

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

ROBERT HEATH,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2022B00034
SMART WORKS, LLC,	)	
Respondent.	)	
	)	

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Appearances: Robert Heath, pro se, Complainant  
Geoffrey Forney, Esq., for Respondent

ORDER ISSUING STAY OF PROCEEDINGS

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 9, 2022, against Respondent Smart Works, LLC. Complainant alleges that Respondent engages in employment-based discrimination against American workers by preferring to hire individuals who possess foreign work visas. Respondent filed a Notice of Appearance and a timely answer to the complaint on April 21, 2022.

Complainant called the Court on April 8 and April 18, 2022. Complainant informed an OCAHO staff member that he has experienced an emergency. It is unclear whether Complainant gave notice to all other parties in this matter as required by 28 C.F.R. § 68.36.<sup>1</sup> Given the circumstances and out of an abundance of caution, the Court is providing notice to the parties of the communication.<sup>2</sup> The Court provides Respondent 14 days from the date of this Order to submit a response, if any, as it deems appropriate. *See Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 3 (2021).

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<sup>1</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

<sup>2</sup> The Court understands Complainant's phone calls as communication of a scheduling issue. *See* 28 C.F.R. § 68.36(a). To the extent that Complainant's phone calls could be considered ex parte communication, this Order satisfies the ALJ's obligation to disclose it to the parties and provide an opportunity for response. *See Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2–3 (2021); *see also* § 68.36(a); 5 U.S.C. § 557(d)(1).

The OCAHO Rules vest the Administrative Law Judge (ALJ) with all appropriate powers necessary to regulate the proceeding. See Hsieh v. PMC-Sierra, Inc., 9 OCAHO no. 1091, 5 (citing 28 C.F.R. § 68.28)).<sup>3</sup> The power to stay a proceeding is incidental to a court's inherent power to "control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936) (citations omitted); see also Monda v. Staryhab, Inc., 8 OCAHO no. 1002, 86, 91 (1998) (citations omitted) ("A stay of proceedings should not be granted absent a clear bar to moving ahead."). In the exercise of its judgment, the Court may issue a stay of proceedings sua sponte. See, e.g., A.S. v. Amazon Web Servs., Inc., 14 OCAHO no. 1381o, 2-3 (2022); Jablonski v. Robert Half Legal, 12 OCAHO no. 1272, 3 (2016).

While Complainant did not address this case specifically, it is apparent to the Court that Complainant's emergency could affect advancement of this litigation. Accordingly, the Court determines that a 60 day stay of proceedings is appropriate given the circumstances.

Therefore, the Court STAYS all proceedings in this matter for a period of 60 days.

Dated and entered on May 19, 2022.

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Honorable John A. Henderson  
Administrative Law Judge

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<sup>3</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 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>.