

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

United States of America, Complainant, v. South Bay Auto Detail,  
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100147.

**JUDGMENT BY DEFAULT**

Discussion and Decision:

The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), adopted significant revisions in national policy with respect to the presence of unauthorized immigrants in the United States. Accompanying other dramatic changes, IRCA, introduced the concept of controlling employment of undocumented aliens by providing an administrative mechanism for imposition of civil liabilities with financial penalties upon employers who hire, recruit, refer for a fee or continue to employ unauthorized aliens in the United States.

IRCA amended the Immigration and Nationality Act of 1952 by adding, amongst other provisions, a new section 274A as codified in 8 U.S.C. section 1324a. Section 1324a provides that an employer is liable for failure to attest ``on a form designated or established by the Attorney General by regulations, that it has verified that the individual is not an unauthorized alien.'' In addition to civil liability, employers also face criminal fines and imprisonment for engaging in a pattern or practice of hiring (recruiting or referring for a fee) or continuing to employ such aliens. This range of public policy remedies against unlawful employment of aliens is commonly referred to as ``employer sanctions.''

By Final Rule published May 1, 1987, 52 Fed. Reg. 16190, 16221-28, the Department of Justice implemented the employer sanctions provisions of IRCA, now codified at 8 C.F.R. Part 274a. These regulations provide, inter alia, in pertinent part, id. at 274a.2(a):

This section states the requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, individuals in the United States, or continuing to employ aliens knowing that the aliens are (or have become) unauthorized aliens. The Form I-9, Employment Eligibility Verifica-

tion Form, has been designated by the [Immigration and Naturalization] Service as the form to be used in complying with the requirements of this section.

The regulation provides that the Immigration and Naturalization Service (INS) initiate an action to assess civil liability by issuance of a Notice of Intent to Fine (NIF), and provides also that an employer against whom the NIF is imposed ``has the right to request a hearing before an Administrative Law Judge (ALJ) pursuant to 5 U.S.C. 554-557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine.'' Id. at 274a.9(c)(1)(ii)(C).

An opportunity for a hearing before an ALJ as a precondition for a cease and desist order and a civil money penalty is conferred by statute. See, 8 U.S.C. 1324a(e)(3).

Consonant with the statute and regulations, the INS initiated this proceeding against South Bay Auto Detail (``Respondent'') by filing, on March 20, 1989, a Complaint Regarding Unlawful Employment with the Office of the Chief Administrative Hearing Officer. The Complaint, dated March 16, 1989, contained as Exhibit A, the Notice of Intent to Fine alleging one Count in violation of the Immigration and Nationality Act and, as Exhibit B, a letter from Respondent requesting a Hearing with an Administrative Law Judge.

By Notice of Hearing on Complaint Regarding Unlawful Employment, dated March 27, 1989, Respondent was advised of (1) the filing of the Complaint; (2) that they had the opportunity to answer within thirty (30) days after receipt of the Complaint; (3) a warning that a failure to file an Answer might result in a judgment by default granting any and all appropriate relief; and, (4) the date and place of hearing.

The record shows that Respondent filed with his office on April 7, 1989, a return receipt of the Notice of Hearing and Complaint as initialed on March 30, 1989 by Respondent.

The Complaint, incorporating the NIF, requests an order directing Respondent to comply with 8 U.S.C. 1324a and seeks civil money penalties totalling \$1,500.00.

By motion filed May 10, 1989, INS asks for default judgment. The motion rests on the premise that no Answer had been filed to the Complaint, although the Complaint had been filed more than thirty (30) days previously.

On May 16, 1989, having not received an Answer to the Complaint or any responsive pleading to the INS motion, I issued, by certified mail, an Order to Show Cause Why Judgment by Default Should Not Issue. That Order provided Respondent an opportunity to ``show cause why default should not be entered against it, any

such showing to be made by motion which also contains a request for leave to file an answer.' The Order specifically stated that Respondent had until on or before May 26, 1989, to respond to the Order and to provide an Answer to the Complaint.

On June 8, 1989, this office received from pro se Respondent an extremely perfunctory request for a hearing, dated May 26, 1989, in lieu of a proper response to my Order to Show Cause.

Though wholly inadequate as an Answer to the Complaint, I deemed the May 26, 1989, ``letter'' by Respondent to manifest a pro se effort to contest the allegations contained in the Complaint; and accordingly, I permitted Respondent one last opportunity to file an answer. See, ``Order Directing Respondent to File an Answer,' June 22, 1989. In the Order of June 22, 1989, I included, for the convenience of pro se Respondent, a highlighted photocopy of the regulations pertaining to the filing of an answer and gave Respondent until June 30, 1989, to file such answer.

As of this date, Respondent has not communicated in any form whatsoever with this office.

Accordingly, the failure of Respondent to file a timely, or any, Answer to the Complaint constitutes a basis for entry of a judgment by default within my discretion as provided by 28 C.F.R. Section 68.6(b). The failure to answer entitles the ALJ to treat the allegations of the Complaint as admitted.

Respondent having failed to file an Answer, and the time allowed for filing one having elapsed, I find the Respondent has waived its right to appear and contest the allegations of the complaint, and that a judgment by default is appropriate. 28 C.F.R. 68.6(b).

Accordingly, in view of all the foregoing, it is found and concluded, that Respondent, South Bay Auto Detail, committed the acts alleged in the Notice of Intent to Fine and in the Complaint, and by so doing, the Respondent violated 8 U.S.C. Section 1324a(a)(1)(B). Specifically, I find that Respondent failed to prepare and/or present the Employment Eligibility Form (Form I-9) for the following individual employees:

- Tomas Gomez-Camacho, hired on July 5, 1988
- Richard Ochoa, hired on July 5, 1988
- Jesus Madueno, hired on October 28, 1988
- Jose Vega-Saucedo, hired on October 28, 1988

Consequently,

IT IS HEREBY ORDERED that Respondent shall:

1. Within 14 days from the date of this Judgment by Default, pay a civil money penalty in the amount of \$1500.00 in either cash,

cashier's check, certified check or money order (if not in cash) to the ``Immigration and Naturalization Service'' and deliver same to: Deborah S. Nordstrom, Trial Attorney, Immigration and Naturalization Service, 880 Front Street, San Diego, Ca. 92188.

2. Comply with the requirements of 8 U.S.C. section 1324a with respect verifying the employment eligibility of individuals that it hires for employment in the United States.

Review of this final order may be obtained by filing a written request for review with the Chief Administrative Hearing Officer, 5113 Leesburg Pike, Suite 310, Falls Church, Virginia 22041, within 5 days of this order as provided in 28 C.F.R. 68.52. This order shall become the final order of the Attorney General unless, within thirty (30) days from the date of this order, the Chief Administrative Hearing Officer modifies or vacates the order.

SO ORDERED this 13th day of July, 1989, at San Diego, California.

ROBERT B. SCHNEIDER  
Administrative Law Judge