

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

December 9, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022A00056
)	
ABCO SOLAR, INC.,)	
Respondent.)	
_____)	

Appearances: Jose R. Solis, Jr., Esq., for Complainant
David Shorey, pro se, for Respondent¹

ORDER

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer on September 7, 2022. Complainant alleges that Respondent, ABCO Solar, Inc., failed to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9) for 45 individuals, and failed to prepare and/or present the Form I-9 for 20 individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B).

The Court sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the complaint, the Notice of Intent to Fine, and Respondent's request for a hearing on September 12, 2022, via U.S. certified mail. The NOCA directed that an answer was to be filed within thirty (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.²

¹ John F. Wolcott, Esq. submitted the filing in this case, identifying himself as the Attorney for Respondent, but has not filed a notice of appearance with the Court in accordance with 28 C.F.R. § 68.33(f). The Court has exercised its discretion to consider the filing. A courtesy copy of this order will be sent to Mr. Wolcott.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

Although the U.S. Postal Service website indicates service of the NOCA on Respondent's statutory agent on September 16, 2022, making an answer due no later than October 16, 2022, *see* 28 C.F.R. §§ 68.3(a), 68.9(a), Respondent did not file an answer by that date. Thus, on November 8, 2022, the Court issued an Order to Show Cause, directing Respondent to file an answer comporting with the requirements of 28 C.F.R. § 68.9(c), and explain why it failed to timely file an answer, within twenty-one (21) days of the date of the Order to Show Cause.

On November 28, 2022, Respondent sent the Court an answer comporting with the requirements of 28 C.F.R. § 68.9(c) by fax and by first-class mail, but did not include an explanation for why the answer was not timely.

As the Court noted in its Order to Show Cause, OCAHO Rules state that “[f]ailure of the respondent 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” and “[t]he Administrative Law Judge may enter a judgment by default.” 28 C.F.R. § 68.9(b); *see also* *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004) (holding that if default judgment is entered, judgment may be entered for the complainant without a hearing).³ The default must be excused before the party is permitted to answer. *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015).

A showing of good cause is a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted. *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993); *see United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445–46 (1989) (Vacation by the CAHO of the ALJ's Order Denying Default Judgment) (finding it was error for the ALJ to deny the complainant's default judgment motion and permit a late file answered, when the respondent did not timely respond to that motion and proffered no good cause for its failure to timely file an answer); *see also United States v. Kirk*, 1 OCAHO no. 72, 455, 456–57 (1989) (granting default judgment when response to show cause order did not establish good cause for failure to answer).

As Respondent has made no proffer of good cause for why its answer was not timely filed, the Court may enter a default judgment against it pursuant to 28 C.F.R. § 68.9(b). However, given

³ 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

the preference for resolving cases on their merits, *see United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO 1407C, 3 (2022), the Court will provide Respondent a final opportunity to provide an explanation for its failure to timely file its answer. Upon receipt of the response, the Court will determine if Respondent has demonstrated the requisite good cause for failing to timely file its answer to the complaint and will decide whether to allow its untimely answer.

The Court therefore ORDERS that Respondent file a response with the Court by December 30, 2022, in which it must provide facts sufficient to show good cause for its failure to timely file an answer to the complaint in this case.

SO ORDERED.

Dated and entered on December 9, 2022.

Honorable Jean C. King
Chief Administrative Law Judge