

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

March 22, 2022

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2022A00015
	)	
KOY CHINESE & SUSHI RESTAURANT,	)	
	)	
Respondent.	)	
_____	)	

Appearances: John C. Wigglesworth, Esq., for Complainant  
Kevin Lashus, Esq., for Respondent<sup>1</sup>

ORDER TO SHOW CAUSE

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. The United States Department of Homeland Security, Immigration and Customs Enforcement (DHS) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 10, 2022, alleging that Respondent, Koy Chinese & Sushi Restaurant, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for nine employees and failed to timely prepare the Form I-9 for twenty-nine employees.

On the same day, this office sent Respondent and Respondent's attorney a Notice of Case Assignment for Complaint Alleging Unlawful Employment, a copy of the Complaint, the Notice

---

<sup>1</sup> Although Respondent's counsel did not file a formal notice of appearance (NOA) with the Court, 28 C.F.R. § 68.33(f) provides that "[a] request for a hearing signed by an attorney and filed with the Department of Homeland Security pursuant to section 274A(e)(3)(A) . . . of the INA, and containing the same information as required by this section, shall be considered a notice of appearance[.]" Respondent's counsel does not need to file a formal NOA because he filed the request for hearing with Complainant. Compl. Ex. B.

of Intent to Fine, and Respondent's request for a hearing, via certified U.S. mail. The Notice of Case Assignment directed Respondent to file an answer 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.<sup>2</sup> The U.S. Postal Service website indicates service was completed on Respondent on January 15, 2022.<sup>3</sup> 28 C.F.R. § 68.3(a). Thus, Respondent's answer was due no later than February 14, 2022. *See* 28 C.F.R. § 68.9(a). To date, Respondent has not filed an 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).<sup>4</sup> 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." 28 C.F.R. § 68.9(b). "[F]ailure to respond to an Order may trigger a judgment by default." *United States v. Hotel Valet Inc.*, 6 OCAHO no. 849, 252, 254 (1996). "If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).

Respondent must submit a filing showing good cause explaining its failure to timely file an answer. Respondent must also file an answer pursuant to 28 C.F.R. § 68.9(c). Both filings must be submitted within twenty (20) days of issuance of this order. The date of issuance shall be calculated based on the date the Certificate of Service is executed.

---

<sup>2</sup> Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

<sup>3</sup> Service was completed on Respondent's counsel on January 18, 2022.

<sup>4</sup> 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>.

If Respondent fails to file an answer and show good cause regarding its untimely filing, the Court may enter a default judgment against Respondent. 28 C.F.R. § 68.9(b).

SO ORDERED.

Dated and entered on March 22, 2022.

---

Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge