

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

August 23, 2023

CHRISTANYA SYMPLICE,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2023B00001
	)	
NEW YORK CITY HEALTH AND HOSPITALS	)	
CORPORATION D/B/A NYC	)	
HEALTH + HOSPITALS,	)	
Respondent.	)	
_____	)	

Appearances: Christanya Symplice, pro se Complainant  
Sarah Arenas, Esq., for Respondent

ORDER ISSUING STAY OF PROCEEDINGS

On October 6, 2022, Complainant, Christanya Symplice, filed a complaint pro se with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, New York City Health and Hospitals Corporation d/b/a NYC Health + Hospitals, discriminated against her on account of national origin and citizenship status, in violation of 8 U.S.C. § 1324b(a)(1), and engaged in document abuse, in violation of 8 U.S.C. § 1324b(a)(6). On November 29, 2022, Respondent filed an answer.

On December 12, 2022, this Court issued a General Litigation Order, and on January 19, 2023, held a telephonic prehearing conference. At the conference, attended by Complainant and Respondent's counsel, this Court advised Complainant of her rights and burdens, then set the following case schedule: discovery motions due on May 10, 2023; dispositive motions due on June 8, 2023; oppositions to dispositive motions due on July 8, 2023; replies in support of dispositive motions due August 8, 2023.

On June 14, 2023, Respondent filed a motion for summary decision.<sup>1</sup> On August 9, 2023, Respondent filed a reply to its motion for summary decision. Complainant did not file a motion for summary decision, or an opposition to Respondent’s motion for summary decision.

As to claims based on citizenship status, Respondent argues that §§ 1324b(a)(1)(B), (a)(6) do not apply to Complainant because she is not a protected individual under § 1324b(a)(3). R’s Mem. Supp. Mot. Summ. Dec. 5, 8. In her complaint, Complainant asserts that she is an “alien authorized to work in the United States”; specifically, she was granted Temporary Protected Status (TPS) and has an Employment Authorization Document. Compl. 2. Respondent argues that individuals with TPS are not protected. *See, e.g., Ondina-Mendez v. Sugar Creek Packing Co.*, 9 OCAHO no. 1085, 11 (2002) (“Individuals lawfully present in the United States pursuant to the TPS program do not qualify as ‘protected individuals’ under Section 1324b(a)(3) and are not protected from citizenship status discrimination.”); *United States v. Mar-Jac Poultry, Inc.*, 12 OCAHO no. 1298, 29–33 (2017) (finding a document abuse claim premised on citizenship status may be raised only by those who were protected individuals as defined by § 1324b(a)(3) at the time of the abuse.).<sup>2</sup>

As to claims based on national origin, Respondent argues that it has more than fourteen employees. R’s Mem. Supp. Mot. Summ. Dec. 4. Specifically, Respondent attests to employing over 40,000 workers, which could preclude OCAHO’s jurisdiction under § 1324b(a)(2)(B). *Id.*; *see, e.g., Zajradhara v. HDH Co.*, 16 OCAHO no. 1417, 2 (2022) (citations omitted) (“For claims based upon national origin, OCAHO has subject matter jurisdiction if the employer employs between four and fourteen workers.”).

OCAHO ALJs have noted that relatively recent OCAHO decisions, following *United States v. Arthrex, Inc.*, 594 U.S. \_\_\_\_ (2021), present an unresolved question as to the Court’s ability to issue

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<sup>1</sup> The motion is dated June 8, 2023, but was not received until June 14, 2023. Given mail delays and the lack of objection by Complainant, the Court will consider the motion. *See Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471, 2–3 (2023) (setting forth the good cause standard for accepting late filings).

<sup>2</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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

a final order in § 1324b cases that address non-administrative questions. *E.g., Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373c, 1–3 (2023) (citations omitted). As explained by the Chief Administrative Hearing Officer (CAHO):

OCAHO ALJs appear to be inferior officers for purposes of the Appointments Clause, Article II, Section 2, Clause 2, of the Constitution. *See Guidance on Administrative Law Judges After Lucia v. SEC (S.Ct.), July 2018*, 132 HARV. L. REV. 1120 (2019) (discussing guidance from the Department of Justice’s Office of the Solicitor General that after the decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), “all ALJs” should be appointed as inferior officers). Consequently, the undersigned acknowledges some possible tension between that status and the unavailability of further administrative review of ALJ decisions in cases arising under 8 U.S.C. § 1324b in light of a recent Supreme Court decision. *See United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021) (holding that unreviewable authority by an Administrative Patent Judge is incompatible with that Judge’s status as an inferior officer).

*A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021). Recent OCAHO decisions have cited to this observation and issued stays of proceedings in § 1324b cases where a final case disposition appeared imminent. *E.g., Degaonkar v. Infosys*, 15 OCAHO no. 1393a, 3 (2022) (citations omitted) (collecting OCAHO cases).

Because the Court finds itself in a position wherein it is unable to execute a final case disposition, it now issues a stay of these proceedings.<sup>3</sup> *See Ackermann v. Mindlance*, 17 OCAHO no. 1462b, 9 (2023) (citations omitted) (collecting OCAHO cases); *see also* Department of Justice Unified Agenda, RIN 1125-AB28, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=1125-AB28> (last accessed Aug. 23, 2023).

During the stay of proceedings, the Court will not consider or adjudicate submissions filed by the parties.<sup>4</sup> The parties are not precluded from contacting the Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

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<sup>3</sup> A stay of proceedings is generally defined as “a ruling by a court to stop or suspend a proceeding . . . temporarily or indefinitely. A Court may later lift the stay and continue the proceeding.” *Heath v. I-Services, Inc.*, 15 OCAHO no. 1413a, 2 n.4 (2022) (citations omitted).

<sup>4</sup> The ALJ expresses no opinion on the overall outcome or the merits of Respondent’s motion for summary decision.

SO ORDERED.

Dated and entered on August 23, 2023.

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Honorable Jean C. King  
Chief Administrative Law Judge