

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 91100147
)	
DENNIS M. DOLAN, DBA OLD)	
OCEAN BEACH CAFE,)	
Respondent.)	
_____)	

ORDER GRANTING MOTION TO EFFECTUATE SERVICE

On August 19, 1991, Complainant filed the complaint in this case with the Chief Administrative Hearing Officer (CAHO). The complaint alleges various violations of the paperwork requirements of Section 274A(a)(1)(B) of the Immigration and Nationality Act.

On October 25, 1991, Complainant filed a "Motion to Effectuate Service of Complaint." Complainant's motion states, inter alia, that service of the complaint in this case has been unsuccessful because Respondent has failed to accept delivery of process. Complainant requests that I advise the government on how to effectuate service.

Numerous attempts have been made by OCAHO to serve the Respondent with the complaint and notice of hearing, but none have been successful. On September 19, 1991, the complaint was mailed to Dennis M. Dolan at 4969 Newport Avenue, San Diego, California 92109, but was returned marked unclaimed. On October 16, 1991, the complaint was mailed certified mail return receipt requested to Dennis Dolan 3864 Mission Boulevard, San Diego, California 92109, but was returned "refused." On October 25, 1991, Dennis Dolan's office was called and the woman who answered identified herself as his secretary and confirmed that the above address is the correct business address.

Service of a complaint and notice of hearing is the responsibility of CAHO or the Administrative Law Judge to whom the case is assigned. See 28 C.F.R. § 68.3. The regulations provide for three methods of service of the complaint and notice of hearing: (a) By delivering a copy to the individual party . . . ; or (b) by leaving a copy at the principal office, place of business, or residence of the a party; or (c) by mailing to the last known address of such individual. 28 C.F.R. § 68.3 (a)-(c). The regulations also state that the "service of the complaint and notice of hearing is complete upon receipt by addressee." (emphasis added) 28 CFR § 68.3(d).

In view of the fact that Respondent has been able to avoid service of process of the complaint and notice of hearing by refusing his mail, personal service of the pleadings needs to be made to effectuate service. See Errion v. Connell, 236 F.2d 447 (9th Cir. 1956). (Service was upheld when sheriff pitched the papers through a hole in the screen door of defendant's apartment.)

Accordingly, Complainant is hereby **ORDERED** to make personal service of the complaint and notice of hearing, within the next ten (10) days, on Respondent by delivering the pleadings at his principal office, place of business or residence or otherwise.

It is further **ORDERED** that notice of service including name of party serving the pleadings, date served, and method used shall be provided to this office in writing within five (5) days after service has been effectuated.

SO ORDERED, this 7th day of November, 1991, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge