

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

United States of America, Complainant, v. Coastal Ventures, Ltd. dba Wendy's/Daly, Ltd., Respondent; 8 U.S.C. Section 1324a Proceeding; Case No. 88100026.

Appearances: RAYMOND M. MONBOISE, Esq. and RONALD E. LEFEVRE, Esq., for the Complainant.

SUMMARY DECISION ON DEFAULT AND ORDER

EARLDEAN V.S. ROBBINS, Administrative Law Judge
Statement of the Case

On March 30, 1988, a Complaint Regarding Unlawful Employment was filed against Coastal Ventures, Ltd. dba Wendy's/Daly, Ltd., herein called the Respondent, by the Immigration and Naturalization Service, herein called the Complainant, alleging that Respondent has violated the provisions of 8 U.S.C. 1324a. On April 6, 1988, the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer served, by mail, a Notice of Hearing on Complaint Regarding Unlawful Employment which inter alia notified Respondent that, if Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and an Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

On May 25, 1988, Counsel for Complainant filed a Motion For Default Judgment based on Respondent's failure to file an Answer as required by Section 68.6 of the Interim Final Rules Of Practice And Procedure For The Office Of The Chief Administrative Hearing Officer,¹ herein called the Rules. Subsequently, on June 2, 1988, I issued an Order To Show Cause why Complainant's Motion

¹52 Fed. Reg. PP. 44972-85, 44975, November 24, 1987 (to be codified at 28 C.F.R. Part 68).

For Default should not be granted. Respondent did not file a response to the Order To Show Cause. Accordingly, the allegations of the Complaint are uncontroverted.

Upon the entire record, I make the following:

Ruling on the Motion For Default Judgment

Section 68.6 of the Rules provides, inter alia, Section 68.6 Responsive pleadings-answer.

(a) Time for answer. Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) Default. 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.

The Notice of Hearing served on Respondent on June 2, 1988, specifically states:

2. The Respondent has the right to file an Answer to the Complaint and to appear in person, or otherwise, and give testimony at the place and time fixed for the hearing. The Respondent's Answer must be filed within thirty (30) days after receipt of the Complaint. The Answer and one copy must be filed with the Honorable Earldean V.S. Robbins, Administrative Law Judge, Office of the Chief Administrative Hearing Officer, and must also be served on the Complainant.

3. If the Respondent fails to file an Answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and an Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

As set forth above, Respondent has not filed an Answer to the Complaint nor did it respond to the Order To Show Cause. No good cause to the contrary having been shown, in accordance with Section 68.6(b) of the Rules, Respondent is deemed to have waived its right to appear and contest the allegations of the Complaint. Absent an Answer the allegations of the Complaint are hereby deemed to be admitted as true, and I find there is no genuine issues as to any material fact. Therefore, Complainant's Motion For Default Judgment is granted.

On the basis of the entire record, I make the following:

Findings of Fact

The Immigration Reform and Control Act of 1986 (IRCA) establishes several major changes in national policy regarding illegal immigrants. Section 101 of IRCA amends the Immigration and Nationality Act of 1952 herein called the Act, by adding a new Section 274A (8 U.S.C. 1324a) which seeks to control illegal immigration into the United States by the imposition of civil liabilities, herein referred to as employer sanctions, upon employers who knowingly

hire, recruit, refer for a fee or continue to employ unauthorized aliens in the United States. Essential to the enforcement of this provision of the law is the requirement that employers comply with certain verification procedures as to the eligibility of new hires for employment in the United States. Sections 274A(a)(1)(B) and 274A(b) provide that an employer must attest on a designated form that it has verified that an individual is not an unauthorized alien by examining certain specified documents to establish the identity of the individual and to evidence employment authorization. Further, the individual is required to attest, on a designated form, as to employment authorization. The employer is required to retain, and make available for inspection, these forms for a specified period of time. Form I-9 is the form designated for such attestations. Section 274A(e)(5) provides for the imposition of a civil penalty of not less than \$100 and not more than \$1,000 for each individual with respect to whom a violation of 274A(a)(1)(B) occurred.

As set forth in the Complaint, Respondent has engaged in the following conduct:

(1) Hired Casimiro Aragona on November 22, 1987.

(a) As of December 21, 1987, failed to sign and date the certification contained in Section 2 of the Form I-9 for Casimiro Aragona.

(2) Hired Linda Campbell on November 19, 1987.

(a) As of December 21, 1987, failed to indicate that any document from List B, Section 2 of the Form I-9 for Linda Campbell was examined.

(3) Hired Pamela Cottonreader on November 19, 1987.

(a) As of December 21, 1987, failed to require Pamela Cottonreader to complete Section 1 of the Form I-9.

(b) As of December 21, 1987, failed to complete Section 2 of the Form I-9 for Pamela Cottonreader.

(4) Hired Jean Parenti on November 19, 1987.

(a) As of December 21, 1987, failed to indicate in Section 2 of the Form I-9 for Jean Parenti that any document was examined.

Conclusions of Law

1. Respondent has violated Section 274A(a)(1)(B) of the Act (8 U.S.C. 1324a(a)(1)(B)):

(a) With regard to Casimiro Aragona, in that the certification in Section 2 of the Employment Eligibility Verification Form (Form I-9) was not signed and dated.

(b) With regard to Linda Campbell, in that Section 2 of the Employment Eligibility Verification Form (Form I-9) failed to indicate that any document from List B, Section 2 of Form I-9 was examined.

(c) With regard to Pamela Cottonreader, in that Section 1 and Section 2 of the Employment Eligibility Verification Form (Form I-9) was not completed.

(d) With regard to Jean Parenti, in that Section 2 of the Employment Eligibility Verification Form (Form I-9) failed to indicate that any documents were examined.

Accordingly, IT IS HEREBY ORDERED:

(1) That Respondent pay a civil money penalty in the amount of \$100 for the violation with regard to Casimiro Aragona; \$300 for each of the violations with regard to Linda Campbell and Jean Parenti; and \$500 for the violation with regard to Pamela Cottonreader; for a total of \$1,200.

(2) That the hearing previously scheduled is canceled.

This Summary Decision of Default and Order is the final action of the Administrative Law Judge in accordance with Section 68.51(b) of the Rules as provided in Section 68.52 of the Rules, and shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Decision and Order, the Chief Administrative Hearing Officer shall have modified or vacated it.

Dated: June 28, 1988.

EARLDEAN V.S. ROBBINS
Administrative Law Judge