include the identifying information of the respective employee. *Id.* at 3-4. In addition, no Forms I-9 from 2016 were provided, which Creative Resource represented it had completed. *Id.* at 4. IER thus considers the submission to be incomplete and non-responsive to the subpoena. *Id.*, Ex. 13. On January 30, 2017, IER emailed, faxed, and mailed a letter to Creative Resource identifying the deficiencies of the January 19, 2017 submission and advising that IER would seek enforcement of the subpoena if Creative Resource failed to take immediate action to address the deficiencies. *Id.* IER states that to date, Creative Resource has not addressed or corrected the deficiencies of this submission nor has it contacted IER to discuss or resolve them.

Title 8 U.S.C. § 1324b(f)(2) provides, in part:

¹ IER identified the company as “Creative Personnel Resources, Inc.” in the case caption of its Application for Authorization to Seek Enforcement of Subpoena. This appears to have been inadvertently done, as the company is otherwise identified as Creative Resource Personnel, Inc. throughout the record.

In the case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

It is well-established that the requesting party, rather than the administrative law judge, makes the actual application to the appropriate district court. *See In re Investigation of Wal-Mart Stores, Inc.*, 5 OCAHO no. 754, 264, 265 (1995). OCAHO regulation, at 28 C.F.R. § 68.25(e), further provides:

(e) Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

See also In re Investigation of Wal-Mart, 5 OCAHO no. 754 at 265 (citing *In re Investigation of Chan's Apparel*, 1 OCAHO no. 1 (1988)).

It is evident that Creative Resource has refused to comply with the subpoena, and IER's application to seek enforcement of the subpoena will be granted.

Because the requirements of notice and time to answer are only applicable to individuals or entities who have been charged with unfair immigration-related employment practices, 28 C.F.R. § 68.25(b), prior notice to Creative Resource of IER's request to enforce the subpoena is not required. Individuals and entities so charged are entitled to notice of the subpoena, by service of the subpoena itself. *Id.*; *see also In re Investigation of Wal-Mart*, 5 OCAHO no. 754 at 265. Counsel for IER is found to be the appropriate counsel to make application to and is hereby authorized to apply to the United States District Court for the Northern District of Illinois, or such other district court of the United States as may be appropriate, for an order requiring compliance with the subpoena.

SO ORDERED.

Dated and entered on April 6, 2017.

James R. McHenry III
Administrative Law Judge