

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. 94A00056
HOSUNG CLEANING CORP.)
D/B/A SUN CLEANERS,)
Respondents.)
_____)

FINAL DECISION AND ORDER
(August 24, 1994)

MARVIN H. MORSE, Administrative Law Judge

Appearances: William F. Jankun, Esq., for Complainant
Francois Au, Esq., for Respondent

I. Background

This is a case pursuant to section 101 of the Immigration Reform and Control Act of 1986, as amended, 8 U.S.C. §1324a. Complainant alleges that Respondent failed to make available for inspection employment eligibility verification forms (Forms I-9) for ten individuals, and failed to properly complete or to ensure that employees properly completed Forms I-9 with respect to 21 individuals. The procedural history is set out in substantial detail in the Order Granting Complainant's Motion to Dismiss Respondent's Affirmative Defenses and Order to Show Cause, dated July 28, 1994.

After addressing Complainant's motion to dismiss, the Order provided as follows:

This order recognizes that three consecutive motions by INS have gone unanswered. Hosung's lack of responsiveness, while not dispositive, casts doubt on its intentions to pursue its request for hearing. In the circumstances,

Respondent is directed to file a pleading to show cause if any it has,

(a) Why Complainant's motion addressed to Counts II and III of the complaint should not be granted, and

(b) Why judgment should not be entered against it for the liability asserted, with respect to individuals named in all three counts of the complaint, and

(c) Why the assessment imposed by Complainant with respect to each individual named in the complaint should not be adjudged against it.

Respondent is cautioned that failure to file a timely response to this order may result in entry of a judgment against it by default. 28 C.F.R. § 68.37(b)(1). A response will be timely if filed not later than Thursday, August 18, 1994. INS may respond to Hosung's filing, if any, in the form of an appropriate pleading to be filed not later than Tuesday, September 6, 1994.

II. *Discussion and Conclusion*

Consistent with its failure to respond to three consecutive motions by INS, no response having been received from Respondent, Respondent has now defaulted on the Order to Show Cause. In light of the explicit warning in that Order that failure to file a timely response might result in entry of judgment, this Final Decision and Order so adjudges. The Rules of Practice and Procedure of the Office of the Chief Administrative Hearing Officer (OCAHO) contemplate that:

A party shall be deemed to have abandoned a complaint or a request for hearing if

(1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge.

28 C.F.R. §68.37(b)(1).

In addition, OCAHO caselaw demonstrates that failure to respond to an order to show cause triggers a judgment of default, equivalent to dismissal of the employer's request for hearing, against an employer who fails to respond to the invitation of such an order:

Having made no filing in response, Respondent necessarily positioned itself for entry against it of a judgment by default. This is that judgment.

U.S. v. Mark's Electrical Contracting Corp., OCAHO Case No. 94A00058 (6/24/94). In the present case, Respondent is represented by counsel. In a number of other OCAHO cases, even though they appeared pro se, without counsel, parties that failed to obey orders of the judge were found to have abandoned their requests for hearing,

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U.S. v. Erlina Fashions, Inc., 4 OCAHO 656 (6/28/94) or to have abandoned their complaints, Holguin v. Dona Ana Fashions, 4 OCAHO 605 (2/1/94); Brooks v. Watts Window World, 3 OCAHO 570 (11/1/93); Castillo v. Hotel Casa Marina (Marriott), 3 OCAHO 508 (4/12/93); Speakman v. The Rehabilitation Hospital of South Texas, 3 OCAHO 476 (12/1/93); Palancz v. Cedars Medical Center, 3 OCAHO 443 (8/3/92).

Absent any reason on the record to restrain from defaulting this attorney-represented non-responsive Respondent, this Final Decision and Order constitutes a judgment by default against it.

III. *Ultimate Findings, Conclusions and Order*

I have considered the pleadings, motions, and accompanying materials submitted by the parties. All motions and other requests not previously disposed of are denied. Accordingly, as previously found more fully explained above and in the Order dated July 28, 1994, I determine and conclude:

1. that, as alleged in the complaint, Respondent is in violation of 8 U.S.C. §1324a(a)(1)(B) with respect to each employee named in the complaint, as to whom Respondent is found to have:

(Count I) failed to prepare and/or to make available for inspection the INS employment eligibility verification form (Form I-9), for ten individuals; (Count II) failed to ensure that seven individuals properly completed section 1 and that as to those seven, Respondent failed to properly complete section 2, of the Form I-9; (Count III) failed to properly complete section 2 of the Form I-9 for 14 individuals;¹

2. that, as assessed in the complaint, Respondent shall pay a civil money penalty in the amount of \$610 per individual, for a total of \$18,910.00;

3. that the hearing in this case is canceled.

¹ The Order dated July 28, 1994 excluded from the grant of Complainant's motion for partial judgment on the pleadings the allegation of liability in Count I as to one of two named individuals, i.e., Jesus M. Hiraldo. That exclusion was based on an understanding from the pleadings that Respondent might not have had an obligation to retain the Form I-9 for Hiraldo at the time of the inspection which gave rise to the allegation of liability in this case. In light, however, of the Respondent's default posture, it is no longer necessary to speculate whether Respondent was obliged to have presented that Form I-9.

This Final Decision and Order is the final action of the judge in accordance with 28 C.F.R. §68.53(a) (1993). As provided at 8 U.S.C. §1324c(d)(4), this action shall become the final decision and order of the Attorney General unless the Chief Administrative Hearing Officer modifies or vacates this Decision and Order within thirty (30) days from this date.

SO ORDERED.

Dated and entered this 24th day of August, 1994.

MARVIN H. MORSE
Administrative Law Judge