

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

April 26, 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 DENYING MOTION TO DISMISS

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).<sup>1</sup> Following this Order on Remand, the Court initiated

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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

a series of prehearing conferences with the parties. Prehearing conferences relevant to this motion are detailed below.

On January 31, 2022, the Court issued an Order Summarizing the January 28, 2022 Prehearing Conference (Order Summ. 1/28/22 PHC) wherein it noted that at the prehearing conference, Complainant “indicated it would provide requested information to Respondent” within the next 60 days. Order Summ. 1/28/22 PHC 2. The Court also scheduled another prehearing conference for April 8, 2022. *Id.*

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.

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.

On April 7, 2022, the Court issued an Order Rescheduling Prehearing Conference to April 20, 2022 concluding Complainant demonstrated good cause to continue the prehearing conference. *United States v. Fasakin*, 14 OCAHO no. 1375e, 3 (2022). The Court declined to address the Motion to Dismiss at that juncture because “Complainant [wa]s still within its statutorily-provided response window[.]” *Id.* at 2.

Complainant’s response to the Motion to Dismiss was due April 18, 2022. *See* 28 C.F.R. §§ 68.11(b), 68.8(a). Complainant did not file a response.

## II. RESPONDENT’S MOTION TO DISMISS

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[.]” Mot. Dismiss 3. Further, Respondent represents that Complainant has not provided the information or performed its duties as outlined in the Order Summ. 1/28/22 PHC, which “has prohibited Respondents[’] counsel the ability to perform any meaningful discovery and has caused irreparable harm to the Respondent.” *Id.* Finally, Respondent alleges that “Complainant appears to be acting in bad faith as it not only

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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>.

has unduly delayed this case several times but has not provided Respondent any information in a timely manner.” *Id.* As such, Respondent requests dismissal of the case pursuant to 28 C.F.R. § 68.54(b)(2). *Id.* at 1.

### III. DISCUSSION

At the outset, the Court notes that 28 C.F.R. § 68.54(b)(2), which Respondent cites in support of its Motion to Dismiss, does not support dismissal. Section 68.54(b)(2) states “the Chief Administrative Hearing Officer may, at the Officer's discretion, permit or require additional filings or may conduct oral argument in person or telephonically.”

As the moving party, Respondent bears the burden of establishing that dismissal is appropriate. Respondent argues that Complainant has prejudiced Respondent because Complainant has not provide information, and several months have elapsed. Respondent characterizes Complainant’s actions as “bad faith” and describes the amount of time as an “undue delay.”

Respondent has not identified a statute, regulation, or case law that supports dismissal. Complainant has represented that the Department of Homeland Security itself does not possess the information Respondent has requested; nevertheless, Complainant has been working diligently to obtain that information from the Department of State. *See* Order Summ. PHC and Setting Hearing Schedule. Moreover, each time Complainant requested an extension of time, the Court found good cause, a reality that precludes a finding of bad faith.

The Court acknowledges that some time has transpired between the January 2022 prehearing conference and present; however, Complainant has been actively prosecuting the case, even though those efforts have yet to (and ultimately may not amount to) the production of any evidence. *See generally Adams v. Trs. of the N.J. Brewery Employees' Pension Tr. Fund*, 29 F.3d 863, 876 (3d Cir. 1994) (citation omitted) (“district courts should be reluctant to deprive a plaintiff of the right to have his claim adjudicated on the merits”).

Further, the Court is mindful that the case was remanded for to further develop the record. *See Fasakin*, 14 OCAHO no. 1375b, at 26 (“[B]oth the numerous legal and factual issues addressed above . . . would benefit from further development by the ALJ . . .”). The Court must allow the parties an opportunity to exhaust all measures available to secure evidence as this will ensure a fully developed record on remand.

Because Respondent has not met its burden of establishing the propriety of dismissal, the Court DENIES Respondent’s Motion to Dismiss.

SO ORDERED.

Dated and entered on April 26, 2022.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge