

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

United States of America, Complainant, v. United Pottery Manufacturing and Accessories, Inc., Respondent; 8 U.S.C. Section 1324a Proceeding; Case No. 89100047.

Appearances: JOHN HOLYA, Esq. of Phoenix, Arizona for the Complainant.

JUDGMENT BY DEFAULT

EARLDEAN V.S. ROBBINS, Administrative Law Judge

Statement of the Case

On January 26, 1989, a Complaint Regarding Unlawful Employment was filed against United Pottery Manufacturing and Accessories, Inc., herein called the Respondent, by the United States of America, herein called the Complainant, alleging that Respondent has violated the provisions of 8 U.S.C. 1324a. On February 1, 1989, 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 failed 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 March 28, 1989, 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 herein called the Rules. Respondent has filed no response to said Motion. 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 February 1, 1989 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 Complainant's Motion. 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 issue 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 \$1000 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) Failed to properly complete section 2, ('`Employer Review and Verification'') of the Employment Eligibility Verification Forms (Form I-9) for the following individuals hired in August, 1988, by failing to sign and attest to the employees' identity and employment eligibility:

Lauara Lynn Acuna	Eladio Gomez
Howard Lee Ahrenberg	Raul Hernandez
Ian Brown	Elvira Marquez-Madrid
Patricia Ann Brudon	Leticia Madrid
Alejandro Carrera	Maria Ortiz
Lena S. Clark	Jesus Quintin
Alia Patricea Erives	Frank Mendoza-Sagarnaga
Sofia Erives	Raymundo Hernandez-Vital
Elias G. Gomez	Darrell R. Wirths

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 each of the individuals named above by failing to properly complete section 2 of the Employment Eligibility Verification Forms (Form I-9).

Accordingly, IT IS HEREBY ORDERED:

(1) That Respondent pay a civil money penalty in the amount of \$200 for each of the violations with regard to each of the individuals named above for a total of \$3,600.

(2) That the hearing previously scheduled is cancelled.

This Judgment by Default 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: April 21, 1989.

EARLDEAN V.S. ROBBINS
Administrative Law Judge