

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

United States of America, Complainant, v. Leo Yruegas, d/b/a Chito's Mexican Restaurant, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 88100194.

JUDGMENT BY DEFAULT

JAMES M. KENNEDY, Administrative Law Judge:

On November 14, 1988, a complaint was issued by the United States of America alleging that Respondent, Leo Yruegas, d/b/a/ Chito's Mexican Restaurant, has engaged in certain violations of 8 U.S.C. 1324a. On November 21, 1988, the Executive Office for Immigration Review, through the Acting Chief Administrative Hearing Officer served a notice of hearing on complaint regarding unlawful employment. In that notice Respondent was advised that he should file an answer within 30 days of the receipt of the Complaint and that if he failed to file a timely answer he may be deemed to have waived his right to appear and contest the allegations set forth in the complaint and that an Administrative Law Judge could enter a judgment by default together with any and all appropriate relief.

On February 1, 1989, Complainant filed a motion for default judgment asserting that Respondent had failed to timely file an answer or otherwise defend the complaint. It seeks the entry of an order requiring Respondent to pay a civil monetary penalty of \$1,300.00 for violating 8 U.S.C. 1324a(1)(B) as set forth in the notice of intent to fine attached to the complaint [see 8 U.S.C. 1324a (e)(5)]. On February 8, 1989, I issued a show cause order directing Respondent to file a written response by February 22, 1989, setting forth good cause why the motion should not be granted.

By letter dated February 17, 1989, Respondent, Leo Yruegas, in essence asserts that he was unaware of the requirement than an answer to the Complaint needed to be filed. He states: ``. . . [O]n 12-03-88, a certified letter was sent to me, I assume giving me instructions for submission or presentation of proof of documenta-

tion. This letter was never received by me. To the best of my knowledge, in my absence, one of my children signed for the letter and then misplaced it.' He also says he possesses some of the documentation sought by the INS.

A photocopy of the postal return receipt in question is attached to this decision as an ``Appendix.' While the signer's given name is illegible, I can discern that the signer's last name is ``Yruegas.' Moreover, I find, from the mature nature of the writing that it was signed by an adult, not a juvenile. Assuming that the signer is one of Respondent's children, I cannot also find that the signer was too young to recognize the importance of the letter or its contents. I am, therefore, not persuaded that the loss of the letter transmitting the complaint and notice of hearing is sufficient reason for Respondent to fail to comply with the requirement that I file an answer.

Complainant properly filed its complaint with the Office of the Chief Administrative Hearing Officer and that office properly served Respondent with a copy of the Complaint together with the information that a Respondent would need to apprise it of the steps it must take to protect its rights. In his letter Respondent is requesting that he be excused from his responsibility to answer a legal charge because of his negligence. That is not a sufficient reason for me to deny Complainant's motion for default judgment.

Moreover, I note that Respondent's letter of February 17 is unpersuasive for several other reasons. There is no evidence that Respondent, either before or after receipt of the motion for default ever attempted to contact the INS to provide it with the documentation he says he has. Furthermore, he does not assert that he contacted either the INS or the Office of the Chief Administrative Hearing Officer for information or assistance or to seek a copy of the lost letter. This suggests that Respondent has not exercised the diligence of one who wishes to operate within the system in order to protect his rights. In that circumstance, I do not believe it to be appropriate to save him now. As a default judgment is proper, it will be granted and I hereby enter the following:

Findings of Fact and Conclusions of Law

1. After November 6, 1986, Respondent failed to properly verify, on a verification form, designated by the Attorney General as Form I-9, the employment eligibility of the above-named employees.

- a. Epimania Castillo-Ramirez aka Epimania Mata
- b. Isidro Tirado

c. Ismael Tirado

d. Anna Rays

e. Anna Morales

2. By its failure to verify the employment eligibility of the employees as described in paragraph 1 above, Respondent has violated Section 274A(a)(1)(B) of the Immigration and Nationality Act [8 U.S.C. Sec. 1324a(a)(1)(B)].

Based on the foregoing findings of fact and conclusions of law, I hereby issue the following:

ORDER¹

Respondent, Leo Yruegas d/b/a Chito's Mexican Restaurant, shall:

1. Comply with the verification requirements of 8 U.S.C. Sec. 1324a(1)(B) with respect to individuals hired by accepting only properly completed I-9 forms and by retaining them for a period of 3 years.

2. Pay a total civil monetary penalty in the amount of \$1,300.00 calculated as follows: \$250.00 for five violations of 8 U.S.C. Sec. 1324a(1)(B).²

IT IS FURTHER ORDERED that the notice of hearing is hereby revoked.

Dated: March 10, 1989.

JAMES M. KENNEDY
Administrative Law Judge

¹Review of this order may be obtained by filing a written request for review with the Chief Administrative Hearing Officer within 5 days of this order as provided in 28 C.F.R. Sec. 52. This order shall become the final order of the Attorney General unless, within 30 days from the date of this order, the Chief Administrative Hearing Officer modifies or vacates it.

²The INS' notice of intent to fine, as attached to the complaint, asks for a \$300 penalty to be levied for the Castillo-Ramirez paperwork, but only \$250 for each of the other four paperwork violations. Complainant has not explained why it seeks different penalty amounts even though the violations alleged are identical. Since there is no explanation, and to avoid arbitrary treatment of like violations, the Castillo-Ramirez penalty has been reduced to \$250.