

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

SUTATIP UTHAI WOODS,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2020B00070
PHILIPS NORTH AMERICA, LLC,)	
d/b/a PHILIPS HEALTHCARE,)	
)	
Respondent.)	
_____)	

Appearances: Sutatip Uthai Woods, pro se Complainant
Patrick Shen, Esq., and Carl Hampe, Esq., for Respondent

ORDER LIFTING STAY OF PROCEEDINGS

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. On May 4, 2020, Complainant, Sutatip Uthai Woods, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Philips North America, LLC, doing business as Philips Healthcare, alleging discrimination and retaliation.

On May 8, 2020, the Chief Administrative Hearing Officer (CAHO) sent a copy of the complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) to the parties by United States Postal Service certified mail. Through the NOCA, the CAHO informed Respondent that these proceedings would be conducted according to the OCAHO Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in

28 C.F.R. part 68 (2024),¹ and applicable case law. Notice Case Assign. ¶ 2. A link to OCAHO's Rules was provided to Respondent, along with contact information for OCAHO. *Id.* The CAHO advised Respondent that it had the right to file an answer to the complaint and that its answer must be filed within thirty days after it was served with the complaint. *Id.* ¶ 4. Respondent's answer was due no later than June 11, 2020. No answer was filed.

Due to Respondent's failure to file a timely answer to the complaint, the Court issued a Notice of Entry of Default on July 2, 2020. The Court ordered Respondent to file an answer pursuant to 28 C.F.R. § 68.9(c) within fifteen days and to show good cause for its failure to file a timely answer. Notice Entry Default 2. Respondent filed a Motion for Enlargement of Time on July 28, 2020, requesting an extension through August 11, 2020, to file its answer to the complaint and a response to the Court's Notice of Entry of Default.

Before the Court ruled on the Motion for Enlargement of Time, Respondent filed its Answer to the Complaint, a Response to the Order to Show Cause, and a Motion to Dismiss on August 6, 2020. Respondent then filed an Amended Motion to Dismiss on August 10, 2020.

On August 18, 2020, Complainant submitted a filing entitled "Additional [sic] Information." Through this filing, Complainant provided additional factual allegations regarding the events giving rise to her complaint and attached additional evidentiary submissions.

The Court issued an Order Granting Motion for Enlargement of Time and Discharging Entry of Default on August 21, 2020. *Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371 (2020).² Through this order, the Court granted Respondent's

¹ OCAHO's Rules are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

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 been 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

Motion for Enlargement of Time in which to file its answer and response to the Court’s Notice of Entry of Default. *Id.* at 4. The Court then found that Respondent had shown good cause in its response to the Notice of Entry of Default for its failure to file a timely answer. *Id.* Accordingly, the Court set aside the Court’s Notice of Entry of Default and accepted Respondent’s answer. *Id.* The Court then addressed Respondent’s Amended Motion to Dismiss and ordered Complainant to file any response to the Amended Motion to Dismiss by September 11, 2020. *Id.*

On September 16, 2020, Complainant filed its Response to Respondent’s Amended Motion to Dismiss. On September 25, 2020, Respondent filed a Request for Leave to Reply and attached to the filing its Reply to Response to Amended Motion to Dismiss. The Court granted Respondent’s request for leave to file a reply in support of its Motion to Dismiss on October 28, 2020, explaining that Complainant’s response contained new assertions outside her complaint and finding that Respondent should have the opportunity to address the issues raised in her response. Order Granting Leave Reply 1-2.

On November 30, 2022, the Court issued an Order Issuing Stay of Proceedings. The Court explained that OCAHO Administrative Law Judges (ALJs) had observed in recent decisions that the United States Supreme Court’s decision in *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021)—in which the Supreme Court found that the unreviewable authority of Patent Trial and Appeal Board Administrative Patent Judges (APJs) was incompatible under the Appointments Clause of the United States Constitution with the APJs’ appointment to an inferior office—presented “an unresolved question as to the Court’s ability to issue a final order in § 1324b cases that address non-administrative questions.” *Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371a, 1 (2022) (collecting cases). On this point, the Court noted that the CAHO had recently explained:

OCAHO ALJs appear to be inferior officers for purposes of the Appointments Clause, Article II, Section 2, Clause 2, of the Constitution. *See Guidance on Administrative Law Judges After Lucia v. SEC (S.Ct.)*, *July 2018*, 132 Harv. L. Rev. 1120 (2019) (discussing guidance from the

citation. Published decisions may be accessed through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” or the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Department of Justice’s Office of the Solicitor General that after the decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), “all ALJs” should be appointed as inferior officers). Consequently, the undersigned acknowledges some possible tension between that status and the unavailability of further administrative review of ALJ decisions in cases arising under 8 U.S.C. § 1324b in light of a recent Supreme Court decision. See *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021) (holding that unreviewable authority by an Administrative Patent Judge is incompatible with that Judge’s status as an inferior officer). However, neither party has raised that issue before the ALJ, and even if one party had, it is not clear that the ALJ could have addressed it. Compare, e.g., *Carr v. Saul*, 141 S. Ct. 1352, 1360 (2021) (“[T]his Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators’ areas of technical expertise.”), and *Califano v. Sanders*, 430 U.S. 99, 109 (1977) (“Constitutional questions obviously are unsuited to resolution in administrative hearing procedures”), with *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994) (observing that the rule that agency consideration of constitutional questions is generally beyond the agency’s jurisdiction is not “mandatory”), and *Graceba Total Commc’ns, Inc. v. FCC*, 115 F.3d 1038, 1042 (D.C. Cir. 1997) (finding that administrative agencies have “an obligation to address properly presented constitutional claims which . . . do not challenge agency actions mandated by Congress”).

Id. at 2 (quoting *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021)). Given this unresolved question, the Court cited recent cases in which OCAHO ALJs sua sponte issued stays of proceedings in cases arising under 8 U.S.C. § 1324b when a “final case disposition appeared imminent.” *Id.* at 2-3 (collecting cases).

Considering these developments in case law, the Court issued a stay of proceedings in this matter on November 30, 2022. *Woods*, 14 OCAHO no. 1371a, at 3. During the stay of proceedings, the Court explained that it would “not consider or adjudicate submissions filed by the parties,” but that the parties were “not precluded from contacting the Court and requesting a status update.” *Id.* The Court would “timely inform the parties in writing when the stay is lifted.” *Id.*

On October 16, 2023, the CAHO issued a Notice of Reassignment reassigning this case to the undersigned pursuant to 28 C.F.R. §§ 68.2 and 68.26.

II. LEGAL STANDARDS AND DISCUSSION

On October 12, 2023, the United States Department of Justice published an interim final rule providing for review by the Attorney General of the United States of OCAHO ALJs' final orders in cases arising under 8 U.S.C. § 1324b. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (codified at 28 C.F.R. pt. 68).

Since the publication of this interim final rule, recent decisions by this Court have lifted stays of proceedings previously issued following the unresolved question raised by *Arthrex, Inc.*, 594 U.S. 1 (2021), finding that the interim final rule “resolved the issue identified in *A.S. v. Amazon Web Servs., Inc.* that led to the stay.” *Symplice v. N.Y.C. Health & Hospitals Corp.*, 18 OCAHO no. 1493a (2024) (lifting stay of proceedings, finding the Court may “proceed to a final case disposition in this matter”); *see also Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417d, 2 (2023) (same); *Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373d, 2 (2024) (same); *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381p, 2 (2024) (same). Further, OCAHO ALJs have recently denied motions to issue a stay of proceedings in light of *Arthrex, Inc.*, also citing the publication of the interim final rule. *See, e.g., US Tech Workers v. Boston Consulting Grp. (BCG), Inc.*, 20 OCAHO no. 1580, 2-3 (2024); *US Tech Workers v. TransUnion, LLC*, 20 OCAHO no. 1582, 2-3 (2024); *US Tech Workers v. BMO Bank*, 20 OCAHO no. 1586, 2 (2024).

Given the publication of the interim final rule and its codification at 28 C.F.R. part 68, providing for the Attorney General's review of final orders in cases arising under 8 U.S.C. § 1324b, this Court concludes that the interim final rule has addressed the constitutional question the CAHO identified in *A.S.*, 14 OCAHO no. 1381h, at 2 n.4. It finds that *Arthrex, Inc.*, no longer presents a “clear bar to moving ahead” in this matter. *Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 2 (2022) (noting that the issuance of a stay “calls for the exercise of judgment, which must weigh competing interests and maintains an even balance,” and “should not be granted absent a clear bar to moving ahead”) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), and then quoting *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998)).

During the stay of proceedings, the Court had informed the parties that it would “not consider or adjudicate submissions filed by the parties.” *Woods*, 14 OCAHO no. 1371a, at 3. The Court now lifts the stay of proceedings in this case and notifies the parties that an order on Respondent's Amended Motion to Dismiss, which has been fully briefed, is forthcoming.

III. ORDERS

IT IS SO ORDERED that the Court's Order Issuing Stay of Proceedings issued in this matter on November 30, 2022, is LIFTED.

SO ORDERED.

Dated and entered on September 19, 2024.

Honorable Carol A. Bell
Administrative Law Judge