

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

February 17, 2023

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

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

ORDER SUMMARIZING FEBRUARY 15, 2023 POSTHEARING CONFERENCE

I. PROCEDURAL HISTORY

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. Complainant, the United States Department of Homeland Security, 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 issued an Order by the Chief Administrative Hearing Officer Vacating the Administrative Law Judge’s Final Decision and Order and Remanding for Further Proceedings. *See generally 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 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

On September 21–22, 2022, the administrative law judge (ALJ) conducted a hearing pursuant to 28 C.F.R. § 68.39.<sup>2</sup> The record was not closed at the conclusion of the hearing. *See United States v. Fasakin*, 14 OCAHO no. 1375i, 3–4 (2022) (Order Summarizing October 18, 2022 Posthearing Conference).

On February 15, 2023, the ALJ held a posthearing conference. Mr. Samuel Yim appeared on behalf of Complainant.<sup>3</sup> Mr. Mark Goldstein and Ms. Jelena Gilliam appeared on behalf of Respondent.

## II. POSTHEARING CONFERENCE SUMMARY

### A. Transcripts

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database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>2</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

<sup>3</sup> Mr. Samuel Yim confirmed that, while not present at this conference, Mr. Jeffrey Bubier and Mr. Mark Wilmoth continue to appear on behalf of Complainant.

On January 31, 2023, the Court issued Order – Post-hearing Conference on February 15, 2023. This order stated “all attorneys who appeared at the September 21-22, 2022 hearing must attend the [February 15, 2023] post-hearing conference.”

In accordance with the January 31, 2023 order, all Respondent’s counsel of record were present at the post-hearing conference.

Complainant had only one of the three counsel of record present. Mr. Bubier and Mr. Yim were at the September 2022 hearing. The provided rationale for the absence of Mr. Bubier (“Mr. Bubier is in court presently”) is not good cause for his absence from the post-hearing conference.

The Court reminded Complainant of its obligation to have all counsel appear at post-hearing conference, or alternatively provide a motion requesting to withdraw from the case. The absence of counsel hinders the Court and parties’ ability to have a meaningful discussion about moving the case to resolution. *See* 28 C.F.R. § 68.32. The Court expects all counsel of record (whether they appeared at the September 2022 hearing or not) to appear at the next scheduled conference. A failure of counsel of record to appear may result in an adverse consequence for the non-compliant party. *See* 28 C.F.R. § 68.28.

The ALJ reminded the parties the transcript generated at the hearing on remand is now certified as final, and the parties can rely upon it when preparing post-hearing filings. *See generally* January 31, 2023 Post-Hearing Order – Transcript Certification (citing 28 C.F.R. § 68.48(b)).

#### B. Complainant’s January 13, 2023 Motion

The ALJ addressed Complainant’s January 13, 2023 Motion to Offer Rebuttal Evidence and Request to Keep the Record Open (Record Motion). Complainant requests the Court refrain from closing the record so Complainant can investigate further. Record Mot. 1–2. Specifically, Complainant is waiting for an Overseas Verification Request (OVR) sent in January 2023. *Id.* Complainant also provided the following exhibits for identification: C(II)-8 (December 2022 OVR response); C(II)-9 (January 2023 OVR response); C(II)-10 (March 2022 Lagos High Court letter); C(II)-11 (January 2023 documents analysis response).

Respondent did not file an opposition in writing. The ALJ allowed Respondent an opportunity to be heard during the post-hearing conference. Respondent objected to the Record Motion, noting the extended amount of time that had elapsed since the hearing on remand and other concerns pertaining to fairness and delay. Complainant clarified the additional investigation pertained to matters beyond rebuttal of Respondent’s late-filed exhibit.

After considering the positions of both parties, the ALJ DENIED Complainant’s Record Motion during the post-hearing conference. The ALJ provided the parties with the following rationale for her decision: The record was originally held open because of the late-filed exhibit from Respondent. Complainant’s rationale for keeping the record open was related to a more expansive investigation. The record, which already includes testimony at two separate hearings and documentary evidence submitted at two separate hearings, is, at this juncture, quite robust, and an opportunity for further record development does not outweigh the procedural due process concerns of continued delay in reaching a resolution.

#### C. Status of the Record

The ALJ stated that the record will close on March 1, 2023. The ALJ set deadlines for Complainant to file a submission on proffered exhibits for identification. Respondent will have an opportunity to object in writing before the record closes.<sup>4</sup>

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<sup>4</sup> The ALJ clarified that if Respondent wished to raise any objections to proffered exhibits, or arguments regarding what weight the Court should give those exhibits, it should do so in this filing or in its post-hearing briefing. Respondent may also renew appropriate evidentiary arguments in its post-hearing briefings.

The ALJ directed the parties to bear in mind the standard related to submission of evidence, and to consider recent OCAHO precedential decisions discussing reliability and probative value of evidence. *See, e.g., United States v. R&SL Inc.*, 13 OCAHO no. 1333b, 24–29 (2022); *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428d, 9–10 (2023).

Finally, the ALJ informed the parties that once the record closes, it will hold another post-hearing conference to discuss post-hearing briefs, and legal issues in this case, as raised by the CAHO, or arising from the record.

### III. UPDATED CASE SCHEDULE

On or before Wednesday, February 22, 2023, Complainant may submit rebuttal evidence to the exhibit R(II)-6. The Court is in receipt of the exhibits for identification already attached to the Record Motion.<sup>5</sup> Complainant need not resubmit those exhibits for identification, but must submit any additional exhibits for identification not yet provided. Complainant’s filing may include a proffer related to admissibility of the exhibits (i.e., reliability and probative value).

On or before Wednesday, March 1, 2023, Respondent may provide written objections to Complainant’s proposed exhibits.

The record will close on March 1, 2023.

On Tuesday, March 7, 2023 at 11:00 a.m. EST (08:00 a.m. PST), the Court will hold a posthearing conference via the OpenVoice platform. Parties should be prepared to discuss any proffered exhibits and the posthearing briefing schedule.

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<sup>5</sup> Prior to the issuance of this Order, Complainant filed a Motion to Admit Rebuttal Evidence on February 16, 2023. Complainant’s motion included exhibits marked for identification as C(II)-8, C(II)-9, C(II)-10, and C(II)-11 (identical to its January 13, 2023 filing). Complainant provided this submission without the benefit of the Court’s written guidance contained in this Order. Complainant is not precluded from submitting anew a revised filing. Again, such a submission must be provided on or before February 22, 2023.

SO ORDERED.

Dated and entered on February 17, 2023.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge