

6 OCAHO 836

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

February 14, 1996

UNITED STATES OF AMERICA, )  
Complainant, )  
)  
v. ) 8 U.S.C. §1324a Proceeding  
) Case No. 95A00094  
CONTINENTAL FORESTRY )  
SERVICE, INC., )  
Respondent. )  
\_\_\_\_\_ )

**ORDER GRANTING DEFAULT JUDGMENT**

*Procedural History*

This is an action arising under 8 U.S.C. §1324a of the Immigration Reform and Control Act (IRCA), in which a complaint was filed with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 6, 1995<sup>1</sup>, and was served upon Continental Forestry Service (Continental or Respondent), together with a Notice of Hearing and a copy of the applicable rules of practice and procedure<sup>2</sup>, by certified mail, return receipt requested. The return receipt indicates that service was perfected on June 20, 1995. No Answer was filed to the Complaint within 30 days of service as provided by 28 C.F.R. 68.9(a); indeed, no Answer has been filed to this day.

On November 15, 1995, the United States of America Immigration and Naturalization Service (INS) filed a Motion for Default Judgment, accompanied by a Memorandum in Support thereof and a Declaration of Counsel. The Motion sought the issuance of a

<sup>1</sup>This case was originally assigned to Administrative Law Judge (ALJ) Morse, and it was reassigned to me on October 2, 1995.

<sup>2</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1995).

6 OCAHO 836

Judgment by Default, without a prior Order to Show Cause and without the opportunity for Respondent to be heard on the issue of penalty. No response was made to the Motion.<sup>3</sup> OCAHO Rules of Practice provide that the failure of a respondent to file a timely answer shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may thereafter enter judgment by default. 28 C.F.R. §68.9(b).

Because Respondent was unrepresented and the significance of its failure to respond was not altogether clear, I issued a show cause order on December 6, 1995, to advise Continental of the consequences of a failure to respond, and to provide an opportunity for Continental to cure its default. Additionally, because there had been no factual development beyond the Complaint and I was unable to perform any independent weighing of the statutory criteria to be considered in assessing the amount of penalty for violations of §1324a, I also allowed time for Continental to comment on this issue as well.

The Order specifically instructed Respondent to show cause within 15 days why the Motion for Default Judgment should not be granted, or in the alternative, show good cause for its prior failure to answer, and to file an answer comporting with 28 C.F.R. §68.9, as well as to submit its comments on the issue of civil penalty in writing within 15 days. The only response which has been made to this Order is a letter dated December 14, 1995, from the Continental's bookkeeper indicating that the owner and President was in the south overseeing the planting of trees, and requesting:

... documents in Spanish that state the complaints against him, so he can better understand how to answer them. Second, could you grant him an additional 30 days after his return to Maine on January 15, 1996, or upon receipt of the complaints in Spanish which ever (sic) is later, to reply to the complaints.

As a response to an Order to Show Cause, this letter is wholly inadequate. Whatever view might have been taken had this request been received in July 1995 in response to the Complaint, it in no way addresses the two issues raised by the Order to Show Cause. I therefore find Respondent in default. *See* 28 C.F.R. §68.9(b).

<sup>3</sup> §68.11(b) provides that a party has ten (10) days after service of a written motion to file a response. §68.8(c)(2) provides that where service is had by ordinary mail, five (5) days shall be added to the prescribed period.

6 OCAHO 836

*Applicable Law*

The purpose of a default judgment both historically and in contemporary practice is to protect a diligent party from interminable delay caused by an essentially unresponsive party, see generally 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* §2681, (2nd Edition 1983 & Supp. 1994). That purpose is well served by the default judgment here. Inasmuch as Respondent did not avail itself of the opportunity provided I accept as true all of the factual allegations of the complaint, which describe with specificity those 31 separate paperwork violations of §1324a(a)(1) more fully set forth in my findings.

Complainant states that the \$5,785.00 monetary penalty assessed for the 31 alleged violations was arrived at in conformity with applicable regulations and is reasonable and appropriate. Further, complainant argues that it will be prejudiced if it is unable to collect the full amount it would have received based on the Notice of Intent to Fine, simply because Continental requested a hearing but then did nothing more. As Continental did not avail itself of the opportunity it was given to comment on this issue, I accept these allegations as true.

*Findings, Conclusions, and Order*

I have considered the record in this case, on the basis of which I find and conclude that:

1. Complainant's Motion for Default Judgment is granted.
2. As alleged in the Complaint, Respondent is in violation of 8 U.S.C. §1324a(a)(1) with respect to each employee named in the Complaint, as to whom respondent is found to have:
  - a) (Count I) failed to prepare employment eligibility verification forms (Form I-9) for eight named individuals it hired after November 6, 1986, and/or failed to make those forms available for inspection, at an assessment of \$265.00 for each of two individuals and of \$205.00 for each of six individuals and total civil money penalty of \$1,760.00.
  - b) (Count II) failed to ensure that six named individuals hired after November 6, 1986 properly completed Section 1 of Form I-9, at an assessment of \$175.00 for each of six individuals and a total civil money penalty of \$1,050.00.
  - c) (Count III) failed to properly complete Section 2 of Form I-9 for fifteen named individuals it hired after November 6, 1986, at an assessment of

6 OCAHO 836

\$175.00 for each of fifteen individuals and a total civil money penalty of \$2,625.00.

d) (Count IV) failed to properly complete Section 2 and failed to ensure that the employees properly completed Section 1 of Form I-9 as to two named individuals hired after November 6, 1986, at an assessment of \$175.00 for each of two individuals and a total civil money penalty of \$350.00.

3. Respondent pay a civil money penalty of \$5,785.00 for violations listed in the Complaint.

**SO ORDERED.**

Dated and entered this 14th day of February, 1996.

ELLEN K. THOMAS  
Administrative Law Judge

*Appeal Information*

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§1324a(e)(7) and (8), and 28 C.F.R. §68.53.