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

June 10, 2003

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| UNITED STATES OF AMERICA,<br>Complainant,<br><br>v.<br><br>DIVERSIFIED TECHNOLOGY &<br>SERVICES OF VIRGINIA, INC.<br>Respondent. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | 8 U.S.C. § 1324b Proceeding<br>OCAHO Case No. 01B00059 |

SUPPLEMENTAL ORDER

On April 15, 2003, a Final Decision and Order was issued in this matter. On May 29, 2003, the complainant OSC filed a Motion for Reconsideration, to which DTSV responded on June 6, 2003.

While it is beyond cavil that interlocutory orders may be the subject of reconsideration, *see, e.g.*, *United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1071, 7 (2001),[1] *United States v. Four Star Knitting, Inc*., 5 OCAHO no. 815, 711, 716 (1995), OCAHO Rules[2] do not specifically address the question of whether a final decision in a case arising under 8 U.S.C. § 1324b is susceptible to reopening or reconsideration pursuant to a post-decision motion by one of the parties, and no authority has been cited to me which permits it. Unlike decisions in cases arising under 8 U.S.C. § 1324a and §

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, 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 omitted from the citation.

[2] 28 C.F.R. Part 68 (2002).

1324c, which do not become final agency decisions until the expiration of a period for administrative review, an administrative law judge's decision in a case arising under 8 U.S.C. § 1324b becomes the final agency decision on the date the order is issued. 28 C.F.R. § 68.52(g).[3]

The weight of authority in this forum is that there is no ability to accept or act upon a party's filings received subsequent to the issuance of a final decision. *Lewis v. Ogden Servs.*, 2 OCAHO no. 384, 704 (1991) (finding that the filing of documents by a party after issuance of final decision is not contemplated by the rules); *United States v. Mojave, Inc.*, 3 OCAHO no. 502, 1024, 1025 (1993) (declining on the authority of *Lewis* to reopen default judgment and receive a late Answer with affirmative defenses); *Trivedi v. Northrop Corp.*, 4 OCAHO no. 603, 135, 136 (1994) (rejecting an unsolicited brief filed after the issuance of a final decision); *Horne v. Town of Hampstead*, 7 OCAHO no. 959, 546, 547 n.1 (1997) (deciding that reconsideration is not authorized by statute or regulation; review is available only in the Court of Appeals). *See also Basua v. Wal-Mart*, 3 OCAHO no. 549, 1452, 1453 (1993) (denying complainant's motion to reopen); *United States v. Marcel Watch Corp.*, 1 OCAHO no. 169, 1155, 1156 (1990) ( noting "mischief" inherent in reopening final decision other than for clerical error because "final decision ordinarily ends the litigation").

One case, *United States v. Workrite Unif. Co., Inc.*, 5 OCAHO no. 755, 266, 268 (1995), however, appears to read a change in the procedural rules as possibly authorizing reconsideration within a 60-day period after the entry of a final decision. Rule 68.52(f)[4] provides, inter alia, that an administrative law judge has the authority to correct any substantive, clerical, or typographical errors or mistakes in a final order within sixty days of the entry of the order. The preamble to the revised text stated that the reason for the amendment inserting the word "substantive" was that an administrative law judge should not be prevented from substantively changing an order when an error comes to his or her attention during the 60-day period. 57 Fed. Reg. 57669, 57671 (1992).

It is not necessarily apparent and I am not necessarily persuaded that the amendment of the rule was intended to permit the parties to file unsolicited pleadings subsequent to the issuance of a final decision, particularly in light of the "Definitions" section of the regulations, which still provides that a "Final order" is "an order by an Administrative Law Judge that disposes of a particular proceeding or a distinct portion of a proceeding, thereby concluding the jurisdiction of the Administrative Law Judge " (emphasis added). 28 C.F.R. § 68.2. With the well-established exception of an ancillary action

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[3] Compare, for example, EEOC regulations which provide that "A decision . . . is final within the meaning of § 1614.407 *unless* the Commission reconsiders the case. A party may request reconsideration with 30 days of receipt of a decision." 29 C.F.R. § 1614.405(b) (2002) (emphasis added).

[4] At the time the *Workrite* decision issued, rule 68.52(f) was codified as § 68.52(c)(4).

involving a petition for attorney's fees pursuant to 8 U.S.C. § 1324b(h), I am aware of no other authority, and none has been cited to me, which permits the parties to file pleadings, motions, or briefs in a case subsequent to the issuance of a final decision, notwithstanding the fact that the administrative law judge has the discretionary authority to make corrections to that decision.

Ordinarily where a legal issue might affect the outcome of a request and the issue has not been sufficiently addressed, I would request the parties to brief that issue more fully. Here, however, the motion was not filed until May 29, 2003, the 44th day after the decision. The 60-day period for appeal of a final decision, as well as the window of opportunity for me to alter a decision, runs only until June 14. 8 U.S.C. § 1324b(i). This decision is accordingly issued without the benefit of adequate briefing as to the propriety of my entertaining the motion at all.

The motion for reconsideration is denied.

SO ORDERED.

Dated and entered this 10th day of June, 2003.

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Ellen K. Thomas
Administrative Law Judge