

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

May 5, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2021A00053
)	
TUESDAY LINE, INC. D/B/A)	
CAPTAIN JACK’S,)	
)	
Respondent.)	
_____)	

Appearances: Steve J. Kim, Esq., for Complainant
Robert A. Hufnagel, Esq., for Respondent

ORDER MODIFYING CASE SCHEDULE

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (the “Government”), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 23, 2021, alleging that Respondent, Tuesday Line, Inc. d/b/a Captain Jack’s (“Tuesday Line”), failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for twenty-five individuals, in violation of § 1324a. On September 29, 2021, Respondent filed a Notice of Appearance and an Answer to Complaint.

On November 12, 2022, the Court held a prehearing conference and, after consultation with the parties, set a case schedule.¹ The Court ordered that discovery closes, and discovery motions are due, on February 9, 2022. The Court further ordered that dispositive motions are due on March

¹ This conference was memorialized in the Order Summarizing Prehearing Conference (issued November 19, 2022).

11, 2022, and responses to dispositive motions are due on April 11, 2022. Lastly, the Court set a tentative hearing date in May of 2022.

On February 9, 2022, the parties filed a “Joint Motion to Continue the Dates of the Case Schedule Ordered at the Prehearing Conference” and a “Joint Stipulation to a 90 Day Continuance to the Dates of the Case Schedule Ordered at the Prehearing Conference.” According to these filings, the parties have both agreed to “continue” the dates of the case schedule by a period of 90 days and, pursuant to 28 C.F.R. § 68.11, are moving for the Court to modify its case schedule in accordance with the parties’ “stipulations.” The parties assert in their joint filings that “there exists good cause for the Court to continue the case schedule dates” as “[b]oth counsels for Tuesday Line and [the Government] had their offices impacted by the effects of the recent COVID-19 pandemic and the related Omicron variant outbreak.” Joint Stipulation at 2. Moreover, the parties represent that “[i]n order to allow time for both parties to complete their investigation and discovery in this matter, and to further potential settlement discussions, the parties hereby agree to a continuance of the Court’s Case Schedule set in the November 19, 2021 Prehearing Conference Order. Joint Motion at 2.

II. LEGAL STANDARDS AND DISCUSSION

Although the parties’ joint motion is titled as a “motion for continuance,” the Court construes the motion as a request to modify the case schedule. Under 28 CFR § 68.27, a motion for continuance contemplates the postponement of a specific proceeding, such as a prehearing conference or a final hearing. *See* § 68.27(b) (“Except for good cause rising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date of the *scheduled proceeding*.”) (emphasis added); § 68.27(c) (“Any motions for continuances filed fewer than fourteen (14) days before the date of the *scheduled proceeding*”) (emphasis added); § 68.27(d) (“Time permitting, the Administrative Law Judge shall enter a written order in advance of the *scheduled proceeding date* that either grants or denies the request.”) (emphasis added). *See also Heath v. Rang Techs.*, 16 OCAHO no. 1420, 1 (2022) (“OCAHO’s rules provide for motions for continuance to postpone a scheduled proceeding.”). However, in this matter, the parties are seeking to postpone the close of discovery and deadlines of submissions, such as dispositive motions, in addition to postponing the tentative hearing date. Therefore, the parties seek to modify the entire case schedule.

While OCAHO’s rules do not specifically provide for a motion to modify a case schedule, a presiding Administrative Law Judge (ALJ) has authority to modify a case schedule as the ALJ sees fit. *See* 28 C.F.R. § 68.28(a)(the ALJ “shall have all appropriate powers necessary to conduct fair and impartial hearings”); § 68.13(a)(providing for the ALJ’s authority to set a date for a prehearing conference and recognizing the ALJ’s authority to set “[a] schedule to be followed by the parties for completion of the actions decided at the conference”). *See also* § 68.11(b) where ALJ may “fix” a deadline for responding to a motion; § 68.5 where ALJ may set

a “date, time, and place . . . for hearing thereon or for a prehearing conference”; and § 68.8(c)(2) which provides that an ALJ may set a “compliance date” for “a party . . . to take some action.”

The Court finds that a modification to the case schedule is warranted in this case. Principally, the Court recognizes that both parties have agreed to postpone all case deadlines, as well as the hearing date, by 90 days. Accordingly, there is no risk of either party being prejudiced by a 90-day postponement of case deadlines. Furthermore, the parties have represented that they are seeking a modification to the case schedule “to allow time for both parties to complete their investigation and discovery in this matter, and to further potential settlement discussions.” Joint Motion at 2. Moreover, the parties claim that they each “had their offices impacted by the effects of the recent COVID-19 pandemic and the related Omicron variant outbreak.” Joint Stipulation at 2. The Court finds that these representations, in this case, warrant a favorable exercise of discretion. Therefore, the Court ORDERS that all case deadlines will be postponed.

The undersigned now sets a Modified Scheduling Order in these proceedings as follows:

Discovery closes and discovery motions due: May 13, 2022

Dispositive motions due: June 9, 2022²

Responses to dispositive motions due: July 11, 2022

Tentative hearing date: August 2022

Hearing location: Los Angeles, CA

SO ORDERED.

Dated and entered on May 5, 2022.

Honorable Jean C. King
Chief Administrative Law Judge

² Either party may file a dispositive motion in advance of the dispositive motions deadline. In the event that either party chooses to do so, the deadline for any opposition shall be 30 days from the date of the motion.