

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

August 23, 1994

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a Proceeding
) OCAHO Case No. 94A00113
KENT B. BURNS AND)
INTRA-CONTINENTAL)
ENTERPRISES, INC.,)
Respondents.)
_____)

ORDER GRANTING MOTION TO AMEND

On March 26, 1994, complainant, acting by and through the Immigration and Naturalization Service (INS), commenced this action by filing a Notice of Intent to Fine (NIF), 93-EPT-274A-2521, against Kent B. Burns and Intra-Continental Enterprises, Inc. (respondents). That NIF consisted of eight (8) counts, in which 68 violations of the Immigration Reform and Control Act of 1986, as amended (IRCA), 8 U.S.C. § 1324a, were alleged, and for which civil penalties totalling \$10,887, were assessed.

In Count 8 of the NIF, complainant alleged that respondents hired Osvaldo Vargas for employment in the United States after November 6, 1986, and failed to ensure that that individual completed section 1 of the Employment Eligibility Verification Form (Form I-9) at the time of hire, in violation of IRCA, 8 U.S.C. § 1324a(a)(1)(B). Complainant assessed a civil money penalty of \$100 for that violation.

Respondents were informed in the NIF of their right to file for a hearing before an Administrative Law Judge assigned to this Office, if they filed such a request within 30 days of their receipt of that notice. Respondents did so on April 25, 1994.

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On June 8, 1994, complainant filed the Complaint at issue, reasserting therein the violations alleged in Counts 1 through 7 of the NIF verbatim.

In Count VIII of the Complaint, however, complainant did not allege that respondents failed to prepare a Form I-9 pertaining to the individual named therein at the time of hire, asserting only that complainant hired that individual for employment in the United States after November 6, 1986.

On August 8, 1994, complainant filed a Motion to Amend Complaint, requesting therein that a new Count VIII be substituted for Count VIII as it was propounded in the Complaint.

In Count VIII as it is propounded in the Motion to Amend, complainant alleges, as it did in Count 8 of the NIF, that respondents violated IRCA, 8 U.S.C. § 1324a(a)(1)(B), by having failed to ensure that Osvaldo Vargas, an individual hired by respondents for employment in the United States after November 6, 1986, completed section 1 of the pertinent Form I-9 at the time of hire.

Despite the fact that the 15-day period for respondents to have responded to complainant's Motion to Amend has elapsed, respondents have failed to file a response thereto. Accordingly, only complainant's motion is under consideration.

The procedural regulation governing amendments and supplemental pleadings, 8 U.S.C. § 68.9(e), provides, in pertinent part:

If and whenever a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint.

It is evident in this instance that paragraph C, Count VIII in the Complaint, alleging that respondents failed to ensure that the individual named in Count VIII, paragraph A.1 completed section 1 of the pertinent Form I-9, was inadvertently omitted by complainant in drafting the Complaint.

That because Count VIII was captioned "Failed to Ensure Timely Completion of Section 1 of the Employment Eligibility Verification Form (Form I-9)", and in further light because respondents were specifically charged in that count with having failed to comply with

section 274a.2(b) of the regulations implementing the employer sanctions provisions of IRCA, which requires that employers ensure that individuals hired properly complete section 1 of the Form I-9 at the time of hire.

Because respondents were advised in the caption, as well as the wording of Count VIII, as it was propounded in the Complaint, that complainant was alleging in that count a violation of IRCA premised upon respondents' failure to ensure that the individual named therein timely completed section 1 of the Form I-9, respondents will not be prejudiced by granting complainant's motion.

Accordingly, complainant's Motion to Amend is hereby granted, and Count VIII of the Complaint is ordered to be and is amended in the manner requested.

JOSEPH E. MCGUIRE
Administrative Law Judge