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

United States of America, Complainant, v. Yakoff Vshivkoff, d/b/a, Reforestation Connections Co., Respondent; 8 USC 1324a Proceeding; Case No. 89100265.

ORDER GRANTING COMPLAINANT'S MOTION FOR JUDGMENT BY DEFAULT

1. Introductory Statement.

The Immigration Reform and Control Act of 1986 [IRCA] established several major changes in national policy regarding illegal immigrants. Section 101 of IRCA amended the Immigration and Nationality Act of 1952 by adding a new Section 274A (8 U.S.C. Section 1324a) which seeks to control illegal immigration into the United States by the imposition of civil liabilities, commonly 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.

Section 274A authorizes the imposition of orders to cease and desist, along with civil money penalties for violation of the proscription against hiring of unauthorized aliens, and authorizes civil money penalties for paperwork violations.

Sections 274A(a)(1)(B) and 274A(b)(1) and (2) of the Act provide that an employer must attest on a designated form (the I-9 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 employer is required to retain, and make available for inspection, these forms for a specified period of time.

2. Procedural History.

Consonant with the statute and regulations, a Complaint was issued on June 9, 1989, by the United States of America, Complainant, alleging that Respondent, Yakoff Vshivkoff, d/b/a Northwest Reforestation Connections Company, was in violation of Section 274A(a)(1)(A), 274A(a)(1)(B), 274A(a)(2), and/or 274A(a)(4) of the Act (8 U.S.C. Sections 1324a(a)(1)(A), 1324a(a)(1)(B), 1324a(a)(2), and/or 1324a(a)(4)). The Complaint incorporated, and attached as Exhibit A, the Notice of Intent to Fine served by the INS on Respondent on April 10, 1989. Attached as Exhibit B was the Respondent's request for a hearing before an Administrative Law Judge written on May 8, 1989, by Jeremy Randolph, Attorney for Respondent.

The Office of the Chief Administrative Hearing Officer assigned this matter to me as the Administrative Law Judge on June 16, 1989, and, by Notice of Hearing on Complaint Regarding Unlawful Employment, advised Respondent, through his Attorney, of 1) the filing of the Complaint, 2) the right to answer within thirty (30) days after receipt of the Complaint, and 3) the place of the hearing as Olympia, Washington, on October 3, 1989.

The record shows that the Notice was mailed to Jeremy Randolph, Esquire, and that an agent of Respondent's Attorney signed a return receipt for the Notice of Hearing which was returned to the Office of the Chief Administrative Hearing Officer on June 23, 1989.

By Motion filed July 26, 1989, the Immigration and Naturalization Service, by and through its Attorney John Paulson, asked for a Default Judgment. The Motion rested on the failure of Respondent to file a timely Answer to the Complaint.

On August 1, 1989, not having received an Answer to the Complaint, or any responsive pleading to the INS Motion, I issued an Order to Show Cause Why Judgment by Default Should Not Issue. That Order provided Respondent an opportunity to ``show cause why default should not be entered against it, any such showing to be made by motion which also contains a request for leave to file an answer.'' The Order specifically stated that Respondent had until not later than Wednesday, August 16, 1989, to respond to the Order and to provide an Answer to the Complaint.

No response to the Order to Show Cause was received. Nonetheless, I still did not grant the requested Default Judgment. I was particularly concerned because a Respondent represented by counsel had not responded to an Order to Show Cause, and the amount of the civil money penalty assessed was relatively large. Additionally, I was concerned that Respondent may not have been notified of my Order.

In view of the above, and out of caution, on August 31, 1989, I reissued an Order to Show Cause Why Default Judgment Should Not Issue and an Order to Show Cause Why Penalties Should or Should Not Be Assessed as Requested. The Order of August 1, 1989, specifically stated that Respondent must request leave to file a late Answer and explain its reasons for failure to timely answer the Complaint (transmitted with the Notice of Hearing) and the Motion for Default Judgment.

On September 13, 1989, Respondent, by and through his Attorney, Jeremy Randolph, submitted an Answer to the Complaint. Respondent's Answer did not request leave to file a late answer, nor did he explain his failure to timely answer the Complaint or to respond to the August 26, 1989, Motion for Default Judgment filed by the Complainant. Neither did Respondent's Answer include any information concerning the appropriateness of the size of the assessed penalties.

On September 14, 1989, Complainant, by and through its Attorney, John Paulson, Filed a Memorandum in Support of Penalty Amount.

I am hereby granting Complainant's Motion for Default Judgment for the following reasons:

3. Findings of Fact and Conclusions of Law.

Respondent has failed to request leave to file a late Answer. Additionally, he has failed to explain his reasons for not timely answering the Complaint and failed to explain his lack of response to the Motion for Default Judgment and/or the first Order to Show Cause.

The Answer submitted by Respondent on September 13, 1989, was originally due in this office of July 24, 1989. I have before me no basis on which to find the September 13, 1989, Answer to be timely.

The failure of Respondent to timely Answer the Complaint constitutes a basis for entry of default judgment as provided by 28 C.F.R. Section 68.6(b). Therefore, I find that the Complaint remains unanswered and conclude that the Respondent is in default.

Accordingly, because the Respondent failed to timely Answer the Complaint, thereby leaving the allegations, of the Complaint uncontroverted, it is found and concluded, that Respondent, Yakoff Vshivkoff, d/b/a Reforestation Connections Co., committed the acts alleged in the Notice of Intent to Fine and in the Complaint, and by so doing, the Respondent violated Section 274A(a)(1)(A) and 274A(a)(1)(B) of the Immigration and Nationality Act.

Since I have found violations of Section 274A(a)(1)(A) and 274A(a)(1)(B), of the Act, assessment of civil money penalties are required by the Act. Section 274A(e)(5) states, in pertinent part:

> Order for Civil Money Penalty for Paperwork Violations: With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occured. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

Count I of the Complaint seeks a penalty of eight thousand dollars ($8,000.) for the violation of Section 274A(a)(1)(A), the hiring of eight (8) named aliens, Humberto Cervantes-Espinoza, Carlos Campos-Guzman, Jose Luis Martinez-Guzman, Pedro Campos-Guzman, Bernardo Lopez-Santiago, Rafael Lara-Garcia, Hugo Campos-Mora, and Cesar Augosto Hansen-Fabiel, knowing them to be aliens unauthorized for employment in the United States, or, alternatively, continuing to hire them in violation of 274A(a)(2).

Count II of the Complaint seeks a penalty of five thousand five hundred dollars ($5,500.) for the violation of Section 274A(a)(1)(B) of the Act, the failure to prepare employment eligibility verification forms and/or the failure to make the forms available for inspection for eleven (11) named individuals, including the persons named in Count I, plus Jose Javier Barragan-Remirez, Ignacia Mora-Guzman, and Antonio Morjan.

The fines assesed for the knowing hiring and paperwork violations are within the statutory limits, although the amounts are above the minimums allowed. In determining the amount of the penalty for the paperwork violations, the regulations require, as set out above, that I give due consideration to mitigating circumstances such as the size of the business, the good faith of the employer, the seriousness of the violation, whether or not the individuals were unauthorized aliens, and any history of previous violations.

Respondent has failed to submit any information concerning the mitigating factors noted above. After giving careful consideration to Complainant's Memorandum submitted in response to my Order to Show Cause, I have determined that the amount of the civil money penalty is not unreasonable and will allow the amount of the penalty, as requested by Complainant, to stand.

4. ORDER.

Accordingly,

IT IS HEREBY ORDERED:

1. That Respondent pay a civil money penalty in the amount of thirteen thousand five hundred dollars ($13,500.).

2. That Respondent shall cease and desist from any further violations of Section 274A(a)(1)(A) of the Immigration and Nationality Act.

3. That Respondent shall comply with the requirements of Section 274(b) of the Act with respect to individuals hired for a period of three years.

4. That the hearing previously scheduled to be held in Olympia, Washington, on October 3, 1989, is cancelled.

5. That review of this final order may be obtained by filing a written request for review with: The Office of Chief Administrative Hearing Officer, 5113 Leesburg Pike, Suite 310, Falls Church, VA 22041, within five (5) days of this Order as provided in 28 C.F.R. Section 68.52. This Order shall become the final Order of the Attorney General unless, within thirty (30) days from the date of this Order, the Chief, Administrative Hearing Officer modifies or vacates the Order.

IT IS SO ORDERED: This 19th day of September, 1989, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge