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

August 20, 2013

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 12A00067
PLATINUM BUILDERS OF CENTRAL FLORIDA, INC., Respondent.	)	

FINAL DECISION AND ORDER

Appearances:

Marvin J. Muller III
For the complainant

Margaret A. Catillaz
For the respondent

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2006). The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint against Platinum Builders of Central Florida, Inc. (Platinum Builders or the company) alleging that the company violated 8 U.S.C. § 1324a(a)(1)(B). Count I alleged that the company hired fifteen individuals for whom it failed to prepare and/or present Form I-9. Count II alleged that the company hired fifty-four individuals and failed to ensure that the employee properly completed section 1, and/or failed itself to properly complete sections 2 or 3. The complaint sought a total of $70,966.50 in civil money penalties. Platinum Builders filed a timely answer denying the material allegations,

raising various defenses, and disputing the amount of the penalty assessment.

Presently pending is the government's motion for summary decision. Platinum Builders filed a timely response and the motion is ripe for resolution.

II. BACKGROUND INFORMATION

Platinum Builders is a domestic private corporation located in Port Charlotte, Florida. The company was incorporated in 2005 by its current president Luis A. Garza. ICE says the company's website reflects that Platinum Builders is a family owned and operated construction company that provides services such as finish work, structural work, and residential and commercial building services. ICE served a Notice of Inspection on Platinum Builders on July 19, 2010, and subsequently served the company with a Notice of Intent to Fine on March 19, 2012 alleging a total of sixty-nine violations. Platinum Builders filed a timely request for hearing on April 13, 2012 and all conditions precedent to the institution of this proceeding have been satisfied. ICE filed its complaint on May 10, 2012.

III. STATUTORY AND REGULATORY PROVISIONS INVOLVED

The INA imposes an affirmative duty upon employers to prepare and retain certain forms for employees hired after November 6, 1986 and to make those forms available for inspection on three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii). Regulations designate the I-9 form as the Employment Eligibility Verification Form to be used by employers. 8 C.F.R. § 274a.2(a)(2). Forms must be completed for each new employee within three business days of the hire, 8 C.F.R. § 274a.2(b)(1)(ii), and each failure to properly prepare, retain, or produce the forms upon request constitutes a separate violation, 8 C.F.R. § 274a.10(b)(2).

An employer is required to ensure that each employee properly completes section 1 of the form, 8 C.F.R. § 274a.2(b)(1)(i)(A), as well as completing section 2 itself. 8 C.F.R. § 274a.2(b)(1)(ii)(B). In order to complete section 2 properly, the employer is required to examine either a List A document, or both a List B and a List C document for each employee. 8 C.F.R. § 274a.2(b)(1)(v). List A documents are those that establish both identity and employment eligibility, 8 C.F.R. § 274a.2(b)(1)(v)(A); List B documents establish identity only, 8 C.F.R. § 274a.2(b)(1)(v)(B); while List C documents establish only employment eligibility, 8 C.F.R. § 274a.2(b)(1)(v)(C). Employers are permitted, but not required, to copy the documents they examine. 8 C.F.R. § 274a.2(b)(3).

A narrow but complete affirmative defense may be available for certain technical or procedural paperwork violations where an employer made a good faith attempt to comply with a particular recordkeeping requirement. 8 U.S.C. § 1324a(b)(6). An employer charged with technical or procedural violations must be given a period of not less than 10 days to correct the failure voluntarily. *Id*. This defense has no application, however, to substantive violations. The distinction between substantive violations and those that are technical and procedural in nature is elaborated in Memorandum to INS from Paul W. Virtue, INS Acting Executive Commissioner for Programs, *Interim Guidelines: Section 274A(b)(6) of the Immigration & Nationality Act Added by Section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (Mar. 6, 1997) (the Virtue Memorandum or Interim Guidelines), *available at* 74 No. 16 Interp. Releases 706, at app. I (Apr. 28, 1997).

According to the guidelines, failure to complete an I-9 form at all is not a technical or procedural failure; it is substantive in nature and defeats the purpose of the law. Virtue Memorandum, app. A; *see also United States v. DJ Drywall, Inc.*, 10 OCAHO no. 1136, 3-4 (2010).[1] Violations in section 1 of the form that the Interim Guidelines characterize as substantive rather than technical or procedural include inter alia: the lack of an employee signature, the lack of a check mark in any box to indicate immigration status, the employee attestation is not completed within three days of hire, or the employee attests to status as a lawful resident or authorized alien without providing an alien number and/or expiration date, unless the employer included the A number in section 2 or on a legible copy of the document produced at the time of the inspection.

Violations in section 2 that the Interim Guidelines characterize as substantive include: the lack of an employer signature in the attestation section, listing of improper documents to establish identity or employment eligibility, and the lack of a complete document title, identification number, and/or expiration date where no legible copy of the document is retained with the I-9 and presented at the time of the inspection. Virtue Memorandum, apps. A & B. The list is not exclusive.

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

IV. THE DISPUTES BETWEEN THE PARTIES

A. The Government's Motion

ICE's motion was accompanied by a Memorandum to File, Summary of Audit Findings, and a page from the IRS website setting out the filing requirements for S corporations. The motion asserts that the NOI requested Platinum Builders to present a payroll list showing current and terminated employees dating back to January 1, 2009, together with I-9 forms for those employees, and that in response the company provided an employee list, a payroll summary, and one hundred and six I-9 forms with no copies of supporting documents appended.

The government pointed out that Platinum Builders' prehearing statement conceded all but one of the violations alleged in Count I, but denied all the violations alleged in Count II as well as one violation alleged in Count I involving the I-9 form for Hortencia Garza. ICE continues to assert that no I-9 was initially produced for Hortencia Garza in response to the NOI, but says even if it had been, the form ultimately produced contains substantive errors. First, although Garza started working at Platinum Builders on September 27, 2008, her I-9 form was not completed until July 27, 2010, seven days after the NOI was served as is reflected in exhibit R-2. Second, Garza signed both section 1 and section 2, as both the employer and the employee.

As to Count II, ICE pointed out that none of the supporting documentation that the company now puts forward in these proceedings was provided in response to the NOI, and the documents should accordingly not be considered when assessing the violations. In ICE's view, if the supporting documents had routinely been appended to the company's I-9 forms, they would have been produced with the forms at the time of the inspection. The government also asserts that, contrary to the employer's contentions, all the violations alleged in Count II are substantive in nature, not technical or procedural.

In response to the allegation in Platinum Builders' prehearing statement that Count II of the complaint was lacking in specificity the government notes that the complaint was sufficient to provide fair notice, and points out that even had it not been, the company could have, but did not, file a motion for more definite statement or use discovery provisions to obtain clarification as to any questions it had. ICE says that in any event the violations are set out with specificity in its Summary of Audit Findings, exhibit G-5. Finally, the government says that because copying and retention of an employee's supporting documentation is optional and voluntary for the employer, it would have been improper for ICE to request production of such documents in an NOI.

ICE says that its Memo to File, exhibit G-5, reflects that eight named employees failed to indicate their respective statuses in section 1 (for some of these employees, additional violations were indicated parenthetically): Adan Arellano, Agustin Arias, Alegandra Gutierrez, Cipriano

Juarez (provided A# on proper line, but no expiration date for LPR card), Francisco Montiel Silva, Joseph Wahler (also DL in list A), Victor Gamboa, and Valentin Zacaula (also no docs in section 2). For Juan Carlos Samaniego (also ID in list A) and Valentin Barrios (also DL in list A, no alien number on the appropriate line or elsewhere on the form, and no legible copy of a document showing it was retained and presented at the inspection). For Israel Argueta, no alien number was entered on the appropriate line or elsewhere on the form, and no legible copy of a document showing the number was retained and presented at the inspection.

The forms were missing proper List A, B, or C documents for Julio Garcia (SS# only for claimed LPR), Ian Wallum (DL in list A and no list C document), Dan Manko (missing list B and no dates in section 2 certification), Steve Ortega (only SS# in list A), and Timothy Reynolds (no employee signature in section 1, no section 2 certification dates, and no list B document). The I-9s for Emiliano Ortega, Jonathan Velasquez, Pedro Rosales, and Valentin Zacaula lacked a signature in the section 2 attestation, and failed to include a proper list A, B, or C document.

In twenty-eight instances, an I-9 failed to include a document title, identification number, or expiration date for a list A, B, or C document, and a legible copy of the document was not retained and presented at the inspection: Armando Peralta (LPR expiration date missing), Arturo Chaidez (DL without expiration date and SS# in list A), Benjamin Rodriguez (DL without expiration date and SS# in list A), Carlos Fernandez (LPR expiration date missing), Carlos Martinez (LPR in list B with no expiration date, SS# in list A), Casimiro Zamudio (LPR expiration date missing), Eloy Flores (LPR in list B with no expiration date, SS# in list A), Enrique Cervantes (LPR in list B with no expiration date, SS# in list A), Enrique Villalobos (LPR in list B with no expiration date, SS# in list A), Esteban Arias (LPR in list B with no expiration date, SS# in list A), Fausto Arias (LPR in list B with no expiration date, SS# in list A), Forrino Juarez (LPR in list B with no expiration date, SS# in list A), Francisco Jil Gomez (LPR in list B with no expiration date, SS# in list A), Gerardo Sanchez (no LPR expiration date), Isaac Perez Pina (LPR in list B with no expiration date, SS# in list A), Jaime M. Rodriguez (LPR in list B with no expiration date, SS# in list A), Javier Velazquez (LPR in list B with no expiration date, SS# in list A), Jesus Ruelas (DL in list A with no expiration date and SS# in list B), Juan Paz (LPR in list B with no expiration date, SS# in list A), Leonardo Silva (LPR with no expiration date), Luis Bolanos (LPR in list B with no expiration date, SS# in list A), Jesus Lombardo (DL in list B with no expiration date, SS# in list A), Gilberto Zuniga (LPR with no expiration date), Marco Rosas Sanchez (LPR in list B with no expiration date), Oscar Castillo (LPR in list B with no expiration date), Oscar Valazquez (LPR in list B with no expiration date), Oscar Salazar (DL in list A with no expiration date), and Valentin Huerto Bravo (LPR in list B with no expiration date).

Finally, the government says in seven instances the I-9 form was not prepared at the time of hire or in a timely manner for: Francisco Garcia (also DL with no expiration date and in the wrong

list as is SS#), Gerardo Romain (also DL with no expiration date and in the wrong list as is SS#), Jose Lagunes (also LPR in list B with no expiration date and SS# in list A), Juan Garcia 1 (also DL with no expiration date and SS# in list A), Juan Garcia 2 (also LPR in list B with no expiration date and SS# in list A), Luis Garza (also LPR in list B with no expiration date and DL in list A with no expiration date), and Martin Aguinaga (also DL without expiration date and SS# in list A.

ICE's Memo to File explains its penalty of $70,966.50 by noting that the baseline figure was set pursuant to internal agency guidelines at $935 for each violation, based on a 57% violation percentage. The government then mitigated the penalty by 5% based on the company's status as a small business, but aggravated the fine by 5% for a lack of good faith, and by another 5% for seriousness of the violations. The government contends further that because fifty-eight unauthorized workers were identified, another 5% was added to that for a total of $1028.50 per violation.[2] The absence of any previous history was treated as neutral.

ICE argues that because Platinum Builders is a subchapter S corporation with only three shareholders, Luis L. Garcia, Hortencia Garza, and Luis E. Garza, its financial condition cannot be properly assessed when the personal income tax returns of the shareholders were not placed in evidence.

B. The Company's Response

Platinum Builders' response asserts that it should not be found liable, and in the alternative that if it is, the fines should be reduced to an amount commensurate with the particular errors as well as its history and financial circumstances. The company says that the allegations in Count II of the complaint are lacking in specificity and urges that the government's exhibits G-5 and G-6 be quashed or rejected because they are unverified and are not dated contemporaneously with the investigation or with the analysis of the case prior to issuance of the complaint. Platinum Builders says further that exhibits G-5 and G-6 were not on the list of exhibits the government included in its prehearing statement and their consideration at this late date is prejudicial to the company because they contain allegations that are outside the scope of this proceeding.

Platinum Builders pointed out that while the NOI asked for I-9 forms, there was no request made for the production of related documents, that is, for copies of the evidentiary documents the employees presented during the I-9 process. The company contends that had the government requested the supporting documents Platinum Builders could have provided them, and that a number of the violations alleged in Count II of the complaint would then have been viewed as

[2] ICE actually made adjustments of 10%, but although the math was wrong, the bottom line total in the memo was correct.

technical and procedural and the employer would have been given ten days to correct those errors.

Platinum Builders also voiced several objections to any aggravation of the penalty based on the presence of allegedly unauthorized workers. First, the company says the mere allegation that there were such workers is insufficient to warrant raising the fine, and that nowhere in the complaint or the prehearing statement was there any previous mention of unauthorized workers. Second, the company points out that the only evidence of unauthorized workers is the unverified and unvalidated assertion in exhibit G-5. Platinum Builders argues that the government has not met its burden of proof to show that any individual named in exhibit G-5 was unauthorized for employment. The company contends that it is a small family drywall business with only twenty-six employees and that its tax returns confirm it had very modest income over the three year period.

C. Discussion and Analysis

Platinum Builders' objections to exhibits G-5 and G-6 are overruled and the exhibits are considered, not necessarily for the truth of uncorroborated statements made therein, but for the explanation of the violations generally and the calculation of the penalty in particular.

1. Liability

Platinum Builders' proffered supporting documents will not be considered nunc pro tunc in assessing liability as the company requests. First, it is well established in OCAHO case law that merely copying List A, List B, or List C documents without completing section 2 does not satisfy the verification requirements. 8 C.F.R. § 274a.2(b)(3) ("[c]opying or electronic imaging of any such document and retention of the copy or electronic image does not relieve the employer from the requirement to fully complete section 2 of the Form I-9."). *See United States v. H & H Saguaro Specialists,* 10 OCAHO no. 1144, 5-6 (2012). Even were the documents to be considered, they would provide no relief from liability for substantive violations involving the failure to complete section 2. As explained in *United States v. Ketchikan Drywall Services, Inc*., 10 OCAHO no. 1139, 6-8 (2011), petition for review denied, No. 11-73105, 2013 WL 3988679 at *7 (9th Cir. Aug. 6, 2013), moreover, the technical and procedural errors and omissions in I-9 forms that may be cured by the presentation of documents are limited to those instances when the document is retained and presented with the I-9 form at the time of the inspection. *See* Virtue Memorandum at app. A and B.

The short answer to the company's assertion that the complaint lacked specificity, moreover, is that the company was afforded every opportunity to engage in discovery in the course of this proceeding and declined to do so. Platinum Builders is not in a position to argue that it had no

opportunity to explore the specifics of the violations alleged where it demonstrated no interest in discovery. The company acknowledged fourteen of the violations in Count I, and it is self-evident that the I-9 for Hortencia Garza did not exist on the date of the NOI; the form reflects on its face that although Garza was employed since September 2008, no I-9 was prepared for her prior to July 27, 2010. Visual inspection of the company's I-9 forms for the employees named in Count II, moreover, confirms the existence of the violations ICE enumerated. Platinum Builders is accordingly liable for the fifteen violations alleged in Count I and the fifty-four violations alleged in Count II.

2. Penalty

Civil money penalties are assessed for paperwork violations according to the parameters set forth in 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom the violation occurred after September 29, 1999, is $110, and the maximum penalty is $1100. In assessing the appropriate amounts of civil money penalties for violations of 8 U.S.C. § 1324a(b), the law requires consideration of the following factors: 1) the size of the employer's business, 2) the good faith of the employer, 3) the seriousness of the violation(s), 4) whether or not the individuals involved were unauthorized aliens, and 5) any history of previous violations. 8 U.S.C. § 1324a(e)(5) (2006). The government has the burden of proof regarding liability and penalty, and must prove the existence of any aggravating factor by a preponderance of the evidence. *See United States v. Nebeker, Inc.,* 10 OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)). The range of penalties authorized for the sixty-nine violations in this case extends from a low of $7590 to a high of $75,900.

The seriousness of violations may be evaluated on a continuum, and not all violations are necessarily equally serious. *United States v. Carter*, 7 OCAHO no. 931, 121, 169 (1997) (citing *United States v. Felipe*, *Inc*., 1 OCAHO no. 93, 626, 636 (1989)). Failure to prepare an I-9 at all is among the most serious of paperwork violations. *United States v. Reyes*, 4 OCAHO no. 592, 1, 10 (1994). Failure to prepare I-9s in a timely fashion is also both substantive and serious, because employees could potentially be unauthorized for employment during the entire time their eligibility remains unverified. *See United States v. Sunshine Building Maintenance, Inc.*, 7 OCAHO no. 997, 1122, 1182 (1998) (citing *United States v. El Paso Hospitality, Inc.*, 5 OCAHO no. 737, 116, 123 (1995)). The longer the delay in preparing an I-9 form, the more serious is the violation. *See, e.g.*, *United States v. Fortune E. Fashion, Inc.*, 7 OCAHO no. 992, 1075, 1080-81 (1998) (finding failure to prepare I-9 within three business days to be serious, but distinguishing between delays of a few days and those of a few months). Here, the violations in Count I involving the failure to prepare and/or present Forms I-9 for fifteen workers are of a more serious nature than those in Count II involving errors or omissions on the I-9 forms, and that difference may be reflected in the final penalty assessment as well.

OCAHO case law has long held, however, that in order to support a finding of bad faith, there must be evidence of culpable conduct that goes beyond the mere failure of compliance with the verification requirements. *See United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the Chief Administrative Hearing Officer). The government's memorandum points to no evidence of bad faith beyond the fact that the violations occurred, and a dismal rate of I-9 compliance may not, in light of *Karnival Fashion,* be used to increase a penalty based upon the good faith criterion. Absent an appropriate evidentiary showing, there is no presumption of bad faith. *United States v. Jonel, Inc*. 8 OCAHO no. 1008, 175, 198 (1998).

As Platinum Builders pointed out, the only evidence of unauthorized workers is the unverified and unvalidated assertion in exhibit G-5 that there were discrepancies between the alien numbers for certain individuals and DHS' Central Index System. A reference to discrepancies or suspect documents, standing alone, is not sufficient to establish unauthorized status, and in any event no across-the-board enhancement is warranted based on the presence of unauthorized aliens. Our case law does not permit enhancement of penalties for all an employer's I-9s based on the fact that some individuals were unauthorized. The statutory factor for consideration is not whether there are unauthorized aliens are present in the workforce, it is "whether or not *the individual* was an unauthorized alien." 8 U.S.C. § 1324a(e)(5) (emphasis added). *See Nebeker,* 10 OCAHO no. 1165 at 5; *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 669 (2000). It is accordingly not appropriate to enhance penalties across the board for all the violations based on the presence of some unauthorized workers. While it is appropriate to assess a higher penalty for a specific violation involving the I-9 form for an individual that is actually shown to be an unauthorized alien, suspicion alone does not justify such a result.

The penalty requested here, $1028.50 for each violation, is only $71.50 short of the maximum permissible. Our case law, however, has often observed that penalties approaching the maximum should be reserved for the most egregious violations. *See United States v. Fowler Equip. Co.,* 10 OCAHO no. 1169, 6 (2013); *United States v. La Hacienda Mexican Cafe*, 10 OCAHO no. 1167, 3 (2013). In consideration of the record as a whole, the penalties for this small family business will be adjusted to an amount closer to the midrange of permissible penalties. The penalties for the more serious violations in Count I will be assessed at the rate of $500 for each violation, and the penalties for Count II will be assessed at the rate of $300 for each violation. The total penalty is $23,700.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Platinum Builders of Central Florida is a domestic private corporation located in Port Charlotte, Florida.

2. Platinum Builders of Central Florida is a small family owned and operated construction business that was incorporated in 2005 by its current president Luis A. Garza.

3. The United States Department of Homeland Security, Immigration and Customs Enforcement served a Notice of Inspection on Platinum Builders of Central Florida on July 19, 2010.

4. The United States Department of Homeland Security, Immigration and Customs Enforcement served Platinum Builders of Central Florida with a Notice of Intent to Fine on March 19, 2012 alleging a total of sixty-nine violations.

5. Platinum Builders of Central Florida filed a request for hearing on April 13, 2012.

6. The United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint against Platinum Builders of Central Florida on May 10, 2012.

7. Platinum Builders of Central Florida hired Patrick Allen, Leda Chaves, Ryan P. Creenan, Hector Garza, Hortensia Garza, Gerardo Garza, Arturo Garza, Jesse Juarez, Raul Lopez, Juan Romero, Jorge A. Rosas, Sam Scmuttzler, Rafael Silva, Adelfino Trejo, and Jeffrey S. Vargo and failed to prepare and/or present I-9 forms for them.

8. Platinum Builders of Central Florida hired Aden Arellano, Arias Agustin, Alegandro Gutierrez, Armando Peralta, Arturo Chaidez, Benjamin Rodriguez, Carlos Fernandez, Carlos Martinez, Casimiro Zamudio, Cipriano M. Juarez, Eloy Flores, Emiliano Ortega, Enrique Cervantes, Enrique Villalobos, Esteban Arias, Fausto Arias, Fortino Juarez, Francisco Garcia, Francisco Jil Gomez, Francisco M. Silva, Gerardo Roman, Gerardo Sanchez, Isaac Perez Pina, Jaime Rodriguez, Javier Velasquez, Jesus Ruelas, Jonathan Velasquez, Jose A. Lagunes, Juan M. Garcia, Juan M. Garcia, Juan Paz, Julio C. Garcia, Luis E. Garza, Leonardo Silva, Luis Bolanos, Jesus Lumbardo, Ian C. Wallum, Gilberto Zuniga, Israel Argueta, Joseph D. Wahler, Rosas Marco, Martin Aguinaga, Juan C. Samaniego, Dan J. Manko, Oscar Castillo, Oscar Velasquez, Pedro Rosales, Steve Ortega, Timothy J. Reynolds, Oscar D. Salazar, Victor Ganboa, Valentin Barrios, Valentin H. Bravo, and Valentin J. Zacuala and failed to ensure that their I-9 forms were properly completed.

B. Conclusions of Law

1. Platinum Builders of Central Florida is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2006).

2. All conditions precedent to the institution of this proceeding have been satisfied.

3. An employer must comply with the verification requirements by ensuring that an employee completes section 1 of the Form I-9, and by itself completing section 2. 8 C.F.R § 274a.2(b)(1)(i)(A), (ii)(B).

4. An I-9 form is timely prepared when the employee completes section 1 on the day the employee is hired, and the employer completes section 2 within three business days of the hire. 8 C.F.R. § 274a.2(b)(1)(i)(A), (ii)(B).

5. Failure to prepare an I-9 within three business days of an employee's date of hire is a serious violation. *See United States v. Anodizing Indus., Inc.*, 10 OCAHO no. 1184, 4 (2013) (failure to timely prepare an I-9 is serious because an employee could potentially be unauthorized for employment during the entire time his or her eligibility remains unverified).

6. Platinum Builders of Central Florida is liable for fifteen violations in Count I and fifty-four violations in Count II, for a total of sixty-nine violations of 8 U.S.C. § 1324a(a)(1)(B).

7. In assessing an appropriate penalty, the following factors must be considered: 1) the employer's size business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5). The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

8. The government has the burden of proof regarding both liability and penalty, and must prove the existence of any aggravating factor by a preponderance of the evidence. *See United States v. Nebeker, Inc.,* 10 OCAHO no. 1165, 4 (citing *United States v. Am. Terrazo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)).

9. In order to support a finding of bad faith, there must be evidence of culpable conduct that goes beyond the mere failure of compliance with the verification requirements. *See United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the Chief Administrative Hearing Officer).

10. Penalties approaching the maximum permissible should be reserved for egregious violations. *See United States v. Fowler Equipment Co.,* 10 OCAHO no. 1169, 6 (2013); *United States v. La Hacienda Mexican Cafe*, 10 OCAHO no. 1167, 3 (2013).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

Platinum Builders of Central Florida is liable for sixty-nine violations and is directed to pay penalties in the total amount of $23,700. The parties are free to establish a payment schedule in order to minimize the impact of the penalty on the operations of the company.

SO ORDERED.

Dated and entered this 20th day of August, 2013.

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Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an

Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.