

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

June 2, 2022

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|--------------------------|---|-----------------------------|
| ZAJI OBATALA ZAJRADHARA, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | OCAHO Case No. 2022B00036 |
| |) | |
| E-SUPPLY ENTERPRISES, |) | |
| Respondent. |) | |
| _____ |) | |

ORDER

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On March 25, 2022, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Zajradhara alleges that Respondent, E-Supply Enterprises, discriminated against him on account of his citizenship status and national origin.

On April 4, 2022, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) and a copy of the Complaint, via certified U.S. mail. The NOCA stated that proceedings in this case will be conducted according to the OCAHO rules appearing at 28 C.F.R. pt. 68 (2022).¹ The NOCA also encouraged the parties to review OCAHO’s Practice Manual, which provides an outline of procedures and rules applicable to OCAHO cases.²

The NOCA directed Respondent to file an answer within thirty (30) days of receipt of the Complaint. Respondent received the NOCA and complaint on April 12, 2022; therefore,

¹ A PDF copy is available at http://www.justice.gov/eoir/OcahoMain/Part_68.pdf.

² See <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

Respondent's answer was due no later than May 12, 2022. *See* 28 C.F.R. §§ 68.3(a)-(b), 68.9(a). To date, Respondent has not filed an answer.³

On May 16, 2022, the Court received Complainant's "Motion for Summary Judgement/Default and Enforcement."⁴ Complainant dated the motion May 3, 2022, and included a certification attesting to service on the same date. Complainant moves the Court to declare Respondent in default and to enter damages. C's Mot. at 1–2. Complainant's requested damages include back and forward pay, along with an order toward various government agencies regarding Respondent's "violation" and a "[bar] from applying to any type of [U.S.] visa." C's Mot. at 2.

II. DISCUSSION

A. Answer

"A party that fails to answer a complaint within the time specified is already in default[.]" *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citation omitted).⁵ Under the OCAHO rules, to contest a material fact alleged in the complaint or a penalty assessment, a respondent must file an answer. 28 C.F.R. § 68.9(c). Failure to file an answer "within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default." § 68.9(b). Further, "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). "If a default judgment is entered . . . judgment is entered for the complainant without a hearing." *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 1 (2004).

³ On May 18, 2022, the Court rejected a filing from Elizabeth Torres. Torres represents that she is the General Manager of E-Supply Enterprises. The filing was rejected because it did not contain a certificate of service, which is required by the OCAHO rules. *See* 28 C.F.R. § 68.6(a) ("[A]ll pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record.").

⁴ This Order will cite Complainant's filing as "C's Mot. at #."

⁵ 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, 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 on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Respondent has not filed an answer that comports with this Court's requirement to include a certificate of service. Respondent is therefore directed to file an answer pursuant to 28 C.F.R. § 68.9(c) within thirty days of this order and to file a submission demonstrating good cause for Respondent's failure to timely file an answer.

B. Motion

As noted above, Complainant correctly recognizes that a failure to timely file an answer has consequences in an OCAHO case. *See* 28 C.F.R. § 68.9(b). However, Complainant's motion for a judgment in his favor is not ripe for adjudication. This is true whether the Court construes the filing as a motion for summary decision or a motion for default judgment. A motion for summary decision cannot be filed until at least thirty days after a respondent receives the complaint. § 68.38(a). Respondent did not receive the complaint until April 12, 2022; Complainant served his motion twenty-one days after receipt. Similarly, a respondent has thirty days to file an answer after service of the complaint. § 68.9(a). Complainant moved the Court for default judgment within Respondent's allotted timeframe for filing an answer. These findings make a decision on Complainant's requested damages premature.

Further, Respondent's May 18, 2022 filing shows an intent to appear in this forum, even though it was rejected for a procedural deficiency. OCAHO precedent instructs that "default judgment should only be used when the inaction of a party is inexcusable and the inaction has prejudiced the opposing party." *See Heath v. I-Services, Inc.*, 15 OCAHO no. 1413, 2–3 (2022) (citations omitted); *see also United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019) (noting that OCAHO generally discourages default judgment solely on failure to meet procedural time requirements). Default judgments are disfavored because of a policy of determining cases on their merits. *United States v. Treescapes, Inc.* 15 OCAHO no. 1389, 2 (2021) (citations omitted). Pursuant to the Order to Show Cause, the ALJ is providing Respondent an opportunity to cure the procedural defect.

III. CONCLUSION

Respondent is ORDERED to file an answer pursuant to 28 C.F.R. § 68.9(c). Respondent is also ORDERED to submit a filing showing good cause for its failure to timely file an answer. **Both filings must be received by the Court within thirty (30) days of issuance of this Order.** If Respondent fails to file an answer and show good cause regarding its untimely filing, the Court may enter a default judgment against Respondent.

Complainant's Motion for Summary Judgement/Default and Enforcement is DENIED.

SO ORDERED.

Dated and entered on June 2, 2022.

Honorable Jean C. King
Chief Administrative Law Judge