

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. 2023A00071
OIL PATCH PETROLEUM, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Nain Martinez, Jr., Esq., for Complainant
Liliana Elizondo, Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On June 20, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Oil Patch Petroleum, Inc., violated 8 U.S.C. § 1324a(a)(1)(B) by failing to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for twelve individuals after being requested to do so by an authorized agency of the United States. Compl. ¶ 6. DHS previously served Respondent with a Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) on May 16, 2019, through which it sought a civil money penalty of \$21,671.40. Compl. Ex. A.

On May 21, 2019, Respondent requested a hearing before this Court (“request for hearing”). Compl. Ex. B. Complainant asked OCAHO to serve the complaint on Respondent through an individual it named and identified as Respondent’s

“CEO/Registered Agent” at an address in Corpus Christi, Texas (Address A). *Id.* at 6 (citing 28 C.F.R. § 68.7).¹

On June 26, 2023, OCAHO’s Chief Administrative Hearing Officer (CAHO) attempted to serve Respondent at Address A via United States Postal Service (USPS) certified mail with (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent’s request for hearing before this Court (collectively the Complaint package). OCAHO addressed the Complaint package to the individual DHS identified in the complaint pursuant to 28 C.F.R. § 68.7. *See* Compl. at 6. As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a USPS certified mail domestic return receipt. On July 12, 2023, OCAHO received a signed return receipt reflecting delivery of the Complaint package to Address A. The signature on the receipt, however, did not match the name of the addressee.²

OCAHO also attempted on June 26, 2023, to serve Respondent with the Complaint package at the address in Laredo, Texas, listed as Respondent’s principal place of business in the complaint, Compl. at 2, and identified as Respondent’s address in the NIF (Address B). *Id.*, Ex. A. Service at Address B was unsuccessful. On July 19, 2023, the USPS returned to OCAHO the Complaint package sent to Address B with an unexecuted return receipt. A label affixed to the envelope and dated July 11, 2023, read, “Return to Sender, Insufficient Address, Unable to Forward.”

On November 1, 2023, the Court issued an Order Directing Complainant to Serve Complaint. *United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508 (2023).³ In the Order, the Court directed Complainant to serve Respondent with the

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), generally govern these proceedings and 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 28 C.F.R. § 68.3(b) provides that “[s]ervice of complaint . . . is complete upon receipt by addressee.”

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

complaint, the NOCA, the NIF, and the request for hearing in a manner that complied with 28 C.F.R. § 68.3(a)(1) within thirty days of the date of the Order. *Id.* at 5. The Court then ordered Complainant to file proof of service with OCAHO. *Id.* Complainant did not file the requested information with the Court.

On June 18, 2024, Complainant filed a Notice of Appearance and Motion for Substitution. Through its motion, Complainant represented that its counsel, DHS Assistant Chief Counsel (ACC) Ricardo Cuellar, “has been reassigned and is no longer working on labor exploitation cases.” Notice Appearance & Mot. Substitution 1. Complainant requested that the Court substitute DHS ACC Nain Martinez, Jr., as Complainant’s counsel. *Id.*

On July 23, 2024, the Court accepted ACC Martinez’s Notice of Appearance and granted the motion to substitute. *United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508a, 3–4 (2024). The Court ordered Complainant to file the complete NIF with attachment in accordance with 28 C.F.R. § 68.7(c) and provide proof of service on Respondent. *Id.* at 6–8. The Court likewise directed Complainant to provide a functional mailing address for Respondent. *Id.* at 7–8. The Court further ordered Complainant to perfect service of the complaint, the NOCA, the complete NIF, and request for hearing on Respondent in a manner that complied with 28 C.F.R. § 68.3(a)(1) and to file proof of service with the Court. *Id.* at 7–9. Should Complainant be unable to effectuate service on Respondent and not move to dismiss the complaint, the Court explained that it could submit a filing submitting its position on a dismissal sua sponte of the complaint. *Id.*

On August 28, 2024, the Complainant filed a Notice of Filing. In the Notice, the Complainant “confirm[ed] that it served the Notice of Intent to Fine with its attachments on Respondent, Oil Patch Petroleum, Inc., on May 16, 2019.” Notice of Filing 1. It attached to its filing the NIF (ICE Form I-763) followed by a copy of Count

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 “FIM-OCAHO,” the LexisNexis database “OCAHO,” or on OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

I from the complaint and copies of the Forms I-9 for the twelve individuals identified in the complaint. *Id.*, Ex. 2. Complainant represented that it was submitting “Proof of Service on the Respondent,” *id.* at 1, and attached an unsigned copy of the complaint with copies of the NIF and request for hearing as Exhibit 1. Complainant identified Liliana Elizondo as Respondent’s attorney and provided the Court with her address as the functional mailing address for Respondent. *Id.* Complainant also attached to its filing seven pages of email communications between DHS ACC Cuellar and Ms. Elizondo. *Id.*, Ex. 3. Complainant’s filing lacked an attestation of personal service of the Complaint package on Respondent as ordered by the Court.

On September 4, 2024, OCAHO staff contacted Liliana Elizondo and requested that she file a notice of appearance if she represented Respondent in this matter.

On September 24, 2024, Complainant filed a Joint Motion to Dismiss Complaint with Prejudice. Complainant’s counsel represented that the parties had “come to a full agreement” and moved the Court dismiss the case with prejudice pursuant to 28 C.F.R. § 68.14(a)(2). Complainant’s Mot. Dismiss 1. Complainant attached to its motion the parties’ signed and dated settlement agreement, bearing the signatures of Complainant’s counsel, the DHS Special Agent in Charge, Respondent’s president, and Liliana Elizondo, who was identified as Respondent’s counsel. *Id.*, Ex. A.

On October 10, 2024, at the request of the Court, Liliana Elizondo entered a Notice of Appearance as Respondent’s counsel. Notice of Appearance 1. In the Notice of Appearance, counsel represented that, “[t]he complaint filed with OCAHO was never served on my client” but that a settlement had been reached. *Id.* At OCAHO’s request, Respondent’s counsel later provided OCAHO with an updated mailing address for the Respondent business.

On November 13, 2024, the parties filed a Joint Motion to Dismiss Complaint with Prejudice. Citing 28 C.F.R. § 68.14(a)(2), the parties represented that they had “come to a full agreement and now ask the court to dismiss the instant matter with prejudice.” Joint Mot. Dismiss 1. Complainant’s counsel and Respondent’s counsel signed the motion. *Id.*

On December 17, 2024, Respondent’s counsel was served by the USPS certified mail tracking service with the Complaint package and the Court’s Orders in this case, including its Order Directing Complainant to Serve Complaint, Complainant’s Notice of Appearance and Motion for Substitution, and Order on Complainant’s Motion to Substitute and Directing Complainant to File the Notice of Intent to Fine and to Serve

Respondent with the Complaint. The Respondent business was served by USPS certified mail with the Complaint package and the Court's Orders on December 26, 2024.

II. LEGAL STANDARDS AND DISCUSSION

A. Notice of Appearance, Complainant's Notice of Filing, and Service of the Complaint

As a preliminary matter, the Court addresses the Notice of Appearance filed by Liliana Elizondo on behalf of Respondent. OCAHO's Rules of Practice and Procedure for Administrative Hearings require each attorney to file a notice of appearance. *See* 28 C.F.R. § 68.33(f). The Notice of Appearance Ms. Elizondo filed comports with OCAHO's Rules as it is signed and identifies "the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made." *Id.* It also is accompanied by "a certification indicating that such notice was served on all parties of record." *Id.* Ms. Elizondo's appearance having been entered in this matter, OCAHO has updated Respondent's contact information and is directing all orders to its counsel of record and its updated mailing address.

The Court turns next to Complainant's Notice of Filing. Complainant failed to comply with the Court's Orders of November 1, 2023, and July 23, 2024, through which it was ordered to file proof of personal service on Respondent of the complaint, the NOCA, the complete NIF, and the request for hearing in accordance with 28 C.F.R. §§ 68.3(a)(1), (c). The Court most recently instructed Complainant:

[i]n its filing, Complainant shall attest to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(b). Complainant also shall provide to the Court the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual's relationship to Respondent, and the date upon which personal service was effectuated.

Oil Patch Petroleum, Inc., 18 OCAHO no. 1508a, at 8–9. Complainant's filed "Proof of Service on the Respondent," Notice of Filing 1, consisted of an unsigned copy of the complaint, the NIF, and request for hearing, all attached to its filing, *id.* at Ex. 1. Complainant did not address any attempted service of the NOCA, nor did it file the

requested attestation of service. Rather than serving the complete NIF on Respondent as ordered, Complainant referenced its pre-complaint service of the NIF on Respondent on May 16, 2019. *Id.* at 1.

Complainant attached to its filing copies of email correspondence between DHS ACC Ricardo Cuellar—Complainant’s former counsel in this matter—and Ms. Elizondo during October and November 2023.⁴ Notice of Filing, Ex. 3. The attached correspondence, which occurred after the filing of the complaint in this matter, included discussion of the OCAHO case, anticipated orders from this Court, and a tentative settlement. *Id.* It did not reflect Respondent’s receipt of the Complaint package. Although Respondent’s counsel was aware of this case, she represented in her Notice of Appearance filed on October 10, 2024, that “[t]he complaint filed with OCAHO was never served on my client, which is why I never appeared in this case.” Notice of Appearance 1.

To ensure proper service of the complaint, on December 17, 2024, OCAHO served Respondent’s counsel with the Complaint package and the Court’s prior orders in this matter via USPS certified mail. OCAHO served the Respondent business with the same materials on December 26, 2024, via USPS certified mail. Service having been perfected in accordance with 28 C.F.R. § 68.3, the Court now addresses the motions pending before it.

B. Joint Motion to Dismiss Complaint with Prejudice

Pending before the Court are Complainant’s Motion to Dismiss Complaint with Prejudice⁵ and the parties’ Joint Motion to Dismiss Complaint with Prejudice. For the reasons set forth herein, the Court grants the parties’ joint motion and approves dismissal of this case.

⁴ On October 16, 2024, DHS counsel, ACC Martinez, Jr., sent OCAHO staff additional email communications regarding settlement between himself (or ACC Cuellar) and Ms. Elizondo between June and October 2024.

⁵ Although Complainant represented that Respondent joined in its September 24, 2024, Motion to Dismiss Complaint with Prejudice, the motion lacked the signature of Respondent’s counsel, who had yet to enter her appearance in this matter. The Court therefore refers to this motion as Complainant’s Motion to Dismiss with Prejudice to distinguish it from the parties’ joint motion filed on November 13, 2024.

Under OCAHO's Rules of Practice and Procedure for Administrative Hearings, there are two avenues for leaving the forum when the parties have entered into a settlement agreement. *See* 28 C.F.R. § 68.14. The parties either may submit consent findings or a filing seeking dismissal. *Id.* § 68.14(a). Here, the parties have filed a Joint Motion to Dismiss Complaint with Prejudice pursuant to 28 C.F.R. § 68.14(a)(2). That regulation requires the parties to notify the Administrative Law Judge (ALJ) that they "have reached a full settlement and have agreed to dismissal of the action." *Id.* § 68.14(a)(2). The presiding ALJ may require the parties to file their settlement agreement and must approve dismissal of the action. *Id.*

The Court has reviewed the parties' Joint Motion to Dismiss Complaint with Prejudice and finds that the parties have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their joint motion, which was signed by counsel for both parties, the parties explain that they "have come to a full agreement and now ask the court to dismiss the instant matter" pursuant to 28 C.F.R. § 68.14(a)(2). Joint Mot. Dismiss 1. The Court also has considered the parties' settlement agreement which was filed as an attachment to Complainant's Motion to Dismiss Complaint with Prejudice. Complainant's Mot. Dismiss 1, Ex. A. The parties' settlement agreement, which bears the signatures of both parties and their counsel, reflects a full and final resolution of the violations of 8 U.S.C. § 1324a(a)(1)(B) alleged in the complaint in this matter. *Id.* Ex. A. In relevant part, the settlement agreement states that the NIF "and the allegations contained therein are incorporated in the Agreement as though fully set forth" in the settlement agreement. *Id.* ¶ 2. The settlement agreement reflects that Respondent has admitted to "[f]ailing to prepare and/or present the employment eligibility verification form (Form I-9)," *id.* ¶ 6, which the Court understands to be a reference to the violations of § 274A(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(1)(B), set forth in Count I of the complaint. Respondent also has agreed to pay a specific civil money penalty for the admitted violations. *Id.* at 1. The agreement further provides for the withdrawal of Respondent's request for hearing before this Court and the waiver of its right to a hearing before an ALJ. *Id.* ¶ 5. Lastly, the agreement provides that "the parties agree to file a joint motion to dismiss with prejudice with OCAHO upon execution of this Agreement." *Id.* ¶ 8.

In conformity with their settlement agreement, the parties now jointly move the Court for a dismissal with prejudice. Joint Mot. Dismiss 1. The Court finds that dismissal with prejudice is appropriate here where the parties jointly seek it after entering into a full settlement agreement that resolves the allegations raised in the complaint. *See, e.g., United States v. Eco Brite Linens, LLC*, 18 OCAHO no. 1485c, 1–2 (2024) (dismissing case with prejudice where the parties jointly requested

dismissal with prejudice and represented through counsel that they had signed a settlement agreement). Further, the Court's review of the parties' signed settlement agreement confirms the appropriateness of a dismissal with prejudice given its final resolution of the complaint's allegations. *See, e.g., United States v. Fresco Produce*, 19 OCAHO no. 1530e, 4–6 (2024) (approving parties' requested dismissal with prejudice after reviewing their settlement agreement which reflected a final resolution of the violation alleged in the complaint); *United States v. Chinese Back Rub*, 17 OCAHO no. 1452, 2 (2022) (finding dismissal with prejudice appropriate where parties' settlement agreement reflected a desire for a final resolution). Lastly, the Court notes that this case has been pending for more than eighteen months during which the parties have engaged in lengthy settlement negotiations. A dismissal with prejudice will bring finality to this litigation and the allegations the government has raised against Respondent.

Given the Court's findings that the parties have sought dismissal in conformity with 28 C.F.R. § 68.14(a)(2) and that dismissal with prejudice is appropriate, the Court now grants the parties' Joint Motion to Dismiss Complaint with Prejudice. Given this dismissal, the Court denies as moot Complainant's Motion to Dismiss Complaint with Prejudice. The Court now dismisses this case with prejudice.

III. ORDERS

IT IS SO ORDERED that, having satisfied the requirements of 28 C.F.R. § 68.14(a)(2), the Joint Motion to Dismiss Complaint with Prejudice filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Oil Patch Petroleum, Inc., is GRANTED;

IT IS FURTHER ORDERED that Complainant's Motion to Dismiss Complaint with Prejudice is DENIED as moot; and

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.14(a)(2), this case namely, OCAHO Case No. 2023A00071, is DISMISSED with prejudice.

SO ORDERED.

Dated and entered on December 30, 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.