

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

October 18, 2019

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324c Proceeding
v.)	OCAHO Case No. 19C00039
)	
CARLOS SANCHEZ,)	
Respondent.)	
_____)	

ORDER VACATING NOTICE OF ENTRY OF DEFAULT

I. BACKGROUND

On July 24, 2019, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging violations of 8 U.S.C. § 1324c. On July 30, 2019, OCAHO sent a Notice of Case Assignment For Complaint Alleging Document Fraud, a copy of the complaint, the Notice of Intent to Fine, and Respondent’s request for hearing to Respondent, via certified U.S. mail. Respondent’s answer was due on September 3, 2019. Respondent did not file an answer.

On September 25, 2019, the Court issued a Notice of Entry of Default and explained that, within fifteen days of the Notice of Entry of Default, the Court may enter a default judgment if Respondent did not file an answer and show good cause why he failed to file an answer. On October 10, 2019, Respondent filed an Answer and a Showing of Good Cause.

II. STANDARDS

While OCAHO rules govern this proceeding, “the ‘Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled’ by OCAHO’s rules.” *U.S. v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (quoting 28 C.F.R. § 68.1). Under Federal Rule of Civil Procedure 55(c), “[t]he court may set aside an entry of default for good cause[.]” Default judgments are disfavored because of the policy of determining cases on their merits. *Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979, 982 (3d. Cir. 1988); *Nickman v. Mesa Air*

Group, 9 OCAHO no. 1106, 2 (2004). OCAHO case law states that default judgments “should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement.” *Nickman*, 9 OCAHO no. 1106 at 2 (citations omitted). “The Court has especially broad discretion when . . . a party is seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Id.*

The Court has discretion to set aside an entry of default and to determine whether good cause exists. The Court considers: “(1) whether there was culpable or willful conduct; (2) whether setting aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action.” *Id.* at 3 (citing *Kanti v. Patel C/O Blimpie*, 8 OCAHO no. 1007, 166, 168 (1998)). The Court considers the same factors when considering setting aside an entry of default or a default judgment, but the Court applies the factors more leniently when considering an entry of default. *Id.*

III. DISCUSSION

Regarding the first factor, “courts usually focus on the defaulting party’s willfulness and consider whether the party intended to violate court procedures.” *Id.* Respondent’s counsel asserts that Respondent is represented by separate counsel in “ongoing negotiations and a proffer regarding this matter that are being held with the Department of Homeland Security Investigations (HSI) office[.]” Resp’t Showing of Good Cause at 1. Respondent’s counsel asserts that Respondent met with HSI to discuss his further cooperation with HSI and that he has been in frequent contact with his other counsel. Respondent, however, has not discussed the proffer and ongoing HSI negotiations with his counsel of record. *Id.* at 1–2. Respondent requests that the Court vacate the entry of default so he can continue “with his proffer of evidence and cooperation with HSI.” *Id.* at 2.

Nothing in the record demonstrates that Respondent failed to answer the Complaint in a timely manner “because of a willful disregard or disrespect for the legal process.” *Nickman*, 9 OCAHO no. 1106 at 3. Rather, after the Court issued the Notice of Entry of Default, Respondent promptly filed a good cause statement and an answer. Similar to *Nickman*, Respondent has not ignored his responsibility to defend against this action or otherwise acted in bad faith. *Nickman*, 9 OCAHO no. 1106 at 3.

Additionally, Complainant did not move for an entry of default and Complainant has not alleged that it would suffer any harm if the Court vacates the entry of default and allows Respondent’s late filed Answer. “Mere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion.” *Id.* As such, there is no showing that setting aside the entry of default would prejudice Complainant.

Finally, the Court must consider whether Respondent has presented any meritorious defenses to the Complaint. When moving to set aside an entry of default, the defaulting party does not need to establish its defenses conclusively. *Id.* (citing *Kanti*, 8 OCAHO no. 1007 at 171). “A respondent adequately presents a defense by clearly stating in the answer the precise contested allegations and indicating the existence of disputed issues.” *Id.* at 4. In the Answer, Respondent denies the central allegations of the Complaint. Respondent does not assert any affirmative defenses.

IV. CONCLUSION

The Court finds that the balance of factors weighs in favor of setting aside the entry of default. Respondent’s failure to file an answer does not appear to be willful and Complainant has not shown that it will be prejudiced if the Court accepts Respondent’s late filed answer. The entry of default is VACATED, and the Court accepts Respondent’s late filed Answer to the Complaint.

SO ORDERED.

Dated and entered on October 18, 2019.

Jean C. King
Chief Administrative Law Judge