

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

August 24, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2020C00011
)	
SAMUEL TOMINIYI FASAKIN,)	
Respondent.)	
_____)	

Appearances: Daniel R. Wilmoth, Esq. and Samuel Yim, Esq. for Complainant
Mark Goldstein, Esq. and Jelena Gilliam, Esq. for Respondent

ORDER DENYING MOTION FOR CONTINUANCE

I. PROCEDURAL & FACTUAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on November 4, 2019. Complainant alleges that Respondent, Samuel Tominiyi Fasakin, violated § 1324c(a)(2).

On May 10, 2021, the Court issued a Final Decision and Order (Final Order) following a hearing on the merits. On June 8, 2021, the Chief Administrative Hearing Officer (CAHO) issued an Order by the Chief Administrative Hearing Officer Vacating the Administrative Law Judge’s Final Decision and Order and Remanding for Further Proceedings (Order on Remand). *United States v. Fasakin*, 114 OCAHO no. 1375b, 1 (2021).¹

¹ 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

After the Order on Remand, the Administrative Law Judge (ALJ) held prehearing conferences on the following dates: June 30, 2021; August 4, 2021; October 18, 2021; January 14, 2022; January 28, 2022; April 20, 2022, and July 29, 2022.

Complainant’s attorney, Assistant Chief Counsel (ACC) Samuel Yim, filed a Notice of Appearance in this case on July 27, 2021. ACC Yim appeared at every prehearing conference after filing his notice of appearance. This includes the most recent prehearing conference wherein the Court and parties discussed the facts which remain in dispute and the initial parameters of what will transpire at the September 2022 hearing.

On August 22, 2022, ACC Yim (who characterizes his appearance as “second chair”) filed “Complainant’s Motion for a Continuance.” *See* Mot. Cont. 1–3. He informed that Court that his co-counsel, ACC Daniel Wilmoth, is presently unavailable to present the case and ACC Wilmoth will be unavailable until October 2022. *Id.* at 2. Because of his co-counsel’s unavailability, ACC Yim requests the Court “adjourn the matter” for “thirty (30) to sixty (60) days due to unforeseen circumstances beyond the control of the Complainant.” *Id.* ACC Yim states that additional time beyond the set hearing date is needed for preparation if ACC Yim needs to represent Complainant, or alternatively, this additional time would allow ACC Wilmoth to become available. *See id.*

II. DISCUSSION

A party seeking to continue a matter must provide, as a threshold matter, good cause for a continuance. 28 C.F.R. § 68.27(a)²; *see, e.g., Heath v. Rang Techs.*, 16 OCAH no. 1420, 1–2 (2022) (citing § 68.27) (analyzing whether a party met its burden in demonstrating good cause in a motion for continuance).

The Court accepts Complainant’s proffer that one counsel recently became unavailable as a result of circumstances beyond the control of Complainant; however, in this case, that is not sufficient good cause to warrant a continuance.

Here, the remaining counsel has been involved in the matter continuously since August 2021, attending multiple prehearing conferences. He has kept the Court apprised of the Complainant’s preparations in the case. Additionally, the available counsel still has several weeks during which he can prepare for the September 2022 hearing, which is sufficient time given his working

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>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

knowledge of the facts and legal issues and the narrow scope of the hearing on remand (discussed at the last prehearing conference).

The Court also notes this hearing will be one during which the parties shall provide evidence, but not argument. As OCAHO Rule 68.48(a) indicates, the parties will have the benefit of a verbatim transcript and full review of the documentary evidence at hand when they provide their written argument.

The Court notes that it did not provide the Respondent an opportunity to submit matters related to Complainant's motion. While the Court generally endeavors to permit parties an opportunity to be heard, here, the Court elected expediency of decision-making because the hearing date is fast approaching and there is value in the parties having sufficient notice and trial date certainty. *See* §§ 68.1, 68.32 (emphasizing that proceedings shall be conducted expeditiously).

Additionally, in this specific instance, it is unclear how a response by Respondent would assist Complainant's counsel in meeting his burden (i.e., showing good cause related to one Complainant's counsel vice the other counsel representing Complainant).

Based on the foregoing, Complainant's August 22, 2022 Motion for Continuance is DENIED.³

The hearing remains set for Wednesday, September 21, 2022. All deadlines outlined in the August 4, 2022 Prehearing Conference Order remain. Parties are encouraged to request a prehearing conference in advance of the currently scheduled September 2, 2022 conference if they feel it appropriate to do so. § 68.13(a).⁴

SO ORDERED.

Dated and entered on August 24, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

³ The ALJ notes that OCAHO Rule 68.27 provides time limit instructions for continuances. *See* §§ 68.27(a)–(c). Fourteen days prior to the date of the scheduled proceeding is September 7, 2022.

⁴ Given the approaching hearing date, the ALJ notes that a prehearing conference may be a more expedient avenue for resolution of written motions. § 68.13(a)(2).