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EOIR's Office of the Chief Administrative Hearing Officer

The Immigration Reform and Control Act of 1986 and its implementing regulations 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) is responsible for the general supervision and management of administrative law judges (ALJs) who hear cases and adjudicate issues arising under the provisions of the Immigration and Nationality Act (INA) relating to illegal hiring and employment eligibility verification violations ("employer sanctions"), unfair immigration-related employment practices, and immigration-related document fraud. The CAHO also reviews the decisions of the ALJs in employer sanctions and document fraud cases.

Case Types

OCAHO's ALJs preside over hearings and decide cases arising from alleged violations of the INA relating to employer sanctions under Section 274A of the INA (8 U.S.C. § 1324a), unfair immigration-related employment practices under Section 274B of the INA (8 U.S.C. § 1324b), and immigration-related document fraud under Section 274C of the INA (8 U.S.C. § 1324c).

Employer Sanctions

Section 274A of the INA establishes:

- Civil and criminal penalties for employers who knowingly hire, recruit, refer for a fee, or continue to employ aliens unauthorized for employment in the United States;
- Civil penalties for employers who fail to properly verify the identity and work authorization of all new hires; and
- Civil penalties for employers who demand money or indemnity bonds from their employees (as a condition of employment) in order to pay for potential employer sanctions penalties.

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Unfair Immigration-Related Employment Practices

Section 274B of the INA provides that it is an unfair immigration-related employment practice for a person or entity to:

- Discriminate in hiring or firing against an individual because of the individual's national origin or citizenship status;
- Retaliate against an individual for engaging in protected activity under the statute; or
- Engage in “overdocumentation ” or “ document abuse” in the employment eligibility verification process (for example, requesting more or different documents or rejecting acceptable documents required for verifying identity and work authorization).

Individuals who demonstrate that they have been subjected to an unfair immigration-related employment practice may be eligible for back or front pay (wages that the individual would have earned if the employer had hired or continued to employ him or her), reinstatement, and/or other forms of equitable relief. Employers who are found to have committed an unfair immigration-related employment practice may also be subject to civil penalties.

Immigration-Related Document Fraud

Section 274C of the INA establishes civil penalties for making, using, possessing, or accepting a fraudulent document for the purpose of satisfying an immigration requirement or obtaining an immigration benefit, including for the purpose of complying with the employment eligibility verification requirements of INA Section 274A.

Receiving Employer Sanctions and Immigration-Related Document Fraud Cases

The Department of Homeland Security (DHS) investigates and enforces the provisions of the INA related to employer sanctions and immigration-related document fraud. A typical investigation proceeds as follows:

- DHS conducts an investigation to determine whether there has been a violation of the employer sanctions or document fraud provisions of the INA.
- If the investigation indicates a potential violation, DHS may issue a Notice of Intent to Fine to the employer detailing the alleged violation(s) and the penalty imposed.
- The employer must choose to either pay the penalty or request a hearing.
- If the employer requests a hearing, DHS may file a complaint with OCAHO.

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EOIR's Office of the Chief Administrative Hearing Officer

Page 3

Receiving Unfair Immigration-Related Employment Practices Cases (cont.)

The Immigrant and Employee Rights (IER) Section in the Department of Justice's Civil Rights Division enforces the unfair immigration-related employment practices provisions of the INA. A typical case proceeds as follows:

- Individuals who believe that they have suffered discrimination in violation of the unfair immigration-related employment practices provisions of INA Section 274B may file a charge with IER within 180 days of the alleged discriminatory practice.
- IER will then investigate the charge.
- Within 120 days of receipt of the charge, IER will either file a complaint with OCAHO on behalf of the charging party (the individual alleging discrimination) or will send the charging party a letter informing them that they may now file a complaint directly with OCAHO.
- Within 90 days of receiving the IER letter, the charging party then may file a complaint with OCAHO.

OCAHO Case Procedures

Once a complaint has been filed with OCAHO, the CAHO reviews the complaint and issues a Notice of Case Assignment, assigning the case to an ALJ and providing the employer (the respondent) with a copy of the complaint and an opportunity to file an answer to the complaint.

After the respondent files an answer, the parties undertake prehearing procedures, which may include prehearing statements and conferences, discovery, settlement negotiations, and dispositive motions (such as motions to dismiss or motions for summary decision). OCAHO's rules of practice and procedure (located at 28 C.F.R. Part 68) are modeled in part after the Federal Rules of Civil Procedure, and OCAHO cases proceed much like federal district court bench trials.

If a case is not settled by the parties or resolved on a dispositive motion, it may proceed to a full evidentiary hearing on the record. Hearings are held at a location near where the parties reside or where the alleged violation(s) occurred, and are typically open to the public.

In every case, the ALJ will issue a final decision or order, and, when necessary, may issue interlocutory (or interim) orders during the course of proceedings.

Review and Appeal of OCAHO Decisions

The CAHO may review all interlocutory and final orders issued by ALJs in employer sanctions and document fraud cases (sections 274A and 274C of the INA), and can affirm, modify, vacate, or remand those decisions.

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EOIR's Office of the Chief Administrative Hearing Officer
Page 4
Review and Appeal of OCAHO Decisions (cont.)

Once a final agency decision and order has been issued in an OCAHO case, a person or entity aggrieved by that decision may seek review of the final agency order by filing an appeal with the appropriate U.S. Circuit Court of Appeals.

Accessing OCAHO Decisions and Resources

OCAHO currently publishes all substantive decisions and orders as precedent decisions, which are available on OCAHO's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#PubDecOrders>.

Additionally, OCAHO maintains a Cumulative Topical Index (Index) of all published decisions. You may access the Index on OCAHO's homepage (<https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer>).

— 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. EOIR's immigration judges conduct administrative court proceedings in immigration courts 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. EOIR's 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.