

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

US TECH WORKERS, ET AL.,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2024B00040
)	
BOSTON CONSULTING GROUP (BCG), INC.,)	
Respondent.)	
)	

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

ORDER SUMMARIZING PREHEARING
CONFERENCE AND ISSUING STAY OF PROCEEDINGS

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b.

On April 17, 2024, the Court issued an Order Setting Prehearing Conference and General Litigation Order, setting an initial prehearing conference for June 3, 2024.

On May 13, 2024, Complainant filed Complainant’s Motion to Consolidate and for Leave to File a Consolidated Amended Complaint (Motion to Consolidate). Respondent filed an Opposition to Complainant’s Motion to Consolidate on May 24, 2024.

Respondent filed an initial prehearing statement on May 15, 2024, and Complainant filed an initial prehearing statement on May 24, 2024.

On May 24, 2024, Respondent filed a Motion to Dismiss and a Motion to Stay Proceedings. Complainant filed a Response to Respondent’s Motion to Dismiss as Motion for Partial Summary Judgment on May 29, 2024.

II. PREHEARING CONFERENCE

The Court held an initial telephonic prehearing conference pursuant to 28 C.F.R. § 68.13.¹ Attorney John Miano appeared on behalf of Complainants, and Attorneys Leon Rodriguez, Edward North, and Dawn Lurie appeared on behalf of Respondent.

The Court first addressed Respondent’s pending Motion to Stay Proceedings. The Court informed the parties that it was disinclined to grant a stay on the grounds identified by Respondent, and that the Court would issue an order to that effect. However, the Court inquired as to the parties’ positions on whether to set a schedule at this time, or alternatively to issue a stay of proceedings pending resolution of Complainant’s Motion to Consolidate and Respondent’s Motion to Dismiss. Both parties consented to a stay of proceedings on this ground.

The Court inquired as to the parties’ interest in a referral to OCAHO’s Settlement Officer Program. Both parties stated that a referral at this time would be premature.

Finally, the Court inquired as to the correct name for the Respondent, pointing out that while the Complaint identified “Boston Consulting Group,” subsequent filings by Respondent indicate that the correct name is “BCG, INC.” Respondent confirmed that both Boston Consulting Group, Inc. and BCG, INC. are appropriate names for Respondent. The Court informed the parties that it would amend the case caption accordingly.

III. MOTION TO STAY PROCEEDINGS

In its May 24, 2024 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 ALJ’s 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)).²

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

² Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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

However, as the Court has recently explained:

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 these grounds.

However, given the pendency of the Complainant’s Motion to Consolidate Proceedings and the Respondent’s Motion to Dismiss, the Court finds that it would serve judicial economy and efficiency to issue a stay of proceeding pending adjudication of these motions. “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 issue a stay of proceedings in lieu of setting a case schedule, 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 and continued discovery at this time.

from the citation. Published decisions may be accessed through the Westlaw database “FIM OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

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.

SO ORDERED.

Dated and entered on June 10, 2024.

John A. Henderson
Administrative Law Judge