

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

United States of America, Complainant, v. I.K.K. Associates, Inc. dba Ocean Avenue Restaurant, and Japan Express Restaurants, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100571.

**DECISION AND ORDER
JUDGMENT BY DEFAULT**

The Immigration Reform and Control Act of 1986 (IRCA), Public Law No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), adopted Significant revisions in national policy with respect to the presence of unauthorized aliens in the United States. Accompanying other changes, IRCA introduced the concept of controlling employment of undocumented aliens and provided an administrative mechanism for imposition of civil liabilities with financial penalties upon employers who hire, refer for a fee, or continue to employ unauthorized aliens in the United States.

IRCA amended the Immigration and Nationality Act of 1952 by adding several new provisions to the law including Section 274A as codified in 8 U.S.C. section 1324a. Section 1324a provides that an employer is liable for failure to attest ``on a form designated or established by the Attorney General by regulations, that it has verified that the individual is not an unauthorized alien.'' In addition to civil penalties, employers also face criminal fines and imprisonment for engaging in a pattern or practice of hiring or recruiting for a fee or continuing to employ such aliens. This range of remedies against unlawful employment is now commonly referred to as ``employer sanctions.''

8 C.F.R. Section 274a.2 provides that the Employment Eligibility Verification Form (Form I-9) is designated by the Immigration and Naturalization Service (INS) as the form to be used by the employer in complying with the requirements of that section. The regulation further provides that the INS initiates an action against an employer to assess civil liability by issuing a Notice of Intent to Fine (NIF), and provides that an employer against whom the NIF is imposed has the right to request a hearing before an Administra-

tive Law Judge (Judge). Such a request must be made within thirty (30) days from the service of the NIF. See, 8 C.F.R. section 274a.9(d)(1).

Consistent with the statute and regulations, the INS ('`Complainant'`) initiated this proceeding against I.K.K. Associates, Inc., dba, Ocean Avenue Restaurant and Japan Express Restaurants, ('`Respondent'`) by filing a Complaint Regarding Unlawful Employment ('`Complaint'`) against the Respondent on November 13, 1989. The Complaint contained as Exhibit A, the Notice of Intent to Fine alleging three counts, involving a total of eleven individuals, of violations of the Immigration and Nationality Act. Included as Exhibit B of the Complaint was a letter from the Respondent requesting a hearing before the Judge.

By Notice of Hearing on Complaint Regarding Unlawful Employment, dated November 24, 1989, the Respondent, who was represented by legal counsel, was advised of (1) the filing of the Complaint, (2) the right to Answer the Complaint within 30 days, as well as (3) the possibility of a default judgment if the Complaint was not Answered, and, finally, (4) the place of the hearing, Fresno, California.

The record in this case includes return receipt for the Notice of Hearing from Respondent, dated on or about November 29, 1989, and signed by an agent of the Respondent.

The Complaint, incorporating the NIF, requests an Order directing Respondent to comply with 8 U.S.C. Section 1324a, to cease and desist from any further violations of the Act and seeks civil money penalties totalling \$2,500.00.

By motion filed January 8, 1990, the INS asked for a default judgment. The motion rests on the premise that no Answer had been filed to the Complaint, although the Complaint had been filed more than thirty (30) days previously.

On January 18, 1990, having not received an Answer to the Complaint or any responsive pleading to the INS motion, I issued, by certified mail, 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 a sworn affidavit setting forth any good reason for not responding to the Complaint. The Order specifically stated that Respondent had ten days from the date of the Order to respond.

By a letter dated January 22, 1990, Respondent's attorney of record, Lawson K. Renge, Esq., withdrew as Respondent's counsel in this case. However, Respondent was also served with a copy of the Order to Show Cause Why Default Judgment Should Not

Issued and failed to respond to that Order in any manner. And, as of the date of this present Order, Respondent has not filed an Answer to the Complaint.

Accordingly, the failure of Respondent to file a timely, or any, Answer to the Complaint constitutes a basis for entry of a judgment by default within my discretion as provided by 28 C.F.R. Section 68.8(b). The failure to answer entitles the Judge to treat the allegations of the Complaint as admitted.

Respondent having failed to file an Answer, and the time allowed for filing one having elapsed, I find that the Respondent has waived its right to appear and contest the allegations of the Complaint, and that a judgment by default is appropriate. 28 C.F.R. 68.8 (b).

Accordingly, in view of the foregoing, I find and conclude that Respondent, I.K.K. Associates, Inc., dba Ocean Avenue Restaurant and Japan Express Restaurants, committed the acts alleged in the Notice of Intent to File and in the Complaint, and by doing so, the Respondent violated 8 U.S.C. Section 1324a(a)(1)(A) and 1324a(a)(1)(B). Specifically, I find that Respondent hired the individual named in Count I of the Notice of Intent to File knowing that the individual was unauthorized to work in the United States and further, that the respondent failed to properly prepare the Employment Eligibility Verification Form (Form I-9) for all of the individuals named in Counts II and III of the Notice of Intent to File.

Consequently, and for good cause shown, IT IS HEREBY ORDERED that Respondent shall:

1. Cease and desist from any further violations of 8 U.S.C. 1324a(a)(1)(A), that is, knowingly hiring an individual who is unauthorized to be employed in the United States:

2. Within 14 days from the date of this Judgment by Default, pay a civil money penalty in the amount of \$2,500.00, in either cashier's check, certified check or money order to the ``Immigration and Naturalization Service'' and deliver same to: INS, Office of the District Counsel, ATTN: Marsha R. Stroup, P.O. Box 26449, San Francisco, CA 94126-1526.

3. Comply with the requirements of 8 U.S.C. Section 1324a with respect to verifying the employment eligibility of individuals that it hires for employment in the United States.

Review of this final order may be obtained by filing a written request for review with the Chief Administrative Hearing Officer, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, within 5 days of this order as provided in 28 C.F.R. Section 68.51. 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.

SO ORDERED: This 21st day of February, 1990, at Washington, D.C.

PAUL J. CLERMAN
Administrative Law Judge