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

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	CASE NO. 91100060
JOO HYUN YI and HYUNG JIN CHO d.b.a. L.A. CONNECTION, Respondent.	)	

E. Milton Frosburg, Administrative Law Judge

Appearances: Gilbert T. Gembacz, Esquire
for the Immigration and
Naturalization Service.
Lawrence A. Grigsby, Esquire
for the Respondent.

FINAL DECISION AND ORDER

I. *Introduction*

The Immigration Reform and Control Act of 1986 (IRCA) adopted significant revision in national policy on illegal immigration. IRCA introduced civil and criminal penalties for violation of prohibitions against employment in the United States of unauthorized aliens. Civil penalties are authorized when an employer is found to have violated the prohibitions against unlawful employment and/or the record-keep-ing verification requirements of the employer sanctions program.

II. *Procedural Summary*

On November 27, 1990, Special Agent Jerry Valentine, of the Immigration and Naturalization Service (hereinafter Complainant or

INS) served Joo Hyun Yi and Hyung Jin Cho d.b.a. as L. A. Connection, Respondent, with the Notice of Intent to Fine (NIF), alleging that Respondent had violated the prohibitions against unlawful employment of aliens and had failed to comply with the verification requirements of IRCA, under 8 U.S.C. §1324a. Specifically, the NIF charged Respondent with violating 8 U.S.C. §1324a(a)(2) by continuing to employ aliens, knowing that the aliens were, or had become, unauthorized to work in the United States. The INS also charged Respondent with seventy (70) violations of the Employment Verification Requirements of 8 U.S.C. §1324a(a)(1)(B). The paperwork violations were all charged as failure to prepare, maintain or present the employment verification Form I-9 issued by INS pursuant to its authority to implement 8 U.S.C. §1324a.

On December 25, 1990, Respondent requested a hearing before an Administrative Law Judge and on April 17, 1991, the Office of the Chief Administrative Hearing Officer (OCAHO) issued its Notice of Hearing advising Respondent of the filing of the Complaint and of my assignment to the case. On April 25, 1991, my office sent a Notice of Acknowledgment to the parties indicating that I would be scheduling a prehearing telephonic conference in the near future and also cautioning Respondent that an Answer had to be filed within thirty (30) days of receipt of the Complaint pursuant to 28 C.F.R. 68.9.*

On May 22, 1991 Respondent filed an Answer to the Complaint which included three affirmative defenses. On June 24, 1991, Complainant filed a Motion to Strike Affirmative Defenses and on July 8, 1991, Respondent's Motion in Opposition was filed.

The Rules of Practice and Procedure applicable to these proceedings require that when asserting Affirmative Defenses, a Respondent must set forth a statement of facts supporting them. 28 C.F.R. 68.9(c)(2). Here, Respondent's Affirmative Defenses were stated as legal conclusions without sufficient supporting facts. See United States v. Samuel Wasem, General Partner, d.b.a. Educated Car Wash, 1 OCAHO 98. Thus, on July 26, 1991, I issued an order granting the Complainant's Motion to Strike Respondent's Affirmative Defenses based on Respondent's noncompliance with our regulations. However, I granted the Respondent fifteen (15) days from the date of my order in which to file an amended answer. None was filed.

* Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings as amended in the Interim Rule published in 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. Section 68).

At a prehearing telephonic conference on October 15, 1991, the parties represented that Respondent was admitting liability in all counts of the Complaint and was not putting forth any Affirmative Defenses. The parties indicated, however, that they were unable to reach an agreement on civil penalties. As such, the parties agreed to direct the issue of appropriate penalties to me. See 28 C.F.R. 68.28. Accordingly, I ordered the parties to submit statements regarding the appropriateness of the requested civil penalties.

Complainant filed a statement regarding the fine assessment on November 26, 1991 which indicated, among other things, that Respondent employed approximately seventy-five (75) individuals during the period in question, that its weekly payroll was approximately $5,000 during that same period, and that on October 18, 1991, almost one year after the issuance of the Notice of Intent to Fine, each of the five (5) aliens identified in Count I of the Complaint was arrested while still unauthorized and still employed by Respondent.

Complainant assessed the following penalties: (1) a one thousand dollar ($1,000) civil penalty per individual named in Count I for a total civil penalty of five thousand dollars ($5,000) for five (5) individuals named in Count I; (2) a five hundred dollar ($500) civil penalty per individual named in Count II for a total civil penalty of eleven thousand five hundred dollars ($11,500) for twenty-three (23) individuals named in Count II; (3) a four hundred sixty dollar ($460) civil penalty per individual named in Count III for a total civil penalty of seventeen thousand four hundred and eighty dollars ($17,480) for thirty-eight (38) individuals listed in Count III; (4) a four hundred sixty dollar ($460) civil penalty per individual named in Count IV for a total civil penalty of two thousand three hundred dollars ($2,300) for five (5) individuals listed in Count IV; and (5) a two hundred fifty dollar ($250) civil penalty per individual named in Count V for a total civil penalty of one thousand dollars ($1,000) for four (4) individuals listed in Count V. Complainant asserted that the fines were reasonable, based upon the totality of the circumstances, and were in accordance with the criteria set forth in 8 U.S.C. 1324(a)(e)(5).

On November 25, 1991, Respondent filed its statement regarding the appropriateness of the assessed fines. Respondent stated that he made an honest attempt to comply with the regulations governing employee hiring and record keeping and had no intent to violate or disregard the law, although his efforts to fully understand the law and completely comply with it were not diligent. He argued that he did not wilfully or knowingly violate the law since, due to business pressures, he negligently failed to inform himself of the law governing employee

eligibility. In addition, he pointed out that he had no history of previous IRCA violations. Respondent admitted, though, that the individuals employed were unauthorized aliens.

Respondent indicated that his business was small and was struggling to survive in the fiercely competitive garment industry. Financially it was doing poorly and had lost more than six thousand dollars ($6,000) from July 8, 1989 to December 10, 1991. In fact, for Respondent stated that for several months in 1990, he had received no salary.

Respondent requested that the seriousness of the violations be considered light based on his good intent, low level of business experi-ence and his lack of sophistication. Respondent asked that I also con-sider the following facts: (1) his business partner abandoned the business venture and returned to Korea leaving the Respondent to shoulder all liability; (2) he is in poor health and unable to resume any business activity in the foreseeable future; (3) he has no significant assets, money or income to pay the assessed fine; and, (4) he has offered to pay an amount he can afford under terms that he can manage.

On November 26, 1991, a Joint Stipulation of Facts was filed by the parties stating that: (1) there is no disagreement regarding the facts surrounding the incident matter as they pertain to Counts I through V, inclusive, of the Notice of Intent to Fine; (2) Respondent took no specific action to verify the status of each of the forty-one (41) individuals identified on the Notice of Inspection results; (3) Respondent has no history of prior violations of the Immigration Reform and Control Act of 1986; and, (4) the only issue for resolution between the parties is the amount of the civil penalty to be paid by Respondent.

III *Findings of Fact*

Since the parties have stipulated to the liability in this matter, the findings of fact will be brief. After reviewing the pleadings, the parties' stipulation and the evidence in this case, I make the following relevant findings of fact:

1. Respondent was a sewing contractor during the relevant period of time, May through October 1990.

2. Respondent operated as a partnership during most of the relevant time in this case.

3. Respondent employed approximately seventy-five (75) employees during the period in question.

4. Respondent's weekly payroll was approximately five thousand ($5,000) per week during the time period in question.

5. Respondent hired five (5) individuals after November 16, 1986 who were unauthorized to work in the United States.

6. Respondent continued to employ the five (5) individuals after June 20, 1990 knowing that the individuals were not authorized for employment in the United States.

7. Respondent hired twenty-three (23) individuals after November 6, 1989 and failed to prepare Employment Eligibility Verification Forms for these individuals which was a violation of the Act.

8. Respondent hired thirty-eight (38) individuals for employment in the United States after November 6, 1989, failed to ensure that the individuals properly completed Section I of the Employment Eligibility Verification Forms and failed to properly complete Section II of said forms.

9. Respondent hired five (5) individuals for employment after November 6, 1986 and that the Respondent failed to ensure that the individuals listed completed Section I of the Employment Eligibility Forms.

10. Respondent failed to complete Section II of the said forms in violation of the Act.

11. Respondent hired four (4) individuals for employment in the United States after November 6, 1986, and failed to properly complete Section II of the Employment Eligibility Verification form for these four (4) individuals.

IV. *Legal Analysis and Conclusions of Law*

The parties have stipulated to the liability on all counts of the Complaint. Thus, the only issue I must determine is the amount of appropriate civil money penalty.

Since I find that Respondent has violated Sections 274A(a)(2) and 274A(a)(1)(B) of the Act, I must assess a civil money penalty pursuant

to Sections 274A(e)(4) and 274A(e)(5) of the Act. The statute states in pertinent part, that:

> With respect to a violation of Subsection a(1)(A) or a(2), the order under this subsection - (A) shall require the person or entity to cease and desist from such violations and to pay a civil money penalty in the amount of (1) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either subsection occurred,...and with respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay civil penalty in the amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien and the history of previous violations.

8 U.S.C. §1324a(e)(4) and (a)(e)(5).

With respect to Count I, I find that both Respondent's low level of business knowledge and his lack of sophistication were continuing factors in these five (5) violations. Although Respondent admitted that he negligently failed to inform himself of the law governing employee eligibility, it is apparent that at this time Respondent is in compliance and is aware of his responsibilities under IRCA. I also find that there are few other mitigating factors in Respondent's favor. I find that the Respondent took no specific actions to verify the status of each of the five (5) individuals after June 20, 1990 knowing that these five (5) individuals were not authorized for employment in the United States. I assess a civil penalty of seven hundred fifty dollars ($750) for each of the five (5) violations under Count I making a total civil penalty of three thousand seven hundred fifty dollars ($3,750.00) for Count I. I find these civil money penalties to be reasonable and appropriate considering all the aspects of this case.

With respect to Counts II thru V, I find that: (1) the size of Respondent's business was small to moderate; (2) Respondent did not provide "good faith" due to the many paperwork violations involved as well as the substantive violations; (3) the violations involved were serious due to the many unauthorized aliens involved; and, (4) Respondent had no prior history of IRCA violations.

With regard to the twenty-three (23) violations listed in Count II, wherein the Respondent failed to prepare Employment Verification forms, it was not shown that these employees were aliens unauthorized for employment in the United States. Since there is no information whereby the Complainant could ascertain this information, I find it appropriate that a civil penalty of three hundred dollars ($300) for

each individual be assessed for a total civil penalty of six thousand nine hundred dollars ($6,900) for Count II.

As to Count III, wherein the Respondent failed to show proper completion of section one of the Employment Verification Forms and also failed to properly complete Section II, these thirty-eight (38) employees are determined to be without employment authorization. I believe that two hundred fifty ($250) to be an appropriate civil money penalty for each of these thirty-eight (38) individuals making a total civil penalty of nine thousand five hundred dollars ($9,500) for Count III.

As to Count IV, wherein the Respondent failed to show proper completion of Section I as well as Section II of the Employment Form for five (5) employees and these five (5) employees were determined to be aliens in the United States without employment authorization, I believe that the proper amount of civil penalty for these violations would be $250 for each individual, making a total civil penalty of one thousand two hundred fifty dollars ($1,250.00) for Count IV.

As to Count V, wherein Respondent failed to properly complete Section II of the Employment Eligibility Verification forms for four (4) individuals, these individuals were determined to have employment authorization and social security account numbers. Thus, I believe that a civil money penalty of one hundred dollars ($100) for each individual, making a total civil penalty of four hundred dollars ($400) for Count V.

V. *Ultimate Findings of Fact, Conclusions of Law and Order.*

I have carefully considered the record in this case, as well as the documents presented by the parties, and the parties request that I determine the amount of civil penalties to be assessed. Accordingly, in addition to the Findings of Fact and Conclusions previously made, I make the following ultimate Findings of Fact and Conclusions of Law.

1. I conclude that it has been proven by a preponderance of evidence, as well as by Respondent's stipulations and admissions to liability, that Respondent violated 8 U.S.C. §1324a(a)(2);

2. I conclude that it has been proven by a preponderance of the evidence that Respondent violated 8 U.S.C. §1324a(a)(1)(B) by hiring for employment in the United States, seventy (70) individuals without

complying with the verification requirements of 8 U.S.C. §1324a(a)(1)(B);

3. I find that it is reasonable to require Respondent to pay a total civil money penalty of twenty-one thousand eight hundred dollars ($21,800) for all the violations indicated;

4. Respondent is ordered to cease and desist from violating the prohibitions against hiring or continuing to employ unauthorized aliens, in violation of Sections 274A(a)(2) of the Act;

5. All motions not previously ruled upon are hereby denied;

6. The hearing to be scheduled in or around Los Angeles, California, is canceled.

This Decision and Order shall become the final Decision and Order of the Attorney General, unless one of the parties files a written request for review of the decision together with supporting arguments with the Chief Administrative Hearing Officer, 5107 Leesburg Pike, Suite 2519, Falls Church, VA 22041, as prescribed in 28 C.F.R. 68.53, or the Chief Administrative Hearing Officer modifies or vacates it within thirty (30) days of the date of this Order. 28 C.F.R. 68.53.

IT IS SO ORDERED this 27th day of January, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge