

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

October 23, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
)	8 U.S.C. § 1324a Proceeding
v.)	OCAHO Case No. 2024A00094
)	
)	
TERRAPOWER, LLC,)	
Respondent.)	
_____)	

Appearances: Margaret LaDow, Esq., for Complainant
Diane M. Butler, Esq., for Respondent

ORDER SUMMARIZING OCTOBER 22, 2024 PREHEARING CONFERENCE

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a.

On October 22, 2024, the Court held a prehearing conference to discuss the current case status and revise the case schedule following receipt of a motion to compel and summary decision. Ms. LaDow attended on behalf of Complainant and Ms. Butler attended on behalf of Respondent.

I. DISCOVERY SCHEDULE REQUEST FOR PRODUCTION & UPDATED MOTION

Respondent filed a Motion to Compel in which it identified several areas of impasse in discovery. The parties informed the Court there were updates relative to the requests for production discussed in the motion. Specifically, Complainant intended to produce some responsive documents. In light of this update, the Court set the following schedule relative to the production of documents and the pending motion to compel:

Complainant to produce requested documents:	November 6, 2024
Meet and confer over remaining issues by:	November 20, 2024
Respondent to file update/ revised motion:	December 4, 2024

Complainant's response to Respondent's revised filing: December 18, 2024

II. GENERAL GUIDANCE ON SCOPE OF DISCOVERY

In considering the scope of discoverable documents and/or information, the parties should bear in mind the following: Department of Homeland Security (DHS) policy and/or guidance may be discoverable when it tends to prove or disprove a fact relevant to a party's claims or defenses. Similarly, the actions (or inaction) of DHS in any particular audit may be discoverable when they tend to prove or disprove a fact relevant to a party's claim or defenses. Finally, if a party in discovery seeks to assert a privilege over otherwise discoverable information or documents, the party should be prepared to produce a privilege log (or its equivalent).

III. DEPOSITION OF COMPLAINANT EMPLOYEE

Respondent seeks to depose an individual from DHS with sufficient personal knowledge to answer questions related to both DHS practice and policy surrounding audits generally and the particular audit which gave rise to this case. Complainant identified an individual with such knowledge, but noted she is unavailable in the near term.

Under OCAHO's Rules of Practice and Procedure, parties may take depositions of witnesses after giving notice of a said deposition. *See* 28 C.F.R. § 68.22. Respondent has done so here.

After providing the parties an opportunity to be heard on the necessity of such a deposition, the Court concluded Respondent should have an opportunity to depose such an individual, and should be afforded the opportunity to conduct this deposition in advance any summary decision motion practice.

The Court will set a prehearing conference on December 17, 2024, at 9:00 am PST, to receive an update from the parties on this, and other discovery issues. The parties shall call #-###-###-####, conference room ###-###-###, and security code #####. Parties may jointly propose an alternate date/time by contacting the Court (#####), at least seven days before the conference.

IV. PENDING MOTIONS

Respondent's Motion to Compel is presently pending before the Court. The motion will be adjudicated following updated filings from the parties as outline above. Parties may file other discovery-related motions as appropriate.

Also pending is Complainant's Motion for Summary Decision. Respondent's response deadline shall be stayed based on current case posture. Instead, parties may anticipate a future dispositive motions deadline following the completion of discovery. The pending motion will not be

adjudicated in advance of that new dispositive motions deadline. Complainant will be permitted to file a revised Motion for Summary Decision, but not before the conclusion of discovery (the deadline for which will be discussed in the December prehearing conference). Should Complainant decline to file a revised motion, Respondent shall have 30 days to respond to the original Motion for Summary Decision, but this 30-day period shall not begin until the future dispositive motions deadline date.

SO ORDERED.

Dated and entered on October 23, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge