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

March 15, 1994

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324a Proceeding
	)	OCAHO Case No. 93A00209
GREEN PLAZA, INC., NACHHATTAR SINGH, CO-OWNER, Respondent.	)	

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

On May 10, 1993, complainant, acting by and through the Immigration and Naturalization Service (INS), initiated this proceeding by personally serving Notice of Intent to Fine (NIF) PIT-93-00005, upon Nachhattar Singh (respondent).

In Count I of the NIF, complainant alleged that respondent violated the provisions of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a(a)(1)(B), by having failed to ensure that the individual named therein, hired by respondent after November 6, 1986 for employment in the United States, properly completed Section 1 of the pertinent Employment Eligibility Verification Form (Form I-9). Complainant assessed a $190 civil money penalty for that alleged paperwork violation.

Count II alleged that respondent violated the provisions of IRCA, 8 U.S.C. § 1324a(a)(1)(B), by having failed to properly complete Section 2 of the Forms I-9 relating to the seven (7) individuals named therein, all of who had been hired by respondent for employment in the United States after November 6, 1986. For each of those seven (7) alleged paperwork violations, complainant levied a civil money penalty of $190, or a total civil money penalty of $1,330 for Count II.

In Count III, complainant charged respondent with violating IRCA, 8 U.S.C. § 1324a(a)(1)(B), by having allegedly failed to ensure that the two (2) employees listed therein, hired by respondent for employment in the United States after November 6, 1986, properly completed Section 1 of the pertinent Forms I-9, and by having allegedly failed to properly complete Section 2 of those forms. Complainant assessed a total civil penalty of $380 for that count, representing $190 for each of those two (2) alleged paperwork violations.

In Count IV, complainant asserted that respondent hired the 17 individuals named therein for employment in the United States after November 6, 1986, and that respondent failed to make Forms I-9 for those individuals available for inspection when requested to do so by complainant, in violation of IRCA, 8 U.S.C. § 1324a(a)(1)(B). Complainant assessed a civil money penalty of $190 for each of those alleged violations, for a total civil money penalty of $3,230 for Count IV.

Respondent was advised in the NIF of his right to request a hearing before an administrative law judge in this Office, and by letter dated June 1, 1993, such a request was timely filed.

On November 22, 1993, complainant filed the Complaint at issue with this Office, realleging therein all 27 charges previously set forth in the NIF, and requesting that respondent be ordered to pay civil money penalties totaling $5,130, in the amounts previously proposed.

On December 10, 1993, this Office received the Domestic Return Receipt that had been attached to respondent's copy of the Complaint and Notice of Hearing, indicating that those documents had been received and signed for by respondent's counsel on December 6, 1993. Accordingly, respondent had 30 days, or until January 5, 1994, in which to file his answer. See 28 C.F.R. § 68.9 (a).

On December 14, 1993, respondent's counsel filed an ex parte letter with this Office, advising the undersigned that he had not heard from respondent in several months and for that reason he felt that he should withdraw as respondent's counsel.

On February 4, 1994, complainant filed a Motion for Default Judgment.

Under the procedural regulations, respondent had 15 days from the date of mailing of complainant's motion, or until February 18, 1994, to

have filed a response thereto. 28 C.F.R. § 68.8(c)(2); 28 C.F.R. § 68.11(b). Because respondent had failed to do so, the undersigned issued an Order to Show Cause Why Motion for Default Judgment Should Not Issue on February 22, 1994.

Respondent was ordered therein to show cause, within 15 days of his acknowledged receipt of that Order, why complainant's Motion for Default Judgment should not be granted, or in the alternative, to have filed an Answer comporting with the requirements set forth in 28 C.F.R. section 68.9(c). Respondent was informed that if he failed to do so, complainant's Motion for Default Judgment would be granted.

On March 3, 1994, respondent's counsel filed a Response to Order to Show Cause Why Motion for Default Should Not Issue, again advising that he has had no contact with respondent since August 1993, or prior to the date upon which respondent was served with the complaint at issue.

Further in that March 3, 1994 response, respondent's counsel urges that since he received the Complaint on complainant's behalf on December 6, 1993, or well subsequent to his last contact with respondent, it would be a violation of respondent's due process rights to enter a default judgment against him.

The pertinent procedural regulation provides:

> Failure of the respondent to file an answer within the time provided 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 enter a judgment by default.

28 C.F.R. § 68.9(b).

The initial determination which must be made in determining whether respondent is in default is whether respondent has been afforded proper notice of the complaint, that is, whether the complaint was properly served on respondent's counsel. United States v. Medina, 3 OCAHO 485, at 4-5 (2/5/93). Should it be found that the complaint was properly served, respondent is in default for having failed to file a proper answer. Id., at 5.

As noted previously, an agent of complainant personally served the NIF on which this action is based on respondent, Nachhattar Singh, on May 10, 1993, and on June 7, 1993, respondent's counsel timely filed a request for hearing in this matter.

Under the procedural regulations, the filing of a request for a hearing signed by an attorney constitutes a notice of appearance on behalf of the respondent for whom the request was made. 28 C.F.R. § 68.33(b)(5).

The applicable rules further provide that service of a complaint can be made by either OCAHO, or the administrative law judge to whom it is assigned, in one of three ways:

1. By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or

2. By leaving a copy at the principal office, place of business, or residence of a party; or

3. By mailing to the last known address of such individual, partner, officer, or attorney. (emphasis added)

28 C.F.R. § 68.3(a).

On December 6, 1993, the Complaint and Notice of Hearing was served on respondent's attorney of record via certified mail.

The pertinent procedural regulation, 28 C.F.R. section 68.3(b), provides that service of the complaint and notice of hearing is complete upon receipt by addressee. The Domestic Return Receipt Card attached to respondent's copy of the Complaint and Notice of Hearing indicates that it was received by respondent's counsel on December 6, 1993.

Respondent's counsel argues in his Response to the Order to Show Cause that he did not represent respondent at the time he received the Complaint and Notice of Hearing, and that therefore service of those documents upon him was improper.

There is no indication that respondent's counsel qualified his entry of appearance on behalf of respondent, or that respondent's counsel had made any attempt to withdraw his representation prior to his receipt of the Complaint and Notice of Hearing.

As noted, however, on December 14, 1993, this Office received an ex parte letter from respondent's counsel in which he stated, in full: "Since I have not heard from the defendant on this matter for several months,

I must withdraw from this proceeding." (Letter of 12/7/93 from Mr. Pollard to Judge McGuire, at 1).

The procedural regulation governing withdrawal or substitution of an attorney, 28 C.F.R. section 68.33(c), provides: "Withdrawal or substitution of an attorney may be permitted by the Administrative Law Judge upon written motion." A review of respondent's counsel's ex parte letter to the undersigned indicates that it does not comport with the standards for written motions in these proceedings. 28 C.F.R. §§ 68.6(a); 68.7(a); 68.11(a).

On January 7, 1994, the undersigned held a telephonic prehearing conference with counsel for the parties, in the course of which respondent's counsel revealed that respondent is no longer in business, that respondent's place of business has burned, and that neither complainant's nor respondent's counsel has been able to contact respondent.

Because respondent's counsel is the only individual empowered to accept documents on respondent's behalf and since his law office is the only address where such documents can be effectively delivered, and because respondent's counsel has failed to file a formal motion to withdraw, it is inappropriate at this time to permit respondent's counsel to do so. See United States v. K&M Fashions, Inc., 3 OCAHO 411, at 7 (3/16/92); United States v. Nu Look Cleaners of Pembroke Pines, Inc., 1 OCAHO 284, at 3 (1/4/91).

Accordingly, I find that respondent's counsel undertook representation of respondent on June 7, 1993, the date he filed respondent's request for hearing with complainant. I further find that respondent's counsel represented respondent on December 6, 1993, the date upon which he accepted the Complaint and Notice of Hearing on respondent's behalf, and that he continues to represent respondent for the purpose of these proceedings.

The regulations governing this matter expressly provide that service of the complaint and notice of hearing is complete by mailing to a respondent's attorney of record, 28 C.F.R. § 68.3(c) and (d). Therefore, service of the Complaint upon respondent's counsel constitutes notice to respondent. See Medina, 3 OCAHO 485, at 7.

Because respondent failed to file an answer in a timely manner after service of the Complaint, and has not shown good cause for having failed to do so, complainant's motion for Default Judgment is granted,

and respondent is found to have violated IRCA, 8 U.S.C. § 1324a(a)(1)(B), in the manners alleged in Counts I, II, III, and IV of the Complaint.

Respondent is hereby ordered to cease and desist from further violations of IRCA, 8 U.S.C. § 1324a(a)(1)(B) and is further ordered to pay civil money penalties totaling $5,130, representing the sum of $190 in Count I, $1,330 in Count II, $380 in Count III, and $3,230 in Count IV.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This Decision and Order shall become the final order of the Attorney General unless, within 30 days from the date of this Decision and 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.