

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. § 1324c Proceeding
v.)	
)	OCAHO Case No. 2020C00045
DIEGA QUISQUINA-YAXON,)	
)	
Respondent.)	
_____)	

Appearances: Roman J. Maney, Esq., for Complainant
Malvern C. Burnett, Esq., for Respondent

ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the document fraud provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324c. On February 11, 2020, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Diega Quisquina-Yaxon. Respondent filed an answer to the complaint on March 23, 2020.

On September 9, 2020, Complainant filed a Motion for Summary Decision and Respondent filed its response on October 8, 2020. On February 8, 2023, the Court denied Complainant's Motion for Summary Decision. *See United States v. Diega Quisquina-Yaxon*, 17 OCAHO no. 1474, 6 (2023).¹ On February 13, 2023, the case was reassigned to the undersigned.

¹ Citations to OCAHO precedents reflect the volume number and case number of the particular decision. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages

Following case reassignment, the Court issued an Order for Status Reports and Scheduling Prehearing Conference. The Court directed the parties to file status reports no later than twenty-one days from the date of the Order and set a prehearing conference for April 4, 2023, to discuss the issues in the case and set a case schedule. Order for Status Reps. 3-4.

On March 7, 2023, the parties filed a Joint Motion to Dismiss Without Prejudice. On March 9, 2023, the Court held a telephonic prehearing conference to discuss a discrepancy between the motion's caption, which reflected the above-captioned proceedings before OCAHO, and the substance of the motion, which focused on apparent proceedings in another forum. *See* Order Memorializing Prehr'g Conference. During this conference, Complainant stated that it was seeking to dismiss the employment-related violations it alleged against Respondent in this matter and Respondent's counsel represented that Respondent intended to join Complainant's motion to dismiss the case pending before OCAHO. *Id.* at 2. Respondent's counsel confirmed that he had explained the concept of a "dismissal without prejudice" to his client and that his client was amenable to a dismissal without prejudice. *Id.* Finding that the parties had expressed a clear intention to leave this forum by voluntarily dismissing this action, the Court directed them to file a corrected motion to dismiss containing citations to the relevant Federal Rules of Civil Procedure for clarity of the record. *Id.*

The parties now have filed a corrected Joint Motion to Dismiss Without Prejudice. In this motion, the parties move the Court to dismiss this case pursuant to Federal Rule of Civil Procedure 41(a)(2).

II. LEGAL STANDARDS & DISCUSSION

OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained at 28 C.F.R. part 68 (2023),² provide for dismissals under

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 through the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or on the United States Department of Justice's website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO's Rules of Practice and Procedure for Administrative Hearings are available on OCAHO's homepage on the United States Department of Justice's

various circumstances, including (1) where “the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted” (28 C.F.R. § 68.10(b)); (2) where the parties have reached a settlement agreement and agree to dismissal of the action (28 C.F.R. § 68.14(a)(2)); (3) where a party abandons a complaint or a request for hearing it filed (28 C.F.R. § 68.37(b)); and (4) through a final order post-hearing after “the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice” (28 C.F.R. § 68.52(d)(5)). Although OCAHO’s rules do not contain a specific provision regarding voluntary dismissals outside the settlement context, they provide that the Court may use the Federal Rules of Civil Procedure as “a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1.

In analyzing the parties’ Joint Motion to Dismiss Without Prejudice, the Court is guided by Federal Rule of Civil Procedure 41(a)(2), being the rule pursuant to which the parties jointly move for dismissal. The Court likewise consults case law from the United States Court of Appeals for the Fifth Circuit as it is the “appropriate circuit for review.” 28 C.F.R. § 68.56.

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Terms may concern the payment of costs and attorneys’ fees or seek to reduce the inconvenience to any party opposing the dismissal by requiring the production of documents or witnesses. *See, e.g., LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976).

Courts should grant voluntary dismissals unless “the non-moving party will suffer some plain legal prejudice.” *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002). Plain legal prejudice may arise “when a party proposes to dismiss the case at a late stage of pretrial proceedings, or seeks to avoid an imminent adverse ruling, or may on refiling deprive the defendant of a limitations defense.” *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 628 F.3d 157, 162 (5th Cir. 2010) (citations omitted). The mere prospect of a second lawsuit does not amount to plain legal prejudice. *See Manshack v. Southwestern Elec. Power Co.*,

website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

915 F.2d 172, 174 (5th Cir. 1990) (citation omitted); *see also United States v. La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, 3 (2021) (noting that OCAHO case law recognizes “the threat of future litigation does not constitute plain legal prejudice”) (citations omitted).

Here, the Court finds that dismissal is appropriate and grants the parties’ Joint Motion to Dismiss Without Prejudice. Respondent has not argued, and the Court does not find, that she will suffer plain legal prejudice from dismissal. Although this case is at a later stage of proceedings, the Court gives great weight to the fact that Respondent joins Complainant in moving this Court for dismissal—a position Respondent’s counsel confirmed to the Court during the parties’ most recent telephonic prehearing conference. *See* Order Memorializing Prehr’s Conference 2; *see also Mangir v. TRW, Inc.*, 4 OCAHO no. 672, 722, 726-27 (1994) (granting motion to dismiss under Rule 41(a)(2) where the respondent stated that it did not object to dismissal of the complaint without prejudice).

The Federal Rules of Civil Procedure provide that a Rule 41(a)(2) dismissal is without prejudice “[u]nless the order states otherwise.” Both OCAHO and the Fifth Circuit recognize a court’s broad discretionary power over whether to grant a Rule 41(a)(2) dismissal with or without prejudice. *See La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citations omitted); *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 195 (5th Cir. 2011). The parties in this matter seek voluntary dismissal without prejudice and the dismissal shall be as such. Although it is possible that Respondent could face future litigation, Respondent’s counsel confirmed that he had explained the concept of “dismissal without prejudice” to his client and that she is amendable to it. *See* Order Memorializing Prehr’s Conference 2.

Lastly, the Court will not impose any additional terms on this dismissal. Respondent has not sought any payment of costs or fees or claimed that production of documents or witnesses is needed, and the Court finds that no curative conditions are necessary. The parties’ Joint Motion to Dismiss Without Prejudice is granted and this case is dismissed.

III. ORDERS

IT IS SO ORDERED that the parties’ Joint Motion to Dismiss Without Prejudice is GRANTED.

IT IS FURTHER ORDERED that this action is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on July 6, 2023.

Honorable Carol A. Bell
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.