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

April 22, 1997

HOBART D'AMICO, JR., Complainant,	)
v.	) 8 U.S.C. §1324b Proceeding
	) OCAHO Case No. 97B00027
ERIE COMMUNITY COLLEGE, Respondent.	)

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

I. *Procedural History*

The complaint in this case was filed on November 18, 1996, and was served on the Respondent on December 13, 1996. Thus, pursuant to the Rules of Practice, an answer to the complaint was required to be filed within thirty days of its service, specifically, January 12, 1997. *See* 28 C.F.R. §68.9(a). Because no answer was filed, on January 22, 1997, I issued a Notice of Default informing the parties that no answer had been received, and that Respondent was in default and risked the entry of a default judgment.

Subsequently, on February 12, 1997, Complainant filed a motion for a default judgment, and on February 19, 1997, I issued an order requiring Respondent, not later than March 11, 1997, to file an answer to the complaint and to show cause why Complainant's motion for default judgment should not be granted. On that same date, I also issued an order directing Complainant to furnish, not later than March 11, 1997, certain information concerning its complaint. Complainant has not complied with that Order.

Finally, on March 13, 1997, Respondent filed an answer to the complaint and a response to the motion for default judgment.[1] In the answer and response, Respondent states that pleadings and notices of administrative actions usually are served on the relevant Erie County agency and the Erie County Attorney's office, but in this case such dual service did not occur. Ans. ¶3. As a result, the County Attorney only received notice of the pendency of this action after the motion for default judgment was sent by the Director of Personnel at the Erie Community College to the County Attorney's office. The County Attorney did not receive earlier copies of the complaint or the orders issued in this case. Ans. ¶4.

Respondent candidly acknowledges that the pleadings were served on the Respondent and that the fault lays with the transmission between the College and the County Attorney's office. However, Respondent respectfully requests that a default judgment not be entered because the normal process of transmittal of pleadings between the College and the County Attorney's office did not occur, and thus there was excusable neglect. Further, Respondent notes that default judgments are disfavored, particularly where, as here, there is no demonstrated prejudice to the non-movant's case, where excusable neglect can be shown, and where meritorious defenses are asserted by Respondent. Ans. ¶¶8–9. Respondent further notes that the answer is only two months late, and that all files and witnesses available in January 1997, when the answer was due, are still available. Moreover, if the Complainant were to prevail, any past deductions covering the two month delay could be included in an award of damages. Ans. ¶10.

II. *Legal Analysis and Decision*

Contrary to the Complainant's position which presumes that a litigant is "entitled" to the entry of a default judgment,[2] see Complainant's Motion to Strike Entry and Demand for Default

[1]The answer and response to the motion were combined in an affidavit submitted by Erie County Assistant County Attorney Paul A. Beyer.

[2]Complainant also objects to the fact that on January 22, 1997, I entered a Notice of Default, rather than a default judgment. As of January 22, the motion for default judgment had not been filed. Moreover, Rule 55(a) of the Federal Rules of Civil Procedure provides that an entry of default may be noted when a party fails to file an answer. The OCAHO Rules of Practice state that the Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by the OCAHO Rules. 28 C.F.R. §68.1. Therefore, the entry of a notice of default was authorized under the OCAHO Rules, and Complainant's position on this point is meritless.

Judgment (hereinafter Motion to Strike), default judgments are disfavored in the law and should be used only when the inaction of a party causes the case to grind to a halt. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95–96 (2d Cir. 1993) ("[D]efaults are generally disfavored. . . ."); *See also H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970); *United States v. R & M Fashion, Inc.*, 6 OCAHO 826, at 2 (1995); 10 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure §2685 (1983). Furthermore, the Courts consistently have held that the entry of a default judgement is within the sound discretion of the trial court. *See, e.g.*, *Enron*, 10 F.3d at 95; *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 507 (2d Cir.1991), *cert. denied*, 503 U.S. 1006 (1992); *Traguth v. Zuck*, 710 F.2d 90, 94 (2d Cir.1983). Moreover, the preferred disposition of cases is upon the merits, not by the imposition of a default judgment, especially where it appears, as here, that there are meritorious defenses. *Enron*, 10 F.3d at 95–96; *See Traguth*, 710 F.2d at 94; *Meehan v. Snow*, 652 F.2d 274, 277 (2d Cir.1981); *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242 (3d Cir. 1951). Thus, even when a default judgment has been entered, it may constitute an abuse of judicial discretion to refuse to vacate the default judgment. *Tozer*, 189 F.2d at 245. It is the responsibility of the trial court to maintain a balance between clearing its calendar and affording litigants a reasonable chance to be heard. *Enron*, 10 F.3d at 95–96; *see also Merker v. Rice*, 649 F.2d 171, 174 (2d Cir.1981); *Gill v. Stolow*, 240 F.2d 669, 670 (2d Cir.1957) ("general principles cannot justify denial of a party's fair day in court except upon a serious showing of willful default"). "Because defaults are generally disfavored and are reserved for rare occasions, when doubt exists as to whether a default should be granted or vacated, the doubt should be resolved in favor of the defaulting party." *Enron*, 10 F.3d at 96. Stated otherwise, "good cause" should be construed generously. *See, e.g.*, *Davis*, 713 F.2d at 915; *Meehan*, 652 F.2d at 277.

Complainant has failed to cite any case law in support of its motion for default and has failed to show any prejudice to Complainant if the motion is denied and the answer is accepted.[3] Generally, default judgments only should be used when the inaction or unresponsiveness of a particular party is unexcusable and the inaction has prejudiced the opposing party. *See Enron*, 10 F.3d at 95–96; *Davis*,

[3]In its Motion to Strike, Complainant cites to 5 C.F.R. §185.110, as supporting its position that a default judgment must be entered when an answer is not filed in a timely manner. That regulation pertains to the Program Fraud Civil Remedies Act of 1986 and has no relevance to the present action.

713 F.2d at 915; *Meehan*, 652 F.2d at 277; *Merker*, 649 F.2d at 174; *Gill*, 240 F.2d at 670. *See also Berthelsen v. Kane*, 907 F.2d 617 (6th Cir. 1990). Here, no prejudice has been shown, and there appear to be meritorious defenses to the complaint. Where delay is minimal, and the respondent has set forth a reasonable defense, there is a strong policy in favor of deciding cases on the merits, rather than resorting to the extreme remedy of entering a default judgment. *See O'Conner v. State of Nevada*, 27 F.3d 357, 364 (9th Cir. 1994). *See also American Alliance Insurance Co. v. Eagle Insurance Co.*, 92 F.3d 57, 61 (2d Cir. 1996) (granting relief from a default judgment and finding that a "meritorious defense" sufficient to grant relief from default need not be ultimately persuasive at an early stage of a proceeding, but only be "good at law so as to give the fact finder some determination to make") (internal citations omitted).

III. *Conclusion*

For the above reasons, Complainant's motion for the entry of a default judgment is denied, and the Respondent's late filed answer is accepted.

ROBERT L. BARTON, JR.
Administrative Law Judge