

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

February 1, 2024

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

Appearances: Omiga Cape, Esq., for Complainant
Kevin Lashus, Esq., for Respondent

ORDER SUMMARIZING FEBRUARY 1, 2024 PREHEARING CONFERENCE AND
DISMISSING CASE

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

The Court held a telephonic prehearing conference in this matter on February 1, 2024. Omiga Cape Esq. appeared on behalf of Complainant, and Kevin Lashus, Esq. appeared on behalf of Respondent. Complainant’s new counsel now informs the parties she has revised the terms of the settlement agreement in a manner consistent with the Court’s previous guidance.

At the conference, the parties made a joint, oral motion to dismiss the case without prejudice.

The Court informed the parties that she would consider their oral motion to dismiss without prejudice. *See* 28 C.F.R. § 68.11(a)¹ (providing that motion shall be made in writing unless the Administrative Law Judge consents to accept a motion orally).

The Court considered the joint motion to dismiss as one made pursuant to 28 C.F.R. § 68.14(a)(2). Where parties have entered into a settlement agreement, they shall “[n]otify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.”

The Court found that the parties complied with the requirements of 28 C.F.R. § 68.14(a)(2), and that dismissal without prejudice was appropriate. The Court declined to require the filing of the settlement agreement, given the parties’ oral representations about its terms. The Court orally granted the parties’ joint motion.

Therefore, the parties’ joint motion to dismiss based on settlement is GRANTED, and this case is DISMISSED WITHOUT PREJUDICE.

This is a Final Order.

SO ORDERED.

Dated and entered on February 1, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

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

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.