

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

United States of America, Complainant v. Capitol Arts and Frames, Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 90100216.

**ORDER DENYING RESPONDENT'S
MOTION TO STRIKE AND DISMISS COMPLAINT**

A Complaint was filed on July 5, 1990, by the United States of America, against Capitol Arts and Frames, Inc., the Respondent, alleging violations of §§ 274A(a)(2) and 274A(a)(1)(B) of the Immigration and Nationality Act. 8 U.S.C. §§ 1324(a)(2) and 1324(a)(1)(B).

More specifically, Count I of the Complaint alleges that Respondent hired Luis Gustavo Saldivar for employment in the United States after November 6, 1986; and that on May 27, 1988, and May 2, 1989, Respondent became aware that Saldivar was an alien not authorized for employment in the United States. Count I further alleges that Respondent continued to hire Salvidar after May 2, 1989, knowing that he was not authorized for employment in the United States. Count I requests a civil monetary penalty of \$1,000.00.

Count II of the Complaint alleges that Respondent hired Luis Gustava Saldivar after November 6, 1986, but failed to ensure that Saldivar properly completed Section 1 of the Employment Eligibility Verification form (Form I-9), and Respondent failed to complete Section 2 of the form. Count II requests a civil monetary penalty of \$500.00.

Attached to the Complaint is the Notice of Intent to Fine and Respondent's Request for a Hearing.

On August 7, 1990, Respondent filed, in the same pleading, its answer to the Complaint and a Motion to Strike and Dismiss the Complaint because of ``ambiguity, vagueness and lack of specificity reflecting knowledge of Salvidar's illegal employment status on May 27, 1988 and May 2, 1989.''

Respondent's Answer admitted allegations No. 1 and 5 of the Complaint, generally denied allegations No. 2, 6, 7, 8, and specifi-

cally denied allegations No. 3 and 4. Respondent does not allege any affirmative defenses with a statement of facts in support thereof in its Answer.

On August 17, 1990, Complainant filed its Reply to Respondent's Answer and Motion to Strike. In its response, Complainant argues that the Complaint meets the requirements of the regulations and, therefore, Respondent's Motion to Strike or Dismiss should be denied. For the reasons more fully described herein, I agree with Complainant.

The regulation applicable to these proceedings details the requirements for a complaint, stating that, inter alia, a complaint shall contain ``(1) a clear and concise statement of facts, upon which an assertion of jurisdiction is predicated; (2) the names and addresses of the respondents, agents and/or their representatives who have been alleged to have committed the violation; (3) the alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; (4) a short statement containing the remedies and/or sanctions sought to be imposed against the respondent; and (5) a copy of the Notice of Intent to Fine and Request for a Hearing shall be attached to the complaint.'' 28 C.F.R. § 68.6.

In deciding that the allegations of the Complaint comply with the requirements of the regulations, it is noted that Respondent's Answer clearly indicates that allegations 1 and 5 do not suffer from ambiguity, vagueness or lack of specificity because Respondent has found them sufficiently clear to admit them. In like manner, Respondent's responses to allegations 2, 6, 7 and 8 indicate that those allegations are of sufficient clarity and specificity as, again, Respondent has made a general denial ``based on Information and Belief.'' Accordingly, Respondent's Motion to Strike for lack of specificity must be based on allegations 3 and 4 of the Complaint.¹

As previously set forth in 28 C.F.R. § 68.6 (b)(1) and (b)(4) respectively, the Complaint need only set out ``a clear and concise statement of facts'' predicating jurisdiction and violations of law together with names and addresses of pertinent parties and a short statement containing the remedies/sanctions sought to be imposed.

¹ Allegation 3 of count I states:

On May 27, 1988 and again on May 2, 1989, you became aware that the individual listed in Allegation No. 1 was an alien not authorized for employment in the United States.

Allegation 3 of count I states:

You continued to employ the individual after May 2, 1989, knowing that he was not authorized for employment in the United States.

In United States v. Azteca Restaurant v. Northgate, OCAHO Case No. 88100087 (November 8, 1988) (Order Ruling on Motion to Strike), a case involving paperwork violations under IRCA, one of Respondent's affirmative defenses was ``that the complaint failed to state a claim upon which relief can be granted.'` Complainant filed a Motion to Strike the affirmative defense. The ALJ, in granting the Complainant's motion, stated that:

Motions to dismiss a complaint for failure to state a claim upon which relief can be granted are disfavored by the courts. Only in the most extraordinary circumstances are they granted. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). Viewing the pleadings most favorably to the INS, as I must when ruling on Azteca's affirmative defense #9, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), I find that the Complaint sets forth the elements of a cause of action, which if the facts pleaded are true, would justify the relief sought by the INS, Middletown Plaza Associates v. Dora Dale of Middletown, Inc., 621 F. Supp 1163, 1164 (D.C. Conn. 1985).

Rule 8(a) of the Federal Rules of Civil Procedure is the parallel rule applicable to complaints filed in federal courts. It is authoritatively determined that:

According to Rule 8(a)(2), the heart of an affirmative federal pleading need consist only of a `short and plain statement of the claim showing that the pleader is entitled to relief.' All that is necessary is that the claim for relief be stated with brevity, conciseness, and clarity (citations omitted). This portion of Rule 8 indicates the objective of the rules to avoid technicalities (citations omitted) and to require that the pleading discharge the function of giving the opposing party fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved (citations omitted); the discovery process bears the burden of filing in the details. (citations omitted)

See, 5 Wright and Miller, Federal Practice and Procedure section 1215, 136_43 (1990).

The Complaint filed in this case clearly conforms to both the requirements of the regulations and the pleading requirements in federal court. The Complaint sets forth the following: (1) a clear and concise statement of facts predicated the jurisdiction of the Office of Chief Administrative Hearing Officer; (2) the names and addresses of the pertinent parties; (3) the alleged violations of Sections 274A(a) (1) and (2) of the Immigration and Nationality Act, with a clear and concise statement of facts for each violation alleged; (4) a short statement containing the sanctions sought to be imposed; and (5) a copy of the Notice of Intent to Fine and the request for a hearing is attached thereto.

Neither the regulations nor the Federal Rules of Civil Procedure require the complaint to relate the basis of every factual detail and its evidentiary foundation. This information is properly reserved for the discovery stage of litigation.

For the foregoing reasons, I find that the Complaint in this case satisfies the requirements of 28 C.F.R. § 68.6 and

ACCORDINGLY, Respondent's Motion to Strike and Dismiss the Complaint is hereby DENIED.

SO ORDERED: This 10th day of September, 1990, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge