

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

December 12, 2023

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00009
	)	
HDH CO., LTD,	)	
Respondent.	)	
_____	)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant  
Stephen J. Nutting, Esq., for Respondent

AMENDED ORDER ON RESPONDENT’S MOTION TO DISMISS

The Court issued an Order in the above-captioned case on November 8, 2023. This Amended Order amends the November 8, 2023, Order, and corrects solely for clerical errors.

I. PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On December 1, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, HDH Co., Ltd., discriminated against him on account of his citizenship status and national origin. Compl. 6–7; *see also id.* at 15.<sup>1</sup>

This case has a lengthy procedural history, summarized as of October 14, 2022 in *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417c, 1–3 (2022).<sup>2</sup>

<sup>1</sup> All pincites to the Complaint refer to the pagination of the PDF file, not the internal pagination of the complaint form itself.

<sup>2</sup> 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

The relevant history to this Order is summarized as follows:

On February 17, 2022, the Court issued an Order to Show Cause to Respondent for failing to file a timely answer. *Id.* at 1. On March 28, 2022, Complainant filed a Motion for Entry of Default Judgment based on Respondent's failure to respond to the Order to Show Cause by March 10, 2022. *Id.* at 1–2. On March 30, 2022, the Court issued an Order to Show Cause on Jurisdiction to Complainant. *Id.* at 1.

On June 28, 2022, the Court received Respondent's Answer and Motion to Dismiss with supporting Memorandum and Declaration. *Id.* On July 5 and July 12, 2022, Complainant filed a Response to Respondent's Motion to Dismiss and a corresponding addendum, respectively. *Id.* at 3. Then, on two separate occasions, June 29 and September 28, 2022, Complainant filed a Motion for Addition of Third Party, seeking to join Respondent's secretary to the Complaint as a third party, arguing that the secretary "is the actual employer . . ." *Id.* at 3. On October 6, 2022, Respondent filed an Opposition to Motion for Addition of Third Party and Request for Ruling in Motion to Dismiss. *Id.*

In the October 14, 2022, decision, in ruling on whether to accept these filings from both parties, the Court first rejected Respondent's Answer because it "did not proffer good cause for its failure to timely respond to the Court's February 17, 2022, Order to Show Cause." *Id.* at 2. As such, the Court "accept[ed] the uncontested facts alleged in the Complaint as true . . ." *Id.* Next, the Court accepted Complainant's Response to Respondent's Motion to Dismiss, as well as the addendum, as they were filed within the time set by the Court to respond to the Order to Show Cause on Jurisdiction and were "ostensibly related to jurisdiction." Then, the Court denied Complainant's Motions for Addition of Third Party, finding the secretary's addition to the Complaint would be futile, as it did nothing to aid Complainant in proving jurisdiction. *Id.* at 5. Finally, the Court construed Respondent's Opposition as a reply to the September 28, 2022, Motion for Addition of Third Party, and therefore accepted it as timely. *Id.* at 3; *see also* 28 C.F.R. § 68.11(b). However, because the Court found itself "in a position wherein it [was] unable to execute [a] case disposition," it stayed the proceedings, citing to *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021). *Id.* at 5.

On October 12, 2023, the Department of Justice published an interim final rule providing for review by the Attorney General of OCAHO Administrative Law Judge (ALJ) final orders in cases arising under 8 U.S.C. § 1324b. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (codified at 28 C.F.R. pt. 68). The regulation resolved the issue identified in *A.S. v. Amazon Web Servs., Inc.* that led to the stay. As a result of this change to the regulation, this Court may proceed to a final case disposition in this matter. Accordingly, the stay is lifted.

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Volume 8, where the decision has not yet 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 "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

## II. DISCUSSION

In *HDH Co., LTD*, 16 OCAHO no. 1417c, in discussing the parties' responses to the Order to Show Cause on Jurisdiction, the Order set forth relevant caselaw, discussed the arguments made by the parties, and concluded that this Court likely does not have jurisdiction over the Complainant's claims. That Order is incorporated into this decision by reference. Based on the discussion in that Order, the Court finds the following:

1. HDH Co., Ltd. is a company that owns a commercial building in Saipan, CNMI containing space leased to both residential and commercial tenants.
2. Complainant applied for the position of "General Manager" with HDH Co., Ltd. in August 2021.
3. HDH Co., Ltd.'s Quarterly Withholding Tax Returns for 2020 and 2021 reflect only one employee for the entire period.
4. OCAHO has subject matter jurisdiction over § 1324b citizenship status claims if the employer employs more than three employees, *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022) (citations omitted), and OCAHO has subject matter jurisdiction over § 1324b national origin allegations if an employer employs between four and fourteen employees. *Id.* (citations omitted).
5. Complainant has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the Complaint. *See Zajradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 2 (2022).
6. Complainant has not alleged, nor sought to amend his Complaint to allege, how many employees HDH employs, despite this Court's Order to Show Cause and the Respondent's Motion to Dismiss.
7. OCAHO does not have jurisdiction over Complainant's complaint because Complainant did not establish that the employer employed more than three individuals on the date jurisdiction attached.

III. ORDERS

The stay is LIFTED.

The Respondent's motion to dismiss is GRANTED and the case is DISMISSED.

SO ORDERED.

Dated and entered on December 12, 2023.

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Honorable Jean C. King  
Chief Administrative Law Judge

### Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.