

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

**ADMINISTRATIVE ACTION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Robert Cleek, d/b/a Robert Cleek Concrete Company, Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100623.

**DENIAL OF RESPONDENT'S REQUEST FOR ADMINISTRATIVE REVIEW**

On December 27, 1989, the United States of America, by and through the Immigration and Naturalization Service (hereinafter Complainant), filed a complaint with the Office of the Chief Administrative Hearing Officer (hereinafter OCAHO). The Complaint charged Robert Cleek, d/b/a Robert Cleek Concrete Company (hereinafter Respondent), with violations of the employer sanctions provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On January 5, 1990, the OCAHO issued a Notice of Hearing to the parties and assigned the matter to the Honorable Robert B. Schneider, Administrative Law Judge (hereinafter ALJ). The Notice of Hearing instructed the Respondent to file an answer within thirty days of receipt of the Complaint.

On February 21, 1990, the Complainant filed a Motion for Default Judgment with the ALJ. The ALJ subsequently issued an order entitled ``Order to Show Cause Why Default Judgment Should Not Issue,' ' dated March 12, 1990, which invited Respondent to offer any explanation for his failure to file an answer. The ALJ allowed the Respondent fifteen days to submit an explanation or answer. Respondent never filed an explanation or Answer with the ALJ.

On April 30, 1990, the ALJ issued a Judgment by Default. Pursuant to the applicable Rules of Practice and Procedure, appearing at 54 FR 48593 [to be codified at 28 C.F.R. Part 68] (hereinafter regulations), a party has five days from the date of the ALJ's decision and order to request an administrative review. The regulations grant an additional five days when, as here, a party has been

served by mail. Additionally, weekends and holidays are excluded from the tabulation during the first five days. Therefore, either party in this case had until May 14, 1990 to file a request for administrative review.

On May 24, 1990, the Respondent filed with the OCAHO a request for administrative review of the ALJ's Judgment by Default. However, because this request for review was received by the OCAHO after May 14, 1990, it cannot be considered timely. Therefore, the Chief Administrative Hearing Officer hereby denies the Respondent's request for an administrative review.

**SO ORDERED:** This 30th day of May, 1990.

JACK E. PERKINS  
Chief Administrative Hearing Officer