

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2024A00005
DNT CONSTRUCTION, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Anne Marie P. Cordova, Esq., for Complainant
Melissa M. Fletcher, Esq., for Respondent

ORDER GRANTING JOINT MOTION FOR AND CONSENT TO REFERRAL TO
SETTLEMENT OFFICER PROGRAM, REFERRING CASE TO THE OCAHO
SETTLEMENT OFFICER PROGRAM, AND DESIGNATING
SETTLEMENT OFFICER

I. PROCEDURAL HISTORY

On October 3, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, DNT Construction, LLC, violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Specifically, the complaint alleges that Respondent (a) knowingly continued to employ 265 individuals who were not authorized to work in the United States, in violation of § 274A(a)(2) of the INA, 8 U.S.C. § 1324a(a)(2); (b) failed to ensure that fourteen employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9), in violation of § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B); (c) failed to prepare and/or present Forms I-9 for eleven individuals, in violation of § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B); (d) failed to prepare Forms I-9 at the time of hire or in a timely manner for twenty-three individuals, in violation of

§ 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B); and (e) failed to ensure that fifteen employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Forms I-9, in violation of § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 5. Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA that it served on Respondent on June 9, 2021, and Respondent's request for a hearing dated July 7, 2021. *Id.*, Exs. A-B. Respondent filed an answer to the complaint on November 16, 2023.

On January 11, 2024, the Court issued an order permitting the parties to file electronically all filings in this case. On January 30, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. The Court ordered the parties to make their initial disclosures and file their prehearing statements with the Court within twenty-one days of the date of issuance of the order. The Court described the OCAHO Settlement Officer Program and provided the parties with links to the Executive Office for Immigration Review's Policy Memorandum 20-16 and chapter 4.7 of OCAHO's Practice Manual, both of which describe the policies and procedures for the use of settlement officers in OCAHO cases. In its order, the Court directed the parties to confer regarding the OCAHO Settlement Officer Program and to state in their prehearing statements whether the parties were interested in a referral to the program. The Court also scheduled the initial prehearing conference in this matter for March 5, 2024, at 11 a.m. Eastern Standard Time.

On February 20, 2024, Complainant filed The United States Department of Homeland Security's Prehearing Statement in which it indicated that the parties had conferred and that they were interested in participating in the OCAHO Settlement Officer Program. On February 16, 2024, Respondent filed Respondent's Prehearing Statement of Position in which it represented that the parties had conferred on February 3, 2024, and that Respondent was interested in a referral to the Settlement Officer Program.

On February 27, 2024, the parties filed a Joint Motion for and Consent to Settlement Officer Program, asking the Court to refer this matter to the program and "expressly consent[ing] to participation in the Settlement Officer Program and agree[ing] to engage in settlement negotiations in good faith."

II. RULES GOVERNING OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through Policy Memorandum 20-16.¹ It is a voluntary program through which the parties use a Settlement Officer to mediate settlement negotiations as a means of alternative dispute resolution. The Settlement Officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. The proceedings before the Settlement Officer are subject to the confidentiality provisions of 5 U.S.C. § 574. The presiding Administrative Law Judge (ALJ) may refer a case for up to sixty days for settlement negotiations before the Settlement Officer. However, with the consent of the parties, the Settlement Officer may seek the approval of the presiding ALJ to extend the period for negotiations for a reasonable period of time, not to exceed an additional thirty days. If the parties reach a settlement, the provisions of 28 C.F.R. § 68.14 apply. If the parties' settlement negotiations are unsuccessful, the case is returned to the presiding ALJ to set appropriate procedural deadlines.

The presiding ALJ may refer a case to a Settlement Officer upon: (1) receipt of written confirmation of consent to referral from each party in the case, and (2) subject to 5 U.S.C. § 572(b) and the eligibility provisions of the program, a determination by the presiding ALJ that the case is appropriate for referral.²

III. DISCUSSION AND ANALYSIS

Pending before the Court is the parties' Joint Motion for and Consent to Referral to Settlement Officer Program. In their motion, the parties ask the Court to refer the case to a settlement officer and "expressly consent to participation in the Settlement Officer Program and agree to engage in settlement negotiations in good faith." Joint Mot. Settlement Officer Program 1. Counsel for both parties signed the motion. *Id.*

¹ <https://www.justice.gov/eoir/page/file/1300746/download>

² See Section II.A.1-2 of OCAHO Settlement Officer Program Policy Memorandum 20-16, available at <https://www.justice.gov/eoir/page/file/1300746/download>. See also Chapter 4.7(b)(1) of the OCAHO Practice Manual, available at <https://www.justice.gov/eoir-policy-manual/iv/4/7>.

The Court finds that referral of this matter to the OCAHO Settlement Officer Program is appropriate. The Court's finding is based on its review of the pleadings in this matter, including the complaint and exhibits, Respondent's answer, the parties' prehearing statements, and the parties' Joint Motion for and Consent to Referral to Settlement Officer Program. The Court finds that this case meets the eligibility requirements for the program set forth in Section I.C.1-2 of Policy Memorandum 20-16 and Chapter 4.7(a)(4)(A)-(B) of the OCAHO Practice Manual. After considering the factors enumerated in 5 U.S.C. § 572(b), Section I.C.3 of Policy Memorandum 20-16, and Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual, the Court finds that they do not counsel against referral of this case to the OCAHO Settlement Officer Program.

Given the Court's finding that this case is appropriate for referral to the OCAHO Settlement Officer Program, the Court now grants the parties' Joint Motion for and Consent to Referral to Settlement Officer Program and refers this case for settlement negotiations through May 3, 2024, pursuant to 28 C.F.R. § 68.28(a). No procedural deadlines need to be stayed in this matter for purposes of this referral, as the Court has not yet set a case schedule.

Should this case not settle through the OCAHO Settlement Officer Program, the settlement officer will refer this matter back for further proceedings. At that time, the Court will schedule a prehearing conference during which the parties must be prepared to set additional case deadlines, including dates for the completion of discovery, the filing of dispositive motions and responses, and a hearing.

Should the parties reach a settlement agreement through the OCAHO Settlement Officer Program, the Court may issue an order setting deadlines for the filing of any settlement materials. The parties should consult 28 C.F.R. § 68.14 to understand the two avenues for leaving this forum after settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may jointly file a notice of full settlement and an agreed motion to dismiss. The Court may require the filing of the settlement agreement. The parties should indicate in their filing whether they seek dismissal with or without prejudice.

IV. ORDERS

IT IS SO ORDERED that the parties' Joint Motion for and Consent to Referral to Settlement Officer Program is GRANTED;

IT IS FURTHER ORDERED that, having found that referral of this matter is appropriate, this case is referred to the OCAHO Settlement Officer Program for settlement negotiations through May 3, 2024;

IT IS FURTHER ORDERED that Chief Administrative Law Judge Jean C. King is designated as the Settlement Officer for this case;

IT IS FURTHER ORDERED that the initial prehearing conference scheduled for March 5, 2024, at 11 a.m. Eastern Standard Time, is canceled; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on March 4, 2024.

Honorable Carol A. Bell
Administrative Law Judge