

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

June 2, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2021A00052
)	
KODIAK OILFIELD SERVICES, LLC)	
Respondent.)	
_____)	

ORDER OF DEFAULT JUDGMENT ON LIABILITY

I. BACKGROUND AND PROCEDURAL HISTORY

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 August 9, 2021, alleging that Respondent, Kodiak Oilfield Services, LLC, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for fifty-five employees.

On August 9, 2021, this office sent Respondent and Respondent's attorney the following via certified U.S. mail: Notice of Case Assignment for Complaint Alleging Unlawful Employment, the Complaint, the Notice of Intent to Fine (NIF), and Respondent's request for a hearing.

The Notice of Case Assignment directed Respondent to file its Answer within thirty (30) days of receipt of the Complaint. The Notice of Case Assignment informed Respondent that failure to answer the Complaint could lead to default, and that Department of Justice regulations govern these proceedings.¹ The U.S. Postal Service website indicates completed service on Respondent's counsel on August 14, 2021.² 28 C.F.R. § 68.3(a). Thus, Respondent's Answer was due no later than September 13, 2021.

¹ Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2018).

² According to the U.S. Postal Service Domestic Return Receipt (Form 3811), Respondent's counsel, James E. Templeman, signed for the delivery and received the correspondence on August 14, 2021.

On October 6, 2021, the Court issued an Order to Show Cause directing Respondent to submit a filing showing good cause and explaining its failure to timely file an Answer. The Court also ordered Respondent to file an Answer pursuant to 28 C.F.R. § 68.9(c). Both filings were due on or before October 26, 2021. Again, the Court provided notice to Respondent that failure to file an Answer and show good cause regarding its untimely filing could result in an entry of default judgment against Respondent. 28 C.F.R. § 68.9(b).

To date, Respondent has provided neither a response to the Order to Show Cause, nor an answer pursuant to 28 C.F.R. § 68.9(c).

II. FINDINGS OF FACT³

1. On August 7, 2019, Complainant served on Respondent the Notice of Intent to Fine. Compl. Ex. A, at 2.
2. It is contained in the Complaint and it is uncontested that “Respondent hired [55 individuals] for employment in the United States.” Compl. 8.
3. It is contained in the Complaint and it is uncontested that “Respondent hired the [55] individuals after November 6, 1986.” Compl. 8.
4. It is contained in the Complaint and it is uncontested that “an authorized agency of the United States” requested the Respondent “present the Employment Eligibility Verification Forms [for these 55 individuals].” Compl. 6.
5. It is contained in the Complaint and it is uncontested that “the Respondent failed to prepare or present the employment eligibility verification forms.” Compl. 6.
6. It is contained in the Complaint and it is uncontested that timeframe during which the Respondent failed to prepare or present these forms is “March 25, 2018 to March 25, 2019.” Compl. 6.

III. LEGAL STANDARDS

³ As will be fully explained in the Order, the Court enters a finding of liability in this case as a matter of default. The practical effect of this finding drives the Court to also make factual findings based on the content of the Complaint alone. These findings may be relied upon by the parties as evidence now established in the record.

A. Propriety of Default Judgment on Liability

An Administrative Law Judge (ALJ) may enter a judgment by default if the Respondent fails to file an answer within the time provided in the Notice of Case Assignment. 28 C.F.R. § 68.9(b). “If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the complaint,⁴ and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.” Notice of Case Assignment ¶ 4. *See id.* Accordingly, when default is entered as a result of the respondent’s failure to file an answer, the Court “accept[s] as true all of the factual allegations of the complaint.” *United States v. Cont’l Forestry Serv. Inc.*, 6 OCAHO no. 836, 140, 142 (1996);⁵ *see, e.g., United States v. Kirk*, 1 OCAHO no. 72, 455, 456-57 (1998); *United States v. Aquino*, 5 OCAHO no. 818, 746, 748 (1995).

While the Court will take the facts asserted by Complainant as uncontested, the Complainant still retains its burden and must allege facts establishing each element of a violation of the law. *See Zajradhara v. Misamis Constr. Ltd.*, 15 OCAHO no. 1396, 2 (2021) (“[W]hen a respondent fails to answer the complaint, the Court accepts the uncontested facts alleged in the complaint as true, and a grant of default judgment may thus be appropriate if the complainant pleaded sufficient facts indicating jurisdiction and a prima facie violation.”) (first citing *Cont’l Forestry Serv., Inc.*, 6 OCAHO no. 836, at 142; and then citing *Monjaras v. Blue Ribbon Cleaners*, 3 OCAHO no. 526, 1285, 1293 (1993)).

B. Failure to Timely Prepare or Present Employment Eligibility Forms

8 U.S.C. § 1324a(a)(1)(B) renders it unlawful for an entity “to hire for employment in the United States an individual without complying with the requirements of subsection (b).” Subsection (b) requires an employer to verify a prospective employee’s eligibility to work in the United States

⁴ *See United States v. Torentino*, 15 OCAHO no. 1397, 4 (2021) (citing 28 C.F.R. § 68.9(b))

⁵ 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>.

by completing a Form I-9, *see* § 1324a(b)(1)(A).⁶ The subsection also requires the employer to retain a Form I-9 for a specified period of time and present it to the Government upon receiving a Notice of Inspection, *see* § 1324a(b)(3).⁷

IV. DISCUSSION

A. Propriety of Default Judgment on Liability

The Court finds that Respondent's failure to file an answer constitutes a waiver of its right to appear and contest the allegations of the complaint. *See* 28 C.F.R. § 68.9(b). *See Torentino*, 15 OCAHO no. 1397, at 4. Therefore, Respondent has forfeited the opportunity to contest the factual allegations contained in the complaint.

B. Failure to Timely Prepare or Present Employment Eligibility Forms

Because Respondent hired fifty-five individuals for employment in the United States after November 6, 1986 and failed to prepare and/or present the Form I-9 for each of the fifty-five employees upon request by the Complainant (from March 25, 2018, to March 25, 2019), Respondent is liable for fifty-five violations of 8 U.S.C. § 1324a(a)(1)(B) for failing to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for fifty-five employees.

V. BIFURCATION OF PENALTY PHASE

With liability established, this case is now ripe for assessment of an appropriate penalty. The Court exercises its discretion and bifurcates the issues of liability and penalty. *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355, 8 (2020) (citing *Hernandez v. Farley Candy Co.*, 5 OCAHO no. 781, 464, 465 (1995). ALJs may assess penalties de novo. *See United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011) (citation omitted).

When considering an appropriate penalty, the Court has discretion to adopt the penalty proposed by Complainant. Indeed, the Court has previously “approved the requested penalty amounts in

⁶ An employer “must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien . . .”

⁷ “After completion of [a Form I-9], the person or entity must retain a . . . version of the form and make it available for inspection by officers of [Immigration and Customs Enforcement], the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor”

cases of default when the amount requested was reasonable.” *Torentino*, 15 OCAHO no. 1397, at 3 (citing *United States v. Yi*, 8 OCAHO no. 1011, 218, 223 (1998)). For example, OCAHO has often approved requested penalty amounts where the government has sought civil monetary penalties at the statutory minimum. *See United States v. Sanjay Jeram Corp.*, 15 OCAHO no. 1412a, 3 (2022) (citing *Torentino*, 15 OCAHO no. 1397, at 5).

Here, there is nothing currently in the record to indicate whether the penalty proposed by the Complainant is “reasonable.” Because the record has not yet been sufficiently developed on penalties, the Court will allow the parties to provide supplemental filings on penalties. *Torentino*, 15 OCAHO no. 1397, at 3 (first citing *United States v. Carlos Cruz*, 3 OCAHO no. 453, 595, 596–597 (1992) (finding that “since the allegations in a complaint are separate and distinct from the prayer for relief, and [OCAHO’s regulations] state that upon the nonfiling of an [a]nswer [the r]espondent loses its right to contest only the [c]omplainant’s allegations, [the r]espondent is not precluded, under [certain] facts, from contesting the amount of relief requested by [the c]omplainant.”); then citing *United States v. Cityproof Corp.*, 15 OCAHO no. 1392, 2–3 (2021) (inviting briefing on penalties after entry of default judgment on liability for a violation of 8 U.S.C. § 1324a)).

In providing its supplemental filing, Complainant is reminded of its burden in establishing aggravating statutory factors, and that it must meet that burden through evidence. *See Sanjay Jeram Corp.*, 15 OCAHO no. 1412a, at 3 (citing *United States v. Continental Sports Corp.*, 5 OCAHO no. 799, 626, 632 (1995)).⁸ Respondent is free to submit matters in consideration of the statutory factors, and any non-statutory factors rooted in equity.

The parties’ filings are due on or before June 24, 2022. Failure to timely provide a submission constitutes a waiver of a parties’ right to be heard on penalties.

⁸ In *Sanjay Jeram Corp.*, the ALJ entered default judgment on liability and provided the parties an opportunity to supplement the record with evidence on penalties; however, the parties declined to do so. 15 OCAHO no. 1412a, at 3. Because the complainant failed to provide evidence on penalties, it did not meet its burden to prove aggravating factors by a preponderance of the evidence. *Id.* Therefore, the ALJ did “not aggravate factors based purely on Complainant’s argument.” *Id.* (citation omitted).

SO ORDERED.

Dated and entered on June 2, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge