

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

October 2, 2015

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 14A00094
)	
SAHARA WIRELESS INTERNATIONAL, INC.,)	
Respondent.)	
_____)	

FINAL ORDER OF DISMISSAL

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a two-count complaint alleging that Sahara Wireless International, Inc. (Sahara Wireless or the company) violated 8 U.S.C. § 1324a(a)(1)(B).

On September 14, 2015, the government filed a Notice of Settlement and Joint Motion to Dismiss, notifying this office that the parties had reached a settlement of the matter and agreed to dismiss the action. Such a filing would ordinarily call for an immediate dismissal pursuant to 28 C.F.R. § 68.14(a)(2),¹ and that would have happened here but for the fact that the motion requested a dismissal **without prejudice**.

¹ See Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2014).

As pointed out in *Mangir v. TRW, Inc.*, 4 OCAHO no. 672, 722, 725-26 (1994),² a dismissal without prejudice is one that leaves the parties as if no action had been brought at all. This would leave the government free to reinstitute the matter at any time by filing a new complaint. *Id.* A dismissal **with** prejudice, on the other hand, is the equivalent of a decision on the merits; it has both res judicata and collateral estoppel consequences. See *Huesca v. Rojas Bakery*, 4 OCAHO no. 654, 550, 557, 560 (1994). Such a dismissal bars forever any further proceedings based on the identical facts. *United States v. G.L.C. Rest., Inc.*, 3 OCAHO no. 439, 459, 466 (1992).

Because one of the goals of a settlement is to dispose of the matter with finality, the intent of the parties appeared to be the latter result, not the former. The parties were accordingly advised by order on September 15, 2015, that absent notification by them within ten days, the matter would be dismissed **with** prejudice.

Nothing further having been heard from the parties, the complaint is dismissed with prejudice.

SO ORDERED.

Dated and entered this 2nd day of October, 2015.

Ellen K. Thomas
Administrative Law Judge

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders>.