

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

September 24, 1998

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) Case No. 98A00048
ENRIQUE SILVA d/b/a J.B.'S)
NIGHT CLUB,)
Respondent.)
_____)

ORDER GRANTING MOTION TO DISMISS

MARVIN H. MORSE, Administrative Law Judge

By Motion To Dismiss filed September 23, 1998, Complainant, on behalf of both parties, requests the judge to dismiss the Complaint on the basis of a settlement agreement which accompanied Complainant's Motion. To give effect to the obvious intentions of the parties, this Order grants Complainant's Motion to Dismiss the Complaint as settled.

However, certain terms of the settlement agreement depart from accepted practice and procedure. The first paragraph designated number "4" in the settlement agreement recites, "That upon execution of this Agreement, the INS will issue a Final Order . . . pursuant to section 274A(e)(3)(B) of the Act, 8 U.S.C. §1324a(e)(3)(B)." But for the undue delay in filing the Motion, I would reject the proposed settlement agreement, remit it to the parties for reformation, and require it to be resubmitted.

Since the outset of the employer sanctions program, both INS and the Administrative Law Judges (ALJ) who exercise jurisdiction over 8 U.S.C. §1324a complaints have understood that the regimen obliges INS to stay its hand in the issuance of final orders until a case is disposed of by the ALJ. So far as I am aware, only once before in the administration of the program did INS embark

upon issuance of a final order without first having obtained dismissal of the complaint or an equivalent judicial action. *See United States v. Turner's Japanese Auto Repair*, 8 OCAHO 1009 (1998). Presumably, the lesson of *Turner's Japanese Auto Repair* has not yet obtained widespread distribution among INS counsel. I expect INS will remind its personnel of the respective roles of the bench and the bar and of the necessity to heed the separation of functions concept.

The Complaint is dismissed, settled.

SO ORDERED.

Dated and entered this 24th day of September, 1998.

Marvin H. Morse
Administrative Law Judge