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

November 30, 2022

NITIN DEGAONKAR, Complainant, v. INFOSYS LIMITED, Respondent.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2021B00030

Appearances: Nitin N. Degaonkar, pro se Complainant
Kenneth E. Raleigh, Esq., for Respondent

ORDER ISSUING STAY OF PROCEEDINGS

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 (IRCA), 8 U.S.C. § 1324b. On May 3, 2021, Complainant, Nitin Degaonkar, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Infosys Limited, alleging § 1324b discrimination and retaliation claims.

On June 7, 2021, Respondent, through counsel, filed a motion to dismiss. On June 9, 2021, Respondent filed an answer. In the Motion to Dismiss, Respondent argues that Complainant's § 1324b claims are time-barred. *See generally* Mot. Dismiss. Specifically, Respondent asserts that Complainant filed his Complaint more than ninety days after he received the "right to sue" letter from the U.S. Department of Justice's Immigrant and Employee Rights Section (IER). *See id.* at 1–5. On June 14, 2021, Complainant filed a reply to the Answer and his opposition to Respondent's Motion to Dismiss.[1]

[1] In late June 2021, Respondent filed a reply to its Motion to Dismiss, and Complainant filed a sur-reply to that motion. On July 16, 2021, the Court issued an Order on Complainant's Response to Respondent's Reply in Support of Its Motion to Dismiss. *See Degaonkar v. Infosys Ltd.*, 15 OCAHO no. 1393, 1 (2021) (stating that the Court would consider neither Respondent's reply, rejected through the Court's July 9, 2021, Order, nor Complainant's sur-reply).

OCAHO ALJs have noted that relatively recent OCAHO decisions, following *United States v. Arthrex, Inc.*, 594 U.S. ___ (2021), present an unresolved question as to the Court's ability to issue a final order in § 1324b cases that address non-administrative questions. *E.g.*, *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449, 1–2 (2022) (citing *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388g, 3 (2022)).[2] As explained by the Chief Administrative Hearing Officer (CAHO):

> 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

[2] 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 "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

> 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 (2021). Recent OCAHO decisions have cited to this observation and issued sua sponte stays of proceedings in § 1324b cases where a final case disposition appeared imminent. *E.g.*, *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417c, 6–7 (2022); *Rodriguez Garcia*, 17 OCAHO no. 1449, at 2–3; *Ravines de Schur*, 15 OCAHO no. 1388g, at 3; *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2–3 (2022). Accordingly, the Court now issues a stay of these proceedings (OCAHO Case No. 2021B00030).[3]

During the stay of proceedings, the Court will not consider or adjudicate submissions filed by the parties.[4] The parties are not precluded from contacting the Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

SO ORDERED.

Dated and entered on November 30, 2022.

_____
Honorable Jean C. King
Administrative Law Judge

[3] A stay of proceedings is generally defined as "a ruling by a court to stop or suspend a proceeding . . . temporarily or indefinitely. A Court may later lift the stay and continue the proceeding." *Heath v. I-Services., Inc.*, 15 OCAHO no. 1413a, 2 n.4 (2022) (citations omitted).

[4] The ALJ 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.