

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

PORFIRIO SPERANDIO,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00025
)	
UNITED PARCEL SERVICE, INC.,)	
Respondent.)	
)	

ORDER GRANTING RESPONDENT'S MOTION TO
ACCEPT ANSWER AND VACATING SHOW CAUSE ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant Porfirio Sperandio filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 22, 2021 alleging that Respondent United Parcel Service, Inc. discriminated against him on the basis of his citizenship status and national origin in violation of § 1324b.

On May 21, 2021, the Court issued an Order to Show Cause requiring Respondent to file an answer and a submission demonstrating good cause for Respondent's failure to timely file an answer. Order Show Cause 1.

On June 18, 2021, Respondent's counsel filed a Notice of Appearance in compliance with 28 C.F.R. § 68.33(f).

On August 9, 2021, Respondent's counsel filed its Answer to Complaint and Response to the Order to Show Cause. Respondent explained that it did not learn about this instant case until June 14, 2021, when it received the Court's Order to Show Cause. Resp. Order Show Cause 1. Upon receiving the administrative record, Respondent noticed that while the complaint and NOCA were delivered to 55 Glenlake Parkway NE, Atlanta, GA 20328, Respondent's address is 55 Glenlake Parkway, NE. Resp. Order Show Cause 1–2.

II. LEGAL STANDARDS

Per 28 C.F.R. § 68.9(b), "Failure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the

allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” The rules do not provide further guidance with defaults, such as when to set aside entry of default. In these instances, the Court may use the Federal Rules of Civil Procedure as a general guide. 28 C.F.R. § 68.1. Federal Rule of Civil Procedure 55(c) permits the court to “set aside an entry of default for good cause[.]” “The Court has discretion to set aside an entry of default and to determine whether good cause exists.” United States v. Treescapes, Inc., 15 OCAHO no. 1389, 2 (2021) (citing United States v. Sanchez, 13 OCAHO no. 1331, 2 (2019)); *accord* Jones v. Harrell, 858 F.2d 667, 669 (11th Cir. 1988) (trial courts have discretion to set aside entry of default).¹

Default judgments “are seen with disfavor because of the strong policy of determining cases on their merits[.]” Domineck v. One Stop Auto Shop, Inc., 302 F.R.D. 695, 699 (N.D. Ga. 2014) (quoting Fla. Physician's Ins. Co. v. Ehlers, 8 F.3d 780, 783 (11th Cir.1993)); *accord* Treescapes, Inc., 15 OCAHO no. 1389, at 2 (citing Harad v. Aetna Cas. & Sur. Co., 839 F.2d 979, 982 (3d. Cir. 1988) and Nickman v. Mesa Air Grp., 9 OCAHO no. 1106, 2 (2004)). “Because defaults are generally disfavored, the Court construes good cause generously.” Sinha v. Infosys, 14 OCAHO no. 1373a, 3 (2021) (citing D’Amico v. Erie Cmty. Coll., 7 OCAHO no. 927, 61, 63 (1997)). The Eleventh Circuit explains that good cause is “a liberal [standard] — but not so elastic as to be devoid of substance.” Compania Interamericana Exp.-Imp., S.A. v. Compania Dominicana de Aviacion, 88 F.3d 948, 951 (11th Cir. 1996) (quoting Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989)). The court provides the following factors in considering whether good cause exists to set aside an entry of default:

whether the default was culpable or willful, whether setting it aside would prejudice the adversary, . . . whether the defaulting party presents a meritorious defense . . . whether the public interest was implicated, whether there was significant financial loss to the defaulting party, and whether the defaulting party acted promptly to correct the default.

Id. (citations omitted). “[I]f a party willfully defaults by displaying either an intentional or reckless disregard for the judicial proceedings, the court need make no other findings in denying relief.” Id. at 951–52 (citing Shepard Claims Serv., Inc. v. William Darrah & Assocs., 796 F.2d 190, 194–95 (6th Cir.1986)).

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the *pinpoint* citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

III. DISCUSSION

The Court finds that Respondent has demonstrated good cause for its failure to timely file its answer. Upon learning of the instant case when it received the Order to Show Cause on June 14, 2021, Respondent submitted its first filings to the Court within that same week in order to correct the default. Respondent's prompt actions demonstrate that it did not willfully default by displaying either an intentional or reckless disregard for the judicial proceedings.

Moreover, Respondent's representations in its pleading that service of the original complaint was defective constitute independent good cause. Although the U.S. Postal Service website indicates that the NOCA and complaint were delivered on April 1, 2021, the documents were delivered to an address that was not Respondent's. Accordingly, service was not completed on April 1, 2021 because 28 C.F.R. § 68.3(b) provides that service of the complaint "is complete upon receipt by addressee."

In short, Respondent's prompt response to the Order to Show Cause, and its representations concerning the defective service of the pleadings, constitute sufficient good cause to set aside the prior Order. Accordingly, the Court VACATES the prior Order to Show Cause and GRANTS Respondent's motion to accept the otherwise untimely filed answer.

IT IS SO ORDERED.

ENTERED:

Honorable John A. Henderson
Administrative Law Judge

DATE: October 21, 2021