

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

April 16, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00011
)	
COSTA WORLD CORPORATION,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Costa World Corporation, pro Respondent

ORDER TO SHOW CAUSE – JURISDICTION & DEFICIENT COMPLAINT

I. PROCEDURAL HISTORY

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

On October 17, 2023, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Officer (OCAHO), alleging Respondent discriminated against him based on national origin and citizenship and retaliated against him in violation of 8 U.S.C. § 1324b(a)(1) and (a)(5).

On October 30, 2024, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and a copy of the Complaint (collectively the Complaint package), via certified U.S. mail. The NOCA directed that an answer was to be filed within 30 days of receipt of the Complaint, that failure to answer could lead to default, and that proceedings would be governed by U.S. Department of Justice regulations.¹

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

The Complaint package was served on Respondent on November 7, 2023. The Answer was due December 7, 2023. *See* 28 C.F.R. §§ 68.3(a), 68.9(a). Respondent did not file an answer.²

On January 10, 2024, Complainant filed a Request for Summary Judgement in Favor of Complainant, citing as the basis Respondent’s failure to file an answer. Mot. Summ. J. 2.

II. LEGAL STANDARDS

A. Subject Matter Jurisdiction

“Failure of the respondent file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint,” and “[t]he Administrative Law Judge may enter judgment by default.” 28 C.F.R. § 68.9(b).

However, “the Court may not issue a default judgment if the Court lacks subject matter jurisdiction over a complainant’s claims.” *Heath v. VBeyond Corp. and Anon. Emp.*, 14 OCAHO no. 1368a, 2 (2020).³ “OCAHO is a forum of limited jurisdiction ‘with only the jurisdiction which Congress has prescribed.’” *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 2 (2020) (quoting *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1170 (1997)). The Administrative Law Judge has the authority to determine whether OCAHO has jurisdiction over a dispute. *Heath v. F18 Consulting and Anon. Emp.*, 14 OCAHO no. 1365, 2 (2020). The forum “has an independent duty to ensure it only adjudicates matters over which it has subject matter jurisdiction.” *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510b, 2 (2024). “The party invoking jurisdiction has the burden to establish that OCAHO has subject matter jurisdiction.” *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022) (internal citations omitted). OCAHO does not have jurisdiction over national origin claims when an employer has more than fourteen employees. 8 U.S.C. § 1324b(a)(2)(B).

² An answer filed at this juncture would be untimely; however, Respondent is not precluded from submitting an untimely answer with an explanation providing good cause for the delay. *See United States v. Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022) (“As to the consideration of untimely filed submissions, the Court employs a standard of good cause in deciding whether to credit a party’s explanations and exercises discretion in accepting a late filing.”).

³ 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 accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

B. Failure to State a Claim

Separate from jurisdictional considerations, a Complaint must also state a claim upon which relief can be granted. When it appears as though a Complainant has not stated a claim upon which relief can be granted, 28 C.F.R. § 68.10(b) applies. As the regulation notes, “[t]he Administrative Law Judge may dismiss the complaint... without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted.” 28 C.F.R. § 68.10(b).

“Relief under § 1324b is limited to ‘hiring, firing, recruitment or referral for a fee, retaliation [under § 1324b(a)(5)], and document abuse [under § 1324b(a)(6)].” *Patel*, 14 OCAHO no. 1353 at 4 (quoting *Wilson*, 6 OCAHO no. 919 at 1175).

To state a claim for retaliation under § 1324b, a complainant “must show that the respondent took an adverse action to discourage a complainant from activity related to the filing of an IER charge or an OCAHO proceeding, or to interfere with her rights or privileges secured specifically under § 1324b.” *Patel*, 14 OCAHO no. 1353 at 4 (citing *Martinez v. Superior Linen*, 10 OCAHO no. 1180, 7 (2013); *Breda v. Braintree Hosp., LLC*, 10 OCAHO no. 1202, 9 (2013)).

III. COMPLAINANT ORDERED TO SHOW CAUSE

In his complaint, Complainant alleges that Respondent has at least 15 employees. Compl. 4.⁴ This raises a serious question as to whether OCAHO has subject matter jurisdiction to hear Complainant’s national origin claim. The Court therefore ORDERS Complainant to submit a filing explaining his position on subject matter jurisdiction and his national origin discrimination claim within 30 calendar days of receipt of this Order.

Complainant alleges that he is “being actively [r]etaliated [a]gainst” because he has “filed both federal and local [complaints]” against Respondent. Compl. 7, 9. However, Complainant does not clearly allege that Respondent took retaliatory action against Complainant to interfere with Complainant’s rights under § 1324b, or to discourage him from filing an IER charge or from participating in an OCAHO proceeding. The Court therefore ORDERS Complainant to submit a filing explaining why his retaliation claim under § 1324b(a)(5) should not be dismissed for failure to state a claim upon which relief can be granted within 30 days of receipt of this order.

SO ORDERED.

Dated and entered on April 16, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁴ Citations to the complaint utilize the PDF pagination.