



**Issue Date: 24 January 2013**

Case No.: 2012-LCA-00007

*In the Matter of:*

ARUN WALIA,  
*Prosecuting Party,*

v.

KIRAN M. DEWAN, CPA, PA,  
*Respondent.*

**ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the Immigration and Nationality Act, as amended, 8 U.S.C. §§ 1101 and 1182 (the Act), and the implementing regulations at 20 C.F.R. Part 655, Subparts H and I. It has been pending in this office for over a year. After numerous discovery disputes, hearings on ancillary matters, and motions, a hearing was scheduled for November 19 and 20, 2012 in Baltimore, Maryland. On November 15, 2012, I received a document entitled “Notice of Dismissal” signed by both of Prosecuting Party’s attorneys. As no provision of statute or regulation allows unilateral dismissal of a claim under the Act that is pending in this tribunal, I directed the parties to appear as scheduled on November 19, 2012. At that time, Prosecuting Party renewed his request to dismiss his claim, and Respondent opposed it. After some discussion and after hearing argument, I ordered the parties to submit written briefs on the issue. The parties have done so. Prosecuting Party has re-stated the reasons for his request and, now, Respondent consents to dismissal.

Because the Act, its implementing regulations, and the Rules of Practice and Procedure Before the Office of Administrative Law Judges do not address voluntary dismissal of a complaint, the provisions of the Federal Rules of Civil Procedure are applied. 29 C.F.R. § 18.1. Fed. R. Civ. P. 41(a)(1) provides:

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

In this matter, both parties have requested a dismissal of the complaint. Although not so styled, I find that the joint request is the functional equivalent of a stipulation, and that dismissal therefore falls under Fed. R. Civ. P. 41(a)(1)(A)(ii). As provided in subsection (a)(1)(B), as both parties have requested that the complaint be dismissed with prejudice, the dismissal will be with prejudice.

**ORDER**

Based on the foregoing, IT IS ORDERED that the complaint in the above-captioned matter be, and the same hereby is, DISMISSED WITH PREJUDICE.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
Associate Chief Administrative Law Judge