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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

SSS:ELM
F. #2016R01981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

RENA BEDUYA AVENDULA,

Defendant.

-----X

THE GRAND JURY CHARGES:

I N D I C T M E N T

Cr. No. **CR 18-00246**
(T. 18, U.S.C., §§ 371, 982(a)(6),
982(b)(1), 1546(a), 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p))

IRIZARRY, CH.J.

SCANLON, M.J.

I N T R O D U C T I O N

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendant and Relevant Entities

1. The defendant, a resident of Queens, New York, was the owner and managing executive of Professional Placement & Recruitment, Incorporated ("PPRI"). PPRI's offices were located in Woodside, Queens.

2. PPRI was a medical staffing agency that provided nursing staff members to healthcare facilities, including residential nursing facilities located in New York, New York, and Queens, New York, that provided care to elderly patients (the "Client Facilities").

II. The H-1B Visa Program

3. The H-1B visa was a temporary, nonimmigrant visa category. The H-1B visa program permitted employers to petition on behalf of a foreign national (the “beneficiary”) to allow the beneficiary to enter the United States for the specific purpose of working for the employer in a qualified “specialty occupation.” H-1B visas were effective for three years, and could be extended for an additional three years.

4. H-1B visa applications included, but were not limited to, a Petition for Nonimmigrant Worker (“Form I-129”), the H Classification Supplement to Form I-129, a Labor Condition Application for Nonimmigrant Workers and supporting documents (collectively, a “Form I-129 H-1B petition”). A completed Form I-129 H-1B petition included, among other things, an explanation of why the beneficiary’s prospective employment was a specialty occupation, including anticipated job duties and responsibilities.

5. An employer seeking an H-1B visa for a prospective employee was required to attest in the Form I-129 H-1B petition that it would pay the beneficiary the prevailing wage for the job in question or the actual wage paid by the employer to similarly qualified employees, whichever was higher.

6. An employer seeking an H-1B visa for a prospective employee was required to pay a fee pursuant to the American Competitiveness and Workforce Improvement Act, and other filing fees. The beneficiary was prohibited by United States Department of Labor regulations from paying any expenses related to filing an H-1B petition on his or her behalf.

7. In or about November 2002, the USCIS issued a memorandum providing guidance on the adjudication of H-1B visa applications filed on behalf of nurses

(the “Memorandum”). The Memorandum indicated that general registered nurses (“RNs”) typically did not qualify as beneficiaries for H-1B visas. The Memorandum indicated that specialized nursing positions – such as advanced practice nurses and nurses in administrative positions – might be eligible for H-1B visas.

III. The Form I-140 Petition Process

8. An individual who entered the United States on an H-1B visa could pursue permanent residency through a petitioning employer. The petitioning employer could apply for a permanent work visa on behalf of an H-1B visa beneficiary by submitting, among other documents, an Immigrant Petition for Alien Worker (“Form I-140”) with the United States Citizenship and Immigration Services (the “USCIS”).

9. To file a Form I-140, a petitioning employer was required to obtain a foreign labor certification (an “ETA Form 9089”) that demonstrated that there was no minimally qualified American citizen or legal permanent resident who could fill the position. Employers were prohibited by federal regulation from selling an ETA Form 9089.

IV. The Fraudulent Scheme

10. In or about and between October 2009 and February 2015, both dates being approximate and inclusive, the defendant RENA BEDUYA AVENDULA, together with others, engaged in a scheme to profit financially by using, attempting to use, processing, obtaining, accepting and receiving H-1B visas for foreign national RNs by falsely representing that the beneficiaries would be engaged in specialized nursing or other qualifying occupations.

11. As part of the conspiracy, the defendant RENA BEDUYA AVENDULA, together with others, prepared Form I-129 H-1B petitions that falsely

represented that a Client Facility would employ prospective beneficiaries in specialized nursing or another qualifying profession and that the beneficiary would be paid at least the prevailing wage. In fact, and as was known by AVENDULA, no Client Facility had agreed to hire the beneficiaries at the time these petitions were filed, the beneficiaries would not be performing the job duties described in the petitions, and the beneficiaries would not be paid the wages represented in the petitions. AVENDULA and her co-conspirators represented that the beneficiaries would be working in qualifying specialty occupations by exaggerating the duties of the positions that PPRI generally staffed and by manufacturing job titles. The prospective beneficiaries were responsible for attorneys' fees and other costs associated with filing the H-1B petitions.

12. In some cases, the defendant RENA BEDUYA AVENDULA filed a Form I-140 petition on behalf of an H-1B visa beneficiary. AVENDULA required beneficiaries whose Form I-140 petitions were granted to pay her up to \$15,000.

13. After the beneficiaries' petitions were granted and they had lawful status in the United States, the defendant RENA BEDUYA AVENDULA placed the beneficiaries as RNs with various Client Facilities. The beneficiaries were not paid the wages represented by AVENDULA in their petitions.

COUNT ONE

(Conspiracy to Defraud the United States, Commit Visa Fraud and
Unlawfully Bring in Aliens)

14. The allegations contained in paragraphs one through 13 are realleged and incorporated as if fully set forth in this paragraph.

15. In or about and between October 2009 and February 2015, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the

defendant RENA BEDUYA AVENDULA, together with others, did knowingly and willfully conspire to commit one or more offenses against the United States, to wit:

(a) to defraud the United States by impeding, impairing and obstructing the lawful governmental functions of the USCIS to administer, regulate and enforce the regulations and laws relating to the implementation of the H-1B visa program;

(b) to knowingly subscribe as true, under penalty of perjury under Title 28, United States Code, Section 1746, one or more false statements with respect to material facts, to wit: that applicants for H-1B visas would be employed in specialty occupations and would be paid the prevailing wage for those occupations, in one or more applications, affidavits and other documents required by the immigration laws and regulations prescribed thereunder, to wit: Forms I-129, Forms I-140 and supporting documents, and knowingly present such applications, affidavits and other documents which contained false statements and which failed to contain any reasonable basis in law and fact, contrary to Title 18, United States Code, Section 1546(a); and

(c) to encourage and induce foreign nationals to come to, enter and reside in the United States, knowing and in reckless disregard of the fact that such coming to, entry and residence in the United States was and would be in violation of law, contrary to Title 8, United States Code, Section 1324(a)(1)(A)(iv).

16. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant RENA BEDUYA AVENDULA, together with other, did commit and cause the commission of, among others, the following:

OVERT ACTS

(a) On or about March 22, 2011, AVENDULA, on behalf of PPRI, signed an H-1B petition stating that Beneficiary One, a citizen of the Philippines whose identity is known to the Grand Jury, would work as a "Health Education Manager."

AVENDULA signed the petition knowing that Beneficiary One did not have a prospective position as a Health Education Manager, and knowing that the petition would be denied if Beneficiary One's position was truthfully identified as an RN.

(b) On or about April 27, 2012, AVENDULA, on behalf of PPRI, signed an H-1B petition stating that Beneficiary Two, a citizen of the Philippines whose identity is known to the Grand Jury, would work as a "Pharmaceutical Analyst."

AVENDULA signed the petition knowing that Beneficiary Two did not have a prospective position as a Pharmaceutical Analyst, and knowing that the petition would be denied if Beneficiary Two's position was truthfully identified as a Pharmaceutical Clerk.

(c) On or about July 24, 2012, AVENDULA, on behalf of PPRI, signed an H-1B petition stating that Beneficiary Three, a citizen of the Philippines whose identity is known to the Grand Jury, would work as a "Clinical Coordinator." AVENDULA signed the petition knowing that Beneficiary Three did not have a prospective position as a Clinical Coordinator, and knowing that the petition would be denied if Beneficiary Three's position was truthfully identified as an RN.

(d) On or about August 16, 2013, AVENDULA, on behalf of PPRI, signed an H-1B petition stating that Beneficiary Four, a citizen of the Philippines whose identity is known to the Grand Jury, would work as a "Nurse Supervisor." AVENDULA signed the petition knowing that Beneficiary Four did not have a prospective position as a

Nurse Supervisor, and knowing that the petition would be denied if Beneficiary Four's position was truthfully identified as an RN.

(e) On or about the dates noted above in paragraphs 16(a) through 16(d), AVENDULA and others known and unknown acting on her behalf and at her direction submitted the aforementioned petitions to the USCIS.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWO THROUGH FIVE
(Visa Fraud)

17. The allegations contained in paragraphs one through 13 are realleged and incorporated as if fully set forth in this paragraph.

18. On or about the dates set forth below, within the Eastern District of New York and elsewhere, the defendant RENA BEDUYA AVENDULA, together with others, did knowingly subscribe as true, under penalty of perjury under Title 28, United States Code, Section 1746, one or more false statements with respect to one or more material facts, to wit: that beneficiaries of Form I-129 H-1B visa petitions would be employed in qualifying specialty occupations and would be paid the prevailing wage for those occupations, and that beneficiaries of Form I-140 petitions would be employed by PPRI and would be paid a specified wage, in one or more applications, affidavits and other documents required by the immigration laws and regulations prescribed thereunder, to wit: a Form I-129 or Form I-140 as set forth below and supporting documents, and did knowingly present such applications, affidavits and other documents that contained false statements and that failed to contain any reasonable basis in law and fact:

| COUNT | APPROXIMATE DATE | FORM I-129 OR I-140 (LAST FOUR DIGITS) | BENEFICIARY |
|-------|-------------------|--|-------------------|
| TWO | August 16, 2013 | 1372 (Form I-129) | Beneficiary Four |
| THREE | November 1, 2013 | 1471 (Form I-129) | Beneficiary Three |
| FOUR | April 7, 2014 | 1724 (Form I-129) | Beneficiary One |
| FIVE | February 17, 2015 | 6777 (Form I-140) | Beneficiary Two |

(Title 18, United States Code, Sections 1546(a), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

19. The United States hereby gives notice to the defendant that, upon her conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(6), which requires the forfeiture of (a) any property, real or personal, that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from, the commission of such offenses; and (b) any property real or personal that is used to facilitate, or is intended to be used to facilitate, the commission of such offenses.

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided

without difficulty;


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(6) and 982(b)(1); Title 21, United States Code, Section 853(p))

A TRUE BILL

FOREPERSON

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: 
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

RENA BEDUYA AVENDULA,

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 371, 982(a)(6), 982(b)(1), 1546(a), 2 and 3551 et
seq.; T., 21 U.S.C., § 853(p))

A true bill

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

Elizabeth Macchiaverna, Assistant U.S. Attorney (718) 254-6351