

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2021A00022
)	
SANJAY JERAM CORPORATION, D/B/A)	
ECONOMY LODGE,)	
Respondent.)	
)	

ORDER PERMITTING COMPLAINANT SUPPLEMENT MEMORANDUM WITH EVIDENCE

On March 1, 2021, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Sanjay Jeram Corporation, doing business as Economy Lodge. ICE alleges Respondent violated 8 U.S.C. § 1324a because it failed to prepare and/or present Forms I-9 for ten individuals, and of those ten employees, Respondent failed to timely prepare five of their forms. Compl. 3. To date, Respondent has not filed an answer.

On May 6, 2021, the Court issued an Order to Show Cause (OTSC) directing Respondent, within 15 days of the OTSC, to file an answer and show good cause for its failure to file a timely answer. OTSC 1. The Court advised that failure to file an answer and show good cause may result in the

¹ Although Respondent’s counsel did not file a formal notice of appearance (NOA) with the Court, Respondent’s counsel did file the request for a hearing with the Department of Homeland Security, which “shall be considered a notice of appearance on behalf of the respondent for whom the request was made.” 28 C.F.R. § 68.33(f)

entry of default judgment against Respondent. *Id.* at 2. Respondent did not file a response or an answer.

On July 30, 2021, Complainant filed a Motion for Default Judgment.

On August 10, 2021, the Court issued an Order bifurcating the proceedings into liability and damages phases. Order 2. The Court entered default judgment as to liability and ordered Complainant to file additional briefing on the penalty assessment within 30 days. *Id.* at 2–3. Complainant filed Complainant’s Memorandum Regarding Assessment of Liabilities on September 9, 2021. Complainant did not submit any evidence with this filing.

On October 6, 2021, the Court provided Respondent an opportunity to provide briefing on penalties within thirty days in an Order Inviting Respondent’s Filing on Penalties. Respondent did not file a submission.

On February 17, 2022, Complainant filed Complainant’s Request for an Order of Payment of Penalties requesting the Court order Respondent to pay \$19,480.00 in penalties.

II. MEMORANDUM SUPPLEMENT

Federal Rule of Civil Procedure 55(b) provides that when damages are not certain when entering default, courts may conduct hearings to determine the amount of damages. *E.g., United States v. Cruz*, 3 OCAHO no. 453, 595, 597–98 (1992); *Monge v. Portofino Ristorante*, 751 F. Supp. 2d 789, 794 (D. Md. 2010) (citation omitted) (“A plaintiff’s assertion of a sum in a complaint does not make the sum ‘certain’ . . . ; otherwise, the complaint must be supported by affidavit or documentary evidence.”). “Therefore, on default judgment, the Court may only award damages without a hearing if the record supports the damages requested.” *Monge*, 751 F. Supp. 2d at 795 (citations omitted). District courts in the Fourth Circuit have declined to hold hearings on damages when there was sufficient evidence in the record to enter a judgment on damages. *See id.* (collecting cases).

In § 1324a cases, “there is no amount *certain*” for purposes of default judgment because “Complainant has so much discretion as to the relief amount it requests[.]” *Cruz*, 3 OCAHO no. 453, at 597–98. As such, there must be sufficient evidence in the record before the undersigned enters a judgment on penalties after having entered default as to liability. *See Monge*, 751 F. Supp. 2d at 795; *see also United States v. March Constr., Inc.*, 10 OCAHO no. 1158, 4 (2012) (emphasis added) (“The obligation to consider [§ 1324a(e)(5)] factors would not be satisfied were [the undersigned] to act as a rubber stamp for someone else’s conclusions; [the Court] must make [its] own assessment of these factors and *can do so only on the basis of specific facts supported by evidence.*”). Additionally, the Court notes that “the government has the burden of proof with respect to the penalty . . . and must therefore prove the existence of any aggravating factor by a preponderance of the evidence.” *March Constr., Inc.*, 10 OCAHO no. 1158, at 4.

Complainant’s memorandum did not include evidence. Complainant only provided legal argument, which is not evidence. *United States v. R&SL Inc.*, 13 OCAHO no. 1333b, 32 (2022)

(citing *United States v. Moreland*, 622 F.3d 1147, 1162 (9th Cir. 2010)). Moreover, the rest of the record is similarly devoid of evidence necessary for the undersigned to assess penalties.

Therefore, the Court provides Complainant an opportunity to supplement its memorandum with evidence. *German Am. Cap. Corp. v. Morehouse*, No. GJH-13-296, 2017 U.S. Dist. LEXIS 124422, at *7 (D. Md. Aug. 4, 2017) (citations omitted) (finding that trial courts have discretion in accepting supplemental submissions); *see Doe v. Chao*, 306 F.3d 170, 183 (4th Cir. 2002) (citation omitted) (“We review the district court's refusal to accept Appellants' supplemental affidavits on the issue of damages for abuse of discretion.”); *cf. Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 1–2 (2021) (citations omitted) (“The Court has discretion in accepting replies.”).

If Complainant elects to supplement, such briefing is due by March 8, 2022. Further, if Complainant files a supplement, Respondent may file a brief in response. Respondent’s brief is due by March 22, 2022.

Based on this order, the Court DENIES Complainant’s Request for an Order of Payment of Penalties.

SO ORDERED.

Dated and entered on February 22, 2022.

Jean C. King
Chief Administrative Law Judge