

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

United States of America, Complainant v. El Mexicano Taco Shop,  
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100141.

**ORDER GRANTING COMPLAINANT'S MOTION FOR JUDGMENT BY DEFAULT**

1. Introductory Statement:

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

Section 274A authorizes the imposition of orders to cease and desist, along with civil money penalties for violation of the proscription against hiring of unauthorized aliens, and authorizes civil money penalties for paperwork violations.

Section 274A(a)(1)(B) and 274A(b)(1) and (2) of the Act provide that an employer must attest on a designated form (the I-9 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 employer is required to retain, and make available for inspection, these forms for a specified period of time.

2. Procedural History:

Consonant with the statute and regulations, a Complaint was issued on March 14, 1989, by the United States of America, Complainant, alleging that Respondent, El Mexicano Taco Shop, was in violation of Section 274A(a)(1)(A), 274A(a)(1)(B), and 274A(b)(3), of the Act (8 U.S.C. 1324a). The Complaint incorporated, and attached as Exhibit A, the Notice of Intent to Fine served by the INS on Respondent on October 18, 1988. Attached as Exhibit B was the Re-

spondent's request for a hearing before an Administrative Law Judge written on November 17, 1988, by K. Kerry Yianilos, Attorney for Respondent.

The Office of the Chief Administrative Hearing Officer assigned this matter to me as the Administrative Law Judge on March 23, 1989, and, by Notice of Hearing on Complaint Regarding Unlawful Employment, advised Respondent, through its Attorney, of 1) the filing of the Complaint, 2) the right to answer within thirty (30) days after receipt of the Complaint, and 3) the place of the hearing as San Diego, California on June 27, 1989.

The record shows that the Notice was mailed to K. Kerry Yianilos, Esquire, and that Respondent's Attorney signed a return receipt for the Notice of Hearing which was returned to the Office of Chief Administrative Hearing Officer on March 30, 1989.

By Motion filed May 3, 1989, the Immigration and Naturalization Service asked for a Default Judgment. The Motion rested on the failure of Respondent to file a timely, or any, Answer to the Complaint.

On May 5, 1989, not having received an Answer to the Complaint, or any responsive pleading to the INS Motion, I issued an Order to Show Cause Why Judgment by Default Should Not Issue. That Order provided Respondent an opportunity to ``show cause why default should not be entered against it, any such showing to be made by motion which also contains a request for leave to file an answer.'' The Order specifically stated that Respondent had until on or before May 22, 1989, to respond to the Order and to provide an Answer to the Complaint.

On May 5, 1989, Attorney K. Kerry Yianilos, submitted a Motion to Withdraw from the case because of Respondent's failure to respond to any of her telephone calls or to advise her as to how Respondent wanted to continue with the employer sanction charge filed against it. I granted the Motion to Withdraw for good cause shown on May 11, 1989. Additionally, on May 11, to avoid prejudice to the Respondent, I issued a second Order to Show Cause Why Default Should Not Issue, which was served by mail on the Respondent, and extended the time for response to May 26, 1989.

On May 17, 1989, Mrs. Maria Martinez, Respondent, called this office with questions regarding the Order. A letter explaining the Order was sent to her on the same day, and a copy was mailed to the previous Attorney of Record, Yianilos, and the INS Attorney, Alan Rabinowitz.

I am hereby granting Complainant's Motion for Default Judgment for the following reasons.

3. Findings of Fact and Conclusions of Law:

While I recognize that Respondent made a telephone call to this office in response to the Order To Show Cause I issued on May 11, 1989, nonetheless, I find that the Respondent has not answered the Complaint. The failure of Respondent to Answer the Complaint constitutes a basis for entry of default judgment as provided by 28 C.F.R. Section 68.6(b).

Title 28 C.F.R. Section 68.6(c)(1) requires that the Answer must include (1) a statement that Respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation of the Complaint, and (2) a statement of the facts supporting each affirmative defense. No such statements have been offered by Respondent.

Therefore, I find that the Complaint remains unanswered and conclude that the Respondent is in default.

Accordingly, because the Respondent failed to Answer the Complaint, thereby leaving the allegations of the Complaint uncontroverted, it is found and concluded, that Respondent, El Mexicano Taco Shop, committed the acts alleged in the Notice of Intent to Fine and in the Complaint, and by so doing, the Respondent violated Section 274A(a)(1)(A), (a)(1)(B), and (b)(3) of the Immigration and Nationality Act.

Since I have found violations of Section 274A(a)(1)(A) and 274A(a)(1)(B), of the Act, assessment of civil money penalties are required by the Act, Section 274A(e)(5) states:

Order for Civil Money Penalty for Paperwork Violations. With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

The Complaint seeks a penalty of \$1,000 for the violation of (a)(1)(A), the hiring of alien, Jose Luis Martinez-Gutierrez, knowing the alien was an unauthorized alien with respect to such employment, and of \$500 for Respondent's failure to prepare an employment eligibility verification form (Form I-9) for Jose Luis Martinez-Gutierrez.

The fine for the paperwork violation is within the statutory limit. Since the penalties requested do not appear unreasonable on their face, I find the total fine in the amount of \$1,500. to be appropriate.

4. Order

Consequently, IT IS HEREBY ORDERED:

1. That a judgment by default is entered against the Respondent in the amount of one thousand five hundred dollars (\$1,500);

2. that Respondent shall cease and desist from any further violations of Section 274A(a)(1)(A) of the Immigration and Nationality Act; and

3. that Respondent shall comply with the requirements of subsection (b) with respect to individuals hired during a period of three years;

4. that the hearing previously scheduled to be held in San Diego, CA, on June 27, 1989, is cancelled; and

5. review of this final order may be obtained by filing a written request for review with: The Chief Administrative Hearing Officer, 5113 Leesburg Pike, Suite 310, Falls Church, VA 22041, within five (5) days of this Order as provided in 28 C.F.R. Section 68.52. This Order shall become the final Order of the Attorney General unless, within thirty (30) days from the date of this Order, the Chief Administrative Hearing Officer modifies or vacates the Order.

**SO ORDERED:** This 31st day of May, 1989, at San Diego, California.

E. MILTON FROSBURG  
Administrative Law Judge