

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

United States of America, Complainant, v. Casa Orozco, Inc.,  
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100299.

ORDER OF DISMISSAL--SETTLED

E. MILTON FROSBURG, Administrative Law Judge

Appearances: ARTHUR A. LIBERTY, II, Esquire, for the Immigration and  
Naturalization Service.

JAMES R. LANGFORD, III, Esquire, for Respondent.

Procedural Background:

Complainant, United States of America, through its Attorney, Arthur A. Liberty, II, filed a complaint against Respondent, Casa Orozco, Inc., on June 23, 1989. Exhibit A of the Complaint consisted of the Intent To Fine served by the Immigration and Naturalization Service (INS) on April 26, 1989; Exhibit B was the Respondent's request for a hearing before an Administrative Law Judge submitted by James R. Langford, III and dated May 22, 1989.

On July 7, 1989, the Office of Chief Administrative Hearing Officer issued a Notice of Hearing on Complaint Regarding Unlawful Employment, assigning me as the Administrative Law Judge in this case and advising the parties of the hearing place and date set for October 31, 1989, at San Francisco, California.

The proceeding, thus initiated in this office, involves liability for civil penalties for violation of Section 274A of the Immigration and Nationality Act (the Act), as amended by Section 101 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. Section 1324a.

On October 3, 1989, I received a Joint Motion for Dismissal predicated upon a Settlement Agreement between the parties. A copy of the Settlement Agreement was enclosed with the Motion along with a proposed Order Dismissing Proceedings. The Motion was executed by Attorney Liberty for Complainant on September 27, 1989, and by Attorney Langford, for Respondent, on the same date.

Although the regulatory treatment of dismissals is more cursory and less rigorous than is the treatment of consent findings, 28 C.F.R. Section 68.10, nothing contained in the regulation should be understood as denying to the Administrative Law Judge the power to inquire, indeed, the obligation in an appropriate case, concerning the form and substance of an underlying agreement to obtain a dismissal.

I accept the Settlement Agreement as the predicate for dismissal of this proceeding, and not as the predicate for consent findings and a decision by me as the Administrative Law Judge.

There being no apparent reason to disturb the intent of the parties to terminate this proceeding and to remit them to a posture as if there had been no request for a hearing under 8 U.S.C. Section 1324a(e)(3), it is appropriate that I grant the Joint Motion to Dismiss in the instant proceeding based upon their notification made pursuant to 28 C.F.R. Section 68.10(c)(2).

I note, however, that the parties recite, at paragraph 5 of the Settlement Agreement, that the Immigration and Naturalization Service will issue a Final Order pursuant to Section 274A(e)(3)(B) of the Act.

The parties are reminded that the provision cited, 274A(e)(3)(B) of the Act, only authorizes a ``final and unappealable order'' if the person or entity against whom it is to be entered has not requested a hearing to be conducted before an Administrative Law Judge. While Respondent waives all rights to a hearing in the Settlement Agreement at paragraph 2, the Settlement Agreement does not enable imposition of a final and unappealable order by the Attorney General (authority for which is exercised by INS) until after entry by the Administrative Law Judge of the appropriate order of dismissal.

ACCORDINGLY:

(1) The hearing previously scheduled to be held beginning October 31, 1989, at San Francisco, California, is hereby cancelled.

(2) This proceeding is dismissed, settled.

**IT IS SO ORDERED:** This 3rd day of October, 1989, at San Diego, California.

E. MILTON FROSBURG  
Administrative Law Judge  
Executive Office for Immigration Review  
Office of the Administrative Law Judge  
950 Sixth Avenue, Suite 401  
San Diego, California 92101  
(619) 557-6179