

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

June 26, 1995

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324c Proceeding
) OCAHO Case No. 95C00010
AMBROCIO MORALES-GUZMAN,)
Respondent.)
_____)

ORDER TO SHOW CAUSE WHY COMPLAINANT'S MOTION FOR
DEFAULT JUDGMENT SHOULD NOT BE GRANTED

On April 6, 1994, complainant, acting by and through the Immigration and Naturalization Service (INS), issued and served upon Ambrocio Morales-Guzman (respondent) Notice of Intent to Fine (NIF) SND 274(c)94-0009. That single-count citation alleged 996 violations of the document fraud provisions of the Immigration and Nationality Act (INA), 8 U.S.C. Section 1324c(a)(2), for which civil penalties totaling \$498,000 were proposed.

In Count I, complainant alleged that respondent knowingly possessed the counterfeited documents described therein, namely 996 Form 151 Alien Registration Cards, and did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, 8 U.S.C. § 1324c(a)(2). The aggregate proposed civil penalty assessment sum results from INS having levied civil money penalties of \$500 for each of those 996 violations.

Respondent was advised in the NIF of his right to file a written request for a hearing before an administrative law judge assigned to this office if he filed his request within 60 days of his receipt of the NIF. Respondent timely filed such a written request.

On January 23, 1995, complainant filed the one-count Complaint at issue, reasserting the 996 violations set forth in the NIF, and requesting civil money penalties totaling \$249,000, or \$250 for each of the 996 alleged violations.

On January 25, 1995, a Notice of Hearing on Complaint Regarding Civil Document Fraud, as well as a copy of the Complaint at issue were served on respondent by certified mail, return receipt requested. In that Notice, respondent was advised that should he fail to file an answer within the 30-day time period provided, he may be deemed to have waived his right to appeal and contest the allegations set forth in the Complaint, and also that an administrative law judge may enter a judgment by default along with any other appropriate relief.

On March 2, 1995, the U.S. Postal Service Domestic Return Receipt, PS Form 3811, which had been attached to respondent's copy of that Notice of Hearing, was returned to this Office displaying an "UNCLAIMED" stamp.

On March 14, 1995, a second copy of the Notice of Hearing and Complaint was served upon respondent by regular, first class mail, and to date, that copy has not been returned to this Office.

On March 23, 1995, complainant supplied this Office with a more current address for respondent, and on that date a third copy of that Notice of Hearing and Complaint was served upon respondent by both regular, first class mail and by certified mail.

On April 24, 1995, the Domestic Return Receipt that had been attached to that third copy of the Notice of Hearing and Complaint was returned to this Office displaying another "UNCLAIMED" stamp. However, the copy that was served via first class mail has not been returned to this Office by the United States Postal Service, as it routinely would have been in the event that the Notice of Hearing and Complaint copy had not been delivered to the current address furnished by complainant.

The pertinent procedural rule governing service of complaints, notices of hearings, written orders and decisions, provides that service of those documents shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

- (1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or
- (2) By leaving a copy at the principal office, place of business, or residence of a party; or
- (3) By mailing to the last known address of such individual, partner, officer, or attorney.

28 C.F.R. § 68.3(a).

Accordingly, the Notice of Hearing and Complaint was received by respondent at respondent's last known address, since "[s]ervice of complaint and notice of hearing is complete upon receipt by addressee." 28 C.F.R. § 68.3(b). Therefore, proper service has been affected in accordance with the provisions of 28 C.F.R. Section 68.3.

On June 19, 1995, complainant filed a Motion for Default Judgment, asserting in support thereof that to date, respondent has failed to file an answer to the Complaint.

The procedural regulation governing answers, 28 C.F.R. Section 68.9, provides that each respondent shall file an answer within 30 days after the service of a complaint. 28 C.F.R. § 68.9(a).

That regulation further provides:

Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

28 C.F.R. § 68.9(b).

Accordingly, respondent is hereby ordered to show cause, within 15 days of his acknowledged receipt of this order, why complainant's Motion for Default Judgment should not be granted or, in the alternative, to have filed an answer which comports with the requirements set forth at 28 C.F.R. § 68.9(c).

In the event that respondent fails to do so, complainant's Motion for Default Judgment will be granted.

JOSEPH E. MCGUIRE
Administrative Law Judge