

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2024A00008
)	
PATCH SUB LLC, D/B/A SUBWAY #12490)	
Respondent.)	
)	

Appearances: Latrice Campbell, Esq., for Complainant
Chaya M. Gourarie, Esq., for Respondent

AMENDED FINAL ORDER OF DISMISSAL

The Court issued a Final Order of Dismissal in the above-captioned case on April 14, 2024. This Amended Final Order of Dismissal amends the order dated April 14, 2024, and corrects solely for typographical and clerical errors.

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On October 10, 2023, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint alleges that Respondent, Patch Sub LLC, violated 8 U.S.C. § 1324a(a)(1)(B).

When Respondent did not timely file an answer, the Court issued an Order to Show Cause on December 26, 2023.

On January 16, 2024, Respondent filed a Notice of Settlement and Request for Extension via fax. The Court granted the extension in its January 30, 2024 Order on Motion for Extension.

On March 14, 2024, Complainant filed its motion for dismissal based on settlement, including a joint stipulation of settlement and dismissal, which consisted of a proposed order of dismissal for this Court. The settlement agreement asserts that “the Parties desire to settle fully

and finally the case” and that they agree to the terms listed. Settlement Agreement 1. The proposed order references dismissal “pursuant 28 C.F.R. § 68.14(c) and the terms of [the Settlement] Agreement.” Stipulation of Settlement and Dismissal 2.

II. STANDARDS

Under 28 C.F.R. § 68.14(a)(1)-(2), when “the parties . . . have entered into a settlement agreement” they have the option to “[s]ubmit to the presiding Administrative Law Judge: [t]he agreement containing consent findings; and [a] proposed decision and order,” or “[n]otify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action.” If the parties follow the route of consent findings and a proposed order, they must agree:

- (1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;
- (2) that the entire record on which any decision and order may be based shall consist solely of the complaint; notice of hearing; and any other such pleadings and documents as the Administrative Law Judge shall specify;
- (3) A waiver of any further procedural steps before the Administrative Law Judge
- (4) A waiver of any further right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

28 C.F.R. 68.14(b).

28 C.F.R § 68.14(c) explains that when parties submit “an agreement containing consent findings and an interim decision and order . . . the Administrative Law Judge . . . may, if satisfied with its timeliness, form, and substance, accept such agreement by entering a decision and order based upon the agreed findings.”

III. DISCUSSION

The Court finds that the parties’ filings substantially conform to the requirements of 28 C.F.R. §§ 68.14(a)(1) and 68.14(b). The parties’ settlement agreement states that the “[p]arties desire to settle fully and finally the case against Respondent” and indicates that they intended to dismiss via consent findings and a proposed order. Settlement Agreement 1. In keeping with the requirements of 28 C.F.R. § 68.14(b), the parties agree that: 1) “the Final Order shall have the

same force and effect as an Order made after a full hearing,” Stipulation of Settlement 2; 2) “the entire record on which the decision and order of the Administrative Law Judge shall be based consists of the Complaint and documents attached thereto by Complainant, and any other such pleadings and documents as the [ALJ] shall specify,” Settlement Agreement 2; 3) “the parties waive any further procedural steps,” *id.*; and 4) “the parties waive the right to contest the validity of the Decision and Order entered in accordance with the agreement.” Stipulation of Settlement 1.

Paragraph 6 of the parties’ Settlement Agreement and Paragraph 1 of the parties’ Stipulation of Settlement states that the Court’s order “will be a final and unappealable Order pursuant to Section 274A(e)(3)(B) of the Act.” Settlement Agreement 2, Stipulation of Settlement 1. This appears to be the parties’ attempt to fulfill the first requirement of 28 C.F.R. § 68.14(b), but it is a misunderstanding of the statutory section cited and the requirements of 28 C.F.R. § 68.14(b). 8 U.S.C. § 1324a(e)(3)(B) states that “[i]f no hearing is . . . requested” in a § 1324a case then “[the Department of Homeland Security’s] imposition of the order shall constitute a final and unappealable order.”

There was a request for a hearing in this case, Compl., Ex. 2, and therefore administrative review by the Chief Administrative Hearing Officer and the Attorney General is available, as explained at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68.

Respondent’s waiver of its appeal rights, which it appears to do explicitly in its stipulation, is not the same as this Court’s removal of either party’s ability to raise an appeal. The Court understands this to be the intent of the stipulated language asking the Court to enter a “final and unappealable order.” As stated previously, the latter objective would be in violation of 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68, and the Court declines to enter an order in contravention of the regulation.

However, the Court is satisfied with the timeliness, form, and substance of the parties’ Settlement Agreement, apart from the phrasing discussed above. With an exception for the language regarding “a final and unappealable Order pursuant to Section 274A(e)(3)(B) of the Act,” the Court GRANTS the parties’ Stipulation of Settlement and Dismissal and accepts the parties’ Settlement Agreement as the Court’s findings in the case and incorporates the findings by reference.

The Court finds the record in this case includes the following: 1) the Complaint and attached exhibits, 2) the Notice of Case Assignment for Complaint Alleging Unlawful Employment, 3) the Order to Show Cause, 4) Respondent’s Notice of Settlement and Request for Extension, 5) Order on Motion for Extension, 6) the Settlement Agreement, and 7) the Stipulation of Settlement and Dismissal. Based on the record, the Court finds that Respondent has violated 8 U.S.C. § 1324a and issues this Final Order of Dismissal finding Respondent liable for the same.

All relief sought in the parties' Settlement Agreement is GRANTED. Each party will perform the promises undertaken in the Settlement agreement, and each will bear its own costs, attorney's fees, and other expenses, as provided in paragraph 23 of the parties' Settlement Agreement.

It is hereby ORDERED that Respondent shall pay a civil money penalty of \$5,000.00 for the admitted violations as agreed in paragraph 10 of the parties' Settlement Agreement.

The Final Order of Dismissal shall have the same force and effect as a decision and order made after a full hearing.

This Final Order of Dismissal is the final order of the Administrative Law Judge in accordance with 28 C.F.R. § 68.52, and will become the final agency order unless vacated or modified by the Chief Administrative Hearing Officer, as provided in 28 C.F.R § 68.54 or referred to the Attorney General pursuant to 28 C.F.R. § 68.55.

SO ORDERED.

Dated and entered on April 30, 2024.

John A Henderson
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.