

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00045
ANCILE, INC.,)	
Respondent.)	
)	

Appearances: Robert Heath, pro se Complainant
Ralph Hua, Esq., and Andrew Hoag, Esq., for Respondent

NOTICE AND ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on July 12, 2021 against Respondent Ancile, Inc. Complainant alleges that Respondent engages in employment-based discrimination against American workers by preferring to hire individuals who possess foreign work visas. On August 11, 2021, Respondent timely filed an answer denying all liability.

Complainant called the Court on April 8 and April 18, 2022. Complainant informed an OCAHO staff member that he has suffered a health emergency, that he was hospitalized, and that he expected to be hospitalized for some time. The Court thereafter issued a stay of proceedings.

On June 27, 2022, Respondent submitted a Notification of Complainant's Passing and Motion to Dismiss. Respondent attached a copy of a death certificate to the motion. The document indicates that Complainant had expired on May 18, 2022, his death was registered with the State of Florida on June 1, 2022; and the death certificate was issued on June 24, 2022.

The Court intends to take judicial notice of the death certificate, subject to the parties' review and opportunity to show the contrary, per OCAHO Rule 68.41. 28 C.F.R. § 68.41; *see also* Fed. R. Evid. 201.

OCAHO regulations have no analogue for Federal Rule of Civil Procedure 25, which provides for the continuation of a case by substitution upon a party's death. Rule 25(a)(1) states:

“[I]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If a motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1).

OCAHO Rule 68.1 provides that the Federal Rules “may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedures Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1. The Court further notes that the dismissal procedures in § 68.37 may apply in instances where a party cannot or does not participate in the litigation of their case. 28 C.F.R. §68.7(b)-(c).

Any determination on the future status of this case must occur after proper notice and opportunity to be heard has occurred. Accordingly, the Court provides all parties to this matter 30 days from the issuance of this Order to contest or otherwise dispute Complainant’s apparent death. The Court notes that Complainant has appeared throughout the entirety of this matter *pro se*, and that at his last communication with the Court he stated that he was hospitalized. Accordingly, the Court directs that all communications subsequent to this Order will be made to Complainant both via email and by post to his last known mailing address.

Finally, as Complainant’s death is not yet an established fact for these proceedings, the 90-day timeframe for substitution of the party or dismissal of the action contemplated in Rule 25 has not yet begun. Indeed, at this phase of the proceedings, the Court has made no determination about Rule 25’s applicability in this matter. The Court therefore invites the parties to file any submissions concerning the applicability of Rule 25 to these proceedings within 30 days from the issuance of this Order.

All other proceedings in this matter are STAYED pending the determination of Complainant’s status.

SO ORDERED.

Dated and entered on July 18, 2022.

Honorable John A. Henderson
Administrative Law Judge