

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

April 25, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00012
)	
MANBIN CORPORATION,)	
Respondent.)	
_____)	

ORDER TO SHOW CAUSE – JURISDICTION & DEFICIENT COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 17, 2023, Complainant, Zaji Obatala Zajradhara, filed a complaint against Respondent, Manbin Corporation, alleging Respondent discriminated against him on the basis of national origin and citizenship status and retaliated against him in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5).

On October 30, 2023, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and a copy of the complaint, via certified U.S. mail. The NOCA directed an answer be filed within 30 days of its receipt. The NOCA warned failure to answer could lead to default, and provided the forum’s procedural regulations.¹ The U.S. Postal Service shows service on Respondent on November 16, 2023, thus the answer was due by December 16, 2023. *See* 28 C.F.R. §§ 68.3(a), 68.9(a). Respondent did not file an answer.²

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

² On February 20, 2024, the Court sent an additional copy of the NOCA and complaint to an additional address for Respondent’s Vice President the Court found in a document attached to the Complaint. According to the USPS website, this package was delivered, “individual picked up at post office,” on March 9, 2024. To date, Respondent has not filed an answer to the complaint.

On January 10, 2024, Complainant filed a Request for Summary Judgment in Favor of Complainant, asking for a judgment in his favor due to Respondent's failure to file an answer to the complaint. Mot. Summ. Judgment 1–2.

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).³

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). “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 ALJ has the authority to determine whether OCAHO has jurisdiction. *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).

B. Failure to State a Claim

Separate from jurisdictional considerations, Complaint must also state a claim upon which relief can be granted. When it this is at issue, 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).

³ 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.”).

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 Respondent has “15 or more employees.” Compl. 6. This raises a question as to whether OCAHO has subject matter jurisdiction over Complainant’s national origin discrimination claim.

Therefore, the Court ORDERS Complainant to submit a filing explaining his position on subject matter jurisdiction over his national origin discrimination claim within 30 calendar days of receipt of this Order.

Moreover, Complainant alleges Respondent is “part of Jun Joo Corporation,” which is “retaliating against all of [his] applications, because [he has] been repeatedly attempting to expose this company for massive visa fraud & discrimination against [him]self,” and because he has been “trying for years to expose this company for C-1 visa fraud.” Compl. 9, 15. Complainant does not clearly allege 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.

Therefore, the Court 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 25, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge