

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, Respondent; 8 U.S.C. 1324b Proceeding; Case No. 90200242.

ORDER GRANTING COMPLAINANT'S MOTION UNDER F.R.C.P. 59(e) TO AMEND
DECISION AND ORDER AS TO ATTORNEY'S FEES

I. PROCEDURAL SUMMARY

On January 2, 1991, I issued a Final Decision and Order Granting Motion for Remedies and Granting in Part Motion for Attorney's Fees. In said Order, I modified Jose Antonio Ordonez' attorneys' request for fees pursuant to 8 U.S.C. Section 1324b(h), reducing the requested amount from \$150.00 (one-hundred fifty) per hour to \$75.00 (seventy-five) per hour for 13.1 hours, resulting in an award of \$982.50.

Through documents dated January 11, 1991, Ordonez' attorney, Charles Wheeler, Esq., moved for an alteration or amendment of the order granting attorney's fees, pursuant to Fed. R. Civ. P. 59(e). For the reasons stated below, I am GRANTING said motion and awarding the full fee originally requested.

II. STANDARDS FOR GRANTING MOTION TO AMEND OR ALTER UNDER
Fed. R. Civ. P. 59(e)

Rule 59(e) of the Federal Rules of Civil Procedure was created to codify the power of a court to alter or amend a judgment after its entry, as held in Boaz v. Mutual Life Insurance Company of New York, 146 F.2d. 321 (8th Cir. 1944). See 11 C. Write & A. Miller, Federal Practice and Procedure Section 2817, at 108 (1983 & Supp. 1990). Where a court has failed to give appropriate relief on a claim to which a party is entitled, the court may amend the judgment accordingly. Id. at 112 (citing Continental Casualty Co. v.

Howard, 775 F.2d. 876 (1985), cert. denied, 106 S.Ct. 1641 (1986)). See also White v. New Hampshire Department of Employment Security, 455 U.S. 445 (1982).

III. LEGAL ANALYSIS

In my order of January 2, 1991, I partially based my reduction of Ordonez' attorneys' hourly rate request on the fact that attorneys Andrade and Wheeler were employed by a nonprofit legal services agency. As such, I was not convinced that the hourly rate requested ``accurately reflect[ed] the true costs to a non-profit organization such as NILC.'' See Final Decision and Order at 8. Accordingly, I reduced the requested \$150.00 (one-hundred fifty) per hour request to \$75.00 (seventy-five) per hour.

The consideration of overhead costs in my determination of an appropriate hourly fee for a nonprofit organization was found to be in error. As attorney Wheeler notes in the Motion to Amend, the Supreme Court has expressly rejected the cost of providing services as a basis for determination of a reasonable attorney's fee. Missouri v. Kalina Jenkins, 491 U.S. 274 (1989); Blanchard v. Bergeron, 489 U.S. 87 (1989); Blum v. Stenson, 465 U.S. 886 (1984). Regardless of the nonprofit nature of a legal aid organization, an award of attorney's fees to a prevailing party should be based on the prevailing rates in the community multiplied by the reasonable number of hours worked. Blum at 897 (citing Hensley v. Eckerhart, 461 U.S. 424 (1983)). This the traditional ``lodestar'' amount, which is ``entitled to a strong presumption of reasonableness and prevents a `windfall' for attorneys . . . by guaranteeing that they receive only the reasonable worth of the services rendered.'' Blanchard at 87.

Given the experience of Ordonez' attorneys, and the evidence of prevailing rates that was provided in the Motion to Amend, I find that \$150.00 (one-hundred fifty) per hour is a reasonable rate, and hereby GRANT the Motion to Amend and award attorney's fees in the amount of \$1965.00 (one thousand nine-hundred sixty-five) as originally requested.

IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered all the pleadings, memoranda, and affidavits submitted by Attorney Wheeler in his Motion to Amend or Alter Judgment as to Attorney's Fees, I make the following findings of fact and conclusions of law:

(1) As previously found and discussed, Complainant is a prevailing party for the purposes of awarding attorneys fees pursuant to 8 U.S.C. Section 1324b(h);

(2) That pursuant to 8 U.S.C. Section 1324b(h), Respondents arguments were without reasonable basis in law and fact;

(3) That determination of the amount of attorneys fees is within my discretion under 8 U.S.C. Section 1324b(h);

(4) That consideration of the cost of services of a nonprofit legal services organization in determining what constitutes a reasonable attorney's fee was found to be in error;

(5) That \$150.00 (one-hundred fifty) per hour is a reasonable rate in the location where the services were performed by attorneys Andrade and Wheeler for the National Immigration Law Center;

(6) That attorneys Andrade and Wheeler worked 13.1 hours on behalf of Jose Antonio Ordonez;

(7) That Respondents pay to the National Immigration Law Center a reasonable attorneys fee in the amount of \$1965.00 (one thousand nine-hundred sixty-five).

IT IS SO ORDERED: This 1st of February, 1991, in San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge
Executive Office for Immigration Review
Office of the Administrative Law Judge
950 Sixth Avenue, Suite 401
San Diego, CA 92101