

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

January 24, 2022

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

Appearances: Daniel R. Wilmoth, Esq. and Samuel Yim, Esq. for Complainant  
Mark Goldstein, Esq. and Jelena Gilliam, Esq. for Respondent

ORDER SUMMARIZING JANUARY 14, 2022 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).<sup>1</sup>

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<sup>1</sup> 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

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 22, 2021, the Court issued an Order Granting Complainant's Request for Continuance and Summarizing Prehearing Conference (Order Granting Continuance). In the Order, the Court noted the Complainant indicated it would produce a report related to its investigation into Nigerian documents. The Court then ordered "Complainant to provide the report as soon as practicable, but before the prehearing conference for January 14, 2022 at 9:00 am PST." Order Granting Continuance 2. Separately, the Court also indicated the parties would review the Findings of Fact section of the Court's May 10, 2021 Final Order "to discuss whether/which factual areas are not in dispute." *Id.* at 3.

## II. PREHEARING CONFERENCE SUMMARY

Mr. Samuel Yim appeared on behalf of Complainant. Mr. Mark Goldstein and Ms. Jelena Gilliam appeared on behalf of Respondent. At the outset, Mr. Yim explained his co-counsel was unavailable (for reasons beyond counsel's control) and estimated his co-counsel could be available in two-weeks' time. Both counsel agreed that a more productive discussion of prehearing matters would transpire with both DHS counsel present. Ultimately, the Court set another prehearing conference in two-weeks' time to allow for the presence of both DHS counsel.

According to DHS, it was unable to produce the report on the timeline outlined at the prior prehearing conference and would endeavor to produce the report as soon as practicable.

DHS indicated its desire to interview Respondent's witness and the Court encouraged the parties to continue to collaborate where possible on such pre-trial matters and should the parties reach impasse, the parties could file a motion seeking Court intervention.

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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>.

Noting the delays and continuances at Complainant's request, Respondent raised concerns of fairness and equity, arguing these delays result in meaningful prejudice to his client. Respondent made an oral motion the case be dismissed in light of these equity and fairness concerns.

Pursuant to the Court's discretion to accept oral motions outlined in 28 C.F.R. § 68.11(a), *United States v. Facebook, Inc.*, 14 OCAHO no. 1386e, 5 (2021), the undersigned declined to accept the oral motion in this instance and encouraged the parties to submit written briefing on the matter. The Court noted that, while dismissal is a remedy, there are other factors to consider and weigh before arriving at dismissal of a case. Because the issue is complex and fact-specific, the Court encouraged the Respondent to consider written briefing and motion so the issue could be fully developed. The Court placed no limits on the timing of such a written motion, but it did suggest parties consider the efficiency of postponing such a filing for two-weeks' time (i.e. following the next prehearing conference).

For the above reasons, the Court continued the prehearing conference to January 28, 2022 at 9:00 am PST.

At the next prehearing conference, the Court expects an update from DHS on the status of the referenced report, and parties can anticipate a discussion of the findings of fact listed in the Court's May 10, 2021 Order. The Court will also use the next prehearing conference as an opportunity to set additional prehearing deadlines and set a revised hearing date.

SO ORDERED.

Dated and entered on January 24, 2022.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge