

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

UNITED STATES OF AMERICA,	)
Complainant,	)
	)
v.	) 8 U.S.C. §1324a Proceeding
	) CASE NO. 93A00134
MUSHTAQ AHMED CHAUDHRY,	)
Respondent.	)
_____	)

ORDER CONFIRMING IN-PERSON PREHEARING CONFERENCE AND  
ORDER GRANTING COMPLAINANT'S  
UNOPPOSED MOTION TO AMEND COMPLAINT

By Order, on October 20, 1993, I rescheduled an in-person prehearing conference in this case, changing the date to October 28, 1993 and moving the site to the Immigration Courtroom at the Federal Office Building, 800 Front Street from the Immigration Courtroom at 950 Sixth Avenue. In that Order, Respondent was directed to appear and was warned that should he not do so, he might suffer a finding that he had abandoned his request for hearing. In at least two telephone conversations with my staff, this information was also conveyed to Mr. A. Waheed Chaudry (Mr. Chaudry), Respondent's brother who has requested that he be recognized as Respondent's representative before this court. The purpose of the prehearing was 1) to hear argument and to rule on Respondent's pending Motion to Change The Location of In-Person Prehearing Conference, filed on October 6, 1993, 2) to hear argument and to rule on Respondent's Motion to Post-pone the In-Person Prehearing Conference Until the Review of the ALJ's 10/20/93 Order by the CAHO, filed on October 27, 1993, 3) to discuss with Respondent issues surrounding his representation before this Court, and 4) to discuss the possibility of a negotiated settlement in this case.

On or about October 26, 1993, Respondent filed a request to vacate my Order of October 20, 1993 with the Chief Administrative Hearing Officer (CAHO) arguing that it was prejudicial to Respondent. I did

not certify this interlocutory appeal or stay my October 20, 1993 Order.<sup>1</sup>

On Thursday, October 28, 1993, only Mr. Rabinowitz, attorney for Complainant, and Mr. A. Waheed Chaudry appeared at the prehearing conference. Before I could discover the cause of Respondent's nonappearance, Mr. Chaudry requested permission to tape-record the conference. His request was based on the fact that the official transcript would not be available for fifteen (15) days. Complainant opposed this request as a court reporter was present and her written product would be the official transcript.

Upon consideration, I granted Respondent's request but advised and cautioned him that the only official transcript would be the one that was produced by the court reporter present in the courtroom. Mr. Chaudry then requested a postponement of the prehearing. In my sound discretion, I denied the request.

1. Respondent's Motion to Change The Location of In-Person Prehearing Conference

Mr. Chaudry argued that the location for this prehearing conference was prejudicial to Respondent and advantageous to Complainant as it was on Complainant's "home base". On the other hand, Mr. Chaudry stated that the previously scheduled location was a fair and neutral location. Mr. Chaudry additionally argued that he believed that this new location was selected after an ex parte communication with the court by Complainant and that his alternative suggestion of a telephonic prehearing conference was ignored.

In response, Complainant's counsel stated that it did not believe that there was any advantage to Complainant or prejudice to Respondent in having the prehearing conference at this site since the court would be an impartial arbiter no matter where the prehearing was held. Counsel also noted that the Immigration Judges hold hearings in both courtrooms under discussion and that, generally, availability is the criteria used for selecting a site for hearings and prehearings before this court.

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<sup>1</sup> On November 1, 1993, the CAHO issued a Notification To Parties in Above Entitled Proceeding in which it held that no administrative action was warranted on Respondent's request to vacate my Order. See 28 C.F.R. 68.53(d). Thus, my Order of October 20, 1993, stands.

Prior to denying Respondent's motion, I explained to Mr. Chaudry that I do not have a courtroom at my ready disposal and must make arrangements to "borrow" a courtroom when one is needed. Additionally, I reminded Mr. Chaudry that in scheduling both a time and place for our prehearing conferences, my staff has tried to accommodate his schedule, noting that he had informed my staff that he is not available at most times on Friday because he prays at the mosque. Thus, since the courtroom at 950 Sixth Avenue is only available to me for a brief time some Friday afternoons, in most instances, that site would not be appropriate for this case.

I stated further that, even though Mr. Chaudry believed that being on, what he termed, Complainant's "home base" is prejudicial to Respondent, I do not find that to be so. I am, have been, and will continue to be, perfectly neutral and fair to both parties. I will not be influenced by the location of the prehearing and will see to it that the location of the prehearing is neutral to all parties.

As to the other points Mr. Chaudry brought up, I stated that I knew of no ex parte communication and, further, that I did not intend to consider the instant issues by telephonic means. My determination was based on the fact that I find it inappropriate to consider the important prehearing issues before me at this point in time by telephonic conference.

## 2. Respondent's Non-Appearance At The Prehearing

Despite my specific Order of October 20, 1993 and my staff informing Mr. Chaudry that Respondent's attendance at this in-person prehearing conference was required, Respondent did not appear. However, prior to taking action on what appeared to be a direct violation of my Order, I inquired as to the reason for Respondent's non-appearance. Mr. Chaudry stated that Respondent had not appeared because this prehearing conference was being held in a biased location selected to harass Respondent. When I asked Mr. Chaudry if he had advised Respondent not to appear, he refused to answer. Then, in response to my statement that Respondent had deliberately avoided my Order, Mr. Chaudry stated that since my Order had been appealed, it was not valid, and further, Respondent would have appeared if the prehearing had been held at a different location.

I informed Mr. Chaudry that he was incorrect in his belief. Not only had I not certified his appeal, but I had not stayed my October 20,

1993 Order. See 28 CFR 68. 53. Mr. Chaudry agreed that he had been advised by my staff prior to this prehearing that I would not certify the appeal and that I intended to proceed with the in-person prehearing conference.

As it appeared that Respondent had been influenced to avoid my direct Order, making it impossible to make determinations on the pending matters, I stated that it appeared that Respondent had frustrated efforts to proceed with this case and had wasted judicial time and effort. However, I took into consideration Respondent's pro se status, as well as other factors, and in the interest of proceeding to a conclusion of this case, I did not find that Respondent had abandoned his request for hearing.

I cautioned the parties that the hearing location would be determined by the OCAHO, and not by them, and that upon receipt of the CAHO's response to Respondent's appeal, I would reset this prehearing conference. At that prehearing conference, resolution of Respondent's representation, as well as Mr. Chaudry's role in this matter will be made since it appears that he intends to be Respondent's representative, witness and interpreter. I directed Mr. Chaudry to inform Respondent that, even should I determine that it to be permissible, it would not in Respondent's best interest to have Mr. Chaudry act in all three capacities. Additionally, I stated that should I find a future attempt to deliberately frustrate the furtherance of this case, I would impose the authorized regulatory sanctions.

3. Complainant's Motion To Amend Complaint

For good cause shown, Complainant's unopposed Motion To Amend Complaint, filed on September 20, 1993, is hereby granted.

**IT IS SO ORDERED** this 12th day of November, 1993, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge