

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

April 7, 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 RESCHEDULING 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 (Final 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 Following this Order on Remand, the Court initiated a series of prehearing conferences with the parties.

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,

On January 31, 2022, the Court issued an Order Summarizing the January 28, 2022 Prehearing Conference in which it scheduled another prehearing conference for April 8, 2022.

On April 5, 2022, Complainant’s counsel sent the Court and Respondent’s counsel an email requesting a one-week continuance of the upcoming prehearing conference due to unforeseen and exigent personal circumstances.²

On April 6, 2022, Respondent filed a Motion to Dismiss, requesting the Court deny the request to reschedule and dismiss the case because of Complainant’s “bad faith.” Mot. Dismiss 2. Respondent’s counsel asserts that “Complainant has requested several extensions which has caused this case to continue on with no productive progress” and “[t]he circumstances for the Complainant’s request while unfortunate, is still a delay[.]” *Id.*

Based on the time-sensitive nature of the date of the prehearing conference (i.e. whether the April 8, 2022 prehearing conference will or will not be continued), the Court will address only that issue in the instant order. Complainant is still within its statutorily-provided response window to respond to Respondent’s Motion to Dismiss.

II. DISCUSSION

“OCAHO’s rules provide for motions for continuance to postpone a scheduled proceeding.” *Heath v. Rang Techs.*, 16 OCAHO no. 1420, 1 (citing 28 C.F.R. § 68.27). When a request for a continuance is filed fewer than fourteen days of the scheduled proceeding, the filing party must demonstrate good cause and telephonically inform the judge and all parties of the request. § 68.27; e.g., *Heath*, 16 OCAHO no. 1420, at 1–2. Section 68.27(a) further dictates that “[c]ontinuances shall only be granted in cases where the requester has a prior judicial commitment or can demonstrate undue hardship, or a showing of other good cause.”

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>.

² “[R]equests for relief must be submitted in the form of a motion, not a letter.” *Hsieh v. PMC – Sierra, Inc.*, 9 OCAHO no. 1089, 1 (2003); e.g., *United States v. Facebook, Inc.*, 14 OCAHO no. 1386, 1–2 (2021) (citing 28 C.F.R. §§ 68.2, 68.7(a)). Complainant’s email was sent in contravention of the requirement; however, given the nature of the issue giving rise to the request, the Court is inclined to construe the email as a motion. The parties should endeavor to ensure future submissions comply with OCAHO’s rules.

Based on the nature of the request, Complainant appears to have apprised the Court and opposing counsel as soon as practicable. Section 68.27(c) requires Complainant to have notified the Court and Respondent of the continuance via telephone because Complainant requested the continuance three days before the prehearing conference. Although Complainant did not telephonically inform the Court of the request, the undersigned will permit the continuance because Complainant's email "substantially complies with the spirit of the rule — the request was received by all parties and the Court prior to the scheduled proceeding." *Heath*, 16 OCAHO no. 1420, at 2.

While the Court notes Respondent's concerns over the total amount of time elapsed, there is sufficient good cause to continue the prehearing conference. See *United States v. Sal's Lounge*, 15 OCAHO no. 1394c, 6 (2022) (citing OCAHO cases finding "that serious illnesses or challenges outside work may constitute good cause for a litigant's unintentional failure to meet a filing deadline."). Additionally, the amount of time requested, one week, is not so prejudicial as to outweigh the good cause articulated by Complainant. The Court does not see any indicia of bad faith on the part of the Complainant.

Therefore, the Court GRANTS Complainant's request for a continuance. The prehearing conference previously scheduled for April 8, 2022 is re-scheduled to April 20, 2022 at 3:00 pm EST (driven by the Court's availability). The parties shall attend the prehearing conference by calling this number: #####, using the conference room number ##### and security code #####.

SO ORDERED.

Dated and entered on April 7, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge