

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

October 22, 2021

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2020C00011
)	
SAMUEL TOMINIYI FASAKIN,)	
Respondent.)	
_____)	

ORDER GRANTING COMPLAINANT’S REQUEST FOR CONTINUANCE
AND SUMMARIZING PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. Complainant, the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on November 4, 2019, alleging that Respondent, Samuel Tominiyi Fasakin, violated § 1324c(a)(2).

On May 10, 2021, the Court issued a Final Decision and Order following a hearing on the merits.

On June 8, 2021, the Chief Administrative Hearing Officer (CAHO) issued an Order by the Chief Administrative Hearing Officer Vacating the Administrative Law Judge’s Final Decision and Order and Remanding for Further Proceedings (Order on Remand). *United States v. Fasakin*, 14 OCAHO no. 1375b, 1 (2021).¹

¹ 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

On August 11, 2021, the Court issued an Order Summarizing Prehearing Conference in which it set a hearing for this matter for November 2-3, 2021.

On October 15, 2021, ICE filed Complainant's Request for Continuance seeking a thirty to sixty day continuance of the hearing due to "unforeseen circumstances." The filing indicated it was an unopposed motion.

On October 18, 2021, the Court held a Prehearing Conference.

II. PREHEARING CONFERENCE SUMMARY

Mr. Daniel Wilmoth and Mr. Samuel Yim appeared on behalf of Complainant. Mr. Mark Goldstein and Ms. Jelena Gilliam appeared on behalf of Respondent.

A. Complainant's Request for Continuance

The Court discussed the parties' positions on the Complainant's motion. Complainant elaborated that the additional time was required to allow for complete examination of the origin of the documents at issue. Respondent's counsel stated that they did not oppose the continuance. As such, the Court GRANTED Complainant's Request for Continuance.

Complainant estimated production of a report associated with the documents on or before January 10, 2022. The Court ORDERS Complainant to provide the report as soon as practicable, but before the prehearing conference for January 14, 2022 at 9:00 am PST. Respondent estimated thirty days to review the report and prepare accordingly. Based on the representations of the parties, the Court scheduled the hearing for the week of March 7, 2022.

B. Hearing Location

The Court directed the parties to 28 C.F.R. § 68.5(b), which requires § 1324c hearings "be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred." Although Respondent resides in Pittsburgh, PA, the parties agreed that the "nearest practicable place" was Philadelphia, PA. The Court ORDERED Respondent to provide a filing stating such by November 5, 2021.

C. Record

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

The Court explained the applicability of the Administrative Procedure Act (APA) to OCAHO proceedings. *See* 28 C.F.R. § 68.1. Specifically, the Court highlighted 5 U.S.C. § 556(e), which explains that “[t]he transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision[.]” Moreover, “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” *Id.*; *see also* 28 C.F.R. § 68.41. In accordance with the APA, the Court explained that the universe of evidence to be considered in the matter shall come from the initial hearing, and the upcoming hearing, and it is incumbent upon the parties to present evidence to further develop the record in accordance with the CAHO’s order on remand. The Court advised the parties to prepare for the hearing with this understanding in mind.

Additionally, the Court explained that at the next prehearing conference, it would go through the Findings of Fact section of its May 10, 2021 Final Order with the parties to discuss whether/ which factual areas are not in dispute.

III. CONCLUSION

Complainant’s Request for Continuance is GRANTED such that the hearing previously scheduled for November 2-3, 2021 is rescheduled to the week of March 7, 2022.

Complainant is ORDERED to produce the above referenced report to Respondent before the Prehearing Conference on January 14, 2022.

Respondent is ORDERED to file a submission memorializing the “nearest practicable place” to hold the hearing pursuant to 28 C.F.R. § 68.5(b). Respondent’s filing is due on or before November 5, 2021.

A Prehearing Conference will be held on January 14, 2022 at 9:00 am PST.

SO ORDERED.

Dated and entered on October 22, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge