

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

SUTATIP UTHAI WOODS,	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2020B00070
PHILIPS NORTH AMERICA, LLC,	)	
	)	
Respondent.	)	

ORDER GRANTING MOTION FOR ENLARGEMENT OF TIME AND  
DISCHARGING ENTRY OF DEFAULT

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (“INA”), as amended, 8 U.S.C. § 1324b. On May 4, 2020, Complainant Sutatip Uthai Woods filed a complaint with the Office of the Chief Administrative Hearing Officer alleging that Respondent, Philips Healthcare,<sup>1</sup> retaliated against her in violation of § 1324b.

On May 8, 2020, this Court sent Respondent the complaint via certified mail along with a Notice of Case Assignment for Complaint Alleging Unlawful Employment. In its notice, the Court explained that the proceedings would be governed by United States Department of Justice regulations and directed Respondent to file its answer within thirty days of receipt, namely by June 11, 2020. The Court cautioned that failure to answer could lead to entry of default. Respondent did not file an answer.

On July 2, 2020, the Court issued a Notice of Entry of Default ordering Respondent to file an answer within fifteen days and show good cause for its failure to file a timely answer.

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<sup>1</sup> Respondent indicated that its correct name is Philips North America, LLC, d/b/a Philips Healthcare.

On July 28, 2020, Respondent filed a Motion for Enlargement of Time through August 11, 2020 to submit its answer to the complaint and response to the Notice of Entry of Default.

On August 5, 2020, before the Court had ruled on its Motion for Enlargement of Time, Respondent filed its Answer to the Complaint, a Response to the Order to Show Cause, and a Motion to Dismiss. Respondent filed an Amended Motion to Dismiss on August 6, 2020.

## II. STANDARDS

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.” *United States 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.*

The Court has discretion to set aside an entry of default and to determine whether good cause exists. *United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019). The Court considers: “(1) whether there was culpable or willful conduct; (2) whether setting aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action.” *Id.* at 3 (citing *Kanti v. Patel C/O Blimpie*, 8 OCAHO no. 1007, 166, 168 (1998)). The Court considers the same factors when considering setting aside an entry of default or a default judgment, but the Court applies the factors more leniently when considering an entry of default. *Id.*

## III. DISCUSSION

The Court will grant Respondent’s Motion for Enlargement of Time and will set aside the Entry of Default because Respondent has shown good cause for its

failure to timely submit its answer and response to the Notice of Entry of Default. Specifically, Respondent's counsel represented to the Court in its Response to Order to Show Cause and in an accompanying signed declaration that Respondent has experienced significant operational disruptions since March 2020, including in the receipt and distribution of incoming mail, due to the current pandemic. Counsel indicated that Respondent's legal department did not receive the Notices of Case Assignment and Entry of Default until the respective deadlines had passed because both notices were sent to a Philips location in Bothell, Washington from which they were belatedly forwarded to Respondent's legal department in Cambridge, Massachusetts. Further, counsel for Respondent encountered several challenges outside work that may have exacerbated the delay in receiving notice of these proceedings. Despite these challenges, Respondent has now filed its Answer and an Amended Motion to Dismiss the complaint in this case.

Nothing in the record demonstrates 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. The Court is aware of significant disruptions to normal business operations throughout the country due to the current pandemic and Respondent has demonstrated that it has suffered such disruptions.

Moreover, Complainant did not move for an entry of default and has not alleged that it would suffer any harm if the Court sets aside the entry of default and allows the filing of Respondent's Answer and Amended Motion to Dismiss. *See Sanchez*, 13 OCAHO no. 1331 at 2. "Mere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion." *Nickman*, 9 OCAHO no. 1106 at 3. As such, the Court finds that there has been no showing that Complainant would be prejudiced by the late filings.

Lastly, Respondent has presented meritorious defenses in its Answer and Amended Motion to Dismiss. When moving to set aside an entry of default, the defaulting party does not need to establish its defenses conclusively. *Sanchez*, 13 OCAHO no. 1331 at 3. "A respondent adequately presents a defense by clearly stating in the answer the precise contested allegations and indicating the existence of disputed issues." *Nickman*, 9 OCAHO no. 1106 at 4. In its Answer, Respondent denies the central allegations of the complaint and asserts several affirmative defenses.

IV. CONCLUSION

The Court finds that, in light of the circumstances, Respondent has shown good cause for its failure to file a timely answer in this case. Accordingly, upon consideration of Respondent's Motion for Enlargement of Time, Response to Order to Show Cause, Answer, and Amended Motion to Dismiss,

IT IS SO ORDERED that Respondent's Motion for Enlargement of Time is GRANTED.

IT IS FURTHER ORDERED that the Notice of Entry of Default is set aside and the Court accepts Respondent's Answer and Amended Motion to Dismiss.

IT IS FURTHER ORDERED that Complainant shall file any response to Respondent's Amended Motion to Dismiss by September 11, 2020.

ENTERED:

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Honorable Carol A. Bell  
Administrative Law Judge

DATE: August 21, 2020