

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

January 26, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00003
)	
MILWHITE, INC.,)	
Respondent.)	
_____)	

ORDER OF DISMISSAL

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On October 27, 2022, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Milwhite, Inc., “failed to prepare the Employment Eligibility Verification Form (Form I-9) at time of hire or in a timely manner” for eighteen individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 2–4, *see also id.* at 7–11 (the Notice of Intent to Fine (NIF)). Complainant requests that the Court order Respondent to pay the \$32,602.15 in proposed penalties as set forth in the NIF, “cease and desist” from the alleged NIF violations, and to comply with § 1324a(b) for a period of three years. *See id.* at 5–6.

On October 31, 2022, OCAHO sent Respondent a Notice of Case Assignment Regarding Unlawful Employment (NOCA), a copy of the complaint, the NIF, and Respondent’s request for a hearing. The NOCA directed that an answer was to be filed within thirty days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice Regulations.¹ The U.S. Postal Service indicates service on Respondent on November 7, 2022, making an answer due no later than December 7, 2022. *See* 28 C.F.R. §§ 68.3(a), 68.9(a). Respondent did not file an answer by that date.

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

On December 21, 2022, the Court issued an Order to Show Cause. *United States v. Milwhite, Inc.*, 17 OCAHO no. 1469, 1 (2022).² The administrative law judge (ALJ) noted that Respondent had not filed its answer within thirty days of receipt of the complaint, and was already in default. *Id.* at 1–2 (citations omitted). The ALJ then ordered Respondent to file an answer and to show good cause for its failure to timely file an answer within twenty-one days. *Id.* at 2–3. The ALJ warned that if Respondent did not respond as ordered or show good cause for its untimely answer, “the Court may enter a default judgment against it pursuant to 28 C.F.R. § 68.9(b), or the Court may conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b)(1).” *Id.* at 3. The twenty-one day period to file an answer and show good cause expired on January 11, 2023. Respondent did not file an answer or good cause submission.

“OCAHO Rules provide that a request for hearing may be dismissed upon its abandonment by the party who filed it, and that a party shall be deemed to have abandoned such a request where the party or its representative fails to respond to [ALJ orders].” *United States v. Louie’s Wine Dive, LLC*, 15 OCAHO no. 1404, 2 (2021) (citing § 68.37(b)(1), and then citing *United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777–78 (1994)).

Respondent did not respond to the Order to Show Cause. The Court therefore finds that Respondent has abandoned its request for a hearing pursuant to 28 C.F.R. § 68.37(b)(1).

The complaint is hereby DISMISSED, and the NIF becomes the final agency order in this matter.

SO ORDERED.

Dated and entered on January 26, 2023.

Honorable Jean C. King
Chief Administrative Law Judge

² 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>.

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.