

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

United States of America, Complainant v. Raul Ramirez d/b/a Solymar Fashion, Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 90100079.

DECISION AND ORDER GRANTING JUDGMENT BY DEFAULT  
(May 9, 1990)

MARVIN H. MORSE, Administrative Law Judge

Appearances: LLOYD MUNJACK, Esq., for the Immigration and Naturalization Service.

The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), at section 101, enacted section 274A of the Immigration and Nationality Act of 1952, (INA or the Act), 8 U.S.C. § 1324a, introducing an enforcement program designed to implement employer sanctions provisions prohibiting the unlawful employment of aliens, and requiring compliance with employment verification requirements in the administration of the employer sanctions program.

On February 27, 1990, the Immigration and Naturalization Service (INS or the Service), filed a Complaint against Raul Ramirez, d/b/a Solymar Fashion (Solymar Fashion, or Respondent), alleging three counts of failure to comply with the employment eligibility verification requirements of 8 U.S.C. § 1324a, and implementing regulations.

Count I alleges that as to three named individuals hired after November 6, 1986, Respondent failed to prepare and/or present Employment Eligibility Verification Forms (Form I-9), as to two of whom civil money penalties are sought in the sum of \$500 per individual and as to one of whom \$750 is sought, for a total of \$1,750. Count II alleges that as to three other named individuals hired after November 6, 1986, Respondent failed to complete properly section two of the Form I-9, as to whom civil money penalties are

sought in the sum of \$250 per individual, for a total of \$750. Count III alleges that as to one other named individual hired after November 6, 1986, Respondent failed to ensure that the employee completed properly section one of the Form I-9, as to whom a civil money penalty is sought in the sum of \$250, for an aggregate civil money penalty for the three counts in the sum of \$2,750.

The Complaint dated February 21, 1990, containing as Exhibit A a Notice of Intent to Fine (NIF) dated on both December 29, 1989 and January 2, 1990, contained also, as Exhibit B, Respondent's request for hearing in the form of a letter dated January 20, 1990 to INS from Raul Ramirez.

By Notice of Hearing dated March 2, 1990, Respondent was advised of the filing of the Complaint, the opportunity to answer within thirty (30) days after receipt of the complaint, my assignment to the case, and the location of a hearing, i.e., in or around New York City, New York, pursuant to further notice as to the specific date, hour and hearing location. The Notice stated in terms that "Respondent's Answer must be filed within thirty (30) days after receipt of the Complaint, "to be filed with me, and stated also that "[I]f 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 the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief."

On March 16, 1990 INS filed a pleading entitled Motion For Default Judgment accompanied by a declaration of counsel, a draft order of default, and a certification by INS counsel that a copy had been mailed to Respondent on April 18, 1989. No Answer to the Complaint or other response has been forthcoming by or on behalf of Respondent, although more than eight weeks have elapsed since the Notice of Hearing was received by Respondent on March 7, 1990, and more than ten days have elapsed since service of the Motion for Default Judgment. This Decision and Order issues in lieu of the form of Order tendered with the Motion.

The rules of practice and procedure of this Office provide a party ten days in which to respond to service of a pleading (unless otherwise ordered by the judge) plus five days extra for response by mail. 28 C.F.R. §§ 68.9(b), 7(c)(2). Service is complete upon mailing. *Id.* at 68.7(c)(1). Therefore, a response to the Motion would have been timely if received not later than May 3, 1990, and, in any event, before today's date.

Neither Respondent or anyone on its or his behalf having made a timely filing in response to the Complaint or to the pending motion, I grant the motion for judgment by default.

ACCORDINGLY, IN VIEW OF ALL THE FOREGOING, IT IS FOUND AND CONCLUDED, that Respondent is in violation of 8 U.S.C. § 1324a(a)(1)(B) for failure to comply with the employment verification requirements with regard to the individuals named in Counts I through III of the Complaint.

**IT IS HEREBY ORDERED:**

(1) that Respondent pay a civil money penalty in the amount of \$1,750.00 for the violations in Count I of the Complaint, \$750.00 for the violations in Count II, and \$250.00 for the violation in Count III, for a total civil money penalty of \$2,750.00;

(2) that the hearing in this proceeding is canceled.

This Decision and Order on Default is the final action of the judge in accordance with 28 C.F.R. § 68.51(a). As provided at 28 C.F.R. § 68.51(a), this action 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, upon request for review, shall have modified or vacated it. See also 8 U.S.C. § 1324a(e)(7), 28 C.F.R. § 68.51(a)(2).

**SO ORDERED.**

Dated this 9th day of May, 1990.

MARVIN H. MORSE  
Administrative Law Judge