

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

March 17, 2020

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324c Proceeding
	)	OCAHO Case No. 19C00055
	)	
JESUS JOSE TORRES,	)	
Respondent.	)	
_____	)	

ORDER VACATING THE ENTRY OF DEFAULT AND  
FOR PREHEARING STATEMENTS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324c. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 11, 2019, alleging Respondent, Jesus Jose Torres, committed a violation of § 1324c when he provided a document lawfully issued to or with respect to a person other than the possessor to satisfy the employment eligibility verification requirements.

On October 29, 2019, ICE served a copy of the complaint and the Notice of Case Assignment for Complaint Alleging Document Fraud on the Respondent in person. The Notice of Case Assignment 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. Thus, Respondent's answer was due no later than November 29, 2019.

On January 6, 2020, the Court issued a Notice of Entry of Default. The Notice required Respondent, within twenty days of the issuance of the order, to file an answer and show good cause for his failure to file a timely answer. The Court sent the Notice of Entry of Default by ordinary mail. Subsequently, the Notice was returned to OCAHO because it was "undeliverable." An amended notice was sent on February 5, 2020, providing Respondent with additional time to respond to the Notice of Entry of Default. The Respondent filed a statement entitled an Answer with an explanation for his failure to file an Answer on March 9, 2020.

## II. ENTRY OF DEFAULT

While OCAHO rules govern this proceeding, “the ‘Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled’ by OCAHO’s rules.” *U.S. v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (quoting 28 C.F.R. § 68.1). Under Federal Rule of Civil Procedure 55(c), “[t]he court may set aside an entry of default for good cause[.]” Default judgments are disfavored because of the policy of determining cases on their merits. *Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979, 982 (3d. Cir. 1988); *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 2 (2004). OCAHO case law states that default judgments “should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement.” *Nickman*, 9 OCAHO no. 1106 at 2 (citations omitted). “The Court has especially broad discretion when . . . a party is seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Id.* The Court has discretion to set aside an entry of default and to determine whether good cause exists. The Court considers: “(1) whether there was culpable or willful conduct; (2) whether setting aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action.” *Id.* at 3 (citing *Kanti v. Patel C/O Blimpie*, 8 OCAHO no. 1007, 166, 168 (1998)).

## III. DISCUSSION

In his statement filed on March 9, 2020, pro se, the Respondent stated that he was in transit in the custody of the U.S. Marshall Service, and is currently in Federal custody serving a 36-month term of imprisonment. Respondent states further that he is indigent and expects to be homeless upon release. He asks the Court to take into consideration the above and not impose civil money penalties.

Nothing in the record demonstrates that Respondent failed to answer the Complaint in a timely manner “because of a willful disregard or disrespect for the legal process.” *Nickman*, 9 OCAHO no. 1106 at 3. Rather, after the Court issued the Notice of Entry of Default, Respondent promptly filed a good cause statement and an answer. Similar to *Nickman*, Respondent has not ignored his responsibility to defend against this action or otherwise acted in bad faith. *Nickman*, 9 OCAHO no. 1106 at 3.

Additionally, Complainant did not move for an entry of default and Complainant has not alleged that it would suffer any harm if the Court vacates the entry of default and allows Respondent’s late filed answer. “Mere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion.” *Id.* As such, there is no showing that setting aside the entry of default would prejudice Complainant.

Finally, the Court must consider whether Respondent has presented any meritorious defenses to the Complaint. When moving to set aside an entry of default, the defaulting party does not need to establish its defenses conclusively. *Id.* “A respondent adequately presents a defense by clearly stating in the answer the precise contested allegations and indicating the existence of disputed issues.” *Id.* at 4. In the answer, Respondent does not address the central allegations of the Complaint, but seeks leniency in the penalties. While it is difficult to ascertain whether the Respondent is challenging the allegations, the Court can consider that the Respondent is pro se. *United States v. Horno MSJ, Ltd.*, 11 OCAHO no. 1247a, 3 (2015). In an abundance of caution, the Court will find that the Respondent filed a sufficient answer.

Accordingly, the Order to Show Cause is discharged.

#### IV. PREHEARING STATEMENTS

Pursuant to 28 C.F.R. § 68.12, the parties are further advised that the government, no later than April 15, 2020, and Respondent, no later than May 15, 2020, should file with this office in quadruplicate and serve on each other, their respective written prehearing statements containing the following sections:

1. Issues: A statement of the perceived issues.
2. Proposed stipulations: Such proposed stipulations and admissions of fact as will eliminate the necessity of taking evidence with respect to allegations as to which there is no genuine or substantial dispute.
3. Preliminary Witness List: Names and addresses of witnesses whose testimony the party intends to present.
4. Summary of testimony: A brief summary of the testimony expected of each witness.
5. Preliminary Exhibit List: A list of the party’s documentary evidence, including affidavits and other exhibits to be offered in evidence, specifying the number of pages in each. Each exhibit is to be identified with the designation to be used at the hearing. Government exhibits should be identified with the letter G and sequential numbers, i.e., G-1, G-2, G-3, etc. while the Respondent’s exhibits should be identified as R-1, R-2, R-3 and so forth. Any exhibit consisting of more than one page shall have each of the pages sequentially numbered. Please do not file the exhibits themselves at this time. Only the exhibit list is required.

6. Discovery: A brief statement outlining what, if any, discovery the party believes needs to be undertaken to prepare for the hearing. The parties are free to begin their discovery at any time.

7. Time Required: Best estimate as to the time required for presentation of the party's own case.

8. Other matters: Any other matter which the party considers relevant.

Given the Respondent's incarceration, a telephonic prehearing conference will not be scheduled. The parties should provide proposed dates for when discovery should close (normally three months from the prehearing conference) and a date for dispositive motions (usually a month after the close of discovery). This Court will then issue an order regarding the case schedule.

## V. INITIAL DISCLOSURES

Simultaneously with the filing of the party's prehearing statement, the filing party is to make initial disclosure of its documentary evidence to the other party without waiting for a formal discovery request to be made. Copies of any exhibits listed in section II. 5 are to be disclosed to the other party, not with this office. If any exhibit listed is not yet in existence but still to be created, disclosure is to be made within two weeks of the creation of the exhibit.

Mandatory initial disclosures also include the names and contact information for persons other than those listed under section II. 3 who have knowledge or discoverable information about the matters at issue, unless the information would be solely for impeachment.

Supplementation of initial disclosures is required in the same manner as would be required pursuant to 28 C.F.R. § 68.18(d).

## VI. RIGHTS

Finally, the Court reminds the Respondent that he has the right to be represented by an attorney of his own choosing at no expense to the government. The Respondent also has the right to present evidence on his behalf.

Lastly, the Respondent has the right to request to see the evidence DHS plans to present against him and to challenge that evidence.

SO ORDERED.

Dated and entered on March 17, 2020.

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Jean King  
Chief Administrative Law Judge