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

September 1, 2021

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324c Proceeding
v.	)	OCAHO Case No. 2021C00012
CLAUDIA ZUNIGA TORENTINO, Respondent.	)	

ORDER OF DEFAULT JUDGMENT

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. The U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 4, 2021, alleging that Respondent, Claudia Zuniga Torentino, committed a violation of § 1324c when she knowingly used two fraudulent documents to satisfy the employment eligibility verification requirements. Respondent timely requested a hearing, but has not filed an answer or any other filing in these proceedings. For the reasons outlined below, the Court enters default judgment against Respondent pursuant to 28 C.F.R. § 68.9(b), and the relief sought by the Government is GRANTED. This is a final order pursuant to 28 C.F.R. § 68.52(e).

I. FINDINGS OF FACT WITH PROCEDURAL HISTORY

1. On November 18, 2020, Complainant personally served a Notice of Intent to Fine (NIF) upon Respondent, alleging that Respondent violated 8 U.S.C. § 1324c(a)(2). The NIF ordered her to cease and desist from such behavior, and assessed a fine of $962.00. Compl. Ex. A at 1, 5.

2. On November 25, 2020, Respondent timely requested a hearing. Compl. Ex. A at 4.

3. On January 4, 2021, Complainant filed its complaint with Office of the Chief Administrative Hearing Officer, alleging that Respondent purchased a fraudulent lawful permanent resident card (Form I-551) and fraudulent social security card, and that she presented

these documents to her employer to evidence identity and for the purposes of securing employment authorization. Compl. 3–4.

4. On January 13, 2021, the Office of the Chief Administrative Hearing Officer sent the parties a Notice of Case Assignment and the Complaint via certified U.S. mail, directing Respondent to file an answer within thirty (30) days of receipt of the Complaint and warning that failure to answer could lead to default judgment in Complainant's favor. Notice Case Assign. 2.

5. The U.S. Postal Service website indicates that Respondent received the Notice of Case Assignment and the Complaint on January 19, 2021 as evidenced by the signed United States Postal Service domestic return receipt card.

6. The similarity in signatures between the United States Postal Service domestic return receipt card and the initial hearing request indicates the same person who requested a hearing also received the Notice of Case Assignment and the complaint.

7. Respondent's answer was due no later than February 23, 2021. *See* 28 C.F.R. §§ 68.9(a), 68.8(c)(2).

8. To date, Respondent has not filed an answer.

9. On April 2, 2021, the Court issued an Order to Show Cause, notifying Respondent that the Court had not received her answer, and directing her to submit a filing within twenty (20) days showing good cause for why she failed to file an answer. Order to Show Cause 1–2.

10. The Order to Show Cause was served upon the same address as the Notice of Case Assignment and the Complaint.

11. The Order to Show Cause also warned Respondent that "[i]f [she] fails to file an answer and show good cause regarding her untimely filing, the Court may enter a default judgment against Respondent." Order Show Cause 2.

12. Respondent's response to the Court's Order to Show Cause was due April 27, 2021. *See* Order Show Cause 2, 28 C.F.R. § 68.8(c)(2).

13. To date, Respondent has not filed a response to the Order, as she was ordered to do.

14. It is contained within the Complaint and is uncontested that "[R]espondent admitted she had purchased" "a fraudulent lawful permanent resident (LPR) card (Form I-551) and a fraudulent social security card." Compl. 3–4 (citing Ex. C).

15. Social security cards and LPR cards are issued only by the government of the United States and are never available for "purchase" from a private entity. *See* 42 U.S.C. § 405; *United States v. Fed. Record Serv. Corp.*, 1999 U.S. Dist. LEXIS 7719, at *26 (S.D.N.Y. May 21, 1999) ("Only the SSA has the ability to issue a Social Security card."); 8 U.S.C. § 1304(d). *See also* United States Citizenship and Immigration Services, *A Guide on Immigration Documents Commonly Used By Benefit Applicants* (2019), https://save.uscis.gov/web/media/resourcesContents/SAVEGuideCommonlyusedImmigrationDocs.pdf#:~:text=%20U.S.%20Citizenship%20and%20Immigration%20Services%20%28USCIS%29%20issues,Resident%20cards%20contain%20two-year%20or%2010-year%20expiration%20dates ("U.S. Citizenship and Immigration Services (USCIS) issues the Form I-551, Permanent Resident card to lawful permanent residents or conditional permanent residents.").

16. It is contained within the Complaint and is uncontested that the fraudulent permanent resident card "contain[s] a picture of the respondent, an alien registration number and name belonging to an individual other than the respondent" and that the "fraudulent social security card [has] a number and name belonging to [an] individual other than the respondent." Compl. 4 (citing Ex. B).

17. It is contained within the Complaint and is uncontested that "[R]espondent admitted she presented her employer[] a fraudulent lawful permanent resident card . . . and a fraudulent social security card to evidence identity and employment authorization" on or about January 14, 2020. Compl. 3 (citing Ex. C); *see also* Compl. Ex. A at 20 (showing that the employer signed the Form I-9 on January 14, 2020).

18. It is contained within the Complaint and is uncontested that Complainant retrieved a Form I-9 and W-4 from Respondent's employer bearing the same information contained on the fraudulent documents found in Respondent's possession. Compl. 3 (citing Ex. B).

II. LEGAL STANDARDS

A. Default Judgment

An Administrative Law Judge (ALJ) may enter a judgment by default when the respondent fails to file an answer within the time provided, as such untimeliness "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint." 28 C.F.R. § 68.9(b). Likewise, "failure to respond to an Order may trigger a judgment by default." *United States v. Hotel Valet Inc.*, 6 OCAHO no. 849, 252, 254 (1996) (citation omitted).[1] Additionally,

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages,

> [f]actors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986) (citation omitted).[2]

B. Penalty Assessment When Entering Default Judgment in Favor of Complainant

While ALJs may assess penalties de novo, *see United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011) (citation omitted), they have frequently "approved the requested penalty amounts in cases of default when the amount requested was reasonable." *United States v. Yi*, 8 OCAHO no. 1011, 218, 223 (1998) (first citing *United States v. Cont'l Forestry Serv. Inc.*, 6 OCAHO no. 836, 140, 142 (1996); then citing *United States v. K & M Fashions*, Inc., 3 OCAHO no. 411, 156, 161–62 (1992); and then citing *United States v. Garza*, 1 OCAHO no. 211, 1409, 1411 (1990)).

When a respondent has suffered default judgment on liability, an ALJ may allow the parties to file supplemental briefing on penalties. *See United States v. Carlos Cruz*, 3 OCAHO no. 453, 595, 596–597 (1992) (finding that "since the allegations in a complaint are separate and distinct from the prayer for relief, and [OCAHO's regulations] state that upon the nonfiling of an [a]nswer [the r]espondent loses its right to contest only the [c]omplainant's allegations, [the r]espondent is not precluded, under [certain] facts, from contesting the amount of relief requested by [the c]omplainant."); *see also United States v. Cityproof Corp.*, 15 OCAHO no. 1392, 2–3 (2021) (inviting briefing on penalties after entry of default judgment on liability for a violation of 8 U.S.C. § 1324a).

---

seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

[2] Both Complainant and Respondent are located in the Ninth Circuit. *See* 28 C.F.R. § 68.57 (designating for appeal purposes "the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.").

When the government seeks civil money penalties at the statutory minimum, "further inquiry into the calculation or justification of penalties sought is unnecessary." *United States v. Leon-Gutierrez*, 6 OCAHO no. 875, 555, 557 (1996). This is especially true in a case arising under 8 U.S.C. § 1324c, which does not enumerate any statuory factors for consideration in the calculation of penalties. *See* 8 U.S.C. § 1324c(d)(3); *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 3 (2021).

"For civil penalties assessed after August 1, 2016 [with relation to § 1324c violations that] occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 CFR 85.5." 28 C.F.R. § 68.52(e)(3). When a penalty is "assessed after June 19, 2019 for violations that occurred after November 2, 2015, the minimum penalty per document is $481 and the maximum is $3,855. 8 C.F.R. § 270.3(b)(1)(ii)(A); 28 C.F.R. § 85.5. "[T]he date of assessment is the date that ICE serves the NIF on a respondent." *Bhattacharya*, 14 OCAHO no. 1380a, at 4 (quoting *United States v. Farias Enterprises LLC*, 13 OCAHO no. 1338, 7 (2020)).

III. DISCUSSION

A. Default Judgment

As detailed above, Respondent has yet to file an answer to the Complaint despite receiving the complaint, Notice of Case Assignment, and the Court's Order to Show Cause. Although Respondent did initially request a hearing, Respondent has failed to participate in her case. Respondent's lack of participation is tantamount to a waiver of her right to appear and contest the Government's allegations against her. *See* 28 C.F.R. § 68.9(b).

Further, an analysis of the *Eitel* factors demonstrates an entry of default judgment is appropriate in this case. First, Respondent's lack of participation brings the adversary process to a halt, which prejudices Complainant. *See Viet. Reform Party v. Viet Tan – Viet. Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019). The second and third *Eitel* factors are related and "often analyzed together and require courts to consider whether [the complainant] has 'state[d] a claim on which [it] may recover.'" *Id.* (quoting *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002)). Here, as the allegations are uncontested, the Court relies exclusively on the factual allegations as presented in the Government's complaint. Complainant sufficiently plead that Respondent violated 8 U.S.C. § 1324c(a)(2); specifically, that Respondent knowingly presented a fraudulent lawful permanent resident card (Form I-551) and a fraudulent social security card to evidence identity and employment authorization, a benefit under the Act. Compl. 3 (citing Ex. C).[3] Although the fourth factor, money at stake, weighs against default

[3] Employment authorization is a benefit under the INA. *See United States v. Dominguez,* 7 OCAHO no. 972, 782, 807 (1997) (quoting *United States v. Morales-Vargas,* 5 OCAHO no. 732, 734 (1995) (modification by CAHO)) ("It has been held that providing documents for the

judgment in light of the penalties sought, *cf. Viet. Reform Party*, 416 F. Supp. 3d at 970; the fifth factor counterbalances the fourth because Complainant has sufficiently pled a § 1324c(a)(2) violation. *Id.* Additionally, "[e]ven if there was a possibility that [Respondent] could dispute [Complainant's] allegations, that would not change the Court's analysis for present purposes because [Respondent] ha[s] not appeared to rebut the allegations." *Id.* Sixth, there is no evidence that Respodnent's failure to appear despite service of the complaint, Notice of Case Assignment, and the Order to Show Cause was due to excusable neglect. *See id.* Despite the seventh factor of the strong policy of favoring a decision on the merits, the factors on balance strongly favor entering default judgment.

Accordingly, the Court finds Respondent in default pursuant to § 68.9(b). Thus, Respondent is liable for two violations of § 1324c(a)(2), which renders it unlawful "to use, attempt to use, possess, obtain, accept or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement . . . or to obtain a benefit under the [INA]." 8 U.S.C. § 1324c(a)(2).

B. Penalties

Here, the charged violations occurred on or about January 14, 2020 (after November 2, 2015) and the Government served the NIF on November 18, 2020 (after June 19, 2020). Compl. 2. Thus, the minimum penalty amount is $481 for each document. 28 C.F.R. § 85.5. Although Complainant does not specify its calculation for the amount it requests, it appears it is seeking the minimum amount of $962.00 in penalties for the single count with two fraudulent documents, a permanent resident card and social security card.[4] Accordingly, the Court finds the Government's requested penalty to be reasonable. *See Bhattacharya*, 14 OCAHO no. 1380a, at 7. Thus, Respondent is subject to a penalty of $962.00 for two violations of § 1324c(a)(2).

IV. CONCLUSION

For the foregoing reasons, the Court finds and concludes:

Default judgement is ENTERED against Respondent and the relief sought by the Government is GRANTED.

---

purpose of gaining illegal employment constitutes an action undertaken 'in order to satisfy any requirement of the Act.'").

[4] In its complaint, the Government asserts that "the respondent's fine amount is higher as a previous immigration violaton and since he [sic] had two fraudulent cards that she utilized to seek employment." Compl. 4. However, it appears that the Government did not in fact increase the fine amount, as $962 is the minimum possible in this case based on the date of violation, date of assessment, and number of documents involved, as described above.

As alleged in the Complaint, Respondent is liable for two violations of 8 U.S.C. § 1324c(a)(2) for using, possessing, obtaining, accepting, receiving, or providing forged, counterfeit, altered, or falsely made documents to satisfy a requirement or obtain a benefit under the INA.

Pursuant to 8 U.S.C. § 1324c(d)(3), which mandates a cease and desist order upon a finding of a § 1324c violation, Respondent shall cease and desist from violating 8 U.S.C. § 1324c(a)(2).

Respondent shall pay $962.00 in civil penalties.

V. CONCLUSIONS OF LAW

1. An Administrative Law Judge (ALJ) may enter a judgment by default when the respondent fails to file an answer within the time provided, as such untimeliness "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint." 28 C.F.R. § 68.9(b).

2. Respondent is in default pursuant to 28 C.F.R. § 68.9(b) for her failure to timely file an answer.

3. "It is unlawful for any person . . . knowingly . . . to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of [the INA] or to obtain a benefit under [the INA]." 8 U.S.C. § 1324c(a)(2).

4. Employment authorization is a benefit under the INA. *See United States v. Dominguez,* 7 OCAHO no. 972, 782, 807 (1997) (quoting *United States v. Morales-Vargas,* 5 OCAHO no. 732, 734 (1995) (modification by CAHO)) ("It has been held that providing documents for the purpose of gaining illegal employment constitutes an action undertaken 'in order to satisfy any requirement of the Act.'").

5. Respondent knowingly obtained, possessed, and used a counterfeit lawful permanent resident card and a counterfeit social security card to obtain employment—a benefit under the INA—in violation of 8 U.S.C. § 1324c(a)(2).

6. When a respondent has suffered default judgment on liability, an ALJ may allow the parties to file supplemental briefing on penalties. *See, e.g.*, *United States v. Carlos Cruz*, 3 OCAHO no. 453, 595, 596–597 (1992) (finding that "since the allegations in a complaint are separate and distinct from the prayer for relief, and the Rules of Practice and Procedure state that upon the nonfiilng of an Answer Respondent loses its right to contest only Complainant's allegations, Respondent is not precluded, under [certain] facts, from contesting the amount of

relief requested by Complainant."); *cf. United States v. Cityproof Corp.*, 15 OCAHO no. 1392, 2–3 (2021) (inviting briefing on penalties after entry of default judgment on liability for a violation of 8 U.S.C. § 1324a).

7. When the government seeks civil money penalties at the statutory minimum, "further inquiry into the calculation or justification of penalties sought is unnecessary." *United States v. Leon-Gutierrez*, 6 OCAHO 875, 555, 557 (1996).

8. Further briefing regarding penalty amount may not be necessary in 8 U.S.C. § 1324c cases where Complainant seeks the statutory minimum because the statute does not enumerate any statuory factors for consideration in the calculation of penalties. *See* 8 U.S.C. § 1324c(d)(3); *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 3 (2021).

9. When a penalty is assessed after June 19, 2019 for violations that occurred after November 2, 2015, the minimum penalty per document is $481 and the maximum is $3,855. *See* 28 C.F.R. § 85.5; 8 C.F.R. § 270.3(b)(1)(ii)(A).

10. 8 U.S.C. § 1324c(d)(3) mandates a cease and desist order upon a finding of a violation of section 1324c(a).

SO ORDERED.

Dated and entered on September 1, 2021.

_____

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2021).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for theappropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324c(d)(5) and 28 C.F.R. § 68.56.