

codified in the Northern Marianas Administrative Code (“NMIAC”) at § 80-20.1-225(a). [Hearing Exhibit 1 at ¶ 2.]

- (2) Employer failed to post JVAs on the Department of Labor (“DOL”) website for two positions in 2016 in violation of CNMI Regulations. *Id.* [Hearing Exhibit 1 at ¶ 3.]
- (3) Employer failed to post numerous Employer Declarations on the DOL website in 2016, in connection with JVAs posted for the jobs of Store Manager and Supervisor. Regs. at NMIAC at § 80-20.1-235(e). [Hearing Exhibit 1 at ¶ 7.]
- (4) Employer failed to submit the three quarterly Total Workforce Listings for 2015 and three quarterly Total Workforce Listings for 2016 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b).
- (5) Employer submitted a Workforce Plan to the Department in 2016, which was inadequate as it failed to include “a realistic timetable for accomplishing the replacement of nonimmigrant aliens with...qualified...citizens [or]... permanent residents.” Regs. at NMIAC § 80-20.1-510(c). [Hearing Exhibit 1 at ¶ 9.]

Employer operates three businesses in Garapan: a grocery retail store named Family Store; a retail clothing store named Xing Long Fashion, and a bar/coffee shop named DZ Coffee Shop. Employer currently employs 7 full-time employees – 4 CW-1 status employees, 2 U.S. citizens and one foreign national worker holding an Employment Authorization Document (“EAD”). [Testimony of Ms. Wang; Hearing Exhibit 2 – a Total Workforce Listing signed on 2/26/2016.]

The testimony of Manager Hong Fei Wang-Rios revealed that she plays a major role in managing this business. Her father, YongLiang Wang, who resides in China, is President, Vice President, Director and sole shareholder of the company. [See Amended Annual Corporation Report for the year 2015, filed at the Registrar’s Office on 4/27/16, at Hearing Exhibit 6.]¹

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¹ Initially, Ms. Wang-Rios’s husband, Benjamin Rangamar Rios, was President/Secretary and a Director of the company. [Hearing Exhibit 7 - Annual Corporation Report for the year 2015, filed at the Registrar’s Office on 1/19/16.] A later Amended Annual Corporation Report (Hearing Exhibit 6) showed that Mr. Benjamin Rios was no longer either an officer or director of the company.

1. Failure to Post Job Announcement on DOL's Website.

Department Regulations state that an Employer who intends to hire or renew a foreign national worker on a full-time basis “must” post the JVA on the DOL’s website. Regs. at NMIAC § 80-20.1-225(a). There are no waivers available with respect to this requirement. *Id.* at § 80-20.1-225(e).

In its Determination, Enforcement charged that in 2015, Employer had failed to post JVAs on DOL’s website for five positions which it then filled with foreign national workers in CW-1 status. [Hearing Exhibit 1 at ¶ 2.] These included the jobs of bartender, store manager, salesperson and two supervisors. Second, Enforcement charged that in 2016, Employer had failed to post JVAs for two jobs – bartender and salesperson – even though Employer posted two JVAs for other positions in August 2016. At Hearing, Employer (Ms. Wang-Rios) admitted the charge. Employer’s Manager, Ms. Wang-Rios, testified that in the course of hiring CW-1 workers, she relied on a local agent, Lu Guo Hua, to handle all aspects of the hiring. Ms. Wang-Rios claimed that she had been completely unaware of the Regulation requiring employers to post JVAs on the website. [Testimony of Ms. Wang-Rios.]

Based on the evidence, Enforcement argued that Employer should be sanctioned for failing to post five JVAs in 2015 and two JVAs in 2016 for positions which were then filled by CW-1 status workers. *Id.* at § 80-20.1-225(a). [Testimony of Mr. Ulloa.]

2. Failure to Post “Employer Declarations” As to Prospective Job Applicants.

Departmental Regulations require any employer who hires a foreign national worker to file a “declaration” on the Department’s website, stating its reasons for rejecting each U.S. citizen or permanent resident who applied for the job. [See Regulations at NMIAC at § 80-20.1-235(e).] All citizens or permanent residents who post responses (or have their names posted) to JVAs on DOL’s website are considered potential job applicants.

In its Determination, Enforcement charged that Employer had failed to post Employer Declarations in connection with two JVAs that Employer posted for the jobs of store manager and supervisor. [Hearing Exhibit 1 at ¶ 7.]

In August 2016, Employer posted two JVAs – one for “Store Manager” and one for “Supervisor” - on the DOL website with a closing date of September 4, 2016. Department records show that as to each JVA, 129 online responses were posted on the website.² [Printouts of these JVAs, listing the 129 listed responses, were entered into evidence as Hearing Exhibits 4 and 5, respectively.]

At Hearing, Employer admitted that it never reviewed those online responses and never posted any “employer declarations” to any responder. Employer’s Manager explained that she had been unaware that after posting a JVA, Employer was required to first review the website to obtain the list of responders, and then review and consider those job seekers for the announced jobs. [Testimony of Ms. Wang-Rios.] Again, the Manager stated that she had left the matter completely in the hands of the agent, Lu Guo Hua.

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to post employer declarations with respect to the 129 responders who were listed as responding to each of the JVAs. [Regs. at NMIAC § 80-20.1-235(e).]

3. Failure to Submit Quarterly Total Workforce Listings.

DOL Regulations require employers to submit information *on a quarterly basis* regarding “the number and classification of employees for whom wages were paid during the quarter.” Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for the 1st, 2nd and 3rd quarters of 2015, as well as the 1st, 2nd and 3rd quarters of 2016. Employer did submit a Total Workforce Listing for the 4th quarter of 2015 in February 2016. [This document was entered into evidence as Hearing Exhibit 2.] Employer’s only response to this charge was that, once again, she relied on her local agent and that she had not realized that Total Workforce Listings were due on a quarterly basis.

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file six quarterly Total Workforce Listings in 2015 and 2016.

² These names were either posted on the website by the job seeker, himself, or else submitted automatically by the Citizen Job Placement computerized system that automatically refers persons to certain JVAs, based on pre-established, programmed criteria. [Testimony of Mr. Ulloa.]

4. Failure to Submit Complete Workforce Plan for 2016:

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] In this case, the evidence shows that Employer submitted a Workforce Plan to DOL in February 2016; however, the Plan was inadequate in several respects. First, the Determination stated that Employer had failed to give a realistic timetable for replacing alien workers with U.S. status-qualified workers. [Hearing Exhibit 1 at ¶ 9.] Second, Mr. Ulloa testified at Hearing that Employer had failed to detail the specific vocational preparations or training that would be needed to increase the percentage of U.S. status-qualified workers in its workforce. [Testimony of Mr. Ulloa.]

Once again, Employer's only response was that she had relied on the services and advice of her local agent, Lu Guo Hua, and that she had no knowledge of the correct format and information that the Department required the employer to present in this form. [Testimony of Wang-Rios.]

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file a complete and correct Workforce Plan in 2016. [Regs. at NMIAC § 80-20.1-510.]

DISCUSSION

The evidence established that: (1) Employer failed to post job vacancy announcements on DOL's website for five jobs in 2015 and two jobs in 2016, which jobs were then filled by CW-1 status workers; (2) Employer posted two JVAs on DOL's website in 2016, but then neglected to post Employer Declarations to 129 online responders to each JVA; (3) Employer failed to submit three quarterly Total Workforce Listings in 2015 and three quarterly Listings in 2016; (4) Employer submitted an incomplete Workforce Plan for 2016.³ [Regs at NMIAC §§ 80-20.1-225(a), 235(e), 505(b) and 510.]

Given these violations, the Department asked that Employer be assessed substantial monetary penalties for its conduct. [Hearing Ex. 1, p. 3.]

³ As to the charge about the Workforce Plan, the Hearing Officer finds that the Determination's allegation (Determination at ¶ 9) about the 4th column of the Workforce Plan, was too vague to be actionable. At Hearing, Enforcement (Mr. Ulloa) did not explain that issue, but focused on the 3rd column of the Workforce Plan that deals with vocational training. The Hearing Officer amends the Determination according to proof and finds in favor of DOL on the charge that Employer submitted an incomplete Workforce Plan because of deficiencies with the 3rd column.

Employer's only defense to these charges was that its Manager, who appears to have no knowledge of local labor statutes or regulations, had used a local agent (Lu Guo Hua) as her advisor in "document handling" and labor processing matters; and the agent had given bad advice to the Manager. [Testimony of Ms. Wang-Rios.]

Employer's story is similar to that of many other local employers. It is the tale of a foreign owner, completely unfamiliar with local labor law, who hires a processing agent to "handle" all labor and immigration processing for her company. The owner relies completely on the agent's advice and efforts, but later discovers that the advice was wrong and the Employer is left to take the blame. Indeed, this has occurred on too many occasions.

At the risk of stating the obvious, it is the business owner's responsibility to understand and follow the law. This includes the employer's responsibility to become educated about CNMI labor laws and regulations. If an employer hires an agent to help with processing matters, that agent should be supervised to ensure that he/she is providing valid, lawful services. It is not a valid defense for the employer to remain ignorant about the law and then, simply blame its agent for inaction.

The Manager in this case, Ms. Wang-Rios, has been managing the company for the past *ten years* (see Hearing Exhibit 2). For at least some period of the relevant time period (2015), the Manager's husband, who is a local citizen, served as Employer's President and Secretary. In short, the Manager was not without resources to learn and understand the company's obligations under the local labor law (i.e, Commonwealth Employment Act of 2007, and its implementing Regulations), significant portions of which are posted on DOL's website.

Sanctions: In its Determination, Enforcement asked that Employer be sanctioned with the maximum fine of \$2,000 for each violation. [Hearing Exhibit 1 at p. 3.] If this were to be accepted, it would result in a sanction of \$8,000 against Respondent. At Hearing, Enforcement indicated that it would accept the Hearing Officer's discretionary ruling in this matter. [Testimony of Mr. Ulloa.]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$2,000 for each violation. 3 CMC § 4528(f)(2). The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is

authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings.” Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14). The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified.

In this case, the evidence established that Employer committed three basic violations. First, it hired and renewed CW-1 workers in 2015 and 2016, without posting job vacancy announcements on DOL’s website for their positions. Second, it failed to post employer declarations for 129 responders, and failed to even consider or review the job responders for the two jobs that Employer posted on DOL’s website. Third, Employer missed numerous deadlines for filing census-related documents, either on a quarterly (Total Workforce Listings) or annual (Workforce Plan) basis.

As stated earlier, the Hearing Officer finds that Employer’s defense – that it relied entirely on an agent to handle all processing matters – is inadequate and does not excuse this Employer from its responsibility for the above-noted violations.

Holding: Based on the evidence presented and the considerations noted above, the Hearing Officer finds as follows: as to each of the three violations cited above, Employer should be sanctioned \$2,000, with \$1,000 paid and \$1,000 suspended. Total sanctions amount to \$6,000, with \$3,000 of that amount suspended for a period of two years. Finally, Employer shall be ordered to correct its Workforce Plan within 30 days.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Xing Wang Development Corporation on the charges of violating the Employment Rules and Regulations, as set forth in the Determination. Regs. at NMIAC §§ 80-20.1-225(a), 235(e), 505(b) and 510. For these violations, Respondent shall be sanctioned in the manner set forth below.

2. **Sanctions:** Respondent Xing Wang Development Corporation is hereby SANCTIONED a total of six thousand dollars (\$6,000) for its conduct; however, one half of the sanction (\$3,000) shall be SUSPENDED for a period of TWO YEARS, then extinguished, provided that Respondent commits no violations of Department of Labor regulations or statutes in that period. The Respondent is ORDERED to pay the remaining \$3,000 in sanctions no later than **thirty (30) days** after the date of issuance of this Order. Proof of payment shall be submitted to the

Hearing Office on or before the due date. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Updated Workforce Plan:** Respondent Xing Wang Development Corporation is ORDERED to submit an updated and complete Workforce Plan for 2017, by delivering copies of the document to the Enforcement and Compliance Office (attn: Mr. Ulloa) and to the Hearing Office no later than **30 days** after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-510.]

4. **Posting on Website:** Respondent is ORDERED to post future job vacancies and renewals on DOL's website (www.marianaslabor.net) in accordance with Regulations at NMIAC § 80-20.1-225(a). Respondent shall hire U.S. citizen and permanent resident job applicants when they are qualified to work.

5. **Reinstatement of Suspended Fine:** The obligations described above are continuing obligations. If Respondent fails to comply with the terms of this Order, or commits further processing-related or reporting violations, it shall be subject to a possible reinstatement of the suspended sanctions (\$3,000) plus additional monetary sanctions, after a due process hearing on this issue.

6. **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: February 14, 2017



Jerry Cody
Hearing Officer