

Vacated by CAHO (10/31/88) Ref. No. 31

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

United States of America, Complainant, v. Casa Lupe, Inc.  
Respondent; 8 U.S.C. Section 1324a Proceeding; Case No. 88100074.

Appearances: MARSHA R. STROUP, Esq., for the Complainant.

**JUDGMENT BY DEFAULT**

EARLDEAN V.S. ROBBINS, Administrative Law Judge

Statement of the Case

On August 1, 1988, a Complaint Regarding Unlawful Employment was filed against Casa Lupe, Inc., herein called the Respondent, by the United States of America, by and through the Immigration and Naturalization Service, herein called the Complainant, alleging that Respondent has violated the provisions of 8 U.S.C. 1324a. On August 9, 1988, the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer served, by mail, a Notice of Hearing on Complaint Regarding Unlawful Employment which inter alia notified Respondent that, if Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and an Administrative Law Judge may enter a judgment by default along with any and all appropriate relief. A copy of the Complaint was attached thereto.

Respondent received the Notice of Hearing along with the attached Complaint on August 12, 1988. Nevertheless, Respondent has failed to file an Answer to the Complaint.

On September 23, 1988, Counsel for Complainant filed a Motion For Default Judgment based on Respondent's failure to file an Answer as required by Section 68.6 of the Interim Final Rules of Practice And Procedure For The Office Of The Chief Administra-

tive Hearing Officer,<sup>1</sup> herein called the Rules. Accordingly, the allegations of the Complaint are uncontroverted.

Upon the entire record, I make the following:

Ruling on the Motion For Default Judgment

Section 68.6 of the Rules provides, inter alia, Section 68.6 Responsive pleadings-answer.

(a) Time for answer. Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) Default. 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.

The Notice of Hearing served on Respondent on August 9, 1988, specifically states:

2. The Respondent has the right to file an Answer to the Complaint and to appear in person, or otherwise, and give testimony at the place and time fixed for the hearing. The Respondent's Answer must be filed within thirty (30) days after receipt of the Complaint. THE ANSWER AND ONE COPY MUST BE FILED WITH THE HONORABLE EARLDEAN V.S. ROBBINS, THE ADMINISTRATIVE LAW JUDGE ASSIGNED TO HEAR THIS CASE AND MUST ALSO BE SERVED ON THE COMPLAINANT.

3. If the Respondent fails to file an Answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

As set forth above, Respondent has not filed an Answer to the Complaint. Therefore in accordance with Section 68.6(b) of the Rules, Respondent is deemed to have waived its right to appear and contest the allegations of the Complaint. Absent an Answer, the allegations of the Complaint are hereby deemed to be admitted as true, and I find there is no genuine issue as to any material fact. Therefore, Complainant's Motion For Default Judgment is granted.

On the basis of the entire record, I make the following:

Findings of Fact

The Immigration Reform and Control Act of 1986 (IRCA) establishes several major changes in national policy regarding illegal immigrants. Section 101 of IRCA amends the Immigration and Nationality Act of 1952 herein called the Act, by adding a new Section 274A (8 U.S.C. 1324a) which seeks to control illegal immigration into the United States by the imposition of civil liabilities, herein

---

<sup>1</sup>52 Fed. Reg. pp. 44972-85, 44975, November 24, 1987 (to be codified at 28 C.F.R. Part 68).

referred to as employer sanctions, upon employers who knowingly hire, recruit, refer for a fee or continue to employ unauthorized aliens in the United States. Essential to the enforcement of this provision of the law is the requirement that employers comply with certain verification procedures as to the eligibility of new hires for employment in the United States. Sections 274A(a)(1)(B) and 274A(b) provide that an employer must attest on a designated form that it has verified that an individual is not an unauthorized alien by examining certain specified documents to establish the identity of the individual and to evidence employment authorization. Further, the individual is required to attest, on a designated form, as to employment authorization. The employer is required to retain, and make available for inspection, these forms for a specified period of time. Form I-9 is the form designated for such attestations. Section 274A(e)(5) provides for the imposition of a civil penalty of not less than \$100 and not more than \$1000 for each individual with respect to whom a violation of 274A(a)(1)(B) occurred.

As set forth in the Complaint, Respondent has engaged in the following conduct:

- (1) Between the 1st and 31st of December, 1987, hired Jorge Mario Rojas-Garcia for employment in the United States.
- (a) Failed to prepare the Employment Eligibility Verification Form (Form I-9) for Jorge Mario Rojas-Garcia.

Conclusions of Law

1. Respondent has violated Section 274A(a)(1)(B) of the Act (8 U.S.C. 1324a(a)(1)(B)):
  - (a) with regard to Jorge Mario Rojas-Garcia by failing to prepare the Employment Eligibility Verification Form (Form I-9) for him.

Accordingly, IT IS HEREBY ORDERED:

- (1) That Respondent pay a civil money penalty in the amount of \$1,000 for the violation set forth above.
2. That the hearing previously scheduled is canceled.

This Judgment By Default is the final action of the Administrative Law Judge in accordance with Section 68.51(b) of the Rules as provided in Section 68.52 of the Rules, and shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Judgment By Default, The Chief Administrative Hearing Officer shall have modified or vacated it.

Dated: September 29, 1988.  
EARLDEAN V.S. ROBBINS.  
Administrative Law Judge

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER  
ADMINISTRATIVE REVIEW AND FINAL AGENCY ORDER VACATING THE  
ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER  
FINAL AGENCY ORDER No. 9

United States of America, Complainant v. Casa Lupe, Inc. Respondent;  
8 U.S.C. 1324a Proceeding; Case No. 88100074.

**Vacation by the Acting Chief Administrative Hearing Officer of the  
Administrative Law Judge's Judgment by Default**

On September 29, 1988, the Honorable Earldean V.S. Robbins, Administrative Law Judge assigned to this case, issued an Order regarding the above-styled proceeding entitled ``Judgment by Default.'' The Administrative Law Judge's Order was based on a Motion for Default Judgment filed by the Complainant on September 21, 1988. Pursuant to Title 8, United States Code, Section 1324a(e)(6) and Section 68.52 of the applicable rules of practice and procedure, appearing at 52 Fed. Reg. 44972-85 (1987) [hereinafter Rules] (to be codified at 28 C.F. R. Part 68), the Acting Chief Administrative Hearing Officer, upon review of the Administrative Law Judge's Order, and in accordance with Section 68.52 of the Rules, supra, vacates the Administrative Law Judge's Order.

Respondent's letter of October 4, 1988, in which he asks for a thirty (30) day extension of time to file an answer to the Complaint, appears to have been received within the time limitations allowed by Sections 68.5 and 68.7 of the Rules, supra. The letter, however, was not ruled on by the Administrative Law Judge. Accordingly, this letter will be acknowledged as a motion and a thirty (30) day extension of time is hereby granted. The Respondent has until December 1, 1988, in which to answer the complaint and the original hearing dates of February 6, 7, and 8, 1989, are hereby reinstated.

**SO ORDERED:**

Date: October 31, 1988.

RONALD J. VINCOLI  
Acting Chief Administrative Hearing Officer