

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

August 6, 1998

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. § 1324a Proceeding
) Case No. 98A00040
)
TURNER'S JAPANESE) MARVIN H. MORSE,
AUTO REPAIR,) Administrative Law Judge
Respondent.)
_____)

ORDER

As confirmed by the First Prehearing Conference Report and Order issued June 23, 1998, both parties, by counsel, advised that this case was effectively settled between them, and that appropriate pleadings as a predicate for judicial disposition would be filed by July 2, 1998. Instead, the Immigration and Naturalization Service (INS or Complainant) on July 2, 1998, filed a document entitled "Motion to Dismiss," which, after advising that the parties had reached a settlement, requested "that the complaint . . . **be dismissed upon receipt of a copy of the executed agreement, to be forwarded shortly.**" (Emphasis added).

Because the "Motion to Dismiss" was inchoate, to be effective only upon subsequent filing of "the executed agreement," I have held it in abeyance, undocketed, pending completion of the anticipated filing. Subsequently, on August 5, 1998, Complainant tendered a document entitled "Settlement Agreement," presumably intended to provide the predicate for judicial disposition. Regrettably, however, the tendered document appears to be a copy in lieu of an original, bearing reproductions of signatures but devoid of any indication of the date(s) of execution. I reject the filing as incomplete. Both the prior "Motion" and the purported "Settlement Agreement" are returned by this Order to the Complainant who will be expected to perfect the filing as a basis for dismissal.

Accompanying the “Settlement Agreement” is a copy of a “Final Order” dated July 1, 1998, apparently signed by Complainant’s Acting District Director and by its Assistant District Counsel. The recitation in the “Final Order” that the Respondent’s “request for a hearing before an administrative law judge was withdrawn in writing pursuant to an agreement between the parties” may reflect the intent of the parties but it is at odds with the law which precludes Complainant from issuing a final order while an employer’s request for hearing is pending before the judge upon the filing of a complaint by INS. 8 U.S.C. §1324a(e)(3); 28 C.F.R. §68.14(a)(2). So far as I am aware, this is the first instance since enactment of 8 U.S.C. §1324a that INS has executed a “Final Order” while a case remains *sub judice*. The parties are cautioned that the “Final Order” is premature and ineffective until after judicial dismissal of the case.

A copy of the pleadings referred to in this Order will be retained in the judge’s working file, but will remain undocketed. The case remains on the docket pending receipt of an appropriate motion to dismiss accompanied by a fully executed agreement (i.e., *inter alia*, signed and dated). Because the “Motion to Dismiss,” dated June 30, but not received in OCAHO until July 2, posits subsequent “receipt of a copy of the executed agreement” and the unauthorized “Final Order” is dated July 1, the tender of an undated agreement is particularly confusing.

SO ORDERED.

Dated and entered this 6th day of August, 1998.

Marvin H. Morse
Administrative Law Judge