

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

In re charge of Jose Antonio Ordonez United States of America, Complainant v. Educational Employment Enterprise, et al., Respondents; 8 U.S.C. 1324b Proceeding; Case No. 90200242.

**DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR A DEFAULT
JUDGMENT**

E. MILTON FROSBURG, Administrative Law Judge

Appearances: **DANIEL W. SUTHERLAND**, Esquire for the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Immigration Reform and Control Act of 1986 (IRCA), at section 102, enacted section 274B of the Immigration and Nationality Act of 1952, (the Act), 8 U.S.C. section 1324b, introducing a program designed to prevent discrimination in employment based upon an individual's citizenship or national origin.

On August 3, 1990, the Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC) filed a Complaint against Educational Employment Enterprise, Entertainment Production Enterprise, William Clay, Individually and in his Capacity as Owner/Operator of Educational Employment Enterprise and Entertainment Production Enterprise, and Linda Martin, Individually and in her Capacity as an Owner/Operator of Educational Employment Enterprise and Entertainment Production Enterprise, (Respondents), alleging that Respondents refused to hire Jose Antonio Ordonez because of his citizenship status, in violation of IRCA.

The Complaint alleged that Mr. Ordonez applied for a position as a receptionist/office worker for Respondents on or about July 18, 1989, but that Mr. Ordonez was refused a job because he was not a United States Citizen or a permanent resident alien. The Complaint alleged that Mr. Ordonez was authorized to accept employment in the United States at the time of this alleged discriminato-

ry act and had been granted asylum by the Department of Justice on August 5, 1988. Complainant also alleged that Respondents hired an employee with qualifications similar to Mr. Ordonez subsequent to their refusal to hire him.

Attached to the Complaint were:

Exhibit 1_A Declaration of Intending Citizen, completed by Jose Antonio Ordonez and filed with OSC on January 5, 1990;

Exhibit 2_A Charge Form for Unfair Immigration Related Employment Practices, completed by Jose Antonio Ordonez and filed with OSC on or about January 5, 1990.

By Notice of Hearing dated August 8, 1990, Respondents were advised of the filing of the Complaint, my assignment to the case, the opportunity to answer within thirty (30) days after receipt of the Complaint, the possibility of a judgment by default being entered against them if no answer was filed, and the approximate location for a hearing to be scheduled in or around Los Angeles, California.

On August 14, 1990, I issued a Notice of Acknowledgement indicating receipt of this case in my office, and advising Respondents of the necessity of filing an Answer within thirty (30) days of receipt of the Complaint. To this date, no Answer has been received in this office from Respondents.

By Motion for Default Judgment dated October 3, 1990, Counsel for Complainant asks that Respondents be found in default. The motion rests on the premise that Respondents have failed to answer or otherwise defend within thirty days after service of the Complaint.

On October 9, 1990, I issued an Order to Show Cause Why Default Judgment Should Not Issue, inviting Respondents to file a motion for leave to file a late answer, with an explanation of their failure to timely answer the Complaint. In said Order I granted Respondents until October 24, 1990 in which to submit the appropriate pleadings. I indicated that I would consider the Motion for a Default Judgment if no documents were received in my office by that date.

The failure of Respondents to file a timely, or any answer to the Complaint constitutes a basis for entry of a judgment by default within the discretion of the Administrative Law Judge pursuant to 28 C.F.R. section 68.8(b).

The file contains the certified mail receipt of the Notice of Hearing on Complaint, addressed to Ms. Linda Martin, 1680 N. Vine Street, Suite 817, Hollywood, CA 90028, to show delivery on August 19, 1990. I have no reason to believe that Respondents did not receive the Notice of Hearing, the Notice of Acknowledgement, the Motion for a Default Judgment, or the Order to Show Cause Why

Default Judgment Should Not Issue. Three Certified copies of the latter document were sent to Respondents' business address. Although two of the copies, (addressed to Linda Martin and William Clay), were returned as ``Refused'', the third copy, mailed on the same date and addressed to Educational Employment Enterprise, Entertainment Production Enterprise was not. My Legal Technician re-mailed these two copies via regular U.S. mail, and to date they have not been returned.

No answer having been received from Respondents within 30 days of their receipt of the Complaint, or even as of this date, and no responses to Complainant's Motion for a Default Judgment or my show cause order having been filed by Respondents, I hereby find Educational Employment Enterprise, et al., Respondents, in default, having failed to plead or otherwise defend against the allegations of the Complaint. Based upon Respondents' failure to answer the allegations set forth in the Complaint, I can, and do deem all allegations as admitted by Respondents, pursuant to 28 C.F.R. section 68.8(c)(1).

ACCORDINGLY, IN VIEW OF ALL THE FOREGOING, IT IS FOUND AND CONCLUDED, that Respondents are in violation of 8 U.S.C. section 1324b with respect to their discriminatory refusal to hire Jose Antonio Ordonez, on or about July 18, 1989, based upon his citizenship status, when he was an alien authorized to work in the United States.

IT IS HEREBY ORDERED:

(1) that Respondents cease and desist from the discriminatory practice described in the Complaint;

(2) that Respondents comply with the requirements of 8 U.S.C. section 1324a(b) with respect to individuals hired by any business entity associated with the Respondents for a period of three years from the date of this Order;

(3) that Respondents retain for a period of three years the names and addresses of each individual who applies, either in person or in writing, for employment in the United States, to any business entity associated with Respondents;

(4) that Respondents pay a civil penalty of one thousand dollars (\$1,000.00);

(5) that I will retain jurisdiction of this matter to determine what other appropriate remedies are just and reasonable, to include offer of employment, back-pay, interest, benefits, and seniority.

This Decision and Order is not yet the final action of the Administrative Law Judge in this matter. Complainant is instructed to provide to my office, no later than November 16, 1990, all documents or affidavits supporting its request for offer of employment,

back-pay, benefits, seniority, and interest, along with a showing of what interim earnings were, or with reasonable diligence could have been received by Mr. Ordonez from July 18, 1989 to the date of this Order. My final Decision and Order will follow.

SO ORDERED: This 30th day of October, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge