

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. 2020A00091
ORIENTAL GARDEN,)	
)	
Respondent.)	
_____)	

Appearances: Martin Celis, Esq., for Complainant
Oriental Garden, pro se Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On September 11, 2020, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Oriental Garden, violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant alleges that Respondent failed to ensure the proper completion of Section 1 and/or failed to properly complete Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9) for eight employees¹ in violation of 8 U.S.C. § 1324a(a)(1)(B).

¹ Although the complaint alleges that Respondent failed to ensure proper completion of Section 1 and/or failed to properly complete Section 2 or 3 of the Form I-9 for “eight (9)” employees, Compl. ¶ 3, the attached Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act (NIF) identified eight individuals. *Id.* Ex. A. Complainant likewise stated that “eight substantive violations occurred” when describing the allegations in the complaint in Complainant’s Motion to Vacate Order on Liability and Dismiss (Complainant’s

Compl. ¶ 3. Complainant attached to the complaint the NIF that it served on Respondent on May 9, 2019, and Respondent's request for a hearing before OCAHO (request for hearing). *Id.* Exs. A, B. Complainant explained that the violations alleged in the complaint were based on the allegations contained in the NIF which was "incorporated [in the complaint] as though fully set forth" therein. *Id.* ¶ 3.

On September 22, 2020, the Chief Administrative Hearing Officer (CAHO) served Respondent via United States Postal Service (USPS) certified mail with (a) the complaint, (b) the NIF, (c) Respondent's request for hearing, and (d) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) (together, the Complaint package). Through the NOCA, the CAHO informed Respondent that proceedings would be conducted according to OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024),² 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. The CAHO warned Respondent that if it failed to file a timely answer, it may be deemed to have waived its right to appear and contest the allegations of the complaint and that "the Administrative Law Judge [ALJ] may enter a judgment by default along with any and all appropriate relief." *Id.* (citing 28 C.F.R. § 68.9(b)).

The USPS website indicated that the Complaint package was delivered to Respondent on September 24, 2020, making Respondent's answer due no later than October 26, 2020. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). Respondent did not file an answer and did not request an extension of time to file its answer with the Court.

On November 12, 2020, the Court issued a Notice of Entry of Default. The Court ordered Respondent to file an answer pursuant to 28 C.F.R. § 68.9(c) within fifteen days of the date of the order and to show good cause for its failure to file an

Mot. to Vacate and Dismiss). Complainant's Mot. to Vacate and Dismiss at 2. As such, the Court understands the complaint's reference to "9" employees to be a scrivener's error.

² 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>.

answer. Notice of Entry of Default 2. The Court cautioned Respondent that if it failed to file an answer and show good cause, the Court might “enter a default judgment against Respondent, pursuant to 28 C.F.R. § 68.9(b).” *Id.* Respondent did not respond to the Court’s Notice of Entry of Default.

On July 9, 2021, the Court issued an Order Entering Default as to Liability and Setting Briefing Schedule on Penalties (Default Order). The Court found that OCAHO had properly served Respondent with the Complaint package and the Notice of Entry of Default. Default Order 3. The Court further found that these mailings notified Respondent that OCAHO’s Rules of Practice and Procedure for Administrative Hearings governed these proceedings and put it on notice of the consequences of failing to file an answer or respond to the Court’s orders. *Id.* Therefore, the Court found that Complainant had abandoned its request for a hearing and waived its right to appear and contest the allegations of the complaint. *Id.* The Court entered default as to liability against Respondent pursuant to 28 C.F.R. § 68.9(b) and found that Respondent conceded liability and admitted to the conduct alleged in the complaint. *Id.* at 3, 6. The Court bifurcated the proceedings into liability and damages proceedings and set a briefing schedule for submissions from each party regarding the penalty assessment. *Id.* at 3, 5-6. Complainant’s brief regarding the assessment of penalties was due by August 9, 2021, and Respondent’s response was due by September 8, 2021. *Id.* at 6.

On August 10, 2021, Complainant filed Complainant’s Motion to Substitute Counsel and for Extension of Time to File Brief on Penalties (Complainant’s Mot. to Substitute and for Extension of Time). In that motion, DHS Assistant Chief Counsel (ACC) Martin Celis moved the Court to substitute him as Complainant’s counsel and, given that “[t]his case was inherited,” ACC Celis requested additional time to familiarize himself with the case and file a response to the Court’s Order Entering Default as to Liability and Setting Briefing Schedule on Penalties. *Id.* at 1-2.

On August 30, 2021, Complainant filed Complainant’s Motion to Vacate Order on Liability and Dismiss. Citing discrepancies between the complaint and the NIF, Complainant moved the Court to vacate its Order Entering Default as to Liability and Setting Briefing Schedule on Penalties. Complainant’s Mot. to Vacate and Dismiss 2-3. Given service issues, Complainant then asked the Court to dismiss this matter without prejudice. *Id.* at 3. Respondent did not file a response to Complainant’s motion.

II. LEGAL STANDARDS AND DISCUSSION

Pending before the Court are Complainant's Motion to Substitute Counsel and for Extension of Time to File Brief on Penalties and Complainant's Motion to Vacate Order on Liability and Dismiss. For the reasons given below, the Court now grants Complainant's motions.

A. Complainant's Motion to Substitute Counsel and for Extension of Time to File Brief on Penalties

In its Motion to Substitute Counsel, Complainant represented that DHS ACC Graciela Jiron was no longer available and that ACC Martin Celis was now assigned the agency's employment-based cases before OCAHO. Complainant's Mot. to Substitute and for Extension of Time 1. Complainant moves the Court to substitute ACC Celis as its counsel in this matter. *Id.* Respondent did not file a response to Complainant's motion.

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that "[w]ithdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution." 28 C.F.R. § 68.33(g). OCAHO regularly grants similar requests for substitution of DHS counsel where the assigned Assistant Chief Counsel becomes unavailable. *See, e.g., United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, 4, 7 (2024) (granting motion to substitute where a different agency attorney was assigned to handle OCAHO cases); *United States v. El Camino, Inc.*, 18 OCAHO no. 1479b, 2 (2023) (accord); *see also United States v. Upright Installation Servs., Corp.*, 18 OCAHO no. 1494, 3 (2023) (granting motion to substitute where complainant's counsel was leaving DHS).³

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 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 citation. Published decisions may be accessed through the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or the

Given DHS ACC Jiron's unavailability, the fact that ACC Celis has taken over employment-based cases, and the fact that the motion is unopposed, the Court grants the motion for substitution. *See United States v. Spring & Soon Fashion Inc.*, 8 OCAHO no. 1003, 102, 128-29 (1998) (granting a motion to substitute counsel where the request was reasonable and unopposed). ACC Celis is substituted for ACC Jiron as Complainant's counsel of record.

Through its filing, Complainant also belatedly moved the Court for an extension of time to file its brief on penalties. Complainant explained that additional time was needed given the change in counsel, the unavailability of ACC Celis for a period of time after his reassignment, the retirement of the DHS auditor who prepared the case, the necessity of assigning a new auditor to review this matter, and the need for ACC Celis and the new auditor to familiarize themselves with the case. Complainant's Mot. to Substitute and for Extension of Time 1-2. Complainant requested an additional fifteen days to file its assessment of penalties. *Id.* at 1. Respondent did not file a response to Complainant's motion.

While the extension request was pending, Complainant filed a Motion to Vacate Order on Liability and Dismiss in lieu of the brief on penalties. Although Complainant's Motion to Vacate Order on Liability and Dismiss was filed more than fifteen days after the Court's deadline for the filing of a brief on penalties, the Court accepts it as being timely filed given that Complainant had sought additional time from the Court and filed its motion while the extension request was pending before the Court. The Court finds that Complainant's requested extension of time was reasonable given the circumstances, including the change in Complainant's counsel and the need to assign a new auditor to the case, and the lack of opposition to the requested extension, and, for purposes of the record, it is granted.

B. Complainant's Motion to Vacate Order on Liability and Dismiss

The Courts turns now to Complainant's Motion to Vacate Order on Liability and Dismiss through which Complainant asks the Court to vacate its Order Entering Default as to Liability and Setting Briefing Schedule on Penalties and then moves the Court to dismiss this case. Complainant's Mot. to Vacate and Dismiss 2-3. The Court will address each motion separately.

United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

1. Complainant's Motion to Vacate Order on Liability

Complainant first moves to vacate the Court's Order Entering Default as to Liability and Setting Briefing Schedule on Penalties. Complainant's Mot. to Vacate and Dismiss 3. Complainant explains that, in preparing its brief on the assessment of penalties as ordered by this Court, it discovered discrepancies between the allegations in the complaint and the NIF. *Id.* at 2. Specifically, while Count I in the complaint alleged that Respondent failed to ensure that the employee properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Form I-9 for eight employees, the NIF alleged that Respondent failed to prepare and/or present the Forms I-9 for these employees. Compl. ¶ 3; *id.* Ex. A. Complainant explained that it determined the applicable civil money penalty of \$15,208, or \$1,901 per alleged violation, *id.* Ex. A, by analyzing "the five statutory factors in light of Oriental Garden's failure to prepare and present Forms I-9, which aggravated the penalty by 5% given the serious nature of such violations." Complainant's Mot. to Vacate and Dismiss 2. Complainant explained that, although it could "seek leave to amend the complaint to correct the discrepancies," "ICE has no means of serving the Respondent with process or an amended NIF" because Oriental Garden moved without providing a forwarding address. *Id.* at 2-3. Given the anticipated service issues, Complainant moves the Court to vacate the Default Order and dismiss the case without prejudice. *Id.* at 3.

Although OCAHO's Rules of Practice and Procedure for Administrative Hearings provide for the entry of a judgment by default,⁴ they do not address setting aside an entry of default. OCAHO's Rules do provide that "[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1. Under Federal Rule of Civil Procedure 55(c), the Court may set aside its entry of default for good cause. OCAHO precedent likewise provides that "[t]he Court has discretion to set aside an entry of default and to determine whether good cause exists." *United States v. Treescapes, Inc.*, 15 OCAHO no. 1389, 2 (2021) (citing *United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019)).

⁴ 28 C.F.R. § 68.9(b) provides that "[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default."

The Court now exercises its discretion and considers whether good cause exists to set aside the entry of default in this case. “Because defaults are generally disfavored, the Court construes good cause generously.” *Sinha v. Infosys*, 14 OCAHO no. 1373a, 3 (2021) (citing *D’Amico v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997)). The information before the Court, including Complainant’s representations in its Motion to Vacate Order on Liability and Dismiss, supports setting aside the entry of default. Complainant has acknowledged charging variances between the complaint filed in this case and the NIF it served on Respondent. Complainant’s Mot. to Vacate and Dismiss 2. In addition, Complainant has disclosed that these discrepancies affected its calculation of the applicable civil money penalty it has been seeking from Respondent in this case. *Id.* These representations directly impact the entry of default in this case because through its order, the Court found that Respondent had conceded liability and admitted to the conduct alleged in the complaint. Default Order 3, 6. The Court cannot move forward with the penalty phase of these proceedings when the liability finding was based on a complaint that Complainant now recognizes does not align with the underlying NIF and Respondent’s conduct. *See United States v. Jula888*, 12 OCAHO no. 1286, 10-11 (2016) (declining to find respondent liable or impose a penalty for potential violations for failure to prepare and/or produce Forms I-9s for at least fifteen individuals “because ICE did not include their names on the NIF and the complaint” and the case had progressed sufficiently far that amendment of the complaint would have been prejudicial); *United States v. Sal’s Lounge*, 15 OCAHO no. 1394a, 3-4 (2021) (granting complainant’s motion for leave to amend the complaint to “align the complaint . . . with the language in the Notice of Intent to Fine” because the NIF “contain[s] the basis for the charge(s) against the respondent.”) (quoting 8 C.F.R. § 274a.9(d)(1)(i)); *United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407, 3-4 (2021) (allowing DHS to amend the complaint’s charging language to align with the NIF served on respondent and to include the NIF’s penalty calculations). The Court thus finds, pursuant to Federal Rule of Civil Procedure 55(c), that good cause exists to set aside the entry of default. The Court now grants Complainant’s Motion to Vacate Order on Liability and vacates its Order Entering Default as to Liability and Setting Briefing Schedule on Penalties.

2. Complainant’s Motion to Dismiss

Having vacated the entry of default, the Court turns now to Complainant’s motion to dismiss this case. In its motion, Complainant explains that it is seeking to dismiss this matter because the complaint and the NIF do not align and it “has no means of serving Respondent with process or an amended NIF” because

Respondent “moved without providing a forwarding address.” Complainant’s Mot. to Vacate and Dismiss 2-3. Complainant seeks a dismissal without prejudice. *Id.* at 3.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide for dismissals under various circumstances, including (1) where “the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted” (28 C.F.R. § 68.10(b)); (2) where the parties have reached a settlement agreement and agree to dismissal of the action (*id.* § 68.14(a)(2)); (3) where a party abandons a complaint or a request for hearing it filed (*id.* § 68.37(b)); and (4) through a final order post-hearing after “the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice” (*id.* § 68.52(d)(5)). OCAHO’s Rules do not address a complainant’s voluntary dismissal of a complaint.

Although OCAHO’s Rules of Practice and Procedure for Administrative Hearings “do not specifically cover a voluntary dismissal by the complainant,” the Court may use the Federal Rules of Civil Procedure as a general guideline. *Zajradhara v. Changxing Corp.*, 14 OCAHO no. 1356, 2 (2020) (citing 28 C.F.R. § 68.1); *see, e.g., United States v. Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, 1 (2019) (using Fed. R. Civ. P. 41 as a guideline in resolving a motion for voluntary dismissal); *United States v. La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, 2 (2021) (same).

Federal Rule of Civil Procedure 41 provides two avenues for voluntary dismissal of a case. Rule 41(a)(1) provides that a plaintiff may dismiss an action without a court order by filing “(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Rule 41(a)(2) states that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Here, Complainant has not submitted a notice or stipulation of dismissal, but rather a motion to dismiss requesting that the Court dismiss the case against Respondent. The Court therefore will analyze Complainant’s request under Rule 41(a)(2) which requires it to decide (a) whether to permit the dismissal, (b) whether the dismissal should be with or without prejudice, and (c) what terms and conditions, if any, should be imposed. The Court likewise consults case law from the United States Court of Appeals for the Fifth Circuit as it is the “appropriate circuit for review.” 28 C.F.R. § 68.56.

When considering whether to allow the dismissal, the Court is guided by case precedent. This Court and federal courts have held that “[c]ourts should grant voluntary dismissals unless ‘the non-moving party will suffer some plain legal prejudice.’” *United States v. Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, 3 (2023) (quoting *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002)). “Plain legal prejudice may arise ‘when a party proposes to dismiss the case at a late stage of pretrial proceedings, or seeks to avoid an imminent adverse ruling, or may on refiling deprive the defendant of a limitations defense.’” *Id.* (quoting *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 628 F.3d 157, 162 (5th Cir. 2010)).

Here, Respondent has not argued that it will suffer any plain legal prejudice from dismissal, and the Court finds none. In making this finding, the Court has considered the record in this case, the stage of these proceedings, the opportunity Respondent has had to make its position known to the Court, and the lack of any stated opposition to Complainant’s motion. *See Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 4-5 (granting dismissal without prejudice where the respondent did not argue that she would suffer plain legal prejudice); *Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, at 2 (finding no prejudice from dismissal where the case was in its initial pleadings stage and the respondent had only filed an answer); *Hussain v. Amazon Web Servs., Inc.*, 17 OCAHO no. 1453, 2 (2022) (granting request for voluntary dismissal and noting that the respondent had “an opportunity to be heard, [but] provided no position on the propriety of dismissal”). Thus, the Court shall grant Complainant’s Motion to Dismiss.

The Court next considers the appropriateness of dismissal with or without prejudice. Complainant requests dismissal without prejudice. Complainant’s Mot. to Vacate and Dismiss 2-3. A dismissal without prejudice allows a complainant “to refile a complaint as if it had never been filed.” *United States v. RGV Best Burger, Inc.*, 18 OCAHO no. 1492, 3 (2023) (citing 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2367 (4th ed. 2023) (an order dismissing without prejudice “permits the initiation of a second action[.]”). In contrast, a dismissal with prejudice has res judicata and collateral estoppel consequences and bars “another prosecution based on identical facts.” *Id.* (citations omitted).

Under Federal Rule of Civil Procedure 41(a)(2), unless the order states otherwise, a dismissal is without prejudice, and both OCAHO and Fifth Circuit case law have recognized a court’s “broad discretionary power” over whether to dismiss a complaint under Rule 41(a)(2) with or without prejudice. *Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 4 (citing *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3; and then citing *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 195 (5th Cir.

2011)). In determining whether to dismiss a complaint with or without prejudice in the context of a voluntary dismissal, OCAHO ALJs have considered factors such as the stage of the proceedings and the resulting prejudice to the respondent from dismissal. *See, e.g., Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, at 2; *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3.

Given Complainant's representations in its motion, the record before the Court, the stage of these proceedings, Respondent's failure to identify any prejudice or unfair effects from a dismissal without prejudice, and the fact that "the threat of future litigation does not constitute plain legal prejudice," *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citations omitted), the Court exercises its discretion and finds that a dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(2) is appropriate here. *See Zajradhara v. CL Corp.*, 16 OCAHO no. 1429a, 3 (2022) (finding "no indication that [r]espondent will suffer plain legal prejudice from dismissal without prejudice" where it did not provide a response to the motion); *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (granting voluntary dismissal where the respondent did not file a response opposing the motion and there did not appear to be any prejudice or unfair effects).

Lastly, Federal Rule of Civil Procedure 41(a)(2) permits a court ordering a dismissal to include any additional terms it "considers proper." "Terms may concern the payment of costs and attorneys' fees or seek to reduce the inconvenience to any party opposing the dismissal by requiring the production of documents or witnesses." *Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 3 (citing *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976)). The Court declines to impose any supplemental terms or conditions on this dismissal. Respondent has not sought any payments, documents, or testimony, and the Court finds no curative conditions are necessary.

Accordingly, based on these reasons, the Court grants Complainant's Motion to Dismiss and this case is dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) without prejudice.

III. ORDERS

IT IS SO ORDERED that the Motion to Substitute Counsel, filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is GRANTED, and DHS Assistant Chief Counsel Martin

Celis is substituted for DHS Assistant Chief Counsel Graciela Jiron as counsel for Complainant;

IT IS FURTHER ORDERED that Complainant's Motion for Extension of Time to File Brief on Penalties is GRANTED;

IT IS FURTHER ORDERED that Complainant's Motion to Vacate Order on Liability against Respondent, Oriental Garden, is GRANTED, and, pursuant to Federal Rule of Civil Procedure 55(c), the Court's Order Entering Default as to Liability and Setting Briefing Schedule on Penalties dated July 9, 2021, is VACATED; and

IT IS FURTHER ORDERED that Complainant's Motion to Dismiss is GRANTED, and, pursuant to Federal Rule of Civil Procedure 41(a)(2), this case is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on September 17, 2024.

Honorable Carol A. Bell
Administrative Law Judge

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).

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.