

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

June 1, 2020

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2020C00053
)	
MARIA GREGORIO-GOMEZ,)	
Respondent.)	
_____)	

AMENDED ORDER VACATING NOTICE OF ENTRY OF DEFAULT

An Order Vacating Notice of Entry of Default was initially issued in the above-captioned case on May 28, 2020. Pursuant to 28 C.F.R. § 68.52(f), this Amended Order Vacating Notice of Entry of Default amends the order issued on May 28, 2020, and corrects solely for clerical and typographical errors.

On February 24, 2020, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging violations of 8 U.S.C. § 1324c. On February 25, 2020, OCAHO sent a Notice of Case Assignment For Complaint Alleging Document Fraud, a copy of the complaint, the Notice of Intent to Fine, and Respondent’s request for hearing to Respondent, via certified U.S. mail. Respondent’s answer was due on March 30, 2020. Respondent did not file an answer.

On April 24, 2020, the Court issued a Notice of Entry of Default and explained that within fifteen days of the Notice of Entry of Default, the Court may enter a default judgment if Respondent did not file an answer and show good cause why she did not file an answer. On May 8, Respondent, through counsel, filed a Notice of Entry of Appearance, an answer, and discovery requests. Respondent also asserted that the answer had been timely filed in March, and she included a United States Postal Service tracking receipt and an answer dated March 23, 2020.

While OCAHO rules govern this proceeding, “the ‘Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled’ by OCAHO’s rules.” *U.S. v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (quoting 28 C.F.R. § 68.1). Under Federal Rule of Civil Procedure 55(c), “[t]he court may set aside an entry of default for good cause[.]” Default judgments are disfavored because of the policy of determining cases on their

merits. *Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979, 982 (3d. Cir. 1988); *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 2 (2004). OCAHO case law states that default judgments “should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement.” *Nickman*, 9 OCAHO no. 1106 at 2 (citations omitted). “The Court has especially broad discretion when . . . a party is seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Id.*

It appears from the evidence that the Respondent either filed, or attempted to file, the answer in a timely manner. The record does not demonstrate that Respondent failed to answer the Complaint in a timely manner “because of a willful disregard or disrespect for the legal process.” *Nickman*, 9 OCAHO no. 1106 at 3. While this office does not appear to have received the answer, as soon as the Court sent a notice of default, the Respondent promptly filed an answer. Similar to *Nickman*, Respondent has not ignored her responsibility to defend against this action or otherwise acted in bad faith. *Nickman*, 9 OCAHO no. 1106 at 3.

Additionally, Complainant did not move for an entry of default, and Complainant has not alleged that it would suffer any harm if the Court vacates the entry of default and allows Respondent’s answer. “Mere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion.” *Id.* The case is in the very earliest stage and is only delayed by two months. As such, there is no showing that setting aside the entry of default would prejudice Complainant.

The Court finds that the balance of factors weighs in favor of setting aside the entry of default. The entry of default is VACATED, and the Court accepts Respondent’s answer to the Complaint.

SO ORDERED.

Dated and entered on June 1, 2020.

Jean C. King
Chief Administrative Law Judge