

On January 15, 2013, Enforcement conducted an on-site compliance inspection of Employer's business and served Employer with a document request, entitled the "Business Establishment Compliances and Monitoring Report," dated 1/15/2013. [A copy of the Report was entered into evidence as Hearing Exhibit 2.]

On January 31, 2013, Employer produced the requested documents, including: (1) a total listing of workforce statement of compliance; (2) a copy of two latest quarterly employer's withholding tax; (3) payroll summary; (4) sketched map to business location; (5) business license; and (6) annual corporate report.

On February 4, 2013, Enforcement served Employer with a Notice of Warning (Hearing Exhibit 3), informing Employer that it was not in compliance with the 30% requirement of 3 CMC § 4525. As of that date, Employer employed 32 employees, consisting of no U.S. citizens, two permanent residents and 30 foreign national (CW1) workers.

The Notice of Warning instructed the Employer to contact the Citizen Job Placement Section for assistance in (1) obtaining referrals of U.S. citizen applicants or (2) making other arrangements to meet the 30% U.S. workforce requirement. *Id.*

In the nine months following February 2013, the Employer hired several U.S. citizens and permanent residents, including two persons referred by the Citizen Job Placement Section. [Testimony of Gina Suarez and James Ulloa.] Even with these hirings, however, the Employer's "workforce percentage" (the percentage of U.S. citizen and/or permanent resident employees within the employer's entire workforce) never approached the 30% level targeted by the CNMI Department of Labor and mandated by CNMI law.

In November 2013, the Citizen Job Placement Section, represented by Yvonne S. Taisacan, made several attempts to discuss this matter with Employer's management in order to determine steps that could be taken to bring Employer's workforce percentage up to the 30% level. Ms. Taisacan tried to reach Employer's management, but could only reach the company accountant, Gina Suarez. Ms. Suarez responded that the Employer had already hired the two U.S. citizens who had been referred by the Department. When Ms. Taisacan noted that the Employer had been instructed to submit a workforce plan, Suarez replied that she would inform "her boss." [For a detailed account of Ms. Taisacan's attempts to consult with Employer, see Hearing Exhibit 4 (copy of Memorandum from Ms. Taisacan to Acting Chief of Enforcement, Jeff Camacho, dated 11/29/13).]

Evidently, Ms. Taisacan made several telephone calls later in November 2013, to determine whether the Employer had devised a workforce plan, but the Employer failed to respond. Ms. Suarez testified that the company's President, Hwang, In Taek, makes all hiring and firing decisions for the company, and that the President had been off-island in November 2013 at the time of Ms. Taisacan's inquiries. *Id.*

At the end of November 2013, the Citizen Job Placement Center referred this Employer to the Enforcement Section for investigation. One principal reason for the referral was the fact that Employer's management had failed to demonstrate that it was engaged in devising a long-range workforce plan to better meet the 30% requirement. [See Hearing Exhibit 4; and testimony of James Ulloa.]

Enforcement concluded that Employer had been uncooperative and non-compliant with the labor laws, rules and regulations with respect to recruiting eligible U.S. workers and permanent residents. [Hearing Exhibit 1 (Determination) at para. 6.] This hearing followed.

DISCUSSION

Under Commonwealth law, every employer is required to make good faith efforts to recruit eligible U.S. workers and permanent residents in sufficient force to meet the targeted percentage of 30% of its total workforce. 3 CMC § 4525(a) and Regs. at § 80-30.3-440.

Among other things, Department Regulations require that "[a]n employer who intends to employ a foreign national worker...on a full-time basis...must post a job vacancy announcement on the Department's website, www.marianaslabor.net." *Id.* at § 80-30.3-205; see also § 80-30.3-300. "There are no waivers available with respect to the job vacancy announcement requirement." *Id.* at § 80-30.3-230.

The Department recognizes that it may take some employers time and effort to achieve the goal of employing 30% of their workforce as U.S. citizens and/or permanent residents. Therefore, the Citizen Job Placement Section is willing to work with employers to devise a long-range plan to bring them into compliance over a period of time. [Testimony of James Ulloa.] However, Employers who are not in compliance with the 30% target are expected to cooperate with the Citizen Job Placement Section in order to demonstrate that they are making a good faith effort to hire U.S. citizens, U.S. permanent residents and CNMI permanent residents. *Id.* An employer who fails or refuses to meet with the Citizen Job Placement Section, after it is requested to do so, creates the impression that it is

ignoring or evading its legal responsibilities under CNMI law. 3 CMC § 4525(a) and Regs. at § 80-30.3-440.

In this case, the Employer (1) failed to post all job listings on the Department's website; and (2) neglected to submit a workforce plan or to meet with the Citizen Job Placement Section for assistance in creating a workforce plan. Employer's President, who apparently is responsible for all hiring and firing decisions, neglected to contact the Citizen Job Placement Section to discuss any plan to meet the 30% target, despite numerous attempts by the Placement Section to meet with Employer's management. On a positive note, the Employer did hire several citizens and one additional permanent resident in 2013, improving its percentages slightly.¹

One difficulty here is that 22 of the 32 jobs in this Employer's workforce are tour guide positions that require fluency in the Korean language, as these guides deal directly with Korean tourist-clients of the Employer. [Testimony of Ms. Sanchez.] These 22 positions will be difficult to fill with U.S. citizens or permanent residents, given the foreign language requirement. Nevertheless, several other positions, such as accounting jobs, may be filled with local hires.

In any event, the Employer must cooperate with the Department by demonstrating that its upper management – not just its accountant – is willing to meet with personnel from the Citizen Job Placement Section to devise a workforce plan to bring the employer into compliance with the law. The Regulations provide that if, despite good faith efforts, an employer cannot reach the 30% goal, the Department may still issue the employer a certification of compliance. Regs. at § 80-30.3-460.

In conclusion, the evidence shows that Employer has failed to make a good faith effort to hire citizens and permanent residents sufficient to meet the 30% requirement. As a corrective action, this Employer shall be ordered: (1) to post all of its future job vacancies on the Department's website (www.marianaslabor.net); and (2) to meet with the Citizen Job Placement Section to discuss long-range workforce plans to meet the 30% target. Employer's President shall attend this meeting, along with his Manager, Won Jong Bong, and accountant Gina Sanchez. Employer is warned that it is being given one final opportunity to demonstrate its good faith. Therefore, any failure by Employer and/or its President to comply with

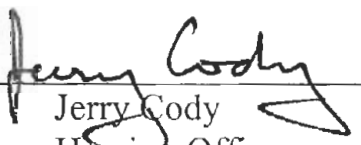
¹ The Employer's accountant testified that in 2013, Employer hired three U.S. citizens as drivers and one U.S. citizen as translator. Employer also hired one permanent resident as a translator. The President and Secretary of the company are permanent residents. [See testimony of Gina B. Suarez.]

the terms of this Order shall lead to monetary or other sanctions, to be determined in further proceedings.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Attendance at Meeting with Citizen Job Placement Section:** Respondent Hana Tour Service Inc. is ORDERED to arrange for its President to meet with James Ulloa of the Citizen Job Availability and Job Placement Section, at a date (to be arranged) within thirty (30) days of the date of this Order. All three of the following representatives shall attend the meeting: President Hwang, In Taek, Manager Won, Jong Bong, and accountant Gina S. Sanchez. The purpose of the meeting shall be to devise a workforce plan to move towards meeting the so-called 30% requirement of 3 CMC § 4525(a). 3 CMC § 4947(11).
2. **Posting on Website:** Respondent Hana Tour Service Inc. is ORDERED to post all job vacancies and job renewals in the future on the Department of Labor website (www.marianaslabor.net), in accordance with Regulations at § 80 – 30.3-205.
3. **Retained Jurisdiction:** The Hearing Office shall retain jurisdiction of this case until it receives written notification from the Citizen Job Placement Section that Employer has complied fully with the terms of this Order. If Respondent fails to comply with the terms of this Order, Respondent shall be subject to monetary and other sanctions in an amount to be determined at a later hearing.
4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: January 21, 2014



Jerry Cody
Hearing Officer