

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. §1324c Proceeding
) CASE No. 94C00087
MONICA ZAPATA-COSIO,)
Respondent.)
_____)

ORDER GRANTING RESPONDENT'S MOTION TO SET
ASIDE DEFAULT JUDGMENT

A complaint was filed in this case on April 28, 1994 with the Office of the Chief Administrative Hearing Officer against Monica Zapata-Cosio ("Respondent"). The Immigration and Naturalization Service ("Complainant" or "INS") alleged violation of 8 U.S.C. § 1324c, section 274C of the Immigration and Nationality Act, as amended by § 544(a) of the Immigration Act of 1990, 8 U.S.C. § 1324c. The complaint included a Notice of Intent to Fine which was served by Complainant upon Respondent by personal service, on November 29, 1993.

On July 7, 1994, Complainant filed a motion for default judgment. On July 21, 1994, I issued an Order to Show Cause Why Default Judgment Should Not Issue. I gave Respondent until August 4, 1994 to respond to my order. Having received no response, on August 25, 1994 I issued a Judgment By Default.

On September 2, 1994, Respondent filed a Motion to Extend Time to File an Answer, an Answer and an Entry of Appearance. In the Motion to Extend Time to File an Answer, Respondent's counsel states the reasons for asking to have additional time to file an answer:

Respondent understood that she was represented by Northwest Immigrant Rights Project. Jay W. Stansell, Staff Attorney for NWIRP, has considered himself to be the attorney of record, but through a misunderstanding with support staff doing intake on section 274C cases, an area which is new to NWIRP, a request for hearing was sent in on NWIRP letterhead signed only by the respondent. This apparently led to a good faith belief by the INS that respondent was unrepresented.

Present counsel has always assumed he was counsel of record. On August 25, 1994, counsel conferred with the INS District Counsel in this matter, Ms. Zsa Zsa DePaulo,

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(sic) and Ms. DePaulo (sic) has indicated that she has no objection to the court granting respondent's motion for leave to file a late answer.

Since I entered a default judgment on August 25, 1994, I interpret Respondent's motion to request additional time to file her answer as a motion to set aside the default judgment.

Our regulations do not specifically provide for motions to set aside a default judgment, but the Federal Rules of Civil Procedure provide for setting aside a default judgment for good cause. See Fed. Rule Civ. P. 55(c) and 60(b). Our regulations allow for using the Federal Rules of Civil Procedure as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation. See 28 C.F.R. § 68.1

Rule 55(c) states: "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

Rule 60(b) states in pertinent part that on motion a court may relieve a party from a final judgment or order because of mistake, inadvertence, excusable neglect and newly discovered evidence.

In my view, Respondent has shown good cause for setting aside the default judgment issued in this case on August 25, 1994, because Respondent's reasons for failing to file a timely answer were based upon inadvertence and excusable neglect.

Accordingly, pursuant to Rule 55(c) and 60(b) of the Federal Rules of Civil Procedure, the order granting a motion for default in this case is hereby set aside, the parties are instructed to begin discovery, and an evidentiary hearing, if needed, shall commence on November 21, 1994 at a time and place to be designated by further order.

SO ORDERED on this 12th day of September, 1994.

ROBERT B. SCHNEIDER
Administrative Law Judge