

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

PRAKASH SINHA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2020B00064
INFOSYS,)	
)	
Respondent.)	

ORDER DISCHARGING ENTRY OF DEFAULT

I. PROCEDURAL BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant, Prakash Sinha, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on April 15, 2020, alleging that Respondent, Infosys, discriminated against him based on his citizenship and national origin by declining to hire him, in violation of the anti-discrimination provisions of the INA.

On April 17, 2020, the Chief Administrative Hearing Officer (CAHO) served Respondent via United States certified mail with the complaint and a notice of case assignment. The CAHO informed Respondent that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings located at 28 C.F.R. § 68 and applicable case law. A link to the rules was provided to Respondent, along with contact information for OCAHO. The CAHO directed Respondent to answer the complaint within thirty days and cautioned that failure to do so could lead the Court to enter a judgment by default and any and all appropriate relief, pursuant to 28 C.F.R. § 68.9(b). Respondent failed to file an answer by the deadline of June 12, 2020.

On July 2, 2020, the Court issued a Notice of Entry of Default finding Respondent in default for its failure to answer the complaint. The Court ordered Respondent to file an answer within fifteen days and show good cause for its failure to file a timely answer. The Court warned that it could enter a judgment of default

against Respondent if it failed to comply. Respondent did not respond to the Notice of Entry of Default by the deadline of July 7, 2020.

Given the record before the Court and Respondent's lack of participation in the case, the Court issued an Order of Inquiry to Complainant on September 15, 2020. OCAHO later published that order, *Prakash Sinha v. Infosys*, 14 OCAHO no. 1373, 2 (2020), as a precedent decision. Through its order, the Court sought to ascertain subject matter jurisdiction over Complainant's claims and ordered Complainant to provide it with additional information regarding (a) the number of employees employed by Respondent; (b) the charges he filed against Respondent before the Equal Employment Opportunity Commission and the status of that case; and (c) the nature and extent of the alleged discriminatory conduct by Respondent so that the Court could determine the timeliness of Complainant's filing before the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER). *Id.* at 5-6. Complainant filed his response to the Order of Inquiry on October 20, 2020.

On or about October 27, 2020, counsel for Respondent entered his appearance and, on behalf of his client, filed a Request for Administrative Record and Motion for Enlargement of Time. In the motion, Respondent sought thirty days after receipt of the record to file its answer, respond to the Notice of Entry of Default, and file dispositive motions in this case.

The Court provided the record to Respondent and ordered it to file by December 11, 2020, both its answer to the complaint and its response to the Notice of Entry of Default, showing good cause as to why it failed to timely file its answer. The Court continued Respondent's request to file dispositive motions until it could determine whether good cause existed to set aside the entry of default.

On December 10, 2020, Respondent filed its answer to the complaint and response to the Notice of Entry of Default. On or about December 18, 2020, Complainant filed a document which the Court construes as both (a) a reply to Respondent's answer to the complaint, and (b) a reply to Respondent's response to the Notice of Entry of Default.

II. LEGAL STANDARDS

Default judgments are generally disfavored in OCAHO proceedings as they are in federal court. *See, e.g., United States v. R & M Fashion Inc.*, 6 OCAHO no.

826, 47-48 (1995); *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989) (“Default judgments are a drastic remedy, not favored by the Federal Rules and resorted to by the courts only in extreme situations.”). Contemporary procedural philosophy also encourages resolution of cases on the merits, not through default judgments. 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2681 (4th ed. Oct. 2020). OCAHO case law holds that default judgments generally should be used only when “the inaction or unresponsiveness of a particular party is unexcusable and the inaction has prejudiced the opposing party.” *D’Amico, Jr., v. Erie Community College*, 7 OCAHO no. 927, 63 (1997) (citations omitted). “The Court has especially broad discretion when, as here, a party is seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 2 (2004) (citation omitted).

Although OCAHO’s rules do not provide a standard to use in determining whether to set aside an entry of default or a default judgment, they specify that 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. 28 C.F.R. § 68.1. Under Federal Rule of Civil Procedure 55(c), courts may set aside an entry of default for good cause.

As a means to determine whether good cause exists, the Court may consider the following non-exhaustive factors: “(1) whether the failure to act was willful; (2) whether setting the default aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003) (citation omitted); *Kanti v. Patel C/O Blimpie*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors). Federal courts also have considered whether (1) the public interest was implicated; (2) there was a significant financial loss to the party not in default; and (3) the party acted expeditiously to correct the default. *Matter of Dierschke*, 975 F.2d 181, 184 (5th Cir. 1992).

III. ANALYSIS

Before the Court are Respondent’s late-filed answer, its response to the Notice of Entry of Default, and Complainant’s reply. The Court will exercise its discretion and consider whether good cause exists to set aside the entry of default in this case. Because defaults are generally disfavored, the Court construes good cause generously. *D’Amico, Jr.*, 7 OCAHO no. 927 at 63 (citations omitted). Here,

the application of the above-listed factors weighs in favor of accepting Respondent's untimely answer and setting aside the entry of default so that this case can be decided on the merits.

First, the evidence before the Court supports the conclusion that Respondent did not fail to timely answer the complaint because of willful disregard for the legal process or an intentional failure to respond to litigation. Respondent asserts that the delay in filing its answer occurred because it was unaware of the complaint and resulting litigation until it located online the Court's published Order of Inquiry in this case. It claims that Complainant did not comply with 28 C.F.R. § 68.3(a) in that the complaint and subsequent notices and orders, none of which it can locate, were improperly served on its New York City office. In support of its assertion, Respondent has provided the Court with its registration with the New York State's Division of Corporations, including the address of its principal executive office and the identity of its agent to receive service of process. This information does not match the information provided to OCAHO by Complainant or the address upon which the complaint and subsequent correspondence were served, namely, Respondent's New York City office.

Respondent further claims that the chaotic environment caused by the COVID-19 pandemic likely resulted in the mishandling of incoming mail, including the Court's communications. Respondent offers the supporting declaration of Vinod Neelamegham, its Associate Vice President of Facilities. Mr. Neelamegham explains that, beginning in March 2020, the COVID-19 pandemic resulted in the sudden closure of its U.S. facilities to personnel, including support staff. Since March 2020, Respondent has relied upon temporary staff to process all incoming mail at its facilities. Mr. Neelamegham states that neither he nor Respondent's legal team were informed of any incoming mail regarding this matter and have been unable to confirm receipt of any mail from the United States Department of Justice. He notes that Respondent's principal executive office is in Richardson, Texas, and that its New York City office is not meant to receive legal service of process.

In his reply, Complainant claims that Respondent was aware of this case and that proper personnel received, but ignored, the Court's correspondence. He asserts that Respondent was receiving mail at its New York City address, which he provided to OCAHO, because he sent a letter to that address and received a response on September 19, 2019, from Rama Diop, Respondent's Lead-HR Business Partner. He argues that the New York City address is a "main central" address for Respondent. Address information he located online for Respondent's New York City office is attached to his reply. Although Complainant provided OCAHO with an

address he had previously used to communicate with an individual who appeared to have a position of authority with Respondent, and there is no dispute that Respondent has an office at the given address in New York City, the communication with Ms. Diop occurred well before the filing of the complaint in this matter and the onset of the COVID-19 pandemic which likely resulted in the mishandling of Respondent's incoming mail.

The Court finds credible Respondent's representations regarding its unintentional failure to answer the complaint in this matter due, in part, to difficulties in mail processing brought about by the COVID-19 pandemic and receipt of legal process by temporary staffing at an address not equipped to handle it. Upon learning of the entry of default, Respondent "acted expeditiously to correct the default." *Dierschke*, 975 F.2d at 184. The Court therefore finds that Respondent's actions or inactions were not willful, and it has not waived its right to appear and contest the allegations of the complaint. *See* 28 C.F.R. § 68.9(b).

The Court also finds that Complainant has presented no evidence of prejudice should the Court allow Respondent's late-filed answer to the complaint and set aside the entry of default. Respondent failed to meet a procedural time requirement which resulted in a sizeable delay of almost six months in the filing of its answer, however, "[m]ere 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; *see also* Wright, Miller, & Kane, *supra*, § 2699 (discussing types of prejudice and costs to the non-defaulting party). Although Complainant argues that Respondent's failure to timely answer the complaint was willful, he has not moved for entry of a default judgment or alleged that he would suffer any harm, evidentiary or otherwise, if the Court allows Respondent's answer and sets aside the entry of default. The only harm of which the Court is aware in setting aside the entry of default here is that it will require Complainant to prove his case.

Lastly, the Court considers whether Respondent has presented any meritorious defenses to the complaint. Although these defenses need not be conclusively established, *Kanti*, 8 OCAHO 1007, at 171, Respondent's answer should clearly lay out both the specific contested allegations and issues in dispute. *Nickman*, 9 OCAHO no. 1106 at 4. The Court will then "determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." Wright, Miller, & Kane, *supra*, § 2697. The Court finds that Respondent has established that possibility here.

In its answer, Respondent identifies factual issues regarding the titles and timing of Complainant's job applications. Respondent also disputes Complainant's allegations that it discriminated against Respondent based on his national origin and citizenship status, and claims that it hired United States citizens like Complainant, not individuals with H-1B visas, for a particular job position for which Complainant applied in October 2018. Through three affirmative defenses presented in its answer, Respondent alleges that Complainant failed to plead sufficient facts or state a claim upon which relief can be granted. It asserts that Complainant's filing to IER was untimely which could result in the Court lacking subject matter jurisdiction over some or all of allegations in the complaint. Although not extremely specific, the Court finds, especially in light of the preference for cases to be decided on the merits, that Respondent's answer provides a basis for finding that it has presented a meritorious defense.

IV. DECISION AND ORDER

Accordingly, having found that good cause exists for the above-stated reasons,

IT IS SO ORDERED that Respondent's answer is accepted and the Notice of Entry of Default against Respondent, Infosys, is DISCHARGED in this case.

ENTERED:

Honorable Carol A. Bell
Administrative Law Judge

DATE: January 29, 2021