

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

MABEL LILIANA RODRIGUEZ GARCIA,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2021B00056
FARM STORES,	)	
Respondent.	)	
	)	

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Appearances: Stephen Rollins, Esq., for Complainant  
Alexandra C. Hayes, Esq. and J. Freddy Perera, Esq., for Respondent

ORDER ISSUING STAY OF PROCEEDINGS

On May 3, 2021, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent Farm Stores discriminated against her in violation of the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b.

On October 27, 2021, Respondent filed a Motion to Dismiss Complainant’s 8 U.S.C. § 1324b Complaint (Motion to Dismiss). Respondent argued that because Complainant admitted she did not timely apply for naturalization after becoming a lawful permanent resident, she is not entitled to the protection of the statute pursuant to 8 U.S.C. § 1324b(a)(3)(B). 8 U.S.C. § 1324b(a)(3)(B) provides that a “protected individual” subject to the protection of the anti-discrimination provision “does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986[.]”

On November 11, 2021, the Court issued an Order granting Complainant’s unopposed Motion for an Extension of Time to file its response to the Motion to Dismiss such that her response was due on or before November 12, 2021. On November 16, 2021, Complainant filed Complainant’s Response to Respondent’s Motion to Dismiss.

The undersigned notes that relatively recent OCAHO decisions, following United States v. Arthrex, Inc., 141 S. Ct. 1970 (2021), have presented an unresolved question as to the Court’s ability to issue a final order with regard to §1324b cases that address non-administrative questions. *See, e.g., Ravines de Schur v. Easter Seals-Goodwill No. Rocky Mountain, Inc.*, 15

OCAHO no. 1388g, 3 (2022).<sup>1</sup> As the Chief Administrative Hearing Officer (CAHO) explained:

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). However, neither party has raised that issue before the ALJ, and even if one party had, it is not clear that the ALJ could have addressed it. *Compare, e.g., Carr v. Saul*, 141 S. Ct. 1352, 1360 (2021) (“[T]his Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators’ areas of technical expertise.”), and *Califano v. Sanders*, 430 U.S. 99, 109 (1977) (“Constitutional questions obviously are unsuited to resolution in administrative hearing procedures”), with *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994) (observing that the rule that agency consideration of constitutional questions is generally beyond the agency’s jurisdiction is not “mandatory”), and *Graceba Total Commc’ns, Inc. v. FCC*, 115 F.3d 1038, 1042 (D.C. Cir. 1997) (finding that administrative agencies have “an obligation to address properly presented constitutional claims which . . . do not challenge agency actions mandated by Congress”).

*A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381h, 2 n.4 (CAHO order 2021). Recent OCAHO decisions have cited to this observation and issued sua sponte stays of proceedings in § 1324b cases where dismissal appeared imminent. *See A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2– 3 (2022); *Ravines de Schur*, 15 OCAHO no. 1388g, at 3. The

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

undersigned finds such a stay appropriate for the instant case, especially where a potential grant of the pending dispositive motion may constitute a non-administrative act.

Given the “possible tension between [the undersigned’s] status and the unavailability of further administrative review of ALJ decisions in cases arising under 8 U.S.C. § 1324b[.]” Amazon Web Servs. Inc., 14 OCAHO no. 1381h, at 2 n.4, the undersigned exercises its “inherent power to stay its proceedings” and issues a STAY of proceedings in the instant matter. Amazon Web Servs., Inc., 14 OCAHO no. 1381o, at 2 n.5. The undersigned expresses no opinion on the overall outcome of the merits of Respondent’s Motion to Dismiss or the matters in dispute as outlined in the Complaint.

SO ORDERED.

Dated and entered on August 11, 2022.

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Honorable John A. Henderson  
Administrative Law Judge