

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

September 30, 1996

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	OCAHO Case No. 96A00059
MAYFLY FASHION, INC.,	)	
Respondent.	)	
_____	)	

**ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE**

On June 10, 1996, Complainant, the United States of America, filed a Complaint against Respondent, Mayfly Fashion, Inc., in the Office of the Chief Administrative Hearing Officer (OCAHO). On June 14, 1996, this case was assigned to me, and a copy of the Complaint and the Rules of Practice were mailed to the Respondent by certified mail, return receipt requested. The return receipt was not delivered to this office, and the package mailed to Respondent was returned to OCAHO on July 18, 1996, marked "return to sender."

The Rules of Practice provide that, "[i]n circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounter difficulty with perfecting service the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process." 28 C.F.R. §68.3(c). Accordingly, on July 23, 1996, I ordered Complainant to effectuate service of the Notice of Hearing and Complaint, and a copy of the Rules of Practice on Respondent. Complainant was ordered to provide evidence of such service within thirty days of the date of the Order, or, if unable to so serve, to file a status report with the Judge indicating what efforts have been made to comply with the Order.

6 OCAHO 894

In its report filed on August 30, 1996, Complainant states that Special Agents from the Immigration and Naturalization Service attempted to serve Respondent on August 2, 1996, by serving the Secretary of State in Albany, New York. Apparently, no further effort was made to effectuate service after August 2, 1996, or to meet the August 23 deadline.

Complainant stated in its status report that the Special Agents were scheduled to return to the Secretary of State's Office in Albany during the first week in September.

Complainant stated service on the Secretary of State was effective because the Secretary acts as an agent for service of process of a corporate party. Complainant further stated that it relied on New York State law to support its belief that serving the Secretary of State constitutes service on Respondent. Complainant requested until September 30, 1996, to produce evidence of proof of service or to file a status report indicating what additional efforts have been made to effectuate service of process.

On August 30, 1996, Complainant was ordered to file, not later than September 30, 1996, proof of service and if it served the Secretary of State, it was ordered to file a brief supporting its position that service on the Secretary of State constituted effective service under the OCAHO Rules of Practice. Instead, on September 27, 1996, Complainant filed a motion seeking dismissal of this action without prejudice.

Although Complainant does not explain why it is seeking to dismiss, the present record does not indicate that the complaint has been served. OCAHO case law demonstrates that when a complaint cannot be effectively served, it is dismissed without prejudice so that a complainant can refile the complaint if the Respondent is located and service can be accomplished. *See, e.g. United States v. Baches-Corado*, 3 OCAHO 571 (1993); *United States v. Iniquez-Casillas*, 6 OCAHO 870 (1996). Consequently, Complainant's motion is granted, and this action is dismissed without prejudice.

ROBERT L. BARTON, JR.  
Administrative Law Judge