

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

United States of America, Complainant v. John Morales, dba Riverside Insulation, Respondent; 8 USC § 1324a Proceeding; Case No. 90100161.

ORDER TO SHOW CAUSE WHY DEFAULT JUDGMENT SHOULD NOT ISSUE

In 1986, the Immigration and Nationality Act was amended by the Immigration Reform and Control Act (IRCA), which made significant revisions in national policy with respect to illegal immigrants. 8 U.S.C. § 1324a.

In conjunction with other substantial changes in United States immigration laws, IRCA introduced the concept commonly referred to as ``employer sanctions.'' By enacting IRCA, Congress intended to address the publicly perceived need to control the employment of aliens unauthorized to work in the United States.

Towards this end, § 1324a provides an administrative mechanism for imposing civil liabilities upon employers who hire, recruit, refer for a fee, or continue to employ aliens who are not authorized to work in the United States. In addition to civil liability, employers may, under IRCA, ultimately face criminal fines and imprisonment if they are found to have engaged in a ``pattern or practice'' of hiring or continuing to employ aliens unauthorized to work.

Section 1324a also provides that an employer is liable for failure to attest, on a form established by regulation (Form I-9), that it has verified that an individual is not an unauthorized alien. 8 U.S.C. § 1324a(a)(1)(B).

Section 1324a also authorizes the imposition of orders to cease and desist with civil money penalties for violation of the proscriptions against hiring, and authorizes civil money penalties for paperwork violations, 8 U.S.C. § 1324a(e)(4)(5).

An employer who has been charged with a violation of § 1324a has a clear right to contest the allegations at a hearing before an Administrative Law Judge. 8 U.S.C. § 1324(e)(3). To effectuate this right, however, an employer must acknowledge and respond to the

official charges that are alleged by the U.S. Immigration and Naturalization Service (``INS''), the agency which has the legal responsibility to enforce United States immigration laws. 8 U.S.C. § 1324a(e)(3)(A).

Consistent with the statute and regulations as described above, the INS (``Complainant'') filed a Complaint Regarding Unlawful Employment (``Complain'') with this office (Office of the Chief Administrative Hearing Officer or ``OCAHO'') against John Maralies, dba Riverside Insulation (``Respondent''), on May 7, 1990. The Complaint incorporated by reference the Notice of Intent to Fine which was dated March 28, 1990. See Exhibit A. The Complaint also included a letter from Respondent, dated April 18, 1990, indicating that it requested a hearing concerning the allegations raised in the Complaint. See, Exhibit B.

By Notice of Hearing on Complaint Regarding Unlawful Employment dated May 10, 1990, Respondent, who apparently is not 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, Sacramento, California.

The record in this case includes a return receipt for the Notice of Hearing from Respondent, dated May 21, 1990, and signed by an agent of Respondent. As of the date of this Order, Respondent has not filed an answer with this office.

On July 9, 1990, the Complainant INS filed motion for Default Judgment. In its Motion, Complainant correctly states that the rules and regulations which guide these proceedings provide for a judgment by default when a Respondent has failed to answer or otherwise defend itself against the allegations contained in the Complaint. See, 29 C.F.R. Part 68.8(b).¹

Thus, the failure of Respondent to file a timely Answer to the Complaint constitutes a discretionary basis for entry of a judgment by default as provided by 28 C.F.R. Section 68.8(b). Prior to considering Complainant's Motion, however, this Order invites Respondent to offer an explanation why a default judgment should not be entered against it.

Any such showing should be made by a formally legal explanation (a ``Motion'') and should contain a request for leave to file a

¹The final rules of practice and procedure for administrative hearings before ALJs in cases involving allegations of unlawful employment of aliens were published on November 24, 1989. 54 Fed. Reg. 48593 (1989) (codified at 28 C.F.R. Part 68).

late Answer. The Answer should comply with 28 C.F.R. Sections 68.6 and 68.8(c). The filing should also explain Respondent's failure to have timely answered both the Notice of Hearing and the Motion for Default Judgment.

Finally, any such filing will be considered only if it is received by this office at the address below within 15 calendar days from the date of this Order, i.e., not later than July 27, 1990. If Respondent does not answer this Order to Show Cause, I will thereafter rule on Complainant's Motion for Judgment by Default.

SO ORDERED: This 12th day of July, 1990, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge