

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

August 24, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2021C00033
)	
BRIAN DE JESUS CORRALES-)	
HERNANDEZ,)	
Respondent.)	
_____)	

Appearances: Joey L. Caccarozzo, Esq., for Complainant
Brian De Jesus Corrales-Hernandez, pro se Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE

I. BACKGROUND

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 (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on May 12, 2021,¹ alleging that Respondent, Brian de Jesus Corrales-Hernandez, committed a violation of § 1324c(a)(2) when he knowingly used a fraudulent document to satisfy the employment eligibility verification requirements, and a violation of § 1324c(a)(5) when he prepared an application for a benefit under the INA with knowledge or in reckless disregard of the fact that the application was falsely made.

Respondent's answer was due on or before November 5, 2021. The Court did not timely receive the answer.

¹ On September 15, 2021, the Court issued an Order Directing Complainant Execute Service of Process. On October 15, 2021, Complainant filed a Proof of Compliance with Service of Process wherein it informed the Court that the Respondent confirmed receipt of the Complaint on October 6, 2021.

On November 19, 2021, the Court issued an Order to Show Cause. *See generally* Order to Show Cause (OTSC). The Court ordered Respondent to submit a filing showing good cause explaining his failure to timely file an answer, and to file an answer pursuant to 28 C.F.R. § 68.9(c).

On March 8, 2022, the Court held a prehearing conference. With the assistance of a Spanish language interpreter, the Court ensured the Respondent understood the nature of the proceedings and the consequences of failing to file an answer. The Court provided Respondent with an opportunity to file his answer by April 6, 2022.

On April 13, 2022, Respondent filed his response to the Order to Show Cause and his Answer. In the response to the Order to Show Cause, Respondent explains that he failed to timely file his answer because of his limited English language proficiency and because of a family member's unforeseen and serious medical issues. Response to Order to Show Cause 1-2 ("Resp."). According to the certificate of service attached to the answer, it was mailed to Complainant and the Court on March 26, 2022.

II. LEGAL STANDARDS

A. Default Judgment

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that a respondent's failure to file an answer may "constitute a waiver of his or her right to appear and contest the allegations of the complaint." 28 C.F.R. § 68.9(b). The Court then "may enter a judgment by default." *Id.*

This forum generally disfavors default judgments. *See, e.g., United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 47-48 (1995).²

² 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>.

OCAHO Administrative Law Judges (ALJs) have found default judgment appropriate, for example, when "the inaction or unresponsiveness of a particular party is inexcusable and the

B. Good Cause

When a respondent fails to timely answer a complaint, the Court may issue an order to show cause as to why a default judgment should not be entered and ask the respondent to justify its failure to file its answer on time. *See Y.Y. v. Zuora, Inc.*, 15 OCAHO no. 1402, 4 (2022); *Saghir*, 16 OCAHO no. 1422, at 2 (citing *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445-46 (1989) (Vacation by the CAHO of the ALJs 16 Order Denying Default Judgment)). In considering the disposition of an order to show cause, the Court reviews the response to its order and determines whether “the [r]espondent possessed the requisite good cause for failing to file a timely answer[.]” *Id.*

The Court has, in some instances, considered significant medical issues to be good cause for failure to timely submit a filing.³ The Court has also considered certain attributes of the litigants themselves, like pro se status, or language proficiency.⁴

As to consideration of untimely filed submissions, the Court employs a standard of good cause in deciding whether to credit a party’s explanations and exercise discretion in accepting a late filing. *See MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, at 5 (citing *United States v. Quickstuff*, 11 OCAHO no. 1265, 4 (2015)).⁵

inaction has prejudiced the opposing party.” *See Saghir v. Serv. Experts*, 16 OCAHO no. 1422, 2 (2022) (citing *D’Amico v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997) (citations omitted); *United States v. Sal’s Lounge*, 15 OCAHO no. 1394c, 3 (2022); *United States v. Popo’s Bar and Restaurant*, 15 OCAHO no. 1398, 1 (2021).

³ OCAHO ALJs have found that “serious illnesses or challenges outside work may constitute good cause for a litigant’s unintentional failure to meet a filing deadline.” *Sal’s Lounge*, 15 OCAHO no. 1394c, at 5 (crediting Respondent’s medical issues as a factor weighing in favor of a finding of good cause). *See also United States v. Treescapes, Inc.*, 15 OCAHO no. 1389, 2 (2021) (finding good cause for failure to timely file an answer based on the serious illnesses of respondent’s president and counsel’s care of a dying family member); *Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371, 3 (2020) (finding good cause for failure to answer complaint where, in part, respondent’s counsel “encountered several challenges outside work that may have exacerbated the delay in receiving notice of these proceedings.”).

⁴ *See also Heath v. I-Services, Inc.*, 15 OCAHO no. 1413, 3-4 (2022) (crediting Respondent’s pro se status as a factor weighing in favor of discharging the order to show cause); *United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 4 (2022) (crediting Respondent’s limited English capacity as a factor weighing in favor of a finding of good cause).

⁵ Moreover, the Court has discretion “to determine whether good cause exists.” *Treescapes, Inc.*, 15 OCAHO no. 1389, at 2 (citing *United States v. Sanchez*, 13 OCAHO no. 1331, 2

To be considered timely filed, a document must be received by the Court on or before the prescribed deadline. *See* 28 C.F.R. § 68.8(b) (“Pleadings are not deemed filed until received by [OCAHO].”).

III. DISCUSSION

A. Acceptance of Late-Filed Documents

The Court received Respondent’s answer and response to the Order to Show Cause seven days after the deadline set during the prehearing conference. In exercising its discretion favorably, the Court considered the Respondent’s pro se status, limited English proficiency, the short amount of time that elapsed between receipt and the deadline, and the fact that Respondent did place the filings in the mail in advance of the deadline.

While the Court did accept these late-filed documents, the Respondent should consider himself on notice that future untimely filing may be rejected. *See* 28 C.F.R. § 68.8(b).⁶

B. Good Cause Demonstrated for Failure to Timely File an Answer

As a separate analysis, the Court also finds Respondent demonstrated sufficient good cause to accept his late filed Answer. The good cause analysis is highly fact intensive and case specific. While good cause is a matter of discretion, the Court endeavors to apply the standard in an equitable fashion across litigants and cases.

For this specific case, the Court considered the Respondent’s family member’s significant medical issues which shifted his focus away from these proceedings. The medical issues were unexpected in their timing and severity. They also, unfortunately, resulted in hospitalization.

Further, the Court considered Respondent’s pro se status and limited English proficiency, and determined these factors likely caused him some confusion with the procedures associated with these proceedings.

(2019)). Given OCAHO’s strong preference for resolving cases on their merits, *see MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, at 4 (first citing *D’Amico*, 7 OCAHO no. 927, at 61, 63; then citing *United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 48 (1995)), “the Court construes good cause generously.” *Sinha v. Infosys*, 14 OCAHO no. 1373a, 3 (2021) (internal citation omitted).

⁶ “Pleadings are not deemed filed until received by [OCAHO].”

Ultimately, this Respondent did not purposefully or intentionally disregard these proceedings, and he has endeavored to comply with procedural regulations following the prehearing conference. Additionally, the Court considered whether the Complainant would be prejudiced by acceptance of the late filed answer. The Complainant has not advanced any argument that prejudice would exist, and the Court independently concludes the same.

It is these reasons, cumulatively, that cause the Court to find good cause in this case to accept the late filed answer.

IV. ORDER

The Court has found that Respondent demonstrated good cause for his failure to file a timely answer to the complaint.

Therefore, the Court ORDERS that the Order to Show Cause is DISCHARGED.

The Court ACCEPTS the Respondent's late-filed answer.

SO ORDERED.

Dated and entered on August 24, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge