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. 93A00071
SAEED RAHIMZADEH CORP.,	)	
Respondent.	)	
	)	

ERRATA TO TECHNICAL CORRECTION
ORDER OF AUGUST 17, 1993

On August 17, 1993, I issued a Final Decision and Order in the above entitled case.

In this order I failed to indicate that the Respondent is ordered to cease and desist from any additional violations under § 274A(a)(2) of the Immigration and Nationality Act and 8 U.S.C. § 1324a(a)(2).

Additionally, there was some confusion as to the computations regar-ding the civil monetary penalties to be set by me. Therefore, in the final Decision and Order at page 10, the last paragraph should read:

> "After much consideration, I have determined that the appropriate and reasonable civil money penalties in this case would be set at a total of $1,000 for the one violation in Count I; $200 each for A-1 and A-2 under Count II and $100.00 for each of the remaining six violations, making a total of $1,000.00 for Count II [it shall be noted that the Complainant dropped violation No. 8, Adolph Mathews, in Count II] and $100.00 for each of the 11 violations in Count III making a total of $1,100.00 for Count III. Therefore, I find and determine that the total money penalties under all counts of the Complaint shall be $3,100.00.

The remainder of the Final Decision and Order of August 17, 1993, is to remain the same.

IT IS SO ORDERED this 1st day of September, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge

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. 93A00071
SAEED RAHIMZADEH CORP.,	)	
Respondent.	)	
	)	

TECHNICAL CORRECTION TO
ORDER OF AUGUST 17, 1993

On August 17, 1993, I issued a Final Decision and Order in the above entitled case. In that order I failed to indicate that the Respondent is Ordered to cease and desist any additional violations under § 274A(a)(2) of the Immigration and Nationality Act and 8 U.S.C. § 1324a(a)(2).

Also, the second line from the last line on page 10, the word "for", before $100.00, is corrected to read "and" $100.... The last line of page 10 shall be corrected to read "making a total of $1,100".

The remainder of the Final Decision and Order is to remain the same.

SO ORDERED this 23rd day of August, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge

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. 93A00071
SAEED RAHIMZADEH CORP.,	)	
Respondent.	)	
	)	

FINAL DECISION AND ORDER

I. *Introduction*

In 1986, the Immigration and Nationality Act of 1952 (the Act), was amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub.L No. 99-603, 100 Stat. 3359 (November 6, 1986) which made significant revisions in national policy with respect to illegal immigrants. 8 U.S.C. § 1324a. Accompanying, other dramatic changes, IRCA introduced the concept of controlling employment of undocumented aliens by providing an administrative mechanism for imposition of civil liabilities upon employers who hire, recruit, refer for a fee, or continue to employ unauthorized aliens in the United States. In addition to civil liability, employers face criminal fine and imprisonment for engaging in a pattern or practice of hiring or continuing to employ such aliens.

8 U.S.C. § 1324a also provides that the employer is liable for failing to attest, on a form established by the regulations, that the individual is an authorized alien, and that the documents proving identity and work authorization have been verified. Additionally, 8 U.S.C. § 1324a authorizes the imposition of orders to cease and desist with civil money penalties for violation of the proscriptions against hiring, and paperwork violations. See 8 U.S.C. § 1324a(e)(4), (5).

II. *Procedural History*

On January 25, 1993, Respondent was properly and personally served with a Notice of Intent to Fine which alleged violations of the Immigration and Nationality Act, specifically 8 U.S.C. § 1324a. A

timely request for hearing by Respondent was filed with the Complainant on February 23, 1993, resulting in the issuance of a Complaint on April 5, 1993. On April 12, 1993, copies of both the Notice of Hearing and the Complaint were effectively served on Respondent by the U.S. Postal Service at Respondent's place of business, as evidenced by a record copy of a return receipt for certified mail signed by an individual at the Respondent's business address.

The three count Complaint alleged violation of the Immigration and Nationality Act, in that Respondent had allegedly knowingly hired or knowingly continued to employ one named individual, after November 6, 1986, who was unauthorized to work in the United States, in violation of 8 U.S.C. § 1324a(a)(1)(A) or 1324a(a)(2), that it had failed to prepare and present employment eligibility forms (Form I-9) for nine named individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B), and that it failed to retain or make available for inspection the employment eligibility verification form (Form I-9) for eleven named individuals, in violation of 8 U.S.C. 1324a(a)(1)(B). A civil money penalty of $1,024 was assessed for the knowing hire violation; a civil money penalty of $4,500 was assessed for the failure to prepare violations; and, a civil money penalty of $5,060 was accessed for the failure to retain/make available violation. Thus the total civil money penalty assessment in this case was $10,684.00.

On May 12, 1993, Respondent filed a request for a one week extension of time to submit an Answer to the "charges". On May 13, 1993, the court received Complainant's response of nonopposition.

On May 20, 1993, Respondent filed a letter pleading, which I accepted as Respondent's Answer. In response to Count I of the Complaint, Respondent stated that it had not terminated the unauthorized alien's employment for humanitarian reasons. As to Count II, Respondent admitted failure to complete the Forms I-9 but raised defenses of lack of education regarding the requirement to complete the I-9s, no forms at its office and forgetfulness. As to Count III, Respondent stated that the Forms I-9 for the named individuals had been prepared but had been misplaced due to a prior flood in its store but had been later located and delivered to Complainant. Respondent asked me to consider: (1) that the assessed civil money penalties were excessive; (2) his humanitarian motivation in determining the civil penalty; (3) that in seven years of business operation, this was the first violation; (4) that it had terminated the unauthorized alien's employment upon Complainant's notification of the charge; and, (5) the financial burden to Respondent.

On June 25, 1993, I held a prehearing to hear argument from the parties, to narrow the issues for hearing and to explore the possibility of settlement. During the prehearing, Respondent admitted hiring and continuing to employ the unauthorized individual named in Count I and, with the exception of Adolph Matthews, A-8 in Count II, failing to prepare and/or present the Forms I-9 for the named individuals in Count II. In response Complainant agreed to drop allegation A-8, Adolph Matthews. Additionally with regard to Count III, the government agreed to accept the minimum fine of $100 on all eleven alleged violations. The government insisted upon a cease and desist order concerning Count I and agreed to a payment schedule for the civil penalties.

In questioning the Respondent further, he admitted liability on all counts, but seriously disagreed with the amount of the requested civil penalties. Based on an inability to work out a settlement amount, the parties agreed in writing to have the court set the amount of the civil penalties.

Complainant presented its position on the five criteria under 8 U.S.C. 1324a(a)(2)(5) which must be considered before I impose an appropriate amount of civil money penalties. Complainant stated that it considered Respondent's business as small, that Respondent did not act in good faith with respect to complying with 8 U.S.C. 1324a and that the violations were serious in Count I, hiring an unauthorized individual and Count II, as two of the named individuals were not authorized to work in the United States, although Complainant chose to charge only one violation. Complainant asserted that there was no history of prior violations.

Respondent on the other hand argued that he has shown good faith and that the violations were not that serious since he personally knew the unauthorized individual in Count I and hired her for primarily humanitarian reasons.

III. *Discussion*

As Respondent has admitted liability, I find that the violations as alleged by the Complaint did occur. With respect to the determination of the amount of civil penalties to be set for paperwork violations, 8 U.S.C. § 1324a(e)(5) which corresponds to 28 C.F.R. 68.52(c)(IV), states:

> The order under this subsection shall require the person or entity to pay a civil penalty in an 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.

I have previously held that I am not restricted to considering only these five factors when making my determination. See U. S. v. Pizzuto, 2 OCAHO 447 (8/21/92).

The statute states that the civil penalty with respect to a civil penalty for a knowing hire/continuing to employ violation is:

> (1) not less than $200 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;
>
> (2) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or
>
> (3) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph,

8 U.S.C. § 1324a(e)(4)(A).

A reading of the above statute shows that in contrast to 8 U.S.C. § 1324a(e)(5), when considering the appropriate amount of civil penalties to set for knowing hire/continuing to employ violations of the Act, the statute is silent as to any mandatory or discretionary considerations. 8 U.S.C. § 1324a(a)(1)(A), (a)(2); U.S. v. Buckingham Ltd., 1 OCAHO 151 (4/6/90). Thus, it is left to my sound discretion to set the civil penalty amount for knowing hire/continuing to employ, although I generally consider the five factors in my determination. It is important to note that I am not bound in my determination of the civil penalty amounts by Complainant's request in its Complaint. See, in general, 8 U.S.C. § 1324a; U.S. v. Cafe Camino Real, Inc., 2 OCAHO 307 (3/25/91); U.S. v. Lane Coast Corporation, Inc., 2 OCAHO 379 (9/30/91).

A. Factors

1. Size of the Business of the Employer Being Charged

The Complainant did not argue regarding the size of the business; Respondent indicated in his testimony that he had five dry cleaning plants. However, two of those plants have been shut down, or are going to be shut down, and that he has a total of 18 to 19 employees. Additionally, the Respondent testified that he has many money

commitments to both the state and the city, tax liens, i.e., the Franchise Tax Board and the City of San Diego; he is operating at a loss.

I have considered the testimony and based upon the record before me, I have determined that the Respondent is a small sized business. I will mitigate based on this factor.

2. Good Faith of the Employer

Complainant asserts that the Respondent did not not show good faith or diligence in its compliance with the requirements of the statute and, as support for its position, cited to Respondent's hiring the unauthorized individual without inquiring about her authorization to work and continuing to employ her after acquiring knowledge as to this status.

Respondent, on the other hand, testified that it had acted in good faith. It stated that it had never received an educational visit from the Complainant and that it had only hired the unauthorized individual because it felt sorry for her due to her dire financial situation; Respondent knew that the unauthorized individual was awaiting work authorization. Further, Respondent asked me to consider that he had been in business for seven or eight years and had never been cited by the INS. As to Count III, he stated that the Forms I-9 were not presented at the time of the inspection because the documents were in the business' main office and not at the site of the inspection.

As the record indicated that the Respondent had the opportunity to secure the requested I-9 documents before the time of the inspection, and that it knew of the unauthorized alien's status at the time of hire, and at the time of inspection, I agree with the Complainant that the facts indicate that there was no good faith effort on Respondent's part to comply with the requirements of 8 U.S.C. § 1324a. As such, I find that that it would not be appropriate to mitigate based on this factor.

3. Seriousness of the Violation

Previous case law has found that a serious violation is one which "renders ineffective the congressional prohibition against employment of unauthorized aliens." U.S. v. Vallares, 2 OCAHO 316 (4/15/91). In addition, a total failure to prepare the Form I-9 is more serious than a failure to fill in certain sections. U.S. v. Dodge Printing Centers, 1 OCAHO 125 (1/12/90). Complainant argues that the Respondent's violations are all serious.

In this case the Complainant argued that by continuing to employ an unauthorized alien, Respondent circumvented the Congressional intent. Complainant argued that in Count II, violations A-1 and A-2 pertained to two individuals who were actually unauthorized to work in the United States, although Respondent was not so charged. The Complainant also considered that as far as Count III was concerned, it had already considered the Respondent's argument that the Forms I-9 were in a different location at the time of the inspection and had reduced the assessed civil penalties to the minimum fine of $100.00 for each of the eleven individuals listed in Count III. In response, Respondent testified that its violations, particularly in Count I, were not serious. It hired the unauthorized individual for humanitarian reasons, knowing that she had made application for a work permit and that her work authorization would be approved at any time.

After considering argument and testimony, I find that the hiring of an unauthorized individual is serious and that failure to prepare the I-9s properly is also serious. Therefore I cannot mitigate on this basis.

4. Whether or not the Individual was an Unauthorized Alien

The parties agreed that the Respondent employed one unauthorized alien. Respondent argued that, although it knew or should have known that the unauthorized alien was not authorized to work in the United States, it hired her for humanitarian reasons with the knowledge that she would be receiving work authorization shortly. Based on the record in this particular case, I cannot mitigate Count I.

5. History of Previous Violations of the Employer

Both Complainant and Respondent assert that there were no previous violations of § 274A by this Respondent. As such I will mitigate all Counts based upon this factor.

B. Amount of Civil Penalties

In its Complaint, Complainant assessed a total civil penalty of $10,684.00 regarding all three counts. At the prehearing, after much negotiation, Complainant agreed to downsize the civil money penalties for Count I to $1,000, for Count II to $2,600 representing a civil money penalty of $260 per violation, and, for Count III to $1,100 representing a civil money penalty of $100 per violation. The Complainant also agreed to drop one alleged violation in Count II. Thus, Complainant suggested a total civil money penalty of $4,700. Respondent on the

other hand offered to pay $3,000, in total, with six installment payments of $500 each.

After review of the record, the parties arguments, the testimony and relevant law, I find that, using a judgmental approach, the amount of civil penalties requested by Complainant would not be appropriate. During this proceeding, I have observed the Respondent's sincerity in his testimony and the equities that he expounded. After much consideration, I have determined that the appropriate and reasonable civil penalties in this case will be set at $1,000 for the one violation in Count I; $200 each for A-1 and A-2 under Count II, $100 for the remaining eight violations making $1,000, for $100 for each violation in Count III, making $1,100. Therefore, I find and determine that the total money penalties in this matter is $3,100. I also find that the Respondent should be given an opportunity to take advantage of a payment schedule not to exceed the length of one year for payment of these civil penalties.

Pursuant to 28 C.F.R. 68.53(a), this Decision and Order is the final decision and order of the attorney general unless within thirty days (30) from this date, the Chief Administrative Hearing officer shall have modified or vacated it.

IT IS SO ORDERED this 17th day of August, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge