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

October 20, 1992

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324a Proceeding
	)	OCAHO Case No. 92A00117
SDI INDUSTRIES, INC., Respondent.	)	

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION TO COMPEL RESPONSE TO DISCOVERY, DENYING COMPLAINANT'S REQUEST TO DEEM REQUEST FOR ADMISSIONS ADMITTED, AND GRANTING MOTION FOR NUNC PRO TUNC RELIEF

On September 15, 1992, complainant filed a Motion to Determine the Sufficiency of Respondent's Answers to Discovery; Complainant's Motion to Compel Response to Discovery; and Complainant's Request to Deem Request for Admissions Admitted, together with a supporting memorandum. In its motion, complainant alleged that on July 20, 1992, it served upon respondent Complainant's First Request for Admissions, Complainant's First Set of Interrogatories, and Complainant's First Request for Production of Documents. Complainant further alleged that on August 27, 1992, respondent, without requesting or receiving an extension of time in which to reply, served upon complainant its responses to complainant's discovery requests, including responses referencing attachments that were not included in the response and of which complainant is not currently in possession.

In its motion, complainant requested that the undersigned determine the sufficiency of respondent's answers to complainant's First Request for Interrogatories and to order respondent to fully answer Complainant's First Request for Interrogatories and to compel respondent to produce the documents requested in Complainant's Request for Production of Documents.

On September 21, 1992, respondent filed SDI's Opposition to Complainant's Motion to Compel and Request to Deem Request for Admissions Admitted. In its opposition, respondent argued that its response to complainant's request for document production was adequate, that complainant's objections to its answers were without merit, and that complainant is not entitled to have its requests for admissions deemed admitted.

On September 21, 1992, respondent also filed a Motion for Nunc Pro Tunc Relief, in which it moved the undersigned for relief to amend the filing deadline for responding to complainant's July 20, 1992, Request for Admissions through and until August 27, 1992. In this motion, respondent alleged that on July 24, 1992, complainant served respondent with 72 requests for admission. Respondent averred that its counsel was out of town during the week of August 22 through 30, 1992, and that through a misunderstanding counsel failed to mail its discovery responses until August 27, 1992. Respondent averred that when this oversight was discovered on the morning of August 28, 1992, respondent's counsel directed that complainant's counsel be notified of the oversight and that expedited delivery of the responses be arranged. Respondent alleged that complainant's counsel declined respondent's offer of expedited mailing, but did request that respondent's responses to complainant's requests for admission be sent via facsimile, which, respondent alleged, was done. Respondent requested that complainant's motion that admissions be deemed admitted on the ground of late filing be denied because of respondent's good faith compliance with the discovery rules, or, in the alternative, that the undersigned grant nunc pro tunc relief, extending the filing deadline through and until August 27, 1992, thus retroactively deeming respondent's responses to complainant's requests for admission timely filed.

On October 5, 1992, complainant filed its Opposition to Respondent's Motion for Nunc Pro Tunc Relief. In its opposition, complainant argued that respondent did not comply with complainant's discovery requests in good faith because, complainant asserted, respondent failed to specifically deny the relevant matters in each request for admission as, complainant alleged, is required in the regulations. Complainant also countered respondent's recitation of the c ommunications between respondent's counsel's secretary and complainant's counsel on August 27, 1992. Complainant alleged that respondent's secretary did not request an extension of time for responding to the admissions, nor, complainant alleged, did complainant's counsel make

any statements which could be construed as granting an extension of time in which to respond.

On October 5, 1992, respondent filed its Reply to Complainant's Opposition to SDI's Motion for Nunc Pro Tunc Relief. In its reply, respondent asserts that complainant has failed to enumerate any prejudice resulting from respondent's untimely filing of its responses to complainant's Request for Admissions, and alleges that its responses to complainant's requests were sufficient under the procedural regulations.

The procedural regulation governing requests for admissions, 28 C.F.R. §68.21, provides that:

> "Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves on the requesting party;
>
> (a) A written statement denying specifically the relevant matters of which an admission is requested;
>
> (b) A written statement setting forth in detail the reasons why he/she can neither truthfully admit or deny them
>
> (c) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

28 C.F.R. §68.21(b). The procedural regulations further provide that any matter admitted is conclusively established unless the administra-tive law judge permits withdrawal or amendment of the admission upon motion. 28 C.F.R. §68.21(d). This regulation closely follows the Federal Rule of Civil Procedure governing requests for admission, Rule 36.

Complainant has proved that it served Complainant's First Request for Production of Documents, Complainant's First Set of Interrogatories, and Complainant's First Request for Admissions on respondent by certified mail, return receipt requested, on July 20, 1992. As noted above, respondent was required to respond to complainant's request for admissions within 30 days of that date, plus five additional days because service was effected by mail, or by August 24, 1992. 28 C.F.R. §68.21(b), §68.8(c). Respondent admits, however, that it did not serve complainant with its answer to complainant's requests until August 27, 1992, three days after the 35 day deadline.

Generally, requests for admission which are not denied within 30 days are deemed admitted. Dukes v. South Carolina Insurance Co., 770 F.2d 545, 549 (5th Cir. 1989). It is within the court's discretion, however, to allow untimely answers to requests for admissions by amendment. See Laughlin v. Prudential Insurance Co., 882 F.2d 187, 191 (5th Cir. 1989), Donovan v. Porter, 584 F.Supp 202, 208 (D.Md. 1984). Allowing a party to untimely file its responses to another party's request for admissions is tantamount to allowing that party to withdraw its admissions, and therefore the standard used for permitting withdrawal or amendment of an admission is used for allowing an untimely filing of a response to a request for admissions. Warren v. International Brotherhood of Teamsters, 544 F.2d 334, 340 (8th Cir. 1976). In the Eighth Circuit, late filing of a party's response to a request for admissions is permitted "'when the presentation of the merits of the action will be subserved thereby and the party who obtains the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.'" Id., quoting Pleasant Hill Bank v. United States of America, 60 F.R.D. 1, 3 (W.D.Mo. 1973).

This action will be best served by allowing respondent the opportunity to respond to Complainant's Request for Admissions. Further, complainant has failed to demonstrate that allowing respondent to untimely file its requests for admissions will prejudice complainant in maintaining this action. Therefore, respondent's Motion for Nunc Pro Tunc Relief is granted, and the filing deadline is extended through and until August 27, 1992. Accordingly, Complainant's Request to Deem Request for Admissions Admitted is denied.

Complainant has proved that it mailed its First Request for Interrogatories on July 20, 1992, and respondent has admitted that on August 27, 1992, it served complainant with its answers to that request.

The pertinent procedural regulation governing the scope of discovery, 28 C.F.R. §68.18(b), provides that parties may obtain discovery regarding any matter which is not privileged and which is relevant to the subject matter involved in the proceeding. If the party upon whom a discovery request fails to respond adequately to the request, the discovering party may move the administrative law judge for an order compelling a response or inspection in accordance with the request. 28 C.F.R. §68.23(a). Therefore, a review of respondent's responses to the document requests and respondent's answers to the interrogatories at issue is in order, to determine that the information sought by

complainant is relevant to these proceedings, and to determine the validity of respondent's objections to those requests.

In its motion, complainant sought production of documents pursuant to its First Request for Production of Documents, Document Requests Numbers 3, 4, 5, 6, 7, 8, 9, 10 and 11. At a prehearing conference between the undersigned and the parties held on October 5, 1992, respondent's counsel promised to produce documents responsive to Requests Numbers 3, 4, and 11 as soon as possible. Therefore, those requests will not be considered in this order.

In Document Request Number 5, complainant seeks production of any and all tax returns regarding or including respondent for 1990, 1991 and 1992. In Interrogatory Number 26, Complainant's First Set of Interrogatories, complainant requests that respondent state the amount of gross and taxable income it reported to the Internal Revenue Service (IRS) for the last two years, and attach copies of all documents filed by respondent with the IRS as required by law in reporting income and tax liability for the last two fiscal years, copies of any balance sheets prepared for respondent for the last two fiscal years, and copies of any earnings or income statements prepared for respondent for the last two fiscal years. Respondent objected to both of these requests on grounds of privilege, confidentiality and lack of relevance.

Complainant is correct in its assertion that respondent's answer to Interrogatory Number 26 and the documents sought are relevant to a determination of an appropriate penalty amount for the alleged paperwork violations. The Immigration Reform and Control Act of 1986 (IRCA) prescribes five factors for the administrative law judge to consider in determining an appropriate penalty for paperwork violations under the Act. 8 U.S.C. §1324a(e)(5). Among these is the size of the employer's business. In prior proceedings under section 1324a, the administrative law judge has examined the employer's tax returns in determining the employer's size for purposes of assessing the civil money penalty. See U.S. v. Noel Plastering and Stucco, Inc., 3 OCAHO 427, at 18; U.S. v. Tom & Yu, 3 OCAHO 412, at 3; U.S. v. Widow Brown's Inn, 3 OCAHO 399, at 39; U.S. v. A-Plus Roofing, 1 OCAHO 209, at 4; U.S. v. Felipe, 1 OCAHO 93, at 6. Financial statements prepared by the employer have also been considered in making this determination. See Noel, 3 OCAHO 427, at 18.

Nor is it material, as respondent asserts, that complainant did not consider respondent's size as a mitigating or aggravating factor in determining the appropriate fine below. Under IRCA, the administrative law judge is obliged to consider all of the enumerated factors which are applicable in the proceedings to determine the appropriate civil money penalty. See U.S. v. Widow Brown's Inn, 3 OCAHO 399, at 38.

Because the answer requested in Interrogatory Number 26 and the documents sought in Document Request Number 5 and in Interrogatory Number 26 are relevant to a determination of an appropriate civil money penalty, and because respondent has failed to provide any grounds for its assertion of privilege and confidentiality, complainant's motion is granted as it pertains to Document Request Number 5, Complainant's First Request for Production of Documents and to Interrogatory Number 26, Complainant's First Set of Interrogatories.

In Document Request Number 6, complainant seeks any and all documents showing the number of respondent's employees for 1990, 1991 and 1992. Respondent asserted that it would produce its EEO-1 report for the requested years showing its gross number of employees for the filing date in each of the requested years, but objected to the production of any other documents within the scope of the request on the ground that the identities of persons employed by respondent other than those named in the Complaint were not relevant to these proceedings.

In Interrogatory Number 27, complainant requests that respondent state separately the number of employees employed during each year of the last two fiscal years, state separately the number of employees in each job, occupational or professional category, and state separately the number of employees in each job, occupational or professional category for each location respondent conducts its business. In answer to this interrogatory, respondent referred complainant to the EEO-1 reports for 1990 and 1991 which, it asserted, it would produce in response to Document Request Number 6.

Consequently, complainant averred in its motion that respondent has failed to produce the EEO-1 reports. In its opposition, respondent admits that it offered to produce its EEO-1 reports, but that it has not done so, asserting that it is not obligated to produce such information because the size of respondent's workforce is irrelevant to complain-

ant's defense of its fine setting, and irrelevant to the employment issues in this case.

In prior proceedings under section 1324a of IRCA, the administrative law judge has considered the number of employees in determining the appropriate civil money penalty for paperwork violations. See U.S. v. Widow Brown's Inn, 3 OCAHO 399, at 39; U.S. v. Land Coast Installation, Inc., 2 OCAHO 279, at 26; U.S. v. Valladares, 2 OCAHO 316, at 6. Employee turnover has also been considered in determining the appropriate civil money penalty. U.S. v. A-Plus Roofing, 1 OCAHO 209, at 4. As noted above, it is immaterial that this factor was not considered by complainant when setting the fine amount.

Because the documents sought by complainant in Document Request Number 6 and Interrogatory Number 27 are relevant to determining the number of respondent's employees and employee turnover throughout the period in question, and because both of those factors are directly relevant to employer's size, a factor for the administrative law judge to consider in determining the appropriate penalty amount, the documents sought are subject to discovery, and complainant's motion is granted as it pertains to Document Request Number 6 and Interrogatory Number 27.

In Document Request Number 7, complainant sought all documents relating to the hiring practice, procedure and policy of respondent. Respondent stated in response that it would produce those documents it possessed relating to the I-9 employee verification procedure, but objected to any other production on relevancy grounds. In its motion, complainant asserted that the documents sought in this discovery request are relevant to Count I of the Complaint, to determining an appropriate penalty amount, and to respondent's first and fourth defenses.

In Document Request Number 8, complainant sought any and all employment, employee, supervisory, and management manuals, books, policy statements or directives. Respondent stated in response that it would produce those documents it possessed relating to the I-9 employee verification procedure, but objected to any other production on relevancy grounds. In its motion complainant asserted that this information is relevant to the knowledge of the employer and the good faith practices and policies of the employer in hiring, employment and termination duties, recommendations and responsibilities, and is relevant to respondent's first and fourth affirmative defenses.

Rule 26 of the Federal Rules of Civil Procedure provides that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. Fed. R. Civ. P. 26(b)(1). Both Document Request Number 7 and Document Request Number 8 are relevant to complainant's claim in Count I that respondent hired or continued to employ the three individuals named therein for employment knowing they were aliens not authorized for employment in the United States. Both document requests are also relevant to respondent's first affirmative defense, that it complied in good faith with the verification requirements of INA section 274A(b) with regard to the individuals listed in Count I of the Complaint.

Because the documents sought are relevant, both to complainant's claim and respondent's affirmative defense, complainant's motion is granted as it pertains to Document Requests Numbers 7 and 8.

In Document Request Number 9, complainant sought all documents generated by respondent, its employees and agents, which relate to an employer's legal obligation under section 274A of the INA. Respondent objected to this request to the extent that it was directed at production of Forms I-9 relating to employees other than those named in the Complaint, on the ground of relevancy. In its motion, complainant asserted:

> Respondent objects to this request to the extent that it is directed at production of Forms I-9 relating to employees other than those named in the complaint. Complainant will not, at this time, pursue this request to that extent. However, Respondent has not identified documents responsive to this document request nor... produced them to Complainant.

Respondent, in its opposition to complainant's motion, asserts: "...Complainant insists that SDI should have identified the documents in its possession which are covered by the request." A plain reading of complainant's request reveals that complainant, contrary to respondent's assertion, is only seeking identification and production of documents relating to those requested individuals named in the Complaint. Because those documents relating to the individuals named in the Complaint are undoubtedly relevant to complainant's claim, complainant's motion is granted as it pertains to Document Request Number 9, to the extent that the document request seeks documents relating to those individuals named in the Complaint.

In Document Request Number 10, complainant sought production of copies of corporate documents including but not limited to Minutes of Shareholder's meetings, Incorporator's Meetings, and Board of Director's Meetings, since November 6, 1986, and of respondent's Bylaws. Respondent objected to this request on the ground that said documents are privileged and confidential and do not contain information relevant to the issues raised in this litigation.

In its motion, complainant asserted that the documents sought in Document Request Number 10 are material and relevant to determining issues of liability and the appropriate penalty amount, are material and relevant to respondent's first and fourth affirmative defenses, and are reasonably calculated to lead to discoverable evidence.

In its opposition to complainant's motion, respondent asserts that this request is overreaching and vexatious, and argues that complainant is attempting, by and through this discovery request, to enlarge the scope of its investigation because respondent has contested its original findings, which, respondent argues, complainant is not entitled to do.

In support of the latter contention, respondent cites to an earlier proceeding before this office, U.S. v. Sam Y. Ro, d/b/a Daruma Japanese Restaurant, 1 OCAHO 265. In Ro, complainant charged respondent with 16 "paperwork" violations. Complainant served respondent with 61 interrogatories inquiring into respondent's employment relationship with a total of 46 separate individuals. The administrative law judge there held:

> Since the Complainant only charges Respondent with so called "paperwork" violations, evidence regarding whether or not respondent may have violated the Act or its regulations with respect to other employees not named in the Complaint by failing to prepare the Employment Eligibility Verification Form (Form I-9) is not relevant to determining the merits of the case. The evidence would not be relevant as to the liability of Respondent with respect to the individuals named in the Complaint, nor would it be relevant to mitigation of penalty, i.e., prior violations.

Id. at 5.

Ro, however, is distinguishable on its facts. Here, complainant has charged respondent with having "knowingly hired" and/or "continued to employ" three individuals knowing those individuals were unauthorized for employment in the United States. As the administrative law

judge noted in Ro: "Had Respondent been charged with 'knowing' violations, the evidence would arguably have been relevant to Respondent's 'knowledge.'" Id. In addition, respondent asserted good faith compliance with the verification requirements of section 274A(b) of the INA as a defense to complainant's charge of "knowing hire". The documents in Request Number 10 would be directly relevant to both respondent's knowledge of its employees authorization status and to its good faith compliance with the employment eligibility verification provisions.

Nor is respondent's assertion that complainant's case is entirely premised on the constructive knowledge theory, and that there was no evidence during the investigation stage of actual knowledge of unauthorized status prior to the alleged notice to respondent's agent of April 11, 1992, material to this determination. Respondent has not established that complainant, having alleged a 'knowing' violation, is not entitled to alter its theory of violation at the discovery stage.

Ro stands for the proposition that the discovery process may not be used by the complainant to uncover violations in addition to those alleged in the Complaint. However, as the administrative law judge noted in Ro, discovery may be used to seek evidence having any bearing on the employees named in the Complaint, as well as evidence dealing with the mitigation of penalty. Id. at 6. The evidence sought in Document Request Number 10 is relevant to the issue of the knowledge of those involved in the operation of respondent's business of the knowing hiring of and/or the continuing employment of the unauthorized individuals named in Count I, and of respondent's good faith compliance with the employment verification procedures.

Respondent also objects to the request on the grounds of privilege and confidentiality. A party objecting to the production of documents must state with specificity why the requests for production are objectionable. Kansas-Nebraska Natural Gas Co. v. Marathon Oil Co., 109 F.R.D. 12, 24 (D.Neb. 1985). In addition, if a party contends that particular documents in a document request are protected by a particular privilege, that party must object to production of those documents with specificity. Leski, Inc. v. Federal Ins. Co., 129 F.R.D. 99, 105 (D.N.J. 1989). Respondent has failed to state with particularity its objections to this discovery request, and has failed to state with specificity which documents it contends are privileged.

Therefore, complainant's motion is granted as it pertains to Document Request 10.

In Interrogatory Number 28(j), Complainant's First Set of Interrogatories, complainant asked whether Pedro Garcia has ever written documents or correspondence on behalf of respondent and, if so, to produce copies of such documentation. In respondent's answer, it asserted Mr. Garcia did not correspond in writing with respondent or with clients because he lacks both authority and capacity to so correspond. Complainant objected to this answer as being unresponsive to the interrogatory. At the prehearing conference held on October 5, 1992, respondent agreed to provide documents prepared by Mr. Garcia for the period at issue in response to this interrogatory.

In Interrogatory Number 30, complainant asked respondent to state whether it had provided housing for its employees in Minnesota during its business operation there in 1991, and, if it had, to identify the housing by name and location, specify the dates such housing was provided, and list each employee for whom a reservation was made, or for whose presence was planned and the dates each employee resided in the housing. In its Answer, respondent identified the hotel it used for this purpose, and stated that all of the employees assigned to the work site stayed at that hotel.

In its motion, complainant objected to respondent's answer on the grounds that it failed to specify the dates respondent provided housing, failed to list which employees reserved rooms, and failed to list the dates the employees occupied those rooms. In support of its motion, complainant alleged that this information may, alone or in conjunction with other evidence, establish knowledge of respondent's knowing hire and/or continuing to employ aliens after receiving actual knowledge that the aliens were unauthorized to work in the United States. In addition, complainant alleged that this information may be important in establishing the contacts and dates of contact between each employee, including those in Count I, with the employer in Minnesota, providing evidence to facts underlying the allegations in Count I.

While the information sought in this interrogatory is clearly relevant with regard to the individuals named in Count I of the Complaint, complainant has failed to establish that this information is relevant with regard to those employees not named in Count I. For this reason, complainant's motion is granted with respect to the name and location

of housing and the dates of occupancy for the three individuals named in subparagraph A of Count I of the Complaint, and denied with regard to those individuals not named in Count I.

In Interrogatory Number 33, complainant asked whether respondent had been a party to any civil, administrative, or criminal proceedings during the past five years, and sought the identity of any officer, director, or shareholder who provided testimony or trial in connection with any such proceeding. Respondent objected to this interrogatory on the grounds of overbreadth and relevance.

Complainant is correct in its assertion that this information is relevant and material in producing potential impeachment evidence against respondent and its witnesses. Further, respondent has failed to demonstrate specifically how the interrogatory is over broad. See Chubb Integrated Sys. Ltd. v. National Bank of Washington, 103 F.R.D. 52, 59-60 (D.D.C. 1984) (where a party objects to an interrogatory on the grounds of overbreadth, the objection must show specifically how the interrogatory is overbroad, by submitting affidavits or offering evidence revealing the nature of the burden). Accordingly, complainant's motion is granted as it pertains to Interrogatory Number 33.

In Interrogatory Number 35, complainant asked respondent to describe in detail and state each and every fact upon which respondent bases the five affirmative defenses that it has asserted to this action. In Interrogatory Number 36, complainant asked that respondent describe in detail and state each and every reason why respondent denies the violations alleged in Counts I, II and III of the Complaint and the NIF.

In response to Interrogatory Number 35, respondent referred to its Answer, and to its Opposition to Complainant's Motion to Strike Affirmative Defenses, and in its Amended Answer. In response to Interrogatory Number 36, respondent asserted that it denied the allegations contained in Count I on the ground that it had relied on the representations of the individuals named therein with respect to their identity, employment eligibility, and the genuineness of the documents which they presented for inspection. Respondent further asserted that prior to complainant's notice that these individuals were unauthorized for employment in the United States, respondent had no basis for believing that the documents presented by those individuals for employment authorization purposes were not valid. With respect

to the alleged paperwork violations, respondent admitted to two of those violations, and asserted that all material aspects of the Forms I-9 were completed with respect to the other individuals named.

In its motion, complainant objected to respondent's responses to Interrogatories Numbers 35 and 36, asserting that respondent failed to sufficiently address and answer those interrogatories, but rather made broad generalized conclusions by referencing its pleadings and filings in this case. Complainant asserted that this information is necessary to its case because without a detailed statement of the reasons and facts upon which respondent relies, complainant must guess as to the facts in issue and reasons for respondent's denials and affirmative defenses, preventing timely completion of these proceedings by adding surprise, hindering discovery efforts, and greatly prejudicing the government's abilities to adequately defend itself.

Respondent did not address complainant's objections to its response to Interrogatory Number 35 in its opposition. In answering complainant's objections to its response to Interrogatory Number 36, respondent asserts that there is no good faith basis for complainant's insistence on a more detailed or additional explanation of its defenses than is found in its Amended Answer, insisting that, while complainant elaborated on the specifics it sought with regard to Interrogatory Number 36 in its motion, respondent was not obliged in discovery to read complainant's mind regarding what it intended to request.

In the prehearing conference held on October 5, 1992, complainant acknowledged that it is satisfied with respondent's response to Interrogatory Number 36 with regard to respondent's substantial compliance affirmative defense, but that it is not satisfied with regard to any of respondent's other affirmative defenses.

The information complainant seeks in Interrogatories Numbers 35 and 36 is clearly relevant to the subject matter involved in these proceedings. See Fed. R. Civ. P. 26(b)(1). Complainant's requests have been clarified as a result of the pleadings and the telephone conference of October 5, 1992. Therefore, complainant's motion is granted as it pertains to Interrogatories Number 35 and 36, and respondent is ordered to fully respond to Interrogatory Number 35, and to Interrogatory Number 36 (with the exception of respondent's substantial compliance affirmative defense), Complainant's First Set of Interrogatories.

In the telephone conference held on October 5, 1992, complainant indicated that it is satisfied with respondent's responses to Interrogatories Numbers 2, 7, and 19, as revealed in the pleadings and at the telephone conference. For this reason, complainant's motion is denied with respect to those interrogatories.

In Interrogatory Number 14, complainant sought the name, job title, or position and current address of those individuals responsible for hiring employees from November 6, 1986 to the present, the dates during which those individuals performed those duties, and, in particular, the limits of authority of hiring and firing employees granted to those individuals named in Interrogatory Number 13. Complainant also inquired into whether the hiring and firing decisions made by those in Interrogatory Number 13 were subject to review, and, if so, the process involved.

In its answer, respondent alluded to its response to Interrogatory Number 7, named an additional individual with authority to hire and fire, and asserted that no employee could be fired without the approval of Richard Whitely, Vice President of Engineering. Complainant objected to respondent's answer, alleging that respondent failed to sufficiently describe the process involved and the limits of authority in hiring and firing decisions exercised by identified officials of respondent. Complainant asserted that this information is relevant to the issue of whether respondent knowingly hired and/or continued to employ unauthorized aliens. In its opposition, respondent objects to this interrogatory on the ground that, respondent alleges, it is overly broad, inasmuch as it is not limited to the employment decisions which are the subject of this proceeding.

Where the information sought might lead to the discovery of relevant evidence a party would be directed to answer an interrogatory. See E.I. Du Pont De Nemours & Co. v. Phillips Petroleum Co., 24 F.R.D. 416 (D.Del. 1959). The information sought in Interrogatory Number 14 could lead to the discovery of evidence regarding the hiring practices and procedures of respondent, which would clearly be relevant to these proceedings, and is therefore subject to discovery. Consequently, complainant's motion is granted as it pertains to Interrogatory Number 14, Complainant's First Set of Interrogatories.

In Interrogatory Number 21, complainant requested that respondent list all places that respondent has conducted its business and the duration of such business at each location. Respondent objected to this

interrogatory on the ground that such information is not relevant to the instant proceedings and would constitute an undue burden.

In its motion, complainant correctly asserted that the information sought in this interrogatory is relevant in determining the size of respondent's business, one factor considered in the determination of the appropriate civil money penalty. See 8 U.S.C. §1324a(e)(5). Respondent has failed to demonstrate that answering this interrogatory would prove to be unduly burdensome. Accordingly, complainant's motion is granted as it pertains to Interrogatory Number 21.

In Interrogatory Number 22, complainant requested the job titles, names and addresses of all persons responsible for the preparation of employee performance appraisals, promotions, reprimands, demotions and removal. Respondent objected to this interrogatory on the ground that the information requested is not relevant to any issue presented in this litigation.

The information sought in this interrogatory is relevant to issues of impeachment. Therefore, complainant's motion is granted as it pertains to Interrogatory Number 22, Complainant's First Set of Interrogatories.

In summary, complainant's Motion to Deem Request for Admissions is denied, and respondent's Motion for Nunc Pro Tunc Relief is hereby granted.

In addition, complainant's Motion to Compel Respondent to discovery is granted as it pertains to Document Requests Numbers 5, 6, 7, 8, 9 and 10, and to Interrogatories 14, 21, 22, 26, 27, 33, 35, and 36. Respondent is hereby ordered to provide copies of the requested documents and to also make available to complainant written answers to those interrogatories, and to Interrogatory Number 30 with regard to those individuals named in Count I of the Complaint, and to have done so with 15 days of its acknowledged receipt of this Order.

JOSEPH E. MCGUIRE
Administrative Law Judge