

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00070
FRESCO PRODUCE, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Ariel Chino, Esq., for Complainant
Robert H. Crane, Esq., for Respondent

ORDER FOR JOINT STATUS REPORT

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023, alleging that Respondent, Fresco Produce, Inc., violated the employer sanctions provisions of 8 U.S.C. § 1324a. Respondent, through counsel, filed an answer to the complaint on July 28, 2023.

On January 25, 2024, the Court issued an Order Requiring Filing of Notice of Intent to Fine and Prehearing Statements and Scheduling Initial Prehearing Conference. The Court ordered the parties to make their initial disclosures and to file prehearing statements of position with the Court by February 15, 2024, and scheduled an initial prehearing conference for February 21, 2024. Order Requiring Filing Notice Intent Fine & Prehr's Statements & Scheduling Initial Prehr's Conf. 2, 7-9. Neither party filed its prehearing statement of position.

On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. Through this joint submission, the parties requested that the Court refer this matter to the OCAHO Settlement Officer Program¹ for mediation, and “expressly consent[ed] to participation in the Settlement Officer Program and agree[d] to engage in settlement negotiations in good faith.” Joint Mot. Consent Referral Settlement Officer Program 1.

The Court held an initial telephonic prehearing conference with counsel for both parties on February 21, 2024, pursuant to 28 C.F.R. § 68.13.² During the prehearing conference, both parties confirmed their interest in a referral to the OCAHO Settlement Officer Program and consented to abide by the program’s rules. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530, 3-4 (2024) (memorializing the prehearing conference in accordance with 28 C.F.R. § 68.13(c)).³ During the conference, the Court granted the parties’ Joint Motion for and Consent to Referral to Settlement Officer Program and, with the parties’ consent, found that the case was appropriate for an initial referral of sixty days. *Id.* at 5.

¹ EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. *See also* Chapter 4.7 of the OCAHO Practice Manual available at <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

² Proceedings in this case will generally be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). 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>.

³ 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 after 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 citation. Published decisions may be accessed through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

On March 7, 2024, the Court issued an Order Referring Case to OCAHO Settlement Officer Program and Designating Settlement Officer. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530a (2024). The Court appointed a Settlement Officer and referred this matter to him for mediation for an initial referral period of sixty days beginning on March 18, 2024, and continuing through May 17, 2024. *Id.* at 4. The Court noted that no procedural deadlines needed to be stayed in this matter during the referral period. *Id.*

On May 16, 2024, the assigned Settlement Officer requested a thirty-day extension of time of this case's referral to the OCAHO Settlement Officer Program. The Settlement Officer explained that the parties requested the extension of time and that they continued to work diligently toward a settlement.

The Court issued an Order Extending Referral to the OCAHO Settlement Officer Program on May 20, 2024. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530c (2024). The Court found that a thirty-day extension of the referral period was reasonable and appropriate, considering the Settlement Officer's representation that the parties consented to the requested extension and continued to work to settle the matter through mediation. *Id.* at 4. The Court extended the referral period through June 17, 2024, and referred the parties to 28 C.F.R. § 68.14 should they reach an agreement through mediation. *Id.* At the conclusion of the referral period, the Court explained that it would request status reports and set other necessary deadlines in the case. *Id.* at 5.

On June 18, 2024, the Settlement Officer informed the Court that the parties had reached an agreement in principle during mediation and were in the process of finalizing their agreement.

II. DISCUSSION

The Court's referral of this case to the OCAHO Settlement Officer Program concluded on June 17, 2024, and this matter is now back before the Court for continued proceedings. Given that the Settlement Officer informed the Court that the parties had reached an agreement in principle through mediation, the Court now orders the parties to file a joint status report providing a case update and describing the status of their settlement negotiations and, if applicable, seeking a specific

amount of time from the Court to make the appropriate filings pursuant to 28 C.F.R. § 68.14.⁴

Should the parties' settlement negotiations have concluded unsuccessfully, they shall confer and use the status report to provide the Court with agreed proposed dates for the filing of prehearing statements of position, the completion of discovery, the filing of dispositive motions and responses, and a contested hearing in this matter. The parties shall identify in the status report their preferred location (city and state) for the hearing.⁵

The parties shall file the joint status report no later than fifteen days from the date of this Order.

III. ORDERS

IT IS SO ORDERED that Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Fresco Produce, Inc., shall file a joint status report with the Court within fifteen days of the date of this Order; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

⁴ 28 C.F.R. § 68.14 describes the two avenues for leaving this forum upon settlement. The parties may proceed pursuant to 28 C.F.R. § 68.14(a)(2) by filing a joint notice of full settlement and an agreed motion to dismiss this case signed by counsel for both parties. The parties should indicate in any such motion whether they are seeking dismissal with or without prejudice.

⁵ Sections 274A(e)(3)(B) and 274C(d)(2)(B) of the INA dictate that hearings be held "at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred." 28 C.F.R. § 68.5(b).

SO ORDERED.

Dated and entered on August 29, 2024.

Honorable Carol A. Bell
Administrative Law Judge