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

March 3, 2021

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324c Proceeding
v.	)	OCAHO Case No. 2020C00020
SANCHITA BHATTACHARYA Respondent.	)	

DENIAL OF RESPONDENT'S REQUEST FOR ADMINISTRATIVE REVIEW

I. INTRODUCTION AND PROCEDURAL HISTORY

This case arises under the immigration-related document fraud provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c (2018). The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or Complainant) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent Sanchita Bhattacharya violated 8 U.S.C. § 1324c by forging and falsely making fifty-seven documents to satisfy an immigration requirement or obtain an immigration benefit. Complainant sought a total civil money penalty of $21,375 for the alleged violations. The complaint was based on actions allegedly taken by Respondent as part of a larger visa fraud conspiracy that resulted in criminal proceedings, though an indictment against Respondent specifically was ultimately dismissed due to violations of discovery obligations by the prosecution. *See United States v. Narang*, 1:16-cr-43 (LMB), 2019 WL 3949308 (E.D. Va. Aug. 21, 2019) (summarizing the criminal case, including Respondent's involvement, and finding one defendant guilty following a bench trial).

The case was assigned to Chief Administrative Law Judge (ALJ) Jean C. King. Respondent subsequently filed an answer disputing the allegations in the complaint and noting that the criminal case against her in federal court had been dismissed. The parties subsequently undertook various prehearing procedures.

On July 14, 2020, Complainant filed a Motion for Summary Judgment and Memorandum in Support (Motion). On July 24, 2020, Respondent filed a response to the Motion. On November 19, 2020, Chief ALJ King issued an Order on Motion for Summary Decision (November 19

Order). *See United States v. Bhattacharya*, 14 OCAHO no. 1380 (2020).[1] Chief ALJ King's November 19 Order found that Complainant met its burden of proof to show that Respondent committed thirty-six violations of 8 U.S.C. § 1324c, and that Respondent did not come forward with contravening evidence to create a genuine issue of material fact. *Id.* at 8. Therefore, the Chief ALJ granted summary decision to the Complainant on those thirty-six violations. *Id.* The Chief ALJ also held that Complainant had not met its burden with respect to the other twenty-one alleged violations, and requested supplemental briefing regarding those allegations. *Id.* at 9. On December 10, 2020, Complainant filed a Supplemental Briefing in Support of Motion for Summary Judgment (Supplemental Motion). On December 24, 2020, Respondent filed a letter in response to the Chief ALJ's November 19 Order.

After consideration of this supplemental briefing, on January 29, 2021, the Chief ALJ issued an Order on Supplemental Motion for Summary Decision (Final Order). *United States v. Bhattacharya*, 14 OCAHO no. 1380a (2021). In the Final Order, the Chief ALJ found that Complainant had met its burden of proof to show that Respondent committed the remaining twenty-one violations of 8 U.S.C. § 1324c, based on the evidence previously submitted by the Complainant and the additional affidavit submitted by Complainant with its Supplemental Motion. *See id.* at 5-7. The Chief ALJ also found that Respondent had failed to create a genuine issue of material fact with respect to the twenty-one remaining violations. *Id.* at 6. Therefore, the Chief ALJ granted summary decision to the Complainant on those additional violations. *Id.* at 7. Having found Respondent liable for fifty-seven total violations of 8 U.S.C. § 1324c, the Chief ALJ assessed a civil money penalty of $21,719, which she arrived at by assessing the minimum applicable penalty amount for each individual violation. *See id.*

On February 9, 2021, OCAHO received an email from the Respondent contesting the Chief ALJ's Final Order. On February 10, 2021, the undersigned issued a Notice to the parties informing them that Respondent's February 9 email would be construed as a request for administrative review and considered accordingly, though the undersigned also observed in the Notice that the request appeared to be both untimely and improperly filed. Nevertheless, the undersigned invited the parties to file briefs or other written statements related to the request for administrative review by February 19, 2021, in accordance with 28 C.F.R. § 68.54(b)(1).[2] The Notice also reminded the parties that all briefs and other filings related to the administrative review were required to be filed and served only by facsimile, same-day hand delivery, or overnight delivery, in accordance with the regulations governing administrative review. *See* 28 C.F.R. § 68.54(c).

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and 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 been 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. OCAHO published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on OCAHO's website at https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#PubDecOrders.

[2] On February 15, 2021, Respondent sent an email to OCAHO requesting a one-week extension of the filing deadline for briefs. In light of Respondent's ability to file her brief by the February 19 deadline, however, that request is denied as moot.

On February 19, 2021, both parties submitted briefs related to the administrative review.[3] On February 24, 2021, Respondent submitted an email addressed to Complainant which the undersigned construes as a reply brief. For the reasons stated below, Respondent's request for administrative review is DENIED.

II. JURISDICTION AND STANDARD OF REVIEW

The Chief Administrative Hearing Officer (CAHO) has discretionary authority to review any final order of an ALJ in a case brought under 8 U.S.C. § 1324c. *See* 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.54. Under OCAHO's rules of practice and procedure, a party may file a written request for administrative review within ten days of the date of entry of the ALJ's final order, 28 C.F.R. § 68.54(a)(1), or the CAHO may review an ALJ's final order on his or her own initiative by issuing a notification of administrative review within ten days of the date of entry of the ALJ's final order, 28 C.F.R. § 68.54(a)(2). Within thirty days of the date of entry of the ALJ's final order, the CAHO may enter an order that modifies or vacates the ALJ's order or remands the case for further proceedings. 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.54(d)(1).

Under the Administrative Procedure Act, which governs OCAHO cases, the reviewing authority in administrative adjudications "has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule." 5 U.S.C. § 557(b). This authorizes the CAHO to apply a *de novo* standard of review to final orders of an ALJ. *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Mfg. Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990); *United States v. Autotech Techs. LP*, 13 OCAHO no. 1340, 2 (2020); *United States v. Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, 2 (2015).

III. DISCUSSION

A. Respondent's February 9, 2021 Email Is Construed as a Request for Administrative Review

As previously noted, on February 9, 2021, Respondent sent an email to OCAHO's email filing pilot program inbox, though her case was not enrolled in OCAHO's email filing pilot program, and filing by email was, thus, not a permissible method of filing in the case. The email was addressed to Chief ALJ King and appeared to reference the Chief ALJ's Final Order.[4] Respondent's email asserted that the Final Order "did not meet the standards of justice [she] expected," and argued that Respondent's "prior response was not given appropriate consideration

[3] Despite the undersigned's reminder in the Notice of the limited permissible methods of filing briefs, the Respondent nevertheless submitted her brief solely by email, which is not one of the permissible methods of filing in this case. Conversely, Complainant attempted to file its brief by facsimile and also filed it by overnight delivery. In light of the apparent failure of Complainant's facsimile transmission, Complainant also submitted a copy of its brief to OCAHO via email. Although Respondent's brief—like her request for review and her subsequent reply brief—was improperly filed and served, OCAHO adjudicators do have some discretion to accept non-conforming pleadings in appropriate circumstances. *See, e.g.*, *United States v. Facebook, Inc.*, 14 OCAHO no. 1386, 2 (2021) (citing *Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) and stating that this Court has "discretion to accept pleadings as it sees fit"). As discussed in more detail, *infra*, in this case, the undersigned has considered Respondent's request for review, brief, and reply brief despite their improper filing and service.

[4] Although Respondent's email refers to the Chief ALJ's "letter dated 01/29/2021," it appears that Respondent was referring to the Chief ALJ's January 29 Final Order.

due to Ms. Richa Narang's false testimonies to the federal agents." Respondent's email further asserted that the Final Order was "unconstitutional and undemocratic," and requested that the Chief ALJ "arrange a hearing at your earliest convenience."

Although Respondent's email was addressed to Chief ALJ King, it was filed after the entry of the Chief ALJ's Final Order in the case, and raised substantive challenges to the Final Order. Under OCAHO's regulations, substantive changes to final orders of the ALJs in cases under 8 U.S.C. § 1324c are considered only through the administrative review process. *See* 28 C.F.R. § 68.52(f). Therefore, Respondent's email is construed as a request for administrative review and has been evaluated accordingly. *Cf. Autotech Techs. LP*, 13 OCAHO no. 1340, at 3 (construing a Motion to Vacate as a request for administrative review, even though it was styled as a motion and addressed to the presiding ALJ); *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 3-4 (2015) (same); *United States v. Greif*, 10 OCAHO no. 1183, 2-3 (2013) (construing a letter filed by the respondent as a request for administrative review).

B. Respondent's Request for Review, Brief, and a Subsequent Email Message Construed as a Reply Brief, Though Improperly Filed and Served, Are Accepted and Considered

OCAHO's rules require parties to file all requests for administrative review and any other briefs or filings related to the review by facsimile, same-day hand delivery, or overnight delivery. 28 C.F.R. § 68.54(c). Respondent's request for review and brief were filed and served only by email. Further, following the filing of Complainant's brief, Respondent submitted an email addressed to Complainant which the undersigned construes as a reply brief. In that email Respondent averred she was unable to comply with any of the acceptable methods of filing because she does not have a facsimile machine, and neither she nor her husband is able to drive.

At present, unless a case is enrolled in OCAHO's email filing pilot program—and Respondent's case is not—email is not an appropriate method of filing or service for requests for administrative review or any attendant filings such as briefs. The CAHO ordinarily expects "[s]trict adherence" to filing and service requirements "to enable all parties to the case to submit briefs related to the request for review and for the CAHO to conduct a thorough review of the request and the administrative record in the case." *Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, at 5. Nevertheless, OCAHO case law has recognized instances where the CAHO has accepted a defective and improperly-served filing when it did not result in any prejudice to the opposing party. *United States v. Split Rail Fence Co., Inc*., 10 OCAHO no. 1181, 3 (2013) (accepting an improperly-served request for review for consideration where the improper service did not actually delay the opposing party's receipt of the document and where the opposing party received the request for review in time to file a timely brief in response); *see also Greif*, 10 OCAHO no. 1183, at 4 (accepting an improperly filed and served request for review where the respondent made a good-faith effort to comply with the rules and any prejudice to the opposing party was minimal). Moreover, OCAHO adjudicators have some latitude to accept non-conforming pleadings in appropriate circumstances. *Facebook, Inc.*, 14 OCAHO no. 1386, at 2. In light of Respondent's pro se status and the lack of any evident prejudice to Complainant or the undersigned's consideration of the request for review due to Respondent's filing and service by email, the

undersigned has accepted and considered Respondent's request for review, brief, and reply brief, notwithstanding their improper filing and service.[5]

C. Respondent's Request for Review Was Untimely

Pursuant to OCAHO's rules, a party may file a written request for administrative review within ten days of the date of entry of the ALJ's final order. 28 C.F.R. § 68.54(a)(1). In this case, the Chief ALJ entered her Final Order on January 29, 2021. Thus, the deadline for filing a request for administrative review was February 8, 2021. Respondent sent her request for review by email on February 9, 2021. Accordingly, the request was untimely.

"Requests for review need not be lengthy, complex documents," *Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, at 3, and OCAHO's rules require no talismanic language in making such a request, only a statement of the reasons or basis for seeking review, 28 C.F.R. § 68.54(a)(1). Moreover, parties have additional time to submit briefs setting forth their legal arguments; thus, such arguments are not expected in the request for review itself. *Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, at 3. Accordingly, there is little reason for a party seeking review to miss the deadline to request review, and OCAHO case law establishes a clear expectation of "strict adherence" to the deadline. *Id*.

Indeed, it is well-established in OCAHO case law that untimely requests for administrative review are subject to denial on that basis. *See Autotech Techs. LP*, 13 OCAHO no. 1340, at 3-4 (denying an untimely request for administrative review, and citing numerous previous CAHO decisions denying other untimely requests for review). Previous CAHO decisions have repeatedly and extensively explained the importance of strict adherence to filing deadlines in the administrative review process, given the short statutory timeframe under 8 U.S.C. § 1324c(d)(4) in which the CAHO must complete the administrative review if the CAHO is to modify or vacate the underlying ALJ order or decision. *See id.; Buffalo Transp., Inc.*, 11 OCAHO no. 1263a; *United States v. Horno MSJ, Ltd.*, 11 OCAHO no. 1247a (2015); *United States v. Silverado Stages, Inc.*, 10 OCAHO no. 1185 (2013); *Greif*, 10 OCAHO no. 1183. Thus, untimely requests for review have routinely been denied, *Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, at 4 (collecting cases), and the untimeliness of a review request is excused only "rarely," such as when a party received notice of an ALJ's decision after the deadline for filing a request for review had already passed, *Vilardo Vineyards*, 11 OCAHO no. 1248, at 4.

To be sure, OCAHO case law has noted that the deadline for filing a request for administrative review may be subject to equitable tolling under appropriate circumstances. *See id.; United States v. Chen's Wilmington, Inc.*, 11 OCAHO no. 1241, 7-8 (2015).[6] Assuming equitable

[5] Nothing about this determination should be construed as establishing a per se rule that a party's pro se status combined with a lack of prejudice to the opposing party automatically excuses compliance with OCAHO's rules of procedures, including rules regarding filing and service. Although OCAHO provides "some consideration" to a party's pro se status, "accommodation of that status must at some point 'give way to the need for orderly and informed participation by the parties to an administrative adjudication.'" *Horno MSJ, Ltd.,* 11 OCAHO no. 1247a, at 3 (quoting *Holguin v. Dona Ana Fashions*, 4 OCAHO no. 605, 142, 146 (1994)). Accordingly, all parties with cases before OCAHO, regardless of representation, are reminded that compliance with OCAHO's rules of procedure is expected in all cases.

[6] The foundation of this point in OCAHO jurisprudence is an assertion that because the ten-day deadline is not jurisdictional, it is necessarily subject to equitable tolling. *See*, *e.g.*, *Chen's Wilmington, Inc.*, 11 OCAHO no. 1241,

tolling of the ten-day deadline in 28 C.F.R. § 68.54(a)(1) is available, it is nevertheless "a rare remedy available only where a party has exercised due diligence in preserving her legal rights," *Chen's Wilmington, Inc.*, 11 OCAHO no. 1241, at 7-8, and the party "was prevented from timely filing by circumstances beyond the party's control," *Vilardo Vineyards*, 11 OCAHO no. 1248, at 4.

Respondent's request for review was filed one day after the deadline, which suggests that she did exercise diligence in preserving her legal rights. However, she has failed to identify any extraordinary circumstances[7] beyond her control that prevented her from timely filing a request for review, particularly in light of her use of email to make filings and the lack of a need for any complex statement in her request for review. Moreover, in the Notice issued to the parties on February 10, the undersigned noted that the request for review appeared to be untimely, citing to § 68.54(a)(1) of OCAHO's rules. Despite flagging this issue, Respondent did not offer any explanation or justification for her untimely filing in her brief. [8] Accordingly, assuming, *arguendo*,

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at 7 ("filing deadlines are not jurisdictional in nature, and thus are subject to equitable remedies, such as equitable tolling, under appropriate circumstances"). However, that assertion does not fully capture the relevant law on the subject of nonjurisdictional deadlines and equitable tolling, particularly in the context of internal agency deadlines. *See Gonzalez v. Thaler*, 565 U.S. 134, 146 (2012) ("But calling a rule nonjurisdictional does not mean that it is not mandatory. . . ."); *cf. Kontrick v. Ryan*, 540 U.S. 443, 456 (2004) (noting that a filing deadline categorized as a nonjurisdictional claim processing rule may nevertheless be "inflexible" or "unalterable"). Although the ten-day deadline in 28 C.F.R. § 68.54(a)(1) is a nonjurisdictional claim-processing rule, not all claim-processing rules are subject to equitable tolling. *See, e.g., Eberhart v. United States*, 546 U.S. 12, 19 (2005) (Fed. R. Crim. P. 33 is a claim-processing rule, but its deadline for a motion for new trial is inflexible); *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019) (Fed. R. Civ. P. 23(f) is a claim-processing rule but is not amenable to equitable tolling); *Huerta v. Gonzales*, 443 F.3d 753, 756 (10th Cir. 2006) (the thirty-day deadline for filing an appeal with the Board of Immigration Appeals (Board) is a claim-processing rule but is nevertheless mandatory if the opposing party raises the issue of timeliness); *Liadov v. Mukasey*, 518 F.3d 1003, 1008 n.4 (8th Cir. 2008) (agreeing with *Huerta* that the Board's filing deadline is nonjurisdictional but nevertheless mandatory). *But see Attipoe v. Barr*, 945 F.3d 76, 77-78 (2d Cir. 2019) (the Board's thirty-day deadline for filing an appeal is a claim-processing rule that is subject to equitable tolling). The Supreme Court has also made clear that its case law establishes no presumption of the availability of equitable tolling for an administrative agency's internal appeal deadline, such as the ten-day deadline in 28 C.F.R. § 68.54(a)(1). *See Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 158 (2013) ("We have never applied [a rebuttable presumption that equitable tolling applies to suits against the United States] to an agency's internal appeal deadline . . . ."). In short, the legal question of whether equitable tolling is available to toll the deadline for requests for administrative review under 28 C.F.R. § 68.54(a)(1) is not quite as settled as prior OCAHO case law may have intimated. Nevertheless, because Respondent's request for review is subject to denial regardless of the availability of equitable tolling, the instant case provides no occasion to provide a dispositive assessment of the issue. Similarly, because Respondent's request for review is subject to denial, her case also provides no occasion to determine whether the thirty-day deadline in 8 U.S.C. § 1324c(d)(4) for the CAHO to modify or vacate a decision by an ALJ is subject to equitable tolling. *See Chen's Wilmington, Inc.*, 11 OCAHO no. 1241, at 7 n.7 (acknowledging but not deciding that issue).

[7] Although the CAHO's decision in *Vilardo Vineyards*, 11 OCAHO no. 1248, at 4, alludes only to the presence of "circumstances beyond [a] party's control," most formulations of this element of equitable tolling require a showing of "extraordinary" circumstances beyond a party's control. *E.g. Holland v. Florida*, 560 U.S. 631, 649 (2010) (equitable tolling requires a showing of diligence and an extraordinary circumstance that prevented timely filing). Assuming equitable tolling is available regarding the deadline in 28 C.F.R. § 68.54(a)(1), it requires a showing of both diligence and extraordinary circumstances beyond a party's control that prevented a timely filing.

[8] On February 24, 2021, after the deadline for filing briefs and other documents related to the administrative review had passed, Respondent sent an email to the Complainant appearing to reply to the brief submitted by Complainant on February 19, 2021, and alleging that her request for review was filed late because she did not receive the Final Order until February 5, 2021. That email was also sent to OCAHO. Construing Respondent's email liberally in light of her pro se status, it functions as a reply brief. Although OCAHO rules do not authorize reply briefs during administrative reviews, the undersigned retains discretion to accept additional filings during an administrative review.

that the deadline in 28 C.F.R. § 68.54(a)(1) is subject to equitable tolling, Respondent has failed to demonstrate any extraordinary circumstance that prevented her from filing on time and, thus, has failed to demonstrate that the deadline for filing a request for review should be equitably tolled.[9] Therefore, Respondent's request for administrative review is untimely and, as such, is subject to denial.

D. Even If Respondent's Request for Review Were Timely, the Request for Review Does Not Provide Grounds to Modify, Vacate, or Remand the Chief ALJ's Final Order

Even if Respondent's request for review had been timely filed, the undersigned would nevertheless decline to modify or vacate the Chief ALJ's Final Order.

1. The Chief ALJ's Final Order

In her Final Order in the case, the Chief ALJ found that Complainant met its burden of proving that Respondent violated 8 U.S.C. § 1324c(a)(1) by knowingly forging, counterfeiting, altering, or falsely making fifty-seven immigration documents after November 29, 1990, for the purpose of satisfying a requirement of the INA. *Bhattacharya*, 14 OCAHO no. 1380a, at 9.

In support of her conclusion that Respondent had knowingly forged and falsely made H-1B visa petitions and supporting documents (including purchase orders), the Chief ALJ cited to and relied upon the following evidence submitted by the Complainant: (1) Richa Narang's testimony in a federal district court proceeding that she observed Respondent signing documents in support of H-1B petitions under Respondent's own name for United Systems, under the name Sam Bose for United Software Solutions, and under the name Sonia Basu for United Technologies, *id.* at 5; (2) Ravinder Kaur's testimony, which further supported that Respondent signed as Sam Bose and Sonia Basu, *id.*; (3) the Statement of Facts from *United States v. Kosuri*, No. 16-CR-00043 LMB (E.D. Va. Oct. 13, 2017), stating that petitions submitted by United Technologies were signed by Sonia Basu, *id.*; (4) the Memorandum of Opinion from *United States v. Richa Narang*, No. 16-CR-00043 LMB (E.D. Va. Aug. 21, 2019), in which the judge found that Respondent signed forged documents, including purchase orders, *id.* at 5-6[10]; (5) emails from Respondent documenting her work signing documents on behalf of various fictitious companies, *id.* at 6; and (6) copies of the documents at issue, which contained false and fabricated information, *id.*

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28 C.F.R. § 68.54(b)(2). Thus, the undersigned has accepted and considered Respondent's reply brief. Nevertheless, the reply brief merely confirms that the Respondent received the Final Order several days prior to the deadline for requesting administrative review and does not explain why Respondent waited to file her request until after the deadline, particularly in light of her demonstrated ability to submit filings by email.

[9] If the deadline in 28 C.F.R. § 68.54(a)(1) is not subject to equitable tolling, it may still be waived or forfeited by the Complainant. *See, e.g., Lambert*, 139 S. Ct. at 714 (nonjurisdictional claim-processing rule can be waived or forfeited by an opposing party). In the instant case, however, Complainant properly raised the timeliness of Respondent's request for review in its brief. Thus, it did not waive or forfeit the issue, and Respondent's request for review was untimely regardless of whether 28 C.F.R. § 68.54(a)(1) is subject to equitable tolling.

[10] I take administrative notice that the defendant Narang has filed an appeal of her conviction with the U.S. Court of Appeals for the Fourth Circuit which remains pending. *United States v. Richa Narang*, No. 19-4850 (4th Cir. filed Nov. 19, 2019).

Although the Chief ALJ noted that there was "no direct testimony or affidavits to show that Respondent signed the purchase orders in the record," the Chief ALJ found that the purchase orders were signed by Sonia Basu, and the evidence showed that Respondent (and only Respondent) signed under that name for that company. *Id.* Therefore, the Chief ALJ found that Complainant had met its burden of proof, by circumstantial evidence, to show that Respondent committed the alleged violations. *Id*.

The Chief ALJ also noted that she "previously found that Respondent's opposition did not create a genuine issue of material fact." *Id*. As Respondent's Response to the Chief ALJ's November 19 Order merely repeated her previous statement that her criminal case was dismissed before the district court, the Chief ALJ found that there was no genuine issue of material fact. *Id.*

Finally, the ALJ assessed the minimum applicable civil money penalty for each of the fifty-seven violations, resulting in a total civil money penalty of $21,719.[11] *Id.* at 7.

2. Arguments of the Parties

Respondent's request for review contests the Chief ALJ's Final Order in different ways, though none is persuasive. Generally, Respondent asserts that the Chief ALJ's Final Order "did not meet the standards of justice as [she] expected" and "is unconstitutional and undemocratic," and as such, it "cannot be accepted." More specifically, Respondent asserts that her "prior response was not given appropriate consideration due to Ms. Richa Narang's false testimonies to the federal agents."

Respondent's brief submitted in support of her request for administrative review generally recounts her version of the events underlying the complaint in this case. Respondent's brief alleges that the H-1B applications at issue in this case were prepared by other individuals, and alleges that these other individuals forged her signature and all other signatures on the documents. Respondent also asserts that it was "physically impossible" for Richa Narang and Ravinder Kaur to have witnessed Respondent signing under other names, "as they were in two different locations." She also alleges that "Richa Narang changed her testimonies to the federal agents [a] couple of times and later…admitted that she made false statements to the federal officers." Respondent also asserts that there was "no analysis done on the signatures by any handwriting expert," and recounts again that her previous criminal indictment on charges related to the alleged document fraud were dismissed with prejudice by the federal district court.

Attached to Respondent's brief were two exhibits: (1) a copy of the district court order dismissing her criminal case, which Respondent previously filed with the Chief ALJ; and (2) what purports to be a copy of a local news article reporting on that criminal case, which Respondent apparently did not file with the Chief ALJ in the proceedings below.

In opposition to Respondent's request for review, Complainant's brief first requests that the CAHO find that "the Respondent failed to timely file and properly file the request for administrative review." The Complainant further argues that ICE "met its burden of proof to

[11] Respondent does not appear to contest the amount of the civil money penalty and, thus, has waived any challenge to its calculation. Even if the issue were not waived, the undersigned finds no error in the Chief ALJ's analysis and conclusion on the penalty amount, which was set as the minimum amount.

support a summary decision," that Respondent "provided no dispositive evidence to support her denial of allegations in the Complaint," and that "[t]he unequivocal evidence" demonstrates that Respondent violated 8 U.S.C. § 1324c. Accordingly, the Complainant requests that, even if the request for review was timely and properly filed, the CAHO find that the ALJ properly entered summary decision as to Respondent's liability for the alleged violations.

3. Analysis

In her request for review and brief in support, Respondent reiterates various assertions that she made before the Chief ALJ and that the Chief ALJ found unsupported and unavailing. For instance, she asserts that the testimony of Richa Narang and Ravinder Kaur in the associated criminal cases was false, and she claims that the H-1B applications at issue in this case were prepared and signed by other individuals, who also forged her signatures on the documents. However, Respondent has failed to offer any admissible evidence in support of these allegations or identified any errors in the Chief ALJ's Final Order, which rejected Respondent's assertions and reached an opposite conclusion, based on the record.

In essence, Respondent asks the undersigned to credit her unsubstantiated, uncorroborated, and self-interested assertions over the factual findings of the Chief ALJ, which were based on a consideration of the record.[12] Although the undersigned possesses de novo review authority, a review of the record, including Respondent's filings after the Chief ALJ's Final Order, provides no basis either to credit those assertions or to find that they establish a disputed issue of material fact sufficient to avoid a summary decision.

[12] Respondent also tacitly asks the undersigned to credit her assertions over the findings of a District Court:

> Another way in which the H-1B petitions were fraudulent was the use of fake names Sam Bose and Sonia Basu to deflect unwanted attention from USCIS investigators. Kaur not only knew that Bhattacharya was signing key documents as "Sam Bose"; Kaur actually alerted Narang to the use of fake names, stressing the obvious point that documents submitted to immigration authorities "shouldn't" be falsified.
> * * *
> Kaur's testimony was corroborated not only by Kosuri's testimony describing Narang's participation in the scheme and the "common knowledge" among the coconspirators that Bhattacharya was using fake names on documents submitted during the H-1B visa application process . . . but also by numerous documents in the record.
> * * *
> With respect to the conspirators' use of false names, Narang on several occasions sent Bhattacharya documents with blank signature lines to be signed by "Sam Bose" and instructed Bhattacharya to "do the needful," which Kaur explained meant that Bhattacharya would apply the signature of this fake person. See, e.g., GEX 51 (Narang forwarding Bhattacharya a letter to be signed by Sam Bose); GEX 51A (the letter Bhattacharya attached in response, which contains the "Sam Bose" signature); see also Bench Trial Tr. 181 (Kaur referring to an email she sent to Bhattacharya, see GEX 69, in which Kaur asked Bhattacharya to "do the needful" with respect to signing another document with the "Sam Bose" signature). Narang made clear that she knew Bhattacharya was forging signatures by sending Kosuri an email attaching documents with blank signatures for Sam Bose and informing Kosuri that they needed to "get the last page ... signed from [Bhattacharya]."

Narang, 2019 WL 3949308 at *13. Although the District Court's findings do not necessarily warrant the application of *res judicata* in this forum, they nevertheless provide a strong record basis supporting the Chief ALJ's Final Order, as they have not been sufficiently disputed by Respondent to avoid summary decision.

As the Chief ALJ observed in both her November 19 Order and her Final Order, once the party moving for summary decision "satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012). Moreover, "the party opposing the motion for summary decision 'may not rest upon the mere allegations or denials' of its pleadings, but must 'set forth specific facts showing that there is a genuine issue of fact for the hearing.'" *3679 Commerce Place, Inc.*, 12 OCAHO no. 1296, at 4 (quoting 28 C.F.R. § 68.38(b)).

The only evidence that Respondent submitted to the Chief ALJ in the proceedings below was a copy of the order of the federal district court dismissing her criminal indictment.[13] Otherwise, she relied solely on the denials and allegations in her pleadings. Those denials, however, are simply insufficient to create a genuine issue of material fact, and Respondent has not established otherwise.

Respondent has not pointed to any evidence of record that would undermine the findings and conclusions of the Chief ALJ. The Chief ALJ's conclusion that Complainant met its burden of proof for the fifty-seven violations at issue is well-supported, and the Chief ALJ correctly concluded that Respondent's bare opposition, without more, did not create a genuine issue of material fact sufficient to avoid summary decision. In short, Respondent has not established a basis for the undersigned to vacate, modify, or remand the Chief ALJ's Final Order.

Finally, Respondent's request for review also put forth several broad and unelucidated challenges to the Chief ALJ's Final Order, such as alleging that the Final Order was "unconstitutional and undemocratic" and did not meet the "standards of justice" Respondent expected. However, Respondent failed to provide any additional information or argument in support of these broad claims, and the undersigned finds no support for them in the record.

In sum, even if Respondent's request for review had been timely, it does not state sufficient grounds to modify, vacate, or remand the Chief ALJ's Final Order, and the undersigned therefore declines to do so.

IV. CONCLUSION

Respondent's February 9 email is construed as a request for administrative review by the CAHO. However, that request was untimely. Moreover, even if the request for review had been timely filed, it does not establish a basis to modify, vacate, or remand the Chief ALJ's Final Order. Accordingly, Respondent's request for review is hereby DENIED.

[13] As noted above, attached to Respondent's brief on administrative review was what purports to be a copy of a local news article discussing the dismissal of her previous criminal case. In light of the undersigned's de novo review authority and discretion to permit additional filings in cases subject to administrative review, the undersigned has accepted Respondent's submission. Nevertheless, the article is cumulative at most, does not provide an evidentiary basis to dispute a material fact in order to avoid summary decision, and provides no basis for modifying, vacating, or remanding the Chief ALJ's Final Order.

Under OCAHO's rules, an ALJ's final order becomes the final agency order sixty (60) days after the date of the order, unless the CAHO modifies, vacates, or remands the order. *See* 28 C.F.R. § 68.52(g). Since the undersigned has denied Respondent's request for review, and thus has declined to modify, vacate, or remand the Chief ALJ's Final Order, the Final Order will become the final agency order sixty days after its date of entry. A person or entity adversely affected by a final agency order may file a petition for review of the final agency order in the appropriate United States Circuit Court of Appeals within forty-five days after the date of the final agency order. 8 U.S.C. § 1324c(d)(5); 28 C.F.R. § 68.56.

It is SO ORDERED, dated and entered this 3rd day of March, 2021.

James McHenry
Chief Administrative Hearing Officer