

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

NOTICE AND ORDER

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 suffered a health emergency, that he was hospitalized, and that he expected to be hospitalized for some time. The Court ultimately stayed proceedings in this matter for a period of 60 days.

On July 18, 2022, the Court issued an Order in Heath v. Ancile, Inc., 15 OCAHO no. 1411a (2022). In that case, the respondent filed a notification stating that Complainant Robert Heath was deceased. The respondent attached a copy of the death certificate, issued by the state of Florida, indicating that Mr. Heath died on May 18, 2022, and that the death notification was issued on June 24, 2022. The Court asserted that pursuant to OCAHO Rule § 68.41 it would take judicial notice of the death notice, subject to the parties’ ability to review and object. 28 C.F.R. § 68.41. *See also* Fed. R. Evid. 201. The Court provided the parties 30 days to file any objections. It further invited the parties to file any submissions concerning the applicability of Rule 25 of the Federal Rules of Civil Procedure to these proceedings by no later than 30 days from the date of the Order’s issuance.

The Court similarly provides notice to the parties in the above-captioned matter of the Complainant's apparent death. The Court invites the parties to file any submissions commenting on or objecting to the Court's taking judicial notice of the death by no later than 30 days from the date of this Order's issuance. The Court further invites the parties to file any submissions concerning the applicability of Rule 25 of the Federal Rules of Civil Procedure to these proceedings within the same timeframe.

The Court further directs that as Complainant's last communication with the Court indicated that he was hospitalized, and as Complainant has appeared *pro se* throughout all of these proceedings, all communications subsequent to this Order will be relayed to the Complainant both by electronic mail and by post to his last known physical address.

The Court also notes that the dismissal procedures in § 68.37 may apply in instances where a party cannot or does not participate in the litigation of their case. 28 C.F.R. §68.37(b)-(c).

Finally, as Complainant's death is not yet an established fact for these proceedings, the 90-day timeframe for substitution of the party or dismissal of the action contemplated in Rule 25 has not yet begun. Indeed, at this phase of the proceedings, the Court has made no determination about Rule 25's applicability in this matter.

All other proceedings in this matter are STAYED pending the determination of Complainant's status.

SO ORDERED.

Dated and entered on August 4, 2022.

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John A. Henderson  
Administrative Law Judge