

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

January 14, 2020

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 19A00031
)	
PITA PIT BAKERY, LLC,)	
Respondent.)	
_____)	

ORDER DISCHARGING ORDER TO SHOW CAUSE AND FOR PREHEARING
STATEMENTS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on May 28, 2019 alleging that Respondent, Pita Pit Bakery, LLC failed to comply with the employment eligibility verification provisions of 8 U.S.C. § 1324a.

On October 11, 2019, ICE filed a Certificate of Service showing that it personally served Respondent with Notice of Case Assignment Regarding Unlawful Employment, a copy of the complaint, the Notice of Intent to Fine, and Respondent’s request for a hearing on Respondent on September 23, 2019. The Notice of Case Assignment directed that an answer was to be filed within thirty (30) days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations. Respondent’s answer was due no later than October 23, 2019. Respondent did not file an answer.

II. ORDER TO SHOW CAUSE

On November 6, 2019, the undersigned issued a Notice and Order to Show Cause requiring Respondent to show good cause why it did not file an answer and to file an answer that comports with the requirements of 28 C.F.R. § 68.9. The undersigned warned that a failure to respond to

the Order to Show Cause may result in dismissal of Respondent's request for hearing for abandonment. On November 18, 2019, Respondent filed a response pro se to the Order to Show Cause. However, Respondent's response did not meet the requirements for an answer under the OCAHO rules, and on December 17, 2019, the undersigned issued another Order to Show Cause explaining the form an answer must take.

On January 8, Respondent filed a letter repeating its explanation that it is proceeding pro se, that it did not understand what was required, and reiterating that it intends to pursue the request for a hearing. The letter also responded to the claims, denying the allegations.

A final decision of abandonment equates to a judgment by default. Such judgments are generally disfavored, and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case. *See United States v. Vilaro Vineyards*, 11 OCAHO no. 1248, 5 (2015); *United States v. Jabil Circuit*, 10 OCAHO no. 1146 (2012). The Court will find that Respondent has demonstrated good cause for its failure to file a timely answer. The Respondent demonstrated that it is intending to pursue the case and did not willfully avoid complying with the Order, and Complainant is not prejudiced by the delay. Further, the Complainant has not sought a default judgment. The Court will also construe the letter as an answer, as it comports with the requirements of 28 C.F.R. § 68.9.

As such, the Order to Show Cause is discharged.

III. PREHEARING STATEMENTS

Pursuant to 28 C.F.R. § 68.12, the parties are further advised that the government, no later than February 12, 2020, and the company, no later than March 13, 2020, should file with this office in quadruplicate and serve on each other, their respective written prehearing statements containing the following sections:

1. Issues: A statement of the perceived issues.
2. Proposed stipulations: Such proposed stipulations and admissions of fact as will eliminate the necessity of taking evidence with respect to allegations as to which there is no genuine or substantial dispute.
3. Preliminary Witness List: Names and addresses of witnesses whose testimony the party intends to present.
4. Summary of testimony: A brief summary of the testimony expected of each witness.

5. Preliminary Exhibit List: A list of the party's documentary evidence, including affidavits and other exhibits to be offered in evidence, specifying the number of pages in each. Each exhibit is to be identified with the designation to be used at the hearing. Government exhibits should be identified with the letter G and sequential numbers, i.e., G-1, G-2, G-3, etc. while the Respondent's exhibits should be identified as R-1, R-2, R-3 and so forth. Any exhibit consisting of more than one page shall have each of the pages sequentially numbered. Please do not file the exhibits themselves at this time. Only the exhibit list is required.
6. Discovery: A brief statement outlining what, if any, discovery the party believes needs to be undertaken to prepare for the hearing. The parties are free to begin their discovery at any time.
7. Time Required: Best estimate as to the time required for presentation of the party's own case.
8. Other matters: Any other matter which the party considers relevant.

A telephonic prehearing conference will be scheduled as soon as practicable after the filing of prehearing statements in order to deal with any questions respecting discovery and to develop the prehearing order.

Within ten (10) days after the filing of the Respondent's prehearing statement, the parties are to consult and agree upon alternative dates and times they can be available for a telephonic prehearing conference, and will provide this office with written notice of a minimum of three proposed agreed dates and times for the conference. The proposed times are to be Eastern Time, and should be specified as such. The date for the conference will be confirmed either telephonically or in writing as soon thereafter as practicable.

III. INITIAL DISCLOSURES

Simultaneously with the filing of the party's prehearing statement, the filing party is to make initial disclosure of its documentary evidence to the other party without waiting for a formal discovery request to be made. Copies of any exhibits listed in section II. 5 are to be disclosed to the other party, not with this office. If any exhibit listed is not yet in existence but still to be created, disclosure is to be made within two weeks of the creation of the exhibit.

Mandatory initial disclosures also include the names and contact information for persons other than those listed under section II. 3 who have knowledge or discoverable information about the matters at issue, unless the information would be solely for impeachment.

Supplementation of initial disclosures is required in the same manner as would be required pursuant to 28 C.F.R. § 68.18(d).

SO ORDERED.

Dated and entered on January 14, 2020.

Jean King
Chief Administrative Law Judge