

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

United States of America, Complainant v. Silvio Vasquez-Guerrero d/b/a The Vasquez Company, Respondent; 8 USC 1324a Proceeding; Case No. 88100089.

**JUDGMENT BY DEFAULT**

On August 29, 1988, Complainant, the Immigration and Naturalization Service (INS), filed a complaint (8 USC 1324a Proceeding) with the Office of the Chief Administrative Hearing Officer (OCAHO) against Silvio Vasquez-Guerrero d/b/a The Vasquez Company, the Respondent (Vasquez). OCAHO docketed the complaint as Case No. 88100089. By date of September 2, 1988, the Chief Administrative Hearing Officer issued a notice of hearing on the INS' complaint, attached a copy of the complaint to the notice of hearing, and mailed both by certified mail to the Respondent.

Among other provisions, the notice of hearing informed Respondent that an answer to the complaint must be filed within 30 days after receipt of the complaint. I take official notice that the records on file with OCAHO reflect that the Respondent received the notice of hearing and copy of the complaint on September 7, 1988. Paragraph 3 of the notice warned Respondent:

3. If 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.

Alleging that Respondent Vasquez has violated provisions of 8 USC 1324a, the Complaint incorporates a July 8, 1988 notice of intent to fine (NIF) issued by the INS and personally served on the Respondent on July 12, 1988. Containing two counts, the NIF alleges one KNOWLEDGE violation (Count 1) of Section 274A(a)(1)(A)

of the Act,<sup>1</sup>and one VERIFICATION violation (Count 2) of Section 274A(a)(1)(B).<sup>2</sup>

The NIF warns that the INS will seek an order fining Respondent Vasquez a total of \$350 (\$250 for Count 1 and \$100 for Count 2). The complaint, which incorporates the NIF, requests an order directing Respondent Vasquez to cease and desist from such KNOWLEDGE violations,<sup>3</sup> pay the civil money penalty of \$350 as specified in the NIF, and comply for 3 years with 8 USC 1324a(b).<sup>4</sup>

By his letter of July 18, 1988 (with attached witness statement being dates of July 1 and 17, 1988) to the INS, Respondent Vasquez denied the allegations of the NIF and requested a hearing before an administrative law judge. Although Vasquez so responded to the NIF, he has not filed an answer to the complaint as required by law. 28 CFR 68.6(a). Because the complaint was served by mail, Respondent's answer was due 35 days after Respondent's receipt on September 7 1988. 28 CFR 68.5(d)(2); 68.6(a). Thus, the due date was Wednesday, October 12, 1988.

Respondent Vasquez having failed to file an answer to the complaint, the INS filed a motion, dated November 29, 1988, for default judgment. The certificate of service reflects that a copy of the motion and its attachments was mailed to the Respondent on November 29, 1988. The attachments include a default declaration by Complainant's attorney of record, William G. Putnicki, plus copies of letters from attorney Putnicki to Vasquez, plus a proposed default judgment. Neither has Respondent Vasquez filed an opposition to Complainant's motion for default judgment within the 10 days allowed by 28 CFR 68.7(b) or the additional 5 days granted (to Wednesday, December 14, 1988) by 28 CFR 68.5(d)(2).

---

<sup>1</sup>Section 274A(a)(1)(A) of the Immigration and Naturality Act (the Act) [8 USC 1324a(a)(1)(A)] makes it unlawful after November 6, 1986 for a person or other entity to hire, or to recruit or refer for a fee, an alien for employment in the United States, knowing the alien is unauthorized to work in the United States, and Section 274A(a)(2) [8 USC 1324a(a)(2)] makes it unlawful for a person or other entity who, after hiring an alien so unauthorized, to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

<sup>2</sup>Section 274A(a)(1)(B) [8 USC 2324a(a)(1)(B)] makes it unlawful to hire an individual for employment in the United States without complying with the verification requirements (on Form I-9) of 8 USC 1324a(b), and 8 CFR 274a.2(b) or 274a.2(b)(2).

<sup>3</sup>Although the complaint seeks an order which also directs the Respondent to cease and desist from violating 8 USC 1324a(a)(2), neither the complaint nor the NIF contains an allegation of such a violation.

<sup>4</sup>Section 274A(b)(3) [8 USC 1324a(b)(3)] requires the employer or referring entity to retain, for a specified period, the verification form (Form I-9) and to make it available for inspection by officers of the INS or the Department of Labor.

The formal hearing specified by the Act, 8 USC 1324a(e)(3), is a hearing conducted before an administrative law judge in accordance with the requirements of the Administrative Procedure Act (APA), 5 USC 554. Pursuant to 8 USC 1324a, the rules promulgated for governing such formal hearings are those to be codified as 28 CFR part 68. Under the rules, a complaint (not the NIF) is the formal document initiating an adjudicatory proceeding, 28 CFR 68.2(g). As already noted, an answer must be filed to the complaint, and failure to file an answer may result in a default judgment. 28 CFR 68.6.

Respondent Vasquez having failed to file an answer to the complaint, and the time for filing an answer having expired, I find Respondent Vasquez has waived his right to appear and contest the allegations of the complaint and that a judgment by default is appropriate. 28 CFR 68.6(b).

ACCORDINGLY,

I FIND the Respondent, Silvio Vasquez-Guerrero, d/b/a The Vasquez Company, in default. I THEREFORE FIND Respondent Vasquez committed the knowledge and verification violations alleged in counts 1 and 2 of the NIF, incorporated in the complaint, and I CONCLUDE that, by so doing, Respondent Vasquez violated Section 274A of the Act, 8 USC 1324a. CONSEQUENTLY,

I ORDER Silvio Vasquez-Guerrero, d/b/a the Vasquez Company, to:<sup>5</sup>

1. CEASE AND DESIST from violating Section 274A(a)(1)(A), 8 USC 1324a(a)(1)(A), of the Immigration and Nationality Act, which renders it unlawful after November 6, 1986 for a person or other entity to hire an alien for employment in the United States knowing the alien is unauthorized to work in the United States.

2. COMPLY WITH the employment eligibility verification requirements of the Act, Section 274A(b), 8 USC 1324a(b), respecting individuals hired, recruited or referred for a fee, for employment in the United States, for a period of 3 years.

3. PAY A CIVIL MONEY PENALTY, within 14 days from the date of this Judgment By Default, in the amount of \$350 in the form of cash or a cashier's check, certified check, money order, or bank check made payable to the ``Immigration and Naturalization Service,`` and deliver same to: Richard M. Casillas, District Director, 727 East Durango Blvd., Suite A-301, San Antonio, Texas 78206.

---

<sup>5</sup>Review of this final order may be obtained by complying with the provisions of 28 CFR 68.52.

The hearing scheduled to begin March 21, 1989, in Austin, Texas is canceled.

**SO ORDERED.**

Dated at Atlanta, Georgia this December 15, 1988.

RICHARD J. LINTON  
Administrative Law Judge