

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. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00065
LEYENDECKER CONSTRUCTION, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Ariel Chino, Esq., for Complainant
Michael V. Galo, Jr., Esq., for Respondent

ORDER REFERRING CASE TO THE OCAHO SETTLEMENT OFFICER
PROGRAM AND DESIGNATING SETTLEMENT OFFICER

I. PROCEDURAL HISTORY

On June 6, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Leyendecker Construction, Inc., violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On July 18, 2023, Respondent, through counsel, filed an answer. On November 21, 2023, the Court issued an order permitting the parties to file electronically all filings in this case.

On January 24, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. The Court ordered the parties to make their initial disclosures and file their prehearing statements with the Court within twenty-one days of the date of issuance of the order. The Court described the OCAHO Settlement Officer Program and provided the parties with links to the Executive Office for Immigration Review’s Policy Memorandum 20-16 and chapter 4.7 in OCAHO’s Practice Manual, both of which describe the policies and procedures

for the use of settlement officers in OCAHO cases. In its order, the Court directed the parties to confer regarding the OCAHO Settlement Officer Program and to state in their prehearing statements whether the parties were interested in a referral to the program. Neither party filed a prehearing statement as ordered.

On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. On February 21, 2024, Complainant filed a Notice of Appearance and Motion to Substitute Counsel and a registration and certification form for OCAHO's Electronic Filing Pilot Program.

On February 22, 2024, the Court conducted an initial telephonic prehearing conference in the above-captioned matter pursuant to 28 C.F.R. § 68.13 and issued an Order Memorializing Initial Prehearing Conference on February 26, 2024, in accordance with 28 C.F.R. § 68.13(c). During the conference, the Court granted Complainant's unopposed Notice of Appearance and Motion to Substitute Counsel and substituted Assistant Chief Counsel Ariel Chino as Complainant's counsel. After accepting the registration and certification form, the Court extended electronic filing privileges to Mr. Chino and removed Complainant's former counsel from the distribution list. The Court also discussed the OCAHO Settlement Officer Program, and both parties responded affirmatively when asked if they understood the policies and procedures for the program and consented to their use. After giving both parties an opportunity to ask questions about the program, the Court granted the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, finding that the case was appropriate for an initial referral for sixty days with the parties' consent. Lastly, the Court extended the deadline for the filing of prehearing statements.

II. RULES GOVERNING OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through Policy Memorandum 20-16.¹ It is a voluntary program through which the parties use a Settlement Officer to mediate settlement negotiations as a means of alternative dispute resolution. The Settlement Officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. The proceedings before the Settlement Officer are subject to the confidentiality provisions of 5 U.S.C. § 574. The presiding Administrative Law Judge (ALJ) may refer a case for up to sixty days for settlement

¹ <https://www.justice.gov/eoir/page/file/1300746/download>

negotiations before the Settlement Officer. However, with the consent of the parties, the Settlement Officer may seek the approval of the presiding ALJ to extend the period for negotiations for a reasonable period of time, not to exceed an additional thirty days. If the parties reach a settlement, the provisions of 28 C.F.R. § 68.14 apply. If the parties' settlement negotiations are unsuccessful, the case is returned to the presiding ALJ to set appropriate procedural deadlines.

The presiding ALJ may refer a case to a Settlement Officer upon: (1) receipt of written confirmation of consent to referral from each party in the case, and (2) subject to 5 U.S.C. § 572(b) and the eligibility provisions of the program, a determination by the presiding ALJ that the case is appropriate for referral.²

III. ANALYSIS

As explained in its Order Memorializing Initial Prehearing Conference, the Court finds that referral of this matter to the OCAHO Settlement Officer Program is appropriate. This case meets the eligibility requirements for the program set forth in Section I.C.1-2. of Policy Memorandum 20-16 and Chapter 4.7(a)(4)(A)-(B) of the OCAHO Practice Manual. After considering the factors enumerated in 5 U.S.C. § 572(b), Section I.C.3. of Policy Memorandum 20-16, and Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual, the Court finds that they do not counsel against referral of this case to the OCAHO Settlement Officer Program. The Court's referral is based on its review of the pleadings in this matter, the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, and the Court's discussions with the parties' counsel during the initial prehearing conference in which they affirmed their understanding of the policies and procedures for the program and consented to their use.

Given the Court's finding that this case is appropriate for referral to the OCAHO Settlement Officer Program, and after granting the parties' Joint Motion for and Consent to Referral to Settlement Officer Program in which they consented to the referral in writing, the Court now refers this case to the program for settlement negotiations through April 29, 2024, pursuant to 28 C.F.R. § 68.28(a).

² See Section II.A.1-2 of OCAHO Settlement Officer Program Policy Memorandum 20-16, available at <https://www.justice.gov/eoir/page/file/1300746/download>. See also Chapter 4.7(b)(1) of the OCAHO Practice Manual, available at <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

No procedural deadlines need to be stayed in this matter for purposes of this referral. As the Court explained to the parties during the initial prehearing conference, should this case not settle through the Settlement Officer Program, the Court will set a date for another prehearing conference before which the parties must file their prehearing statements. At the next prehearing conference, the parties must be prepared to set additional case deadlines, including dates for the completion of discovery, the filing of dispositive motions and responses, and a hearing.

Should the parties reach a settlement agreement through the OCAHO Settlement Officer Program, the Court may issue an order setting deadlines for the filing of any settlement materials. As the Court explained during the initial prehearing conference, the parties should consult 28 C.F.R. § 68.14 to understand the two avenues for leaving this forum after settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may jointly file a notice of full settlement and an agreed motion to dismiss. The Court may require the filing of the settlement agreement. The parties should indicate in their filing whether they seek dismissal with or without prejudice.

IV. ORDERS

IT IS SO ORDERED that this case is referred to the OCAHO Settlement Officer Program for settlement negotiations through April 29, 2024;

IT IS FURTHER ORDERED that Chief Administrative Law Judge Jean C. King is designated as the Settlement Officer for this case; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with the provisions of 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on February 29, 2024.

Honorable Carol A. Bell
Administrative Law Judge