U.S. Department of Justice
Executive Office for Immigration Review
Office of the Director
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

FACT SHEET

Contact: Office of Legislative and Public Affairs
(703) 305-0289 Fax: (703) 605-0365
PAO.EOIR@usdoj.gov
Internet: www.justice.gov/eoir/

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EOIR's Office of the Chief Administrative Hearing Officer

Hears Immigration Cases Related to Employer Sanctions, Document Fraud and Unfair Immigration-Related Employment Practices

The Immigration Reform and Control Act of 1986 established the Office of the Chief Administrative Hearing Officer (OCAHO) within the Executive Office for Immigration Review (EOIR). OCAHO's Chief Administrative Hearing Officer (CAHO) heads a staff of administrative law judges (ALJs) who handle cases related to employer sanctions, document fraud and unfair immigration-related employment practices.

Types of OCAHO Cases

OCAHO's ALJs are responsible for presiding over hearings and deciding cases arising from alleged violations of the Immigration and Nationality Act (INA) related to:

Employer Sanctions (8 U.S.C. § 1324a), which:

Establish civil penalties for employers who fail to prepare and maintain the required verification paperwork documenting newly-hired employees' identities and legal authorization to work in the United States;

Establish civil and criminal penalties for employers who knowingly hire, recruit, refer for a fee, or knowingly continue to employ aliens who do not have legal authorization to work in the United States; and

Establish civil penalties for employers who demand money or indemnity bonds from their employees (as a condition for employment) in order to pay for potential employer sanctions fines.

Document Fraud (8 U.S.C. § 1324c), which establishes civil penalties for document fraud that relates to satisfying an immigration law requirement or obtaining an immigration-related benefit.

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Unfair Immigration-Related Employment Practices (8 U.S.C. § 1324b), which establishes civil penalties and other remedies against employers and recruiters or referrers for a fee who discriminate against work-authorized job applicants or employees based on their national origin or citizenship status.

How OCAHO Receives Cases Related to Employer Sanctions and Document Fraud

The Department of Homeland Security (DHS) enforces provisions related to employer sanctions and document fraud, and brings those cases before EOIR. A typical case proceeds as follows:

DHS conducts an investigation to determine whether there has been a violation of the employer sanctions or document fraud provisions of immigration law.

If the investigation indicates an immigration law violation, DHS may issue a Notice of Intent to Fine to the employer detailing the nature of the violation and the proposed fine.

The employer must choose either to pay the fine or to request a hearing.

If the employer opts for a hearing, DHS can decide to pursue the matter by filing a complaint with OCAHO.

OCAHO reviews the complaint, assigns the case to one of its ALJs, and sends all parties (DHS and the employer) a copy of a Notice of Case Assignment.

The Notice explains the procedural requirements for answering the complaint and the potential consequences of failure to file a timely answer.

Many employer sanctions cases never proceed to the hearing stage because either the parties reach a settlement with the approval of the ALJ or the ALJ resolves a case through a prehearing ruling.

(NOTE: A decision that an alien has committed document fraud can be a ground for the alien's removal from the United States. Removal proceedings information is available on the EOIR website at http://www.usdoj.gov/eoir/press/05/ImmigrationCourtProcess2005.pdf.)

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How OCAHO Receives Cases Related to Unfair Immigration-Related Employment Practices

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the Department of Justice's Civil Rights Division enforces the employment discrimination provisions of the INA. A typical case proceeds as follows:

- Individuals who believe that they have suffered discrimination in violation of the INA's unfair immigration-related employment practices provisions may file a charge with the OSC.
- The OSC then has 120 days to determine whether to file a complaint with OCAHO on behalf of the individual charging party.
- If the OSC chooses not to file a complaint, the individual who filed the charge may file a complaint with OCAHO.

OCAHO Decisions

After hearing a case, an OCAHO ALJ may decide to:

- Impose sanctions and penalties, as specified by law;
- Issue "cease and desist" orders to prohibit a person or business from continuing an illegal activity;
- Award attorney's fees; and
- Award back pay, hiring or reinstatement, and civil penalties in cases regarding unfair immigration-related employment practices.

Review of OCAHO Decisions

Regarding employer sanctions and document fraud cases, either the CAHO or the Attorney General may review the ALJ's decision and then:

- Modify the ALJ's decision and issue a revised decision;
- Set aside the ALJ's decision and issue a new decision; or
- Send back the case to the ALJ for further proceedings.

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Once a final agency decision has been issued, a party has 45 days to file an appeal of the decision with the appropriate federal circuit court of appeals.

Regarding immigration-related employment discrimination cases, once the ALJ has decided the case, a party (the employer, the OSC, or the job applicant or employee) has 60 days to file an appeal of that decision with the appropriate federal circuit court of appeals.

How to Access OCAHO Decisions

OCAHO decisions are available on the EOIR website at http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm and in bound volumes entitled *Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States.*

— EOIR —

The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice. Under delegated authority from the Attorney General, immigration judges and the Board of Immigration Appeals interpret and adjudicate immigration cases according to United States immigration laws. EOIRs immigration judges conduct administrative court proceedings in immigration courts located throughout the Nation. They determine whether foreign-born individuals – whom the Department of Homeland Security charges with violating immigration law – should be ordered removed from the United States or should be granted relief from removal and be permitted to remain in this country. The Board of Immigration Appeals primarily reviews appeals of decisions by immigration judges. EOIRs Office of the Chief Administrative Hearing Officer adjudicates immigration-related employment cases. EOIR is committed to ensuring fairness in all of the cases it adjudicates.