

ZAJI ZAJRADHARA,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2025B00018
)	
)	
NENITA DELOS SANTOS OLARTE d/b/a)	
PROPHET MANPOWER SERVICES,)	
Respondent.)	
)	

ORDER TAKING OFFICIAL NOTICE OF DEATH, GRANTING RESPONDENT'S MOTION
FOR STAY, & DIRECTING RESPONDENT TO IDENTIFY PARTY FOR SUBSTITUTION

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On November 19, 2024, Complainant, Zaji Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Nenita Delos Santos Olarte, alleging national origin and citizenship status discrimination in violation of 8 U.S.C. § 1324b(a)(1).

On December 10, 2024, the Chief Administrative Hearing Officer mailed a Notice of Case Assignment (NOCA) and a copy of the complaint to Respondent. The NOCA informed Respondent that it “has the right to file an answer to the complaint,” and that the answer “must be filed within thirty (30) days after receipt of the attached complaint by either Respondent or its attorney (or representative) of record.” Notice Case Assign. 3. Tracking records from the United States Postal Service (USPS) indicate that the NOCA was delivered and picked up on December 18, 2024, making Respondent’s answer due on January 17, 2025.

On January 7, 2025, Respondent, through counsel, filed a Suggestion of Death and Motion for Stay. Through the filing, Respondent gave the Court notice of Ms. Olarte's "death on May 31, 2024 in Mandaluyong City, Philippines." Sugg. Death 1; *Id.* Ex. 1 "Certificate of Death of Nenita Delos Santos Olarte." As a result, Respondent argues that "Complainant may choose to either contest or otherwise dispute Respondent's death or file a motion for substitution of a proper party within 90 days from the date of the filing of this notification of Respondent's death." Sugg. Death 2. "Failing that," Respondent maintains, "this action should be dismissed pursuant to Fed. R. Civ. P. 25(a)(1), in relation to 28 C.F.R. § 68.1."¹ *Id.* Finally, Respondent claims that "[t]his matter cannot proceed farther at this time with a deceased Respondent," and therefore requests "that this matter be stayed and the period of time to file an answer, should it still be necessary, be tolled until the lapse of the 90-day period when a proper party is duly substituted in place of the deceased Respondent." *Id.*

On January 10, 2025, Complainant filed his Memorandum in Opposition to Respondent's Suggestion of Death and Motion for Stay; and Motion for Discovery and Referral with Exhibits.² Through the Opposition, Complainant acknowledges Respondent's death but argues that his claims survive her death and that pursuant to Rule 25(a)(1), "OCAHO should order the substitution of a proper party representing the estate or successor in interest to Prophet Manpower Services and not dismiss based on the untimely death of Ms. Olarte." Opp'n 2. Complainant also requests that the Court deny Respondent's Motion for Stay. Opp'n 4.

II. DISCUSSION

a. Notice of Respondent's Death

OCAHO's regulations provide that "[o]fficial notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice . . . of the matters so noticed, and shall be given adequate opportunity to show the contrary." 28 C.F.R. § 68.41.

Here, Respondent has presented as evidence a death certificate for Respondent issued by the Republic of the Philippines' Office of the Civil Registrar General. Sugg. Death Ex. 1. The death certificate is signed by two medical staff and the City Civil Registry Staff and Registration Officer.³ Complainant does not contest Respondent's death. The Court now takes official notice of the fact that Nenita Delos Santos Olarte died on May 31, 2024.

¹ OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

² Complainant's request that the Court compel discovery is untimely at this point in that a proper Respondent has yet to be identified. Further, any motion to compel discovery may be made only after the parties have met and conferred regarding the requested information and remain at an impasse after the meeting. *See* 28 C.F.R. § 68.23(b)(4). Therefore, to the extent Complainant's filing contains a motion to compel discovery, that motion is denied.

³ Federal Rule of Civil Procedure 902(44)(a)(2) provides that a foreign record may be proved by an official publication of the record, or an attestation and a final certification of genuineness, or if

b. Complainant's Claim Survives Respondent's Death, and Respondent Must Identify an Appropriate Party for Substitution

Respondent correctly notes that OCAHO's regulations provide that the Federal Rules of Civil Procedure "may be used as a general guideline in any situation not provided for or controlled by [28 C.F.R. pt. 68], by the Administrative Procedures Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1; Sugg. Death 1. Since neither 8 U.S.C. § 1324b nor 28 C.F.R. pt. 68 contemplate the issue of substitution following the death of a party, this Court has consistently found that Rule 25(a)(1) applies to OCAHO proceedings. *See, e.g., Heath v. Ancile, Inc.*, 15 OCAHO no. 1411b, 3–4 (2022).⁴

Rule 25(a)(1) provides that

if a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Thus, in applying Rule 25(a)(1), the Court must first determine whether plaintiff's claim was extinguished by Respondent's death. "[F]ederal claims typically survive a decedent's death if they are remedial in nature and not penal." *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1057 (9th Cir. 2018) (citing, *inter alia*, *Ex parte Schreiber*, 110 U.S. 76, 80 (1884); *E.E.O.C. v. Timeless Invests., Inc.*, 734 F. Supp. 2d 1035, 1056–57 (E.D. Cal. 2010); *Lopez v. Regents of Univ. of Cal.*, 5 F. Supp. 3d 1106, 1119–20 (N.D. Cal. 2013)). "Congress had intended the 1986 Immigration and Reform and Control Act to have a broad, remedial purpose." *United States v. Robison Fruit Ranch, Inc.*, 4 OCAHO no. 594, 23, 25 (1994); *Cruz v. Able Serv. Contractors, Inc.*, 6 OCAHO no. 837, 144, 155 (1996). Therefore because 8 U.S.C. § 1324b is a remedial statute, the Court

all parties have had a reasonable opportunity to investigate a foreign record's authenticity, the court may, for good cause, admit an attested copy without final certification. *See also* Fed. R. of Evid. 902(3). As the death certificate purports to be signed by persons authorized to do so, and Complainant has not contested the document and was given the opportunity to do so, the Court will treat the document as presumptively authentic, despite the lack of certification or attestation. Fed. R. of Evid. 902(3)(A).

⁴ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, *seriatim*, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

finds Respondent's death did not extinguish Complainant's claim. *See also Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427c, 4 (2022).

Next, the Court must determine whether Complainant's 90-day window for filing a motion for substitution has begun. In interpreting Rule 25(a)(1), the Ninth Circuit has held that it

requires two affirmative steps in order to trigger the running of the 90 day period. First, a party must formally suggest the death of the party upon the record. Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute. Thus, a party may be served the suggestion of death by service on his or her attorney, Fed. R. Civ. P. 5(b), while non-party successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons.

Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994) (internal citations omitted).

Since *Barlow* was decided, courts have noted that the decision “expressly left open the question of whether service on a nonparty successor or representative was required when the appropriate persons could not be ascertained at the time the suggestion of death is filed.” *McNeal v. Evert*, 2015 WL 1680496, at *2 (E.D. Cal. Apr. 14, 2015) (internal quotations omitted). The issue was resolved in *Gilmore v. Lockard*, 936 F.3d 857 (2019), when the Ninth Circuit held that “the suggestion of death must identify the representative or successor before the 90-day period is triggered,” and that when such a party cannot be readily ascertained, the burden rests with the party “better suited . . . to identify the proper parties,” which is usually the party filing the suggestion of death. *Id.* at 866–67.

Here, Respondent's suggestion of death does not identify the proper representative or successor of Ms. Olarte to be substituted pursuant to Rule 25(a)(1), and as such, the notice is insufficient to trigger Complainant's 90-day window to file a motion for substitution. Moreover, because Respondent's counsel represents Ms. Olarte herself, the Court finds she is in a much better position than the pro se Complainant to ascertain who is the appropriate representative or successor in interest. Accordingly, the court orders Respondent's counsel to file a submission either identifying the appropriate party for substitution or demonstrating that the identity of such a party could not be ascertained within thirty days of receipt of this order. *See McNeal*, 2015 WL 1680496, at *4. Additionally, should Respondent identify an appropriate party for substitution, it must demonstrate to the Court that a copy of the suggestion of death has been served on that party. *See Barlow*, 39 F.3d at 233. Only at that time will the 90-day period for Complainant to file a motion for substitution with the Court begin.

c. Motion for Stay

Because this action may not proceed against the current Respondent, and the appropriate party to substitute as her representative or successor is currently unknown, the Court finds it appropriate to stay the deadline for filing an answer until after the substitution has been made and the new party has sufficient time to respond to Complainant's allegations. Accordingly, Respondent's Motion

for Stay is GRANTED. While the stay is in place, Respondent is still obligated to ascertain and identify to the Court and Complainant a proper party for substitution.

III. CONVERSION TO ELECTRONIC FILING

This Court typically only enrolls cases in OCAHO's Electronic Filing Pilot Program when both parties have consented to the program by filing registration forms. *See* EOIR Policy Manual, Part IV, Ch. 3.7(c). However, this case is based out of Saipan, while OCAHO's offices are in Virginia. Given the significant delays inherent with mail filing for both the parties and for the Court, the Court now puts the parties on notice that it will convert the case to electronic filing unless one or both parties object in a written filing to the Court. The Court will utilize ##### as Complainant's email address, and #####. If either party would prefer a different email be utilized, they may so indicate in a filing to the Court.

The parties have thirty (30) days from the date of this order to file any objections to the conversion. The Court issues this order both by mail and electronically, to ensure that the parties are in receipt of the Court's order and may object as they deem appropriate.

IV. ORDERS

The Court takes OFFICIAL NOTICE of the death of Ms. Nenita Delos Santos Olarte;

Complainant's claim survives Respondent's death and Respondent's counsel is ORDERED to submit a filing within 30 days of receipt of this Order identifying an appropriate party for substitution or demonstrating that the identity of such a party could not be ascertained;

Upon Respondent's counsel's identification of an appropriate party for substitution, Complainant will have 90 days from the date of Respondent's filing to file a motion for substitution with the Court; and

Respondent's deadline to file an answer to the complaint is STAYED until after a proper respondent is identified and the new party has time to review Complainant's allegations.

SO ORDERED.

Dated and entered on March 11, 2025.

Honorable Jean C. King
Chief Administrative Law Judge

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

April 7, 2025

ZAJI ZAJRADHARA,)	
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Appearances: Zaji Zajradhara, pro se Complainant
Janet H. King, Esq., for Respondent

ERRATA

In the decision entitled “Order Taking Official Notice of Death, Granting Respondent’s Motion for Stay, & Directing Respondent to Identify Party for Substitution” issued March 11, 2025, the citation to the Federal Rule of Civil Procedure on page 2, note 3, is corrected to read “Federal Rule of Civil Procedure 44(a)(2)”.

SO ORDERED.

Dated and entered on April 7, 2025.

Honorable Jean C. King
Chief Administrative Law Judge