

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

October 24, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2022A00015
)	
KOY CHINESE & SUSHI RESTAURANT,)	
Respondent.)	
_____)	

Appearances: John C. Wigglesworth, Esq., for Complainant
Kevin Lashus, Esq., for Respondent

ORDER SUMMARIZING OCTOBER 18, 2023 PREHEARING CONFERENCE

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On January 10, 2022, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Koy Chinese & Sushi Restaurant, violated § 1324a(a)(1)(B).

On October 18, 2023, the Court held a prehearing conference to receive an update from the parties on settlement. *See* Order Summ’g Sept. 5, 2023 Prehr’g Conf. 2; Order Rescheduling Prehr’g Conf. John Wigglesworth, Esq. appeared on behalf of Complainant. Kevin Lashus, Esq. appeared on behalf of Respondent.

During the prehearing conference, the parties confirmed they have reached a meeting of the minds and are attempting to draft a settlement agreement. Based on the progress made by the parties, the Court was disinclined to set a case schedule. The next prehearing conference will occur on Wednesday, December 6, 2023 at 3:00 p.m. Central time (1:00 p.m. Pacific time). At this conference, the parties will once more update the Court on the status of settlement.

During the prehearing conference, the parties provided the Court with a preview of potential settlement terms. The Court then provided guidance to assist the parties in drafting an approvable agreement. *See* 28 C.F.R. § 68.14(a)(2).¹ Based on the discussion, the Court felt obligated to explain to Complainant that in settlement, as a foundational matter, an agreement should contain all terms contemplated by the parties (i.e., if the parties intend to agree that they will jointly move the Court to dismiss a case as a condition of settlement, such a term should expressly appear in the written agreement.) The Court also explained that a valid settlement agreement must have consideration. *See, e.g., Heath v. Springshine Consulting*, 16 OCAHO no. 1421b, 4 (2023)² (“The parties bargained on a lawful object—the release of claims by Complainant against Respondent in exchange for a sum of money.”).

The Court also explained (for Complainant) the limitations on use of the term “Final Order” when a case is still in this forum. Notably, DHS does not have the authority to issue any equivalent to an ALJ-issued Final Order prior to issuance of said Final Order by the ALJ.³ Once a case has left this forum, DHS can issue whatever documents or forms it chooses to in accordance with its own regulations and policies. Issuance of a “Final Order” (or its equivalent) by DHS “upon execution of the agreement” is not an approvable settlement term because when the settlement agreement is executed, the case is still in the forum. It leaves the forum if and when it is dismissed by the Court pursuant to a reason provided for in regulation or caselaw.

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

² 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

³ *See, e.g., United States v. Enrique Silva*, 8 OCAHO no. 1014, 252, 253 (1998) (noting that the § 1324a “regimen obliges [DHS] to stay its hand in the issuance of final orders until a case is disposed of by the ALJ”); *United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 2 n.3 (2017) (referring to an ICE Order issued *after* the ALJ’s Final Decision and Order as “merely cumulative or repetitive”).

Should parties feel they have drafted or executed an approvable agreement, they are encouraged to file such agreement with the Court attached to a motion requesting the Court review the agreement in advance of the next prehearing conference.

SO ORDERED.

Dated and entered on October 24, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge