

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

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 2021A00005
TREESCAPES, INC.,	)	
Respondent.	)	

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ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on November 18, 2020, alleging that Respondent, Treescapes, Inc. (“Treescapes”), failed to prepare and/or present the employment eligibility form (Form I-9) for twelve individuals and failed to properly complete Forms I-9 for three individuals.

On December 3, 2020, the Office of the Chief Administrative Hearing Officer (OCAHO) sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment, a copy of the Complaint, and the Notice of Intent to Fine via U.S. certified mail. The Notice of Case Assignment directed that an answer was to be filed within 30 days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.<sup>1</sup> Thus, Respondent’s answer was due no later than January 6, 2021. Respondent did not file an answer.

On February 25, 2021, the Court issued a Notice of Entry of Default directing Respondent, within fifteen days of the order, to file an answer and show good cause for its failure to file a timely answer. The Court warned that failure to file an answer and show good cause may result in the entry of a default judgment against Respondent.

On March 12, 2021, Respondent filed an answer, a notice of appearance, and a motion for good cause and to set aside entry of default. Respondent also submitted an affidavit from D.M., the President of Treescapes, and an affidavit from T.G., the attorney representing Respondent, attesting to the facts asserted in the motion. Respondent asserts in its motion that, in December of 2020, soon after receiving the complaint, D.M. and his family became infected

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<sup>1</sup> Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2018).

with COVID-19 and became seriously ill. Respondent claims that D.M. suffered from symptoms of the virus until February of 2021. T.G. asserts that D.M. contacted him “about issues and a lawsuit involving Treescapes and the [United States] Department of Homeland Security” in late January of 2021. T.G. further claims that, on the day he spoke to D.M. about the lawsuit involving Treescapes, he was informed that his mother was suffering from a serious illness and he would need to leave town immediately to travel to her. T.G. states that his mother passed away the following week. T.G. further claims that he was unable to follow up with Treescapes on any representation or information due to the circumstances. T.G. asserts that this was the cause for Respondent’s failure to timely file an answer to the complaint.

## II. LEGAL STANDARDS

Although 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[.]” 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).

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). Because defaults are generally disfavored, the Court construes good cause generously. Sinha v. Infosys, 14 OCAHO no. 1373A, 3 (2021) (citing D’Amico v. Erie Community College, 7 OCAHO no. 927, 61, 63 (1997)). 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.

## III. DISCUSSION

The Court finds that Respondent has shown good cause for its failure to timely file an answer. Respondent demonstrated that the President of Treescapes, D.M., was infected with the COVID-19 virus when he received the complaint, and was suffering from serious symptoms until February of 2021. Furthermore, Respondent demonstrated that shortly after D.M. contacted T.G. to represent Treescapes in this lawsuit, T.G. had to attend to his seriously ill mother, who passed away shortly thereafter. The Court is mindful of the profound impact that the COVID-19 pandemic has had on many litigants in this forum. OCAHO has found good cause in instances where litigants failed to meet procedural deadlines due to difficulties caused by the pandemic.

*See, e.g.,* Sinha, 14 OCAHO no. 1373A at 3; Woods v. Philips North America, LLC, 14 OCAHO no. 1371, 2 (2020).

Since Respondent has demonstrated good cause, the Court will vacate the entry of default and allow Respondent's answer to be entered into the record.

SO ORDERED

ENTERED:

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John A. Henderson  
Administrative Law Judge

DATE: May 6, 2021