

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:)	D.C. No. 17-008
Md. Nurul Islam Bhuiyan,)	
<i>dba</i> Island Protection Services,)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Department of Labor – Citizen Job Availability)	
and Citizen Job Placement Section,)	
Appellee.)	
)	

This denial appeal came on for hearing on August 7, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Md. Nurul Islam Bhuiyan was represented by counsel Brian Flaherty, appearing on behalf of appellant’s counsel, Robert T. Torres. The Department’s Citizen Availability and Citizen Job Placement Section (“Job Placement”) was represented by James Ulloa. Mr. Zahid Islam appeared and testified in support of Appellant. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant’s timely appeal of a Notice of Denial (“Denial”) issued by the Job Placement Section on April 20, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Appellant’s Appeal of Denial of Certificate of Good Standing, dated May 5, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Md. Nurul Islam Bhuiyan, *dba* Island Protection Services (“Employer”), operates a business primarily engaged in providing security services to contracting clients in Saipan. The Job Placement Section denied Employer’s request for a Certification of Compliance, citing three grounds:

- (1) Employer failed to submit Total Workforce Listings for the 1st, 2nd, 3rd and 4th quarters in 2016, as required by the Employer Rules and Regulations

("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC"), at § 80-20.1-505(b-c);

(2) Employer failed to submit a Workforce Plan for 2016 in accordance with Regulations at NMIAC § 80-20.1-510; and

(3) Employer failed to post Employer Declarations to responders regarding 23 posted Job Vacancy Announcements ("JVAs") from 2015 until the present. [Regs. at NMIAC § 80-20.1-235(e).]

1. Failure to Submit Quarterly Total Workforce Listings for Four Quarters in 2016.

Department of Labor 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 all four quarters of 2016. Employer testified that prior to the Denial, he had not realized that he was obligated to submit Total Workforce Listings on a quarterly basis. As soon as he received the Denial, he took immediate steps to correct the deficiencies. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The four quarterly Listings for 2016 were entered into evidence collectively as Hearing Exhibit 3.] [Testimony of Mr. Bhuiyan.]

Employer brought to the Hearing his Total Workforce Listing for the Second Quarter of 2017, which he had filed with the Department of Labor ("DOL") on August 3, 2017. [A copy of this Total Workforce Listing was entered into evidence as Hearing Exhibit 5.] A review of the document revealed several mistakes, including that Mr. Bhuiyan erroneously listed himself as an employee (an employer cannot employ himself); and that employee Benjamin Abraham was listed as a CW-1 even though he evidently has a green card. [Testimony of Mr. Bhuiyan.]

After the hearing, on August 17, 2017, Employer submitted an Amended Total Workforce Listing for the Second Quarter of 2017. This document corrected the

erroneous entries in the prior Total Workforce Listing (Exhibit 5). This amended document has been entered into evidence as Hearing Exhibit 5a.

2. Failure to Submit a 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.]

At Hearing, Employer admitted that he had not submitted a Workforce Plan for 2016. According to Employer, he had not known about the regulations requiring this submission until he received this Denial. Meanwhile, Employer prepared a current Workforce Plan for 2017 and submitted it with his Request for a Certificate of Compliance. (See Workforce Plan at Hearing Exhibit 4.) Upon reviewing the submitted Plan, Mr. Ulloa testified that the document is acceptable to the Placement Section.

3. Failure to Post Employer Declarations With Respect to 23 JVAs Posted From 2015 to April 2017.

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the DOL website (www.marianaslabor.net) in cases where the employer has rejected a U.S. citizen or permanent resident applicant for a particular job and instead, hired a foreign national worker for the position. [Regs. at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In this case, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with 23 JVAs that Employer posted during the period from 2015 through March 2017. [Hearing Exhibit 1.] These JVAs were for the following positions:

2017

Accountant (1 JVA)
Security Officer (1 JVA)
Operations Manager (1 JVA)
Security Supervisor (1 JVA)
Security Guard (1 JVA)

2016

Accountant (3 JVAs)
Security Officer (3 JVAs)
Operations Manager (1 JVA)
Security Supervisor (1 JVA)
Security Guard (4 JVAs)

2015

Security Officer (2 JVAs)

Security Supervisor (2 JVAs)

Security Guard (2 JVAs)

At Hearing, Employer admitted that he never posted responses to responders of JVAs that he had posted in 2015 and 2016. Mr. Bhuiyan stated that he had not understood his legal obligation to post responses, but he noted that since receiving the Denial, his staff has reviewed all job applicants' resumes and conducted in person or phone interviews with all interested applicants. For the accountant positions, tests were administered to determine applicants' abilities to do the job. [Testimony of Mr. Bhuiyan and former Operations Manager, Zahid Islam.]

Employer noted that as to JVAs filed in March 2017, the security guard position has been filled by a U.S. citizen, but the other posted jobs (accountant, security officer, operations manager, and security supervisor) have not been filled. [Testimony of Mr. Bhuiyan.]

DISCUSSION

The evidence established that: (1) Employer failed to submit four quarterly Total Workforce Listings in 2016; (2) Employer failed to submit a timely Workforce Plan for 2016; and (3) Employer neglected to post Employer Declarations to responders with respect to 23 JVAs posted during a 3-year period, from 2015 through March 2017. [Regs at NMIAC §§ 80-20.1-505(b) and 510.]

In mitigation, after receiving the Denial, Employer took steps to correct the above deficiencies by submitting the missing documents (See Hearing Exhibits 3 and 4). Employer also produced a copy of his Total Workforce Listing, filed with DOL on 8/03/17 (Hearing Ex. 5); as well as his Amended Total Workforce Listing, filed with DOL on 8/17/17 (Hearing Exhibit 5a). Moreover, Employer and his former Operations Manager (Zahid Islam) testified that Employer had carefully reviewed the resumes of all job applicants who applied for the posted JVAs in 2017, to determine if they were qualified for the positions and interested in the jobs. Employer testified that any qualified U.S. citizens or permanent residents have been offered jobs for which they applied; some responders indicated that they were no longer interested in the positions. [Testimony of Mr. Bhuiyan and Mr. Islam.]

Employer's Amended Total Workforce Listing, filed on August 17, 2017, shows that Employer currently employs 30 full-time employees and out of that number,

10 are U.S. citizens or green card holders, 19 are CW-1 status workers and 1 holds an EAD. Thus, Employer's workforce satisfies the minimum 30% ratio of U.S. status-qualified workers that is required under 3 CMC § 4525, and the Regulations [NMIAC § 80-20.2-120(c)].

At Hearing, Job Placement testified that it would not object to a reversal of its denial, provided that Employer is sanctioned monetarily for his failure to submit census-related documents in 2016 and his failure to post Employer Declarations during a 3-year period. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions. [Testimony of James Ulloa.]

Sanctions:

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 §§ 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a fine should be assessed against this Employer for its numerous regulatory violations, including: failure to submit a timely Workforce Plan for 2016 and Total Workforce Listings for four quarters in 2016; and failure to post Employer Declarations for 23 JVAs. As mitigating factors, the Hearing Officer notes that (1) Employer filed his missing documentation after he received the Denial; (2) Employer made a concerted effort to review and consider U.S. citizen job applicants for the positions he posted in March 2017; and (3) Employer is currently above the minimum workforce participation goal of 30% with respect to its total, full-time workforce. [Hearing Exhibit 5a.] Based on the foregoing, the Hearing Officer finds that Employer should be sanctioned with a fine of \$1,500; however, half (\$750) of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no violations of CNMI labor law during the two-year period.

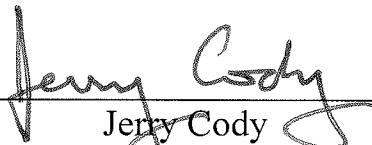
//

//

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Md. Nurul Bhuiyan is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certificate of Good Standing to Appellant as soon as Appellant has paid the \$750 portion of the sanction (see below).
2. **Sanctions:** For the reasons stated above, Appellant Md. Nurul Bhuiyan is hereby FINED one thousand five hundred dollars (\$1,500); however, \$750 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining \$750 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).
3. **Payment Terms:** Appellant Md. Nurul Bhuiyan is ORDERED to pay the \$750 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.
4. **Warning:** If Appellant Bhuiyan fails to comply with its continuing obligation to comply with Department's statutes and regulations during the suspension period, he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.
5. **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: August 22, 2017



Jerry Cody
Hearing Officer