

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

March 27, 2014

VICTOR B. PALMA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 14B00030
)	
ALUFASE USA, LLC,)	
Respondent.)	
_____)	

FINAL ORDER OF DISMISSAL

Victor B. Palma filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Alufase USA, LLC, discriminated against him. Presently pending are Palma’s request that the case be dismissed, and respondent’s motions to dismiss, for sanctions, and for attorney’s fees. The complaint will be dismissed in accordance with Palma’s request.

Alufase’s motions are denied. Sanctions for failure to comply with discovery orders are set out in 28 C.F.R. § 68.23(c);¹ attorney’s fees are not among those sanctions. While the question is not entirely free from doubt, the weight of authority is that the rules do not permit the imposition of monetary sanctions for failure to comply with discovery orders. *See United States v. Nu Look Cleaners of Pembroke Pines, Inc.*, 1 OCAHO no. 274, 1771, 1780 (1990) (action by CAHO vacating ALJ’s decision and order). Alufase’s motion to dismiss is denied because a determination as to whether an individual is an employee or an independent contractor cannot be made based simply on the classification a respondent uses, but requires a series of factual inquiries, as explained, inter alia, in *United States v. Hudson Delivery Serv., Inc.*, 7 OCAHO no. 945, 368, 382-88 (1997). Finally, attorney’s fees are awarded in this forum only to a prevailing party. 8 U.S.C. § 1324b(h). Absent a decision on the merits or a consent decree, there is no sufficient alteration in the legal relationship between the parties to identify either of them as the prevailing party. *See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep’t of Health and Human Res.*, 532 U.S. 598, 603-05 (2001).

¹ See Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2013).

The complaint in this matter is hereby dismissed.

SO ORDERED.

Dated and entered this 27th day of March, 2014.

Ellen K. Thomas
Administrative Law Judge