

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. § 1324c Proceeding
) OCAHO Case No. 95C00109
CARLOS ANTONIO AQUINO,)
Respondent.)
) Judge Robert L. Barton, Jr.
)
_____)

FINAL DECISION AND ORDER GRANTING COMPLAINANT'S
MOTION AND
ENTERING DEFAULT JUDGMENT
(November 20, 1995)

I. Procedural History

On November 15, 1994 Respondent submitted a request for hearing in this matter. Subsequently the United States of America, through the Immigration and Naturalization Service, (hereinafter Complainant), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint alleges that Respondent knowingly used a forged social security card and seeks a civil penalty of \$250. The Complaint was served on Respondent by certified mail with the return receipt card indicating that Respondent received the complaint on July 18, 1995.

When no answer to the complaint was received, Complainant served a motion for default judgment on September 6, 1995, citing Respondent's failure to file a written answer to the complaint within the time frame prescribed by 28 C.F.R. § 68.9(a).

Because no answer to the complaint or to the default motion had been received, on September 18, 1995 I issued an Order to Show Cause Why Complainant's Motion for Default Judgment Should Not Be Granted (hereinafter Show Cause Order). In that Order I specifically reminded Respondent that the Rules of Practice require a written answer to the

complaint, and that if he failed to answer the complaint a default judgment may be entered against him.

In response to the Show Cause Order, Respondent sent a hand printed letter with an American Express Money Order in the amount of \$200 payable to the United States Department of Justice. In the letter Respondent states, among other things, that he does not want to go to a hearing and intends to pay the penalty.

Because there was no indication that this letter was served on Complainant, I issued an Order attaching a copy of the Respondent's letter. Since the letter reflected a desire to settle the case, the Order encouraged the parties to discuss settlement, stated that either party could request a conference, and ordered Complainant to file a status report with the Court on or before November 15, 1995 concerning the status of any settlement negotiations. I further noted that if the parties were unable to settle the case by November 15, I would then rule on Complainant's Motion for Default. Since any settlement offer had to be directed to Complainant, Respondent's money order was returned to him.

In response to the Order, on November 13, 1995 Complainant's counsel filed a status report attaching a letter dated November 2, 1995 which it sent to Respondent. According to the status report, no telephonic or written reply to the letter has been received.

Consequently, the Motion for Default is now ripe for adjudication.

II. Discussion

As was explained in the Show Cause Order, the Rules of Practice provide that a respondent shall serve a written answer to the complaint and that failure to do so shall constitute a default. 28 C.F.R. § 68.9. The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b).

Here Respondent did respond to the Show Cause Order by submitting a letter and a money order which would have constituted partial payment of the requested penalty. However, he did not answer the complaint, and he did not comply with my order to show cause for his failure to file an answer. Even in cases where they appeared without counsel, as here, parties that failed to obey Judges' orders were found

to have abandoned their requests for hearings. See e.g. United States v. Erlina Fashions, Inc., 4 OCAHO 656, at pp. 4-5 (1994).

As provided by the Rules of Practice, Respondent's failure to file an answer shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint. Thus, the uncontravened allegations must be considered as true. Where no answer is filed, the Rules specifically empower the Judge to enter a default judgment. Here Respondent has not shown any good cause for his failure to file an answer. Given his unexcused failure to file an answer, Complainant's motion should be and is granted.

Further, I would note that Respondent apparently has explicitly abandoned his request for hearing. In his letter to the Court following the Show Cause Order, Respondent states, among other things, that "I don't want to go to the hearing court", that "I don't want lose (sic) time and my money goin to the court", and "I have more important thing (sic) to do". It is apparent from his letter and his lack of action that Respondent does not wish to and does not intend to contest this action any further. He has abandoned his request for hearing.

III. Findings, Conclusions, and Order

1. Complainant's Motion for Default Judgement is granted;
2. I find that each and every paragraph of the Complaint, including the allegations concerning knowing use of forged documents and the prayer for relief, have been admitted by Respondent due to his failure to answer the Complaint;
3. Respondent shall cease and desist from violating 8 U.S.C. § 1324c(a)(1);
4. Respondent shall pay a civil money penalty of \$250;
5. The hearing in this case is canceled.

ROBERT L. BARTON, JR.
Administrative Law Judge