

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

US TECH WORKERS, ET AL.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00050
)	
TRANSUNION, LLC,)	
Respondent.)	
)	

Appearances: John M. Miano, Esq., for Complainant
Dawn Lurie, Esq., Edward North, Esq., and Leon Rodriguez, Esq., for Respondent

ORDER ON RESPONDENT’S MOTION FOR LEAVE TO REPLY AND ISSUING STAY OF PROCEEDINGS

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers et al., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 9, 2024, against Respondent, TransUnion, LLC. Complainant alleges that Respondent engaged in citizenship status discrimination in hiring in violation of 8 U.S.C. § 13424b(a)(1). On April 1, 2024, Respondent filed an Answer.

On April 17, 2024, the Court issued an Order Setting Prehearing Conference and General Litigation Order. Through this Order, the Court scheduled an initial telephonic prehearing conference for June 11, 2024 at 11:00 a.m. Eastern Time. Order Setting Prehr’g Conf. & Gen. Lit. Order 1.

On May 7, 2024, Respondent filed a Motion to Dismiss, and Complainant filed a Response to Respondent’s Motion to Dismiss on May 14, 2024. Respondent filed a Motion for

Leave to File a Reply Memorandum in Support of Respondent’s Motion to Dismiss¹ on May 28, 2024.

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint (Motion to Consolidate). On May 28, 2024, Respondent filed an Opposition to Complainant’s Motion to Consolidate and for Leave to File a Consolidated Amended Complaint.

On June 4, 2024, Respondent filed a Motion to Stay Proceedings.

II. MOTION FOR LEAVE TO REPLY

Respondent moves for leave to file a memorandum in support of Respondent’s Motion to Dismiss in reply to Complainants’ Opposition to Respondent’s Motion to Dismiss, attaching a copy of its reply as an exhibit.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that “[u]nless the Administrative Law Judge provides otherwise, no reply to a response, counterresponse to a reply, or any further responsive document shall be filed.” 28 C.F.R. § 68.11(b). However, in its April 17, 2024 Order Setting Prehearing Conference and General Litigation Order, the undersigned provided that the parties may file replies seven days after a memorandum in opposition to a motion, and that reply briefs were limited to 15 pages. Order Setting Prehr’g Conf. & Gen. Lit. order 5. Accordingly, Respondent’s reply brief has been accepted, and will be given due consideration in resolving the pending Motion to Dismiss.

III. STAY OF PROCEEDINGS

In its Motion to Stay Proceedings, Respondent argues that the Court should stay proceedings in this matter “until such time as this Court gains the constitutional authority to issue final orders on dispositive motions.” Mot. Stay Proceedings 1. Respondent argues that “OCAHO Administrative Law Judges (ALJs) are not constitutionally empowered to issue final orders in 8 U.S.C. § 1324b cases addressing non-administrative questions.” *Id.* at 4 (citing United States v. Arthrex, Inc., 141 S. Ct. 1970, 1986 (2021)). Respondent argues that OCAHO ALJs have previously issued stays of proceedings in light of Arthrex, Inc. *Id.* (citing, inter alia, Symplice v. New York City Health & Hospitals Corp., 18 OCAHO no. 1493 (2023)).

However, as the Court has recently explained:

¹ Respondent titled the motion “Motion for Leave to File a Reply Memorandum in Support of Respondent’s Motion to Stay Proceedings.” The Court assumes this is a scrivener’s error, given that the body of the motion refers to Respondent’s Motion to Dismiss.

On October 12, 2023, the Department of Justice published an interim final rule providing for review by the Attorney General of OCAHO Administrative Law Judge (ALJ) final orders in cases arising under 8 U.S.C. § 1324b. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (codified at 28 C.F.R. pt. 68). The regulation resolved the issue identified in A.S. v. Amazon Web Servs., Inc. that led to the stay. As a result of this change to the regulation, this Court may proceed to a final case disposition in this matter.

Sinha v. Infosys Ltd., 14 OCAHO no. 1373d (2024). Given that the concerns raised in Arthrex, Inc., which led to stays of proceedings in the OCAHO cases identified by Respondent, have been addressed by the interim final rule, the Court declines to issue a stay of proceedings on this ground.

However, given the pendency of the Motion to Consolidate and the Motion to Dismiss, the Court finds that it would serve judicial economy and efficiency to issue a stay of proceeding. “The OCAHO Rules vest the Administrative Law Judge (ALJ) with all appropriate powers necessary to regulate the proceedings.” Heath v. Amazee Glob. Ventures, Inc., 16 OCAHO no. 1433, 2 (2022) (citing Hsieh v. PMC-Sierra, Inc., 9 OCAHO no. 1091, 5 (2003)); 28 C.F.R. § 68.28(a). This includes the power to issue stays of proceedings. United States v. Black Belt Sec. & Investigations, 17 OCAHO no. 1456b, 2 (2023) (citing Hsieh, 9 OCAHO no. 1091, at 5). The issuance of a stay “calls for the exercise of judgment, which must weigh competing interests and maintains an even balance,” and “should not be granted absent a clear bar to moving ahead.” *See* Heath v. ConsultAdd, 15 OCAHO no. 1395b, 2 (2022) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936), and then quoting Monda v. Staryhab, Inc., 8 OCAHO no. 1002, 86, 91 (1998)). Here, the Court finds that it would be prudent to cancel the previously-scheduled initial prehearing conference, as the pendency of the Motion to Consolidate currently presents a bar to the Court’s ability to set an appropriate case schedule in this matter, and the pendency of the Motion to Dismiss (which would be case-dispositive if granted) likewise counsels against setting a case schedule at this time.

Therefore, it is ORDERED that proceedings are STAYED pending resolution of

Complainant's Motion to Consolidate and for Leave to File a Consolidated Amended Complaint and Respondent's Motion to Dismiss, and the prehearing conference is CANCELLED.

SO ORDERED.

Dated and entered June 13, 2024.

John A. Henderson
Administrative Law Judge