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

June 24, 2014

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 13A00075
CRESCENT CITY MEAT COMPANY, INC., Respondent.	)	

FINAL DECISION AND ORDER

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 (2012), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint alleging that Crescent City Meat Company, Inc. (Crescent City or the company) violated 8 U.S.C. § 1324a(a)(1)(B) by failing to prepare, retain, and/or present I-9 forms for fifteen employees. The total penalty sought was $14,025.

Crescent City, by its president and owner, Gerard Hanford, filed an answer admitting that Crescent failed to prepare, retain, or present I-9s for fifteen individuals. A telephonic prehearing conference was subsequently conducted, at which the parties agreed that there was no dispute regarding the company's liability for the violations alleged. Hanford said the company was previously unaware of the necessity to complete these forms. The parties were given an opportunity to set out their views as to the appropriate penalties, and both parties did so.

A decision was issued on April 22, 2014, after which ICE filed a timely appeal with the Chief Administrative Hearing Officer (CAHO). On May 22, 2014, the CAHO vacated the initial

decision and remanded the case for reconsideration of the penalty assessment. *See United States v. Crescent City Meat Company, Inc.*, 11 OCAHO no. 1217 (2014) (decision by CAHO vacating initial decision issued on Apr. 22, 2014).[1]

II. BACKGROUND INFORMATION

Crescent City Meat is a small family business located in Metairie, Louisiana. The company makes and sells meat products to retail and wholesale customers and has been in business since 1985. It has fewer than ten employees, several of whom are family members. The president and owner of the business, Gerard Hanford, acknowledged that Crescent City failed to prepare, retain, or present I-9s for fifteen individuals as alleged by the government. Hanford said until ICE served Crescent City with a Notice of Inspection (NOI) on May 31, 2012, the company was unaware of the necessity to complete these forms.

The NOI required Crescent to produce I-9 forms for current and former employees. The company belatedly completed I-9s for its current employees, but was unable to prepare the forms retroactively for its former employees because specific information about their hire and termination dates was no longer unavailable after the loss of some company documents in Hurricane Katrina. ICE served Crescent City with a Notice of Intent to Fine on April 25, 2013, after which the company made a timely request for hearing on or about May 1, 2013. ICE filed a complaint with this office on May 23, 2013, and all conditions precedent to the institution of the proceeding were satisfied.

The initial decision of April 22, 2014 found Crescent City liable for fifteen violations of 8 U.S.C. § 1324a(a)(1)(B) and assessed a penalty totaling $1650. Because the penalty assessment was based in part on an inference drawn from a misreading of the record, the question of penalty is now considered de novo. The finding of liability is unchanged.

[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.

III. PENALTY ASSESSMENT

A. Standard Applied

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is $110, and the maximum is $1100. The permissible penalties for the fifteen violations established range from a minimum of $1650 to a maximum of $16,500. In assessing an appropriate penalty, the following factors must be considered: 1) the size of the employer's 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). Potential penalties in this matter range from a minimum of $1650 to a maximum of $16,500.

B. The Government's Position

ICE said it calculated a baseline penalty in accordance with internal agency guidance that sets a penalty of $935 for each violation when the employer's error rate exceeds fifty percent. The government mitigated the penalty by five percent based on the small size of Crescent City's business, but aggravated the penalty by five percent based on the seriousness of the violations, *citing United States v. Davis Nursery, Inc.*, 4 OCAHO no. 694, 924, 943 (1994). ICE's penalty memorandum explains that the company completed I-9 forms for its current employees after the issuance of the NOI, but was unable to provide I-9s for its previous employees because the company did not require them to complete the form at the time of hire. ICE treated the remaining factors of good faith, history of previous violations, and presence of unauthorized workers as neutral. After mitigating and aggravating factors offset each other, the baseline penalty for each violation remained $935, for a total of $14,025.

The government's memorandum argues that its proposed penalty should not be modified because this case is distinguishable from *United States v. Mr. Mike's Pizza*, 10 OCAHO no. 1196, 3 (2013), in which the penalties for another very small family business were substantially reduced in similar circumstances where the employer was wholly unaware of the I-9 requirements until receiving the NOI. ICE points out that the company in *Mr. Mike's* presented evidence of its inability to pay, but the company here has not done that.

The government's memorandum was accompanied by exhibits consisting of: A) Excerpt from Worksite Enforcement Handbook (2 pp.); B) Memorandum to Case File/Determination of Civil Money Penalty (3 pp.); C) Quarterly Earnings Report provided by Crescent City Meat (2 pp.); and D) Crescent City Meat's Quarterly Wage and Tax Reports provided to the Louisiana

Workforce Commission (2 pp.).

ICE's appeal to the CAHO was accompanied by exhibits that were also designated alphabetically. These are: A) a copy of the decision of April 22, 2014 (8 pp.); B) Memorandum to Case File/Determination of Civil Money Penalty (3 pp.); and C) Employee List with highlights and notations (4 pp.).[2]

C. Crescent City's Position

Crescent City stresses that it is a small family business, and says that it did show good faith because as soon as it became aware of the I-9 form, it immediately complied with the requirements. The company says it didn't know beforehand that the I-9 form even existed because the government had never notified it about the requirements. Crescent City questions how it could be expected to know of the law without hiring an attorney or a human resources administrator, which the company lacks the financial resources to do.

The company says in addition that the government uses *Davis Nursery* as its "gauge of seriousness," but that Crescent City's violations are not as serious as those in *Davis*, and penalties there were only $250 for each violation. The company also says that the government should not have aggravated the penalty based on the company's failure to provide I-9s for former employees because this is an unrealistic expectation with which it is "not humanly possible" to comply. The company also says it has suffered losses over the last twenty-five years, and asks for a reduction or elimination of the penalty because Gerard Hanford has had to deplete his retirement savings just to stay in business. No exhibits accompanied Crescent City's memorandum.

D. Discussion and Analysis

In reconsidering the penalty, I rely on the record as a whole, including the exhibits filed with the original motion, as well as ICE's second exhibit C, filed with the appeal. The initial decision reduced the penalties to the minimum permissible based on an erroneous inference that the government overreached its authority in pursuing penalties for two employees hired prior to November 6, 1986. Upon reconsideration, it is clear that the record does not support that inference, that there was no such overreach, and that the government's conduct of this case was without fault. ICE's second exhibit C identifies by name each of the individuals for whom penalties were sought and confirms that the grandfathered employees are not among them.

[2] This list was not part of the record on appeal, and was therefore not considered by the CAHO. The remand order noted, however, that the document could be considered if necessary or helpful in reassessing the penalty. It is incorporated into the record and is considered.

While reduction of the penalties to the statutory minimum based on an unsupported inference was thus unwarranted, I nevertheless still regard the proposed penalty as excessive in light of OCAHO case law suggesting that penalties so close to the maximum should be reserved for more egregious violations than have been shown here. *United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013). The purpose of imposing penalties is to induce compliance through a reasonably proportioned fine, not to punish an employer beyond what is necessary to achieve and maintain compliance. The penalty should accordingly be meaningful enough to accomplish the goal of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), but should not be unduly punitive, or disproportionate to the employer's revenues. *United States v. Minaco Fashions*, Inc., 3 OCAHO no. 587, 1900, 1909 (1993).

To be sure, failure to prepare an I-9 form is always a serious violation because it subverts the purpose of the employment eligibility verification process. *See United States v. M & D Masonry, Inc.*, 10 OCAHO no. 1211, 11 (2014). Apart from the seriousness of the violations, however, all the remaining statutory factors in this case incline in the company's favor. Although the record is relatively barren, it is still evident that Crescent City is a very small family business of a "mom and pop" character, and that the company was simply unaware of the I-9 requirements. Hanford observed in a letter he wrote to government counsel that "[i]f there was a manual on all of the forms and documents needed to open a small business the author would certainly make a fortune." The government does not suggest that there is any indication of bad faith on the company's part, that there were unauthorized employees found, or that the company has any history of previous violations.

Crescent City's reliance on *Davis Nursery* is, however, inapposite. First, contrary to Crescent City's bald assertion that the violations here are not as serious as those in *Davis*, the violations here were of the same nature as those alleged in *Davis*' Count I. 4 OCAHO no. 694 at 927-28. The violations in Counts II and III in that decision involved errors in various I-9 forms. The penalties in *Davis* were assessed at the rate of $325 for the violations in Count I, $212.50 for the violations in Count II, and $475 for the lone violation in Count III. Although there are many similarities between the employers in these two cases, the administrative law judge in *Davis* specifically relied on a non-statutory mitigating factor in reaching the result in that case. *Id.* at 945-46. Although the employer in *Davis Nursery* failed to prepare or present I-9 forms as alleged in Count I, the company nevertheless had a policy and practice of requiring its employees to provide identification and a work permit, if applicable. No such measures are evident in this case.

Examination of the company's Quarterly Earnings Reports from October 2011 to June 2012 and the Quarterly Wage and Tax Reports that the company provided to the Louisiana Workforce Commission (ICE's first exhibits C and D) nevertheless persuades me that, like the company in *Mr. Mike's*, this is precisely the type of business Congress intended to benefit from the general public policy of leniency to small entities that was expressed in the Regulatory Flexibility Act, 5

U.S.C. 601 et seq. (2006), amended by § 223(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 864 (1996). The penalties for this small family business will accordingly be adjusted to an amount closer to the midrange of permissible penalties, and set at $450 for each violation. The total penalty is $6750.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Crescent City Meat Company, Inc. is a sausage-making company located in Metairie, Louisiana.

2. The Department of Homeland Security, Immigration and Customs Enforcement, served Crescent City Meat Company, Inc. with a Notice of Inspection (NOI) on May 31, 2012.

3. The Department of Homeland Security, Immigration and Customs Enforcement, served Crescent City Meat Company, Inc. with a Notice of Intent to Fine on April 25, 2013.

4. Crescent City Meat Company, Inc. made a timely request for hearing on or about May 1, 2013.

5. The Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with this office on May 23, 2013.

6. Crescent City Meat Company, Inc. hired Brian Baker, Alex Bedoucha, Darnell Harding, Gerard D. Hanford, Lauren Hanford, Dennis Jackson, Alfred Jones, Donald Jones, Darren Johnson, Danielle Lathers, Cynthia Migon, Charles McClup, Randall Pete, Gregory Powell, and Sarah Reginald, and failed to prepare, retain, and/or present Forms I-9 for them.

B. Conclusions of Law

1. Crescent City Meat Company, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).

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

3. Crescent City Meat Company, Inc. admitted liability for fifteen violations of 8 U.S.C. § 1324a(a)(1)(B).

4. In assessing an appropriate penalty, the following factors must be considered: 1) the size of

the employer's 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. *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

5. Penalties close to the maximum should be reserved for the most egregious violations. *United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

6. Failure to prepare an I-9 form is always a serious violation because it subverts the purpose of the employment eligibility verification process. *See United States v. M & D Masonry, Inc.*, 10 OCAHO no. 1211, 11 (2014).

7. The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (2006), as amended by § 223(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 864 (1996) set out a general public policy of leniency to small entities in assessing civil money penalties.

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

Crescent City Meat Company, Inc. is liable for fifteen violations of 8 U.S.C. § 1324a(a)(1)(B) and is ordered to pay a civil money penalty of $6750. The parties are free to negotiate a payment schedule to minimize the impact of the penalty on the company's operations.

SO ORDERED.

Dated and entered this 24th day of June, 2014.

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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) (2012).

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.