

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

United States of America, Complainant v. J.J.L.C., Inc. t/a Richfield Caterers and/or Richfield Regency, Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100187.

**ORDER DENYING RESPONDENT'S REQUEST FOR STAY AND
FOR RECONSIDERATION**

(May 11, 1990)

By letter dated May 1, 1990, Respondent asks that I stay the decision and order issued April 13, 1990, pending reconsideration of my finding that 22 of the Forms I-9 implicated in Count II of the Complaint lacked attachments. Conceding that 20 of 22 I-9s in evidence without attachments pertained to individuals identified at Count II, Respondent nevertheless contends that the Count II I-9s in evidence erroneously omitted attachments which were included in original documents of which the exhibits in evidence were copies.

Respondent's motion is not in customary pleading form and fails even to satisfy the relaxed standard of 28 C.F.R. § 68.6(a). Moreover, to the extent Respondent's letter-pleading constitutes a proffer of additional evidence it fails to satisfy traditional requirements for receipt ``upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.'' 28 C.F.R. § 68.47(c).

The rules of practice and procedure for cases before administrative law judges of this Office are silent as to reconsideration of final decisions and orders of the trial judges. However, at 28 C.F.R. § 68.1 those rules contemplate that the Federal Rules of Civil Procedure (FRCP) will be used ``as a general guideline in any situation not provided for or controlled by these rules,'' and to the extent not inconsistent with ``any statute, executive order or regulation.''

I am unaware of any reason to withhold application of the Federal Rules to the requests at hand. Amendment of findings is unavailable pursuant to FRCP 52(b) because not asked for within 10 days after entry of judgment. Similarly, so much of FRCP 59 as

contemplates motions to amend judgments is clearly unavailable to Respondent as such motions must be served not later than ten days after entry of judgment. Applying FRCP 60 which outlines considerations pertinent to disposition of requests for reconsideration, I take up the request for reconsideration. See, e.g., United States v. Edith Fine, OCAHO Case No. 89100363 (Oct. 11, 1989) (Order Denying Motion for Reconsideration and Extending Time to Answer).

Respondent was represented at hearing by the same counsel as now. Any claim Respondent might have had to the completeness of the I-9s should have been asserted at hearing, not at this juncture. Finally, Respondent's request illustrates the soundness of the rule that fact finding turns on an evidentiary record which once closed defines exclusively the matters in dispute. Respondent's letter-pleading holds out the hope that Complainant will ``agree that the Count II I-9s did contain the documents . . . and that the exhibits submitted erroneously omitted them.'' To the contrary, Complainant's Memorandum in Opposition to Respondent's Request, dated May 8, 1990, recites, inter alia, ``that the forms and attachments . . . are true copies. . . . There have been no oversights or omissions in the materials submitted by the Government as Exhibit 6.'' By a second and unauthorized letter-pleading dated May 9, 1990, Respondent takes issue with Complainant's May 8 assertions as to whether the original I-9s lacked attachments, once again blinking the reality that these documents were received in evidence in open hearing.

Respondent has failed to persuade of a reason to stay the decision and order or to relieve against it within the scope of FRCP 60(b) or otherwise. Having considered the request, it is denied.

SO ORDERED.

Dated this 11th day of May, 1990.

MARVIN H. MORSE
Administrative Law Judge