

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

TALHA CIHAD GULCU,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00053
	)	
FRAUNHOFER USA,	)	
Respondent.	)	
	)	

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Appearances: Talha Gulcu, pro se Complainant  
Amy L. Peck, Esq. and William Kang, Esq., for Respondent<sup>1</sup>

ORDER ISSUING STAY OF PROCEEDINGS

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant Talha Cihad Gulcu filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 22, 2024, alleging that Respondent Fraunhoffer USA discriminated against him on the basis of his citizenship status and national origin and retaliated against him in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5).

On April 3, 2024, Respondent timely filed Respondent’s Answer and Defenses, as well as a Motion to Dismiss. In the Motion to Dismiss, Respondent argues: 1) the Court lacks subject matter jurisdiction over Complainant’s national origin discrimination claim, given that Complainant alleges that Respondent employs more than 15 employees; 2) Complainant has not alleged that he is a protected individual for a citizenship status discrimination claim as defined by 8 U.S.C. §§ 1324b(a)(1) and (3) given his allegation that at the time of the alleged discrimination, he held an H-1B visa; and 3) that Complainant has failed to state a claim for retaliation because he has not alleged that he engaged in protected activity. *See generally* Resp.

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<sup>1</sup> The Complaint lists Respondent’s attorney as Mark J. Eby. Compl. 7. Given that the Court has not received a notice of appearance from this individual, the Court has not included him in the appearances on this matter. If an additional attorney wishes to appear for Respondent, that individual must file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

Brief in Support Mot. Dismiss. Complainant has not, to date, filed an opposition to Respondent's Motion to Dismiss.<sup>2</sup>

Given the pendency of the Motion to Dismiss which, if granted, would be case-dispositive, the Court will now sua sponte issues a stay of proceedings in this matter pending adjudication of the Motion to Dismiss.

“The OCAHO Rules vest the Administrative Law Judge (ALJ) with all appropriate powers necessary to regulate the proceedings.” Heath v. Amazee Glob. Ventures, Inc., 16 OCAHO no. 1433, 2 (2022) (citing Hsieh v. PMC-Sierra, Inc., 9 OCAHO no. 1091, 5 (2003));<sup>3</sup> 28 C.F.R. § 68.28(a).<sup>4</sup> This includes the power to issue stays of proceedings. United States v. Black Belt Sec. & Investigations, 17 OCAHO no. 1456b, 2 (2023) (citing Hsieh, 9 OCAHO no. 1091, at 5). The issuance of a stay “calls for the exercise of judgment, which must weigh competing interests and maintains an even balance,” and “should not be granted absent a clear bar to moving ahead.” See Heath v. ConsultAdd, 15 OCAHO no. 1395b, 2 (2022) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936), and then quoting Monda v. Staryhab, Inc., 8 OCAHO no. 1002, 86, 91 (1998)).

The Court finds that a stay of proceedings is appropriate in this circumstance. Respondent's Motion to Dismiss raises arguments related to the Court's subject matter jurisdiction over the Complaint, and seeks full dismissal—therefore, if meritorious, the Motion to Dismiss would be case-dispositive. The Court finds that it would be in the interest of judicial economy to stay proceedings in lieu of scheduling an initial prehearing conference to set a case schedule.

In light of the Court's inherent authority to issue stays, and the fact that a stay of the regulatory proceedings would be in the interest of judicial economy, the Court will stay

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<sup>2</sup> Complainant is located in Turkey, and accordingly, there will likely be significant delays associated with mail filing in this case. The Court invited the parties to participate in its Electronic Filing Pilot Program by letter on April 4, 2024, and encourages the parties to file their registration forms to avoid further delays associated with mail filing.

<sup>3</sup> Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>4</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

proceedings pending adjudication of the Motion to Dismiss. If the Court denies the Motion to Dismiss, the Court will notify the parties of a date and time for an initial prehearing conference.

SO ORDERED.

Dated and entered May 2, 2024.

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John A. Henderson  
Administrative Law Judge