

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2021A00049
CHINESE BACK RUB D/B/A)	
CHINESE MASSAGE,)	
Respondent.)	
)	

Appearances: Samuel Yim, Esq., for Complainant
Frederick Sproull, Esq., for Respondent

ORDER OF DISMISSAL

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On July 12, 2021, 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). Complainant alleged that Respondent, Chinese Back Rub d/b/a Chinese Massage, failed to prepare or present Forms I-9 for four individuals, in violation of § 1324a(a)(1)(B).

On August 2, 2022, Complainant filed a Motion to Dismiss, pursuant to 28 C.F.R. § 68.14(a)(2),¹ requesting dismissal of the case as a result of a settlement. The motion does not indicate whether Complainant seeks dismissal with or without prejudice. Complainant attached a copy of an executed settlement agreement.

Where parties have entered into a settlement agreement, they shall notify the Administrative Law Judge (ALJ) that “the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.” 28 C.F.R. § 68.14(a)(2).

After reviewing the Motion to Dismiss and the executed settlement agreement, the Court finds that dismissal is appropriate in this case.

¹ Rules of Practice and Procedure, 28 C.F.R. pt. 68.

The remaining issue is whether a settlement dismissal should be granted with or without prejudice. The pleadings do not indicate the parties' preference on this matter. The courts have previously held that when the parties fail to indicate whether they seek dismissal with or without prejudice, the matter is left to the sound discretion of the trial court. *See Tingling v. City of Richmond, VA*, 13 OCAHO no. 1324e, 2 (2021) (citing *Brooks v. Anthem, Inc.*, 14 OCAHO no. 1351, 2 (2020) (internal citations omitted)). *See also Garcia v. Can-Am Electric, LLC*, 15 OCAHO no. 1401, 2 (2021). In evaluating the nature of the dismissal, the courts have sought guidance from the motion itself and from circumstantial evidence, including the parties' conduct while in the forum, and any other statements or conduct indicative of their preference. *See Tingling*, 13 OCAHO no. 1324e, at 2 (finding that the closeness in time between Complainant's request for dismissal and the scheduled hearing, Complainant's unequivocal demand to have no further participation in the litigation, Complainant's failure to attend the scheduled prehearing conference, and Respondent's claims of prejudice if the matter was further delayed signaled that a dismissal with prejudice is appropriate); *Garcia*, 15 OCAHO no. 1401, at 2 (finding that the parties' conduct indicative of an unwillingness to remain in the forum militates towards a dismissal with prejudice).

The circumstances in this matter indicate that dismissal with prejudice is appropriate. While the motion to dismiss does not indicate the parties' preference on a dismissal with or without prejudice, the parties' oral and written representations suggest that they seek a final resolution of this case. The parties advised during a status conference in February 2022 that they had resolved this matter; they sought a brief continuance to formalize their settlement. The subsequent delay in the dismissal was largely due to a defect in the parties' pleading seeking dismissal. *See Order Rejecting Filing* (issued April 29, 2022). In short, during the last few months the parties have repeatedly expressed a desire to leave the forum through a negotiated settlement. Moreover, the text of the settlement agreement suggests that the parties seek a final resolution, one which does not involve the future use of this Court relative to this dispute. In paragraph four of the settlement agreement, Respondent withdraws its request for a hearing before OCAHO. Complainant Mot. Dismiss Ex. A, Settlement Agreement ¶ 3 ("Settlement Agreement"). In paragraph six of the same, Complainant agrees to issue a "final and unappealable order" upon execution of the agreement, triggering a debit from Respondent of \$5,000. *Id.* at ¶ 6. In paragraph ten of the agreement, the parties agree that upon Respondent's failure to pay the \$5,000, Complainant may sue for enforcement of the final order in any appropriate U.S. District Court. *Id.* at ¶ 10. On balance, the Court finds that the parties' intention, as evidenced by the circumstantial evidence present in this matter, justifies a dismissal with prejudice, and the Court therefore orders the same.

For the foregoing reasons, Complainant's motion is GRANTED and this matter is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on August 18, 2022.

Honorable John A. Henderson
Administrative Law Judge