

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

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a Proceeding
) CASE NO. 90100149
CHARO'S CORPORATION d.b.a.,)
"CHARO'S RESTAURANT",)
Respondent.)
_____)

ORDER REGARDING REQUEST TO
ACCEPT EAJA DOCUMENTATION

On August 29, 1991, I issued a Final Decision and Order in this case and bifurcated the issue of EAJA fees. On December 10, 1991, counsel for Respondent filed a request that I include in the record ten (10) INS documents that Respondent had obtained through a Freedom of Information Act request. Counsel alleged that these documents had only recently been released to him and were relevant to his EAJA claim. On December 20, 1991, the Service filed its response.

Under 28 C.F.R. 68.49(c)* of the Rules of Practice and Procedure:

Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available prior to the closing of the record. However, the Administrative Law Judge shall make part of the record any motions for attorneys' fees authorized by statutes, and any supporting documentation, any determinations thereon, and any approved correction to the transcript.

Although there is no specified time limitation in this regulation for the submission of an EAJA application or documentation in support of,

* Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings as amended in the Interim Rule published in 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. Section 68).

the relevant EAJA statute in this case, 5 U.S.C. 504, requires that the EAJA application be filed within thirty (30) days of a final decision. Respondent has complied with this requirement. 5 U.S.C. 504 does not, however, make any prohibition against documentary supplementation of the application at a later date. Although neither the statute nor the regulations include a time barrier for submission, it would be unreasonable to believe that either Congress or the agency anticipated allowing supplementary submissions for an unlimited time. Therefore, I find that the timeliness of supplementary submissions of documentation of EAJA fee applications should be reviewed on an individual case basis on a reasonableness basis.

In this case, my final decision and Order was issued on August 29, 1991. It became final on September 28, 1991 pursuant to 28 C.F.R. 68.53. The EAJA application, however, was filed on May 15, 1991. Counsel for Respondent states in his affidavit of December 9, 1991 that the documents relevant to his request were released by the INS on October 24, 1991 pursuant to a FOIA request made on September 10, 1991.

I must admit that looking at the time span from the filing of the EAJA application until the filing of the request to supplement the record makes me question the timeliness and urgency of this request. However, taking into account that there was a substitution of counsel late in this case, the volume of material in the record, and in the interest of justice, I will grant Respondent's request and accept this addition to the record.

As counsel has included explanations of each document, and what could arguably be considered further argument with the request, I am also accepting the Service's response to this request, filed on December 20, 1991. With these submissions, the record is now closed and no further documentation will be accepted.

IT IS SO ORDERED this 17th day of January, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge