

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

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Complainant, |) | |
| |) | 8 U.S.C. § 1324b Proceeding |
| v. |) | |
| |) | OCAHO Case No. 2024A00030 |
| RITALKA, INC., |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Appearances: Kenneth Knapp, Esq., for Complainant
Kayla Ruikkie, Esq., for Respondent

ORDER ON COMPLAINANT'S MOTION TO WITHDRAW, MOTION FOR
SUBSTITUTION, NOTICE OF APPEARANCE, AND ELECTRONIC FILING

I. PROCEDURAL HISTORY

On January 3, 2024, 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, Ritalka, Inc., 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. Specifically, Complainant alleges that Respondent (a) failed to prepare and/or present or failed to prepare in a timely manner the Employment Eligibility Verification Form (Form I-9) for ten individuals and (b) 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 fifty-seven individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶¶ 4-12. Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA it served on Respondent on November 29, 2023, and Respondent's request for a hearing dated November 29, 2023. *Id.*, Exs. A-B. Respondent filed an answer to the complaint on February 15, 2024.

On March 7, 2024, the Court enrolled the case in OCAHO's Electronic Filing Pilot Program through its Order on Electronic Filing.

On November 6, 2024, DHS Assistant Chief Counsel (ACC) Nicole Wells filed Complainant's Motion to Withdraw as Counsel for DHS. On that same date, DHS ACC Kenneth Knapp filed Complainant's Motion to Substitute as Counsel. ACC Knapp attached to his motion a completed and signed Attorney Registration Form and Certification for OCAHO's Electronic Filing Pilot Program. On November 12, 2024, DHS ACC Knapp filed a Notice of Appearance in this matter.

II. LEGAL STANDARDS AND DISCUSSION

Complainant's counsel, DHS ACC Nicole Wells, has filed a Motion to Withdraw as Counsel for DHS. In the motion, she explains that "counsel is departing ICE/OPLA, and therefore will be unavailable to continue to represent ICE in this matter." Mot. Withdraw 2. She moves the Court to grant her motion to withdraw and explains that a different DHS attorney, namely, ACC Kenneth Knapp, has been assigned to handle this matter. *Id.*

ACC Knapp also filed a Motion to Substitute as Counsel in which he moves the Court, pursuant to 28 C.F.R. § 68.33(g), to substitute as counsel for Complainant. Mot. Substitution 2. He explains that ACC Wells is departing ICE and that he "has familiarized himself with the procedural history of this matter, the facts of this matter, and granting this motion will not cause any undue delay." *Id.* ACC Knapp also seeks the Court's approval to participate in OCAHO's Electronic Filing Pilot Program. *Id.* at 2. He has attached as an exhibit to his motion a completed registration form and certification for OCAHO's Electronic Filing Pilot Program. *Id.*, Ex. A. Further, ACC Knapp has filed a Notice of Appearance in this matter.

Complainant did not indicate Respondent's position on its motions, and Respondent has not filed any responses. According to Complainant's certifications, it served Respondent with the motions on November 6, 2024. Mot. Withdraw 7; Mot. Substitution 7. Given that more than ten days have passed since Respondent was served with the motions, they are ripe for a ruling. *See* 28 C.F.R. § 68.11(b) ("Within ten (10) days after a written motion is served . . . any party to the proceeding may file a response in support of, or in opposition to, the motion.").

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).¹ The Notice of Appearance filed by ACC Knapp 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.*

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). The Court has granted motions to substitute DHS counsel where the counsel of record was no longer employed by Complainant, *see United States v. PJ's of Texas, LLC*, 18 OCAHO no. 1524, 5–7 (2024), or where the counsel of record was reassigned, *see United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508a, 3–4 (2024).²

Given Complainant's representation in both motions that ACC Wells is leaving ICE, ACC Knapp's entry of appearance and request to substitute as Complainant's counsel, and the lack of evidence of opposition to the motions, the Court grants Complainant's Motion to Withdraw as Counsel for DHS and Motion to Substitute as Counsel. *See, e.g., United States v. Spring & Soon Fashion Inc.*, 8 OCAHO no. 1003, 102, 128–29 (1998) (granting a motion to substitute counsel and noting that the request was reasonable and unopposed). ACC Knapp is substituted for ACC Wells as Complainant's counsel of record.

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. They 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 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>.

The Court also received the signed and completed registration form and certification for ACC Knapp, submitted for the purposes of filing and receiving orders through OCAHO's Electronic Filing Pilot Program. *See* Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program, 79 Fed. Reg. 31143 (May 30, 2014). As this case was previously enrolled in OCAHO's Electronic Filing Pilot Program by order dated March 7, 2024, and he has submitted the necessary registration and certification, ACC Knapp now may electronically file all filings in this case. OCAHO shall serve case-related documents electronically on ACC Knapp and Respondent's counsel shall copy ACC Knapp on all filings to, and all communications with, the Court. Complainant's counsel shall likewise ensure that Respondent's counsel is copied on all filings to, and all communications with, the Court. All filings must include a certificate of service. Given the representation that ACC Wells is leaving the employment of ICE and the substitution of counsel, OCAHO and Respondent's counsel shall remove her email address from the service list after serving her with this Order granting her Motion to Withdraw as Counsel for DHS.

III. ORDERS

IT IS SO ORDERED that the Motion to Withdraw as Counsel for DHS filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is GRANTED. DHS Assistant Chief Counsel Nicole Wells is withdrawn as counsel for Complainant.

IT IS FURTHER ORDERED that Complainant's Motion to Substitute as Counsel is GRANTED. DHS Assistant Chief Counsel Kenneth Knapp is substituted for Nicole Wells as counsel of record for Complainant in this matter.

IT IS FURTHER ORDERED that DHS Assistant Chief Counsel Kenneth Knapp is extended electronic filing privileges in this case. Counsel for both parties shall include each other on all filings to, and communications with, the Court and abide by the rules of OCAHO's Electronic Filing Pilot Program. ACC Wells shall be removed from the service list in this matter after service of this Order.

SO ORDERED.

Dated and entered on January 16, 2025.

Honorable Carol A. Bell
Administrative Law Judge