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

United States of America, Complainant v. Edith Fine, Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100363.

ORDER OVERRULING MOTION FOR DEFAULT JUDGMENT, WITHOUT PREJUDICE TO FILING A RENEWED MOTION, AND REJECTING RESPONDENT'S NOTICES FOR ADDITIONAL TIME

(October 25, 1989)

My order issued October 11, 1989 considered but denied respondent's motion for reconsideration of my prior order of September 20, 1989 which had denied her motion ``to quash'' the complaint. The October 11 order explained that I was acting on the motion for reconsideration without awaiting a response from complainant to the motion.

Subsequently, by motion dated October 13, 1989, filed on October 18, complainant asks for default judgment against respondent, accurately reciting that respondent had yet to file an answer to the complaint. It may be speculated that complainant's motion for default crossed in the mail with my order of October 11, 1989. Whether it did or not, I treat it as premature in recognition that my order of October 11 postponed the deadline date until October 23, 1989, for receipt by me of a timely answer by respondent to the complaint in this case. Accordingly, the motion is denied, without prejudice, however, to filing of a new motion for default decision.

An answer in this case is overdue. Instead of receiving an answer not later than October 23, 1989, respondent's counsel has filed two pleadings, each of which certify that service was effected by mail on October 18, 1989:

The first document entitled Notice of Interlocutory Appeal, asserting that respondent has filed in the United States Court of Appeals for the Eleventh Circuit for immediate judicial review of my October 11, 1989 order requests that I stay further proceedings pending disposition of that appeal, ``including the time for filing an answer and the motion for default filed by Complainant. . . .''

The second document entitled Notice recites as the apparent basis for the request that I ``grant appropriate extension of time to reply to any pleadings that may be filed within the stated time period,'' that counsel, ``a solo practitioner, will be out of the country from October 19 through October 31, 1989.''

Both requests are denied:

(1) An answer could have been filed without prejudice to respondent's having maintained the objections previously asserted by her. I can not speculate whether the court will consider the assertions raised before me initially and reiterated in the first document, arising as they do on interlocutory appeal, and stemming in any event not from any forthright challenge to the subpoena but rather from counsel's advice not to comply until he could determine the lawfulness of the subpoena. No case has been made or suggested that would justify a stay pending disposition of the asserted appeal to the Eleventh Circuit.

(2) As to the second document, reliance on counsel's unavailability from October 19 through October 31 as the basis for an extension of time to respond to pleadings in this case is particularly inappropriate. Respondent's counsel was aware from the date he received my October 11 order, clearly not later than October 18, 1989, that an answer was due to be received by the judge not later than October 23, 1989. Had respondent, by counsel, intended to meet even that long-delayed deadline for tendering an answer, she could not have waited much past the 18th to assure receipt here on the 23rd.

SO ORDERED.

Dated this 25th day of October, 1989.

MARVIN H. MORSE
Administrative Law Judge