

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

April 22, 2022

SYED FAIZZAN SAGHIR,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00017
)	
SERVICE EXPERTS,)	
Respondent.)	
_____)	

ORDER DISCHARGING ORDER TO SHOW CAUSE

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Syed Faizzan Saghir, through counsel, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 10, 2022, alleging that Respondent, Service Experts, discriminated against him on the basis of his citizenship status and retaliated against him in violation of § 1324b.

On January 10, 2022, this office sent a Notice of Case Assignment and a copy of the Complaint to the Respondent via certified U.S. mail. The Notice of Case Assignment directed Respondent file its Answer within thirty (30) days of receipt of the Complaint. It informed Respondent that failure to answer could lead to default, and that Department of Justice regulations govern these proceedings.¹ The U.S. Postal Service certified mail receipt indicates completed service on January 15, 2022. Respondent's Answer due no later than February 14, 2022. *See* 28 C.F.R. § 68.9(a). The Court did not receive the Answer timely.

On March 8, 2022, the Court issued a Notice and Order to Show Cause requiring Respondent show good cause as to why it did not timely file its answer and to file an answer by March 18, 2022. On March 18, 2022, Respondent's counsel filed Respondent's Response to OCAHO's Order to Show Cause (R's Resp. OTSC) to which it attached its Answer. Respondent explained it sent its Answer and two notices of appearances to the Court via USPS Certified Mail and

¹ Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

facsimile on February 9, 2022. R’s Resp. OTSC 2–3. The USPS tracking information reflects delivery on February 11, 2022. *Id.* at 2; R’s Resp. OTSC, Exs. 2, 3. Respondent used the fax number listed on the Court’s website and obtained a fax call report indicating the transmission was successful. *Id.* at 3.

II. LEGAL STANDARDS

A. Default Judgments

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). 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 inaction has prejudiced the opposing party.” *D’Amico, Jr., v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997) (citations omitted).

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. *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). In deciding whether to accept a late-filed answer, the Court reviews the respondent’s response to its order and determines whether “the [r]espondent possessed the requisite good cause for failing to file a timely answer[.]” *Id.* at 446.

To determine whether good cause exists in this case, the Court will consider the following non-exhaustive factors: “(1) whether the failure to act was willful; (2) whether setting the [order to show cause] aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003) (citation omitted); *see also Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors).

III. DISCUSSION AND ANALYSIS

Although Respondent mailed and faxed its Answer to the Court on February 11, 2022, 28 C.F.R. § 68.8(b) dictates that submissions “are not deemed filed until received by [OCAHO.]” The

Court did not receive Respondent's Answer by February 14; therefore, Respondent did not timely file its Answer.

A decision to discharge the Order to Show Cause is one of discretion. In this instance, the Court finds the *Effjohn* factors identified above weigh in favor of accepting Respondent's Answer and discharging the Order to Show Cause.

First, the Court considers whether Respondent's failure to act was due to a willful disregard for the legal process or an intentional failure to respond to litigation. As Respondent explained, it sent its Answer via fax and mail. There was no willful disregard for the legal process as Respondent attempted to file its Answer in multiple ways before the deadline.² Unfortunately, the Court did not receive either copy.

Second, the Court evaluates whether Complainant was prejudiced. Although Respondent failed to timely file its Answer, "[m]ere delay alone does not constitute prejudice." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 3 (2004); *see also* Wright & Miller, *supra*, § 2699 (discussing types of prejudice and costs to the non-defaulting party). Here, the delay in answering the complaint is not lengthy. The Court has not provided the parties with deadlines for discovery, thus Complainant's ability to conduct full and meaningful discovery has not been impacted. Further, Complainant has not indicated acceptance of the late filing would cause prejudice. The lack of prejudice weighs in favor of discharging the Order to Show Cause and requiring Complainant prove its case.

Finally, the Court considers whether Respondent presented any meritorious defenses to the Complaint. Although these defenses need not be conclusively established, *Kanti*, 8 OCAHO no. 1007, at 171, a respondent's answer should clearly lay out both the specific contested allegations and issues in dispute. *Nickman*, 9 OCAHO no. 1106, at 4. The Court finds the Respondent has done so here. In its Answer to the Complaint, Respondent provides a general denial and specific denials to the allegations, additional facts, and affirmative defenses, including lack of jurisdiction and lack of standing. Answer 2–9. The Court finds that Respondent has not waived its right to contest the allegations of the Complaint. *See* 28 C.F.R. § 68.9(b). This case shall proceed to a determination on the merits.

IV. CONCLUSION

² The Court did not receive the faxed copy because Respondent used a fax number that is not current. The Court's new fax number is (703) 305-1212. When fax-filing, the parties are directed to use this new number. While it is a proper and available method of filing, fax-filing should be considered a disfavored method of filing.

Based on the foregoing, the Court exercises its discretion and accepts Respondent's late-filed Answer.

The Court finds sufficient good cause exists and DISCHARGES the Order to Show Cause.

As a separate matter, the Court also did not receive Respondent's notices of appearance it referenced in its Response. The Court directs Respondent's counsel file notices of appearance within twenty days issuance of this Order.

The Court will hold an initial telephonic prehearing conference in this matter on May 18, 2022 at 9:00 am PST. 28 C.F.R. § 68.13.

Parties shall attend the prehearing conference by calling telephone number #####, and entering conference room number ##### with security code #####.

SO ORDERED.

Dated and entered on April 22, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge