

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

UNITED STATES OF AMERICA )  
Complainant, )  
 )  
v. ) 8 U.S.C. §1324c Proceeding  
 ) Case No. 94C00116  
ABEL GALVEZ-MELGAREJO, )  
Respondent. )  
\_\_\_\_\_ )

FINAL DECISION AND ORDER  
(September 9, 1994)

Appearances: Thomas L. Day, Esq., for Complainant.  
Camille Kim Cook, Esq., for Respondent.

MARVIN H. MORSE, Administrative Law Judge

On June 10, 1994, the Immigration and Naturalization Service (INS or Complainant), filed a complaint dated June 6, 1994, in the Office of the Chief Administrative Hearing Officer (OCAHO), against Abel Galvez-Melgarejo, aka Abel Galves (Galvez or Respondent). Exhibit A to the complaint is a Notice of Intent to Fine (NIF), which was personally served on Respondent almost a year and a half earlier, on January 5, 1993. Exhibit B, a request for hearing, dated March 1, 1993, evidences that Camille Kim Cook, Esq. (Cook), made a request for hearing on behalf of Galvez.

This is a civil document fraud case in which INS alleges that Respondent is in violation of 8 U.S.C. §1324c(a)(2) for knowing use of a fraudulent alien registration receipt. Count I to the complaint charges Galvez with knowing use of forged documents, i.e., he used or possessed a forged and counterfeited alien registration receipt card (Form I-151), issued in the name of Abel Galves. INS assessed a civil money penalty of \$800 in its NIF, reduced to a \$400 assessment in its com-

4 OCAHO 684

plaint. The complaint omits another charge which had been contained in the NIF.

On June 15, 1994, the Office of the Chief Administrative Officer (OCAHO) issued a Notice of Hearing (NOH) containing a copy of the complaint, to Galvez and, separately, to Cook. That mailing also contained a letter from the Acting CAHO advising Cook that because she had made the request for hearing in response to the NIF, she was deemed to be the attorney before the judge in the present case.

The copy of the NOH, with enclosures, addressed to Galvez was sent by prepaid first class mail, the copy to her attorney of record was sent by prepaid certified mail. The copy addressed to Galvez was returned by the Postal Service marked "Attempted-Not Known." At my direction, my staff contacted Cook to let her know that her client had not received a copy of the NOH. Cook indicated that she would take care of it. The copy addressed to Cook was also returned by the Postal Service marked "Moved Left No Address." On June 30, 1994, after verifying the correct address by telephone inquiry, my legal technician forwarded a copy to Cook at 369 Pine Street, Suite 725, San Francisco, CA 94014. That certified mailing was received by Cook on July 12, 1994. Meanwhile, on June 28, 1994, OCAHO received an undated letter from Cook which advised that she was responding "to your letter of June 15, 1994." The letter continued,

I continue to represent Mr. Galvez. However, please be informed that I have relocated my office to the following address:

369 Pine Street, Suite 725  
San Francisco, CA 94104

The reference in Cook's letter to OCAHO to "your letter of June 15, 1994" and admonishment that she continues to represent Galvez is reasonably understood to reflect that she was aware of the NOH and its enclosures, including the complaint. In any event, as confirmed by Postal Service return receipt upon the second mailing by my office, Cook received the NOH and complaint not later than July 12, 1994.

The NOH cautioned Respondent that failure to answer the complaint within thirty (30) days of receipt might result in a waiver of the right to appear and contest Complainant's allegations. Respondent was warned explicitly that absent a timely answer, the judge might "enter a judgment by default along with any and all appropriate relief." To date no answer to the complaint has been received from either Galvez or Cook. More than 30 days has elapsed since receipt by Cook of the complaint. See 28 C.F.R. §68.9(a)(1993).

On August 25, 1994, Complainant filed a Motion for Default dated August 22, 1994, stating that Respondent is in default for failing to plead or otherwise defend within thirty (30) days of receipt of the complaint as required by 28 C.F.R. §68.9(a). The time for Respondent to respond has expired but no response has been received. See 28 C.F.R. §68.11(b).

It is my frequent although not invariable custom in cases where respondents are not represented by counsel to issue an order to show cause why default judgment should not issue, as an intermediate step before entering such a judgment. The considerations which favor such a step in cases involving pro se respondents do not, however, pertain where as here the record is clear that the respondent is represented by counsel. Accordingly, no answer to the complaint having been filed within seven weeks after service, notwithstanding explicit warning in the NOH and the rules of practice and procedure, and no reply having been received to service of the August 22, 1994 INS motion, I find Galvez in default.<sup>1</sup>

This final decision and order enters a judgment of default against Respondent.

Accordingly, I find and conclude:

1. that, as alleged in the complaint, Respondent is in violation of 8 U.S.C. §1324c;
2. that, as assessed in the complaint, Respondent shall pay a civil money penalty in the amount of \$400;
3. that Respondent shall cease and desist from further violations of 8 U.S.C. §1324c; and
4. that the hearing in this case is canceled.

This Final Decision and Order is the final action of the judge in accordance with 28 C.F.R. §1324c(d)(4) (1993), this action shall become the final decision and order of the Attorney General unless the Chief Administrative Hearing Officer modifies or vacates this Decision and Order within thirty (30) days from this date. Both administrative and

---

<sup>1</sup> It appears that another copy of the NOH and enclosures were forwarded to Cook by mistake on or about August 22, 1994. By telephone, Cook was informed on the same day that the new mailing was in error, and to disregard it.

4 OCAHO 684

judicial review are available to parties adversely affected. See 8 U.S.C. §1324c(d)(4),(5); 28 C.F.R. §68.53.

**SO ORDERED.**

Dated and entered this 9th day of September, 1994.

---

MARVIN H. MORSE  
Administrative Law Judge