

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

December 6, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024A00057
)	
G-NET CONSTRUCTION CORP.,)	
Respondent.)	
)	

Appearances: Nancy Torrellas, Esq., for Complainant
Robert Fileccia, Esq., for Respondent

AMENDED ORDER GRANTING EXTENSION OF DISCOVERY PERIOD
AND SETTING REVISED CASE SCHEDULE

The Court issued an Order Granting Extension of Discovery Period on December 6, 2024. This Order amends that Order only to correct typographical errors in the case deadline set.

This case arises under the employer sanctions provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 5, 2024. Complainant alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(B). On April 19, 2024, Respondent filed an answer.

This order addresses Respondent's Motion for an Extension of the Discovery Deadline filed on November 2, 2024. This Court set a case schedule on June 27, 2024, setting October 24, 2024, as the close of discovery. Because the Court had received a request for extension of discovery from Respondent that was rejected and (at the time) not refiled,¹ the Court ordered the parties to file a

¹ Respondent sent an email regarding the extension request on October 24, 2024, to cms.ocado@usdoj.gov. This email was not considered, as the correct inbox for e-filing motions is sctc.ocado@usdoj.gov. See Resp't's Mot. Extens. Discovery, Ex. 1. The Respondent also attempted to file the motion with the Court via facsimile on October 24, 2024. The Court rejected the facsimile on October 28, 2024, because of a lack of certificate of service. The email address at cms.ocado@usdoj.gov is used *only* for filing complaints. See <https://www.justice.gov/eoir/filing-email-office-chief-administrative-hearing-officer>. Further, parties whose cases who are enrolled in e-filing may only submit filings by email, not by facsimile. Only parties whose cases are mail-filing and who are attempting to toll a deadline may file by facsimile. See 28 C.F.R. § 68.6(c).

joint status report regarding discovery to determine if discovery was indeed complete on October 24, 2024. Order Joint Status Report 1.

In response, Complainant filed a Status Report Regarding Discovery and Motion for a Conference on November 18, 2024, which was not joint, stating that Complainant had not received discovery requests from Respondent. Complainant's Status Report 1.

Respondent then filed a Status Report Regarding Discovery and Motion for an Extension of the Discovery Deadline on November 2, 2024, requesting a 60-day extension of the discovery period to conduct depositions of Complainant's investigator and auditor. Resp't's Mot. Extens. Discovery 2-4. The Respondent also requested the Court order a settlement conference between the parties with the Court. *Id.* at 4.²

On December 2, 2024, Complainant filed a Motion for Summary Decision in which it addressed Respondent's request to extend discovery in order to conduct depositions. Complainant stated that "it objects to Respondent's Discovery Requests for depositions" insofar as they would require disclosure of material protected by several privileges. Complainant's Mot. Summ. Decision 1.

"OCAHO has broad authority to control discovery." *United States v. Chancery Staffing Sols.*, 13 OCAHO no. 1326a, 3 (2019) (citing 28 C.F.R. pt. 68).³ The Court's authority over discovery includes the ability to decide on motions to extend the discovery period. *Sharma v. NVIDIA*, 17 OCAHO no. 1450a, 3 (2022); *see also United States v. Terrapower*, 19 OCAHO no. 1548b, 2 (2024).

Typically, "[a] party requesting to modify the date discovery closes must demonstrate good cause." *Sharma*, 17 OCAHO no. 1450a at 3 (citing first *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381k, 2 (2021) and then Fed. R. Civ. P. 16(b)(4)). However, where an extension request "is untimely made, the showing that must be made includes both good cause and excusable neglect." *US Tech Workers v. Oak Street Health*, 19 OCAHO no. 1574, 1 (2024) (citing *United States v.*

² Enrollment in the voluntary Settlement Officer Program (SOP), which the Court described to the parties during the June 26, 2024, prehearing conference, requires written agreement from both parties.² *See* Order Summarizing Preh'r'g Conf. The Complainant has not agreed to participate in SOP, and the Court will therefore not refer the case to a settlement officer.

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 in the Westlaw database "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Quickstuff, LLC, 11 OCAHO no. 1265, 5 (2015)); *see also* Fed. R. Civ. P. 6(b). A showing of good cause “requires a demonstration of good faith on the party seeking an enlargement of time and some reasonable basis for noncompliance within the time specified[.]” *United States v. Zarco Hotels, Inc.*, 18 OCAHO no. 1518c, 1-2 (2024). “Factors to consider in applying the excusable neglect standard are (1) the danger of prejudice to the non-movant, (2) the length of the delay and its impact on the judicial proceedings, (3) the reason for the delay (including whether the delay was within the control of the movant), and (4) the movant’s good faith.” *Oak Street Health*, 19 OCAHO no. 1574 at 2.

Here, the Respondent submitted a compliant Motion for Extension after the close of discovery. Respondent states that he attempted to timely file a discovery extension request on October 24, 2024, and that he consulted with opposing counsel and got its consent at that time for an extension. Mot. Extens. Discovery 3. Respondent states that the reason for the requested extension is because of “a family medical emergency” that occurred during the discovery period and that required Respondent’s counsel to “reschedule” professional obligations. *Id.* at 2.

Respondent has not explained why he did not begin discovery in June. Although the Court is sympathetic to the family medical emergency, this occurred in September, a month before discovery was to close. Depositions should have been noticed by that time. Further, Respondent did not attempt to refile the motion, despite receiving notice of the rejection. While the Court is concerned that Respondent was untimely in beginning discovery, the Court will nevertheless find good cause and excuse the neglect. Complainant has not objected to the request on the basis of prejudice to it. Although the delay is not insignificant, it is not so lengthy as to impact the case. The reason for the delay was a family medical emergency that was out of Complainant’s control. Finally, there is no reason to suspect that the motion is anything but a good faith attempt to clarify issues in the case as the discovery is limited and reasonable.

Respondent’s Motion for an Extension of the Discovery Deadline is GRANTED. Discovery is reopened until **February 5, 2025**.

Given the reopening of discovery, the Court also sets the following revised case deadlines:

- Dispositive motions (Complainant may, but is not required, to file supplemental arguments and evidence): March 6, 2025
- Responses to dispositive motions: April 5, 2025

SO ORDERED.

Dated and entered on December 6, 2024.

Honorable Jean C. King
Chief Administrative Law Judge