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

December 3, 2019

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UNITED STATES OF AMERICA, Complainant,

v.

FERRANTINO FUEL CORPORATION, Respondent.

8 U.S.C. § 1324a Proceeding OCAHO Case No. 19A00042

ORDER DENYING REQUEST FOR DISMISSAL, DISCHARGING ORDER TO SHOW CAUSE, AND RESETTING RESPONDENT'S PREHEARING STATEMENT DEADLINE

This case arises under the Immigration and Nationality Act as amended, 8 U.S.C. § 1324a. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (Complainant or ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 7, 2019, alleging that Respondent, Ferrantino Fuel Corporation, failed to comply with the employment eligibility verification provisions of § 1324a. Respondent filed its answer on August 21, 2019.

On August 28, 2019, the undersigned issued an Order for Prehearing Statements, directing Complainant to file its prehearing statement no later than September 27, 2019, and Respondent to file its prehearing statement no later than October 28, 2019. Complainant did not file a prehearing statement.

On October 10, 2019, Respondent filed a letter requesting dismissal pursuant to 28 C.F.R. § 68.23(c)(5) because Complainant failed to comply with the Order for Prehearing Statements. On November 1, 2019, the undersigned issued a Notice and Order to Show Cause directing Complainant to show good cause why it failed to file a prehearing statement and to file a prehearing statement that comports with 28 C.F.R. § 68.12. The Order warned that a party shall be deemed to have abandoned a complaint where the party or its representative fails to respond to orders issued by the ALJ. § 68.37(b)(1).

On November 14, 2019, Complainant filed a response to the Order to Show Cause and filed its prehearing statement. Complainant states that, due to office error, Complainant never received a copy of the Order for Prehearing Statements, and it became aware of the Order when it received Respondent's request for dismissal. Complainant states that two days after it received

Respondent's request for dismissal, it filed an Opposition to Respondent's Request for Dismissal, which included a request to reissue an Order for Prehearing Statements. Complainant attached a United Postal Service Shipping Document and Proof of Delivery showing that a package addressed to OCAHO was delivered to 5107 Leesburg, Falls Church, Virginia on October 21, 2019. OCAHO never received the package.¹

While Respondent cites to 68.23(c)(5) in support of dismissal, that regulation relates to discovery orders. In this case, the remedy for failure to file a prehearing statement would be a judgment of abandonment. 68.37(b)(1).

Respondent has provided sufficient proof to demonstrate that it timely filed a response to Respondent's motion to dismiss, including filing a prehearing statement. Respondent's explanation that it did not receive the Order for Prehearing Statements because of office error is not a detailed explanation. However a final decision of abandonment equates to a judgment by default. Such judgments are generally disfavored, and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case. *See United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 5 (2015); *United States v. Jabil Circuit*, 10 OCAHO no. 1146 (2012). The Court will find that Complainant has demonstrated good cause for its failure to file a timely prehearing statement. As the Complainant is intending to pursue the case and did not willfully avoid complying with the Order, and Respondent is not prejudiced by the delay, Respondent's request for dismissal is DENIED.

As such, the Order to Show Cause is discharged. Respondent's prehearing statement deadline is reset to January 3, 2020.

SO ORDERED.

Dated and entered on December 3, 2019.

Jean C. King Chief Administrative Law Judge

¹ The Shipping Document is a preprinted form addressed to the Board of Immigration Appeals (BIA). OCAHO's information is handwritten on the document, but "Board of Immigration Appeals" is typed in bold font. In other OCAHO cases, ICE has sent packages with similarly addressed Shipping Documents and the filings are delivered to the BIA, rather than OCAHO. In the future, Complainant should ensure that its mailing are clearly addressed to OCAHO, instead of the BIA.