

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

December 5, 2022

ROBERT PAUL HEATH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00010
)	
NIHA TECHNOLOGIES, INC.)	
Respondent.)	
_____)	

Appearances: Robert Heath, pro se Complainant
Anantha Paruthipattu, Esq., for Respondent
Tamara Hoflejzer, Esq., for the U.S. Department of Justice¹

ORDER

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on December 13, 2021. Complainant alleges that Respondent, Niha Technologies, Inc., discriminated against him based on his national origin and citizenship status, and engaged in unfair immigration-related documentary practices, in violation of § 1324b.

¹ Although the U.S. Department of Justice is not a party to this case, Hoflejzer filed a Notice of Appearance and Notice (regarding Complainant’s executor) on September 14, 2022. While the Court appreciates the assistance, and exercises its discretion to accept these filings and consider the contents, OCAHO regulations do not have a provision for limited appearances. The Court encourages the Immigrant and Employee Rights Section (IER) to seek leave and file notices as an amicus curiae or intervener. *See* 28 C.F.R. § 68.15 (interveners); § 68.17 (amicus curiae); *see also Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414a, 2–3 (2022) (discussing IER and amicus curiae) (citations omitted).

On January 19, 2022, Respondent, through counsel, filed an answer. On January 28, 2022, the Court issued an Order for Prehearing Statements. On March 18, 2022, Complainant filed his prehearing statement. On March 31, 2022, Respondent filed its prehearing statement.

On May 4, 2022, the Court issued an Order Issuing Stay of Proceedings, which required the parties to file a status report. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427, 1 (2022).² On July 13, 2022, the Court issued an Order to Show Cause for Status Report. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427a, 1 (2022). On August 2, 2022, Respondent filed a status report. On August 31, 2022, the Court issued a Notice That Court May Deem Complaint Abandoned. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427b, 1 (2022).

On September 14, 2022, an attorney from IER, Tamara Hoflejzer, filed a Notice of Appearance and a Notice (collectively, the IER Notice). IER states that “[a]lthough this Court and Respondent appear to be aware that Complainant died on May 18, 2022,” IER seeks to provide relevant updated information. *See* IER Notice 1. IER then states that Ms. Tonya Heath has been designated as “personal representative” of Complainant’s estate, and attaches Letters of Administration in support. *See id.* at 1–3 (also giving contact information for Ms. Heath). IER then requests that the Court restrict access to its Notice to avoid undue invasion of Ms. Heath’s privacy. *Id.* at 1–2.

On September 28, 2022, Respondent filed its Supplemental Status Report and Response to Notice That Court May Deem Complaint Abandoned (Supplemental Status Report). Respondent confirms that it received the September 14, 2022, IER Notice, and that it has not received communication from Ms. Heath as Complainant’s personal representative. Supp. Status Report 2. Respondent then argues that Ms. Heath was, or should have been aware, of the Court’s August 31, 2022, Notice. *Id.* According to Respondent, Complainant’s unresponsiveness warrants dismissal of the complaint pursuant to 28 C.F.R. § 68.37(b)(1).³ *See id.* at 3.

To date, the Court has not received a status report or further filings from Complainant, his executor, or an apparent successor in interest.

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 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,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

II. DISCUSSION

Pursuant to the Court’s August 31, 2022, Notice, the Court sought briefing from the parties on “the propriety of taking judicial notice of a death certificate, applicable law on the substitution of parties, [and] whether a complaint may be deemed abandoned in the event of death where there has been no appearance by the decedent’s estate or motion to substitute party[.]” *Niha Techs., Inc.*, 16 OCAHO no. 1427b, at 3.

Complainant did not submit briefing on these topics. While Respondent presented arguments as to abandonment, it did not address the propriety of a complaint being deemed abandoned when a successor in interest or executor has not appeared. *See* Supp. Status Report 3, n.6 (maintaining that fully briefing “the issues” would burden Respondent and the Court’s resources).

In this case, IER submitted a Letter of Administration from the Palm Beach County Circuit Court indicating that Mr. Robert Heath is deceased and that Ms. Tonya Heath has been appointed Mr. Heath’s personal representative. *See generally* IER Notice, IER’s Notice, and Respondent’s Supplemental Status Report, were served upon Ms. Heath. *See id.*; Supp. Status Report 2.

The undersigned finds that the Letter of Administration submitted by IER is material and reliable evidence of Complainant’s death. *See* 28 C.F.R. § 68.40; *see also* Fed. R. Evid. 803(9). The Court therefore finds that Mr. Heath is deceased. The Court also finds the Letter of Administration to be sufficient evidence of Ms. Heath’s appointment as personal representative. Moreover, Complainant was served with this Court’s prior order indicating it was considering taking notice of a death certificate,⁴ and Ms. Heath was served with the IER Notice and Respondent’s filing. Through this service, the Court finds that Ms. Heath has notice of these proceedings.

⁴ The Court also finds that it would be appropriate to take official notice of Complainant’s death in this matter, pursuant to 28 C.F.R. § 68.41. Information on Complainant’s death is readily verifiable by online obituaries, as noted by Respondent as well as the probate record introduced in this case and publicly available. Status Report 1–2, Ex. A–B; *Robert “Bobby” Paul Heath, Jr.*, Tribute Archive, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Nov. 29, 2022); *Obituary: Robert Heath*, Palm Beach Post, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Nov. 29, 2022); *eCaseView*, Palm Beach Clerk of Court, <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Nov. 29, 2022) (listing Complainant as a decedent); *see generally* 28 C.F.R. § 68.40. Indeed, some federal courts have embraced obituaries as proper foundation on which to take judicial notice of a death. *See Crews v. Pfizer, Inc.*, No. 2:21-CV-00868-RDP, 2021 WL 5040493, at *1 (N.D. Ala. Oct. 29, 2021) (citations omitted) (“Courts may take judicial notice of obituaries.”); *e.g.*, *United States v. Thomas*, No. CR 01-058 (KSH), 2022 WL 538540, at *3 (D.N.J. Feb. 23, 2022) (taking judicial notice of an obituary notice published

On October 20, 2022, an OCAHO administrative law judge (ALJ) issued orders in *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411b, 1 (2022). In that case, the ALJ took official notice of Mr. Heath's passing based on a death certificate submitted in the case, and made a finding of fact that he had died. *Ancile, Inc.*, 15 OCAHO no. 1141b, at 3. The ALJ also determined that application of Federal Rule of Civil Procedure 25 (Rule 25), regarding substitution of parties, is appropriate in this forum. *Id.* at 4 (citing *Lee v. AT&T*, 8 OCAHO no. 924, 1, 9 n.5 (1997)) ("Although the OCAHO rules do not directly address the issue of substitution of parties, the Federal Rules of Civil Procedure may be utilized as a general guideline in any situation not covered by the OCAHO Rules. See 28 C.F.R. § 68.1[.]"). Per Rule 25, should a party fail to file a motion "within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). This ALJ similarly finds that Rule 25 may be used as a guideline, is applicable to the facts presented here, and will apply the rule in this circumstance.

The remaining issue is whether Mr. Heath's death extinguishes his claims. Neither the INA, OCAHO's regulations, nor Rule 25 address the issue of survivability when a complainant dies during the proceedings. 8 U.S.C. § 1324b; 28 C.F.R. § 68.1; Fed. R. Civ. P. 25(a)(1). The Court finds that Complainant's § 1324b claims are not extinguished, whether the state survivorship law or the federal common law is applied.⁵ Fla. Stat. Ann. § 46.021 (2022) ("No cause of action dies with the person. All causes of action survive and may be [prosecuted] in the name of the person prescribed by law."); see *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th Cir. 1993) (holding that a remedial action survives the death of a plaintiff under federal common law); *McNeir v. S.F. State U.*, 8 OCAHO no. 1030, 425, 433–36 (1999) (describing 8 U.S.C. § 1324b as a "remedial scheme" for prosecution of individualized discrimination claims).

Because the claim survives Mr. Heath's passing, and upon this Court's determination that the complainant is deceased and Rule 25 applies, the ninety-day window for filing a motion to substitute commences as of the date of issuance of this order. See Fed. R. Civ. P. 25(a)(1).

III. CONCLUSION

Having found that Complainant is deceased, the Court now ORDERS that the ninety-day window for filing motions for substitution, pursuant to Rule 25(a)(1), begins. If a motion to substitute is not made within ninety days from the date of this Order, this action by Mr. Robert Heath (OCAHO Case No. 2022B00010) may be subject to dismissal.

online by a funeral home); *Sanders v. Justice*, No. 15-CV-00142-SMY, 2015 WL 1228830, at *4 (S.D. Ill. Mar. 16, 2015) (taking judicial notice of an online newspaper obituary).

⁵ As Complainant resided and passed away in Florida, the Court may consult Eleventh Circuit caselaw as permissive guidance, and as applicable, Florida state law.

The Court FURTHER ORDERS that Ms. Tonya Heath be included in the certificate of service.

SO ORDERED.

Dated and entered on December 5, 2022

Jean C. King
Chief Administrative Law Judge