

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

January 11, 2024

ARTIT WANGPERAWONG,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00007
)	
META PLATFORMS, INC.,)	
Respondent.)	
<hr style="border: 0.5px solid black;"/>)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for
Respondent

ORDER SUMMARIZING PREHEARING CONFERENCE

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b.

On October 3, 2023, Complainant, Artit Wangperawong, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc. Complainant alleges 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 January 9, 2024, the Court held a telephonic prehearing conference pursuant to 28 C.F.R. § 68.13.¹ Complainant appeared pro se and Attorneys Amelia Munger, Eliza Kaiser, Matthew Dunn, and Genevieve Burger-Weiner appeared on behalf of Respondent.

The Court first discussed OCAHO's Settlement Officer Program. This program is a no-cost, voluntary dispute resolution program. The settlement discussions are subject to the confidentiality provisions of 5 U.S.C. § 574. If the parties reach a settlement, 28 C.F.R. § 68.14 applies.² Both

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

² Further details are available at: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7> (last accessed June 22, 2023); *see also* EOIR Policy Memorandum 20-16 describing the

parties must submit written consent to refer this case to the Program. The parties can ask for a referral to the Program up to 30 days prior to a hearing.

The Court next turned to the Respondent's December 15, 2023 Motion to Compel Arbitration and to Dismiss or Stay Action. The Court informed the parties a ruling would be forthcoming, and the pending motion would not impact the Court's ability to set deadlines in the case.

The Court informed the parties it may not have subject matter jurisdiction over Complainant's national origin allegation. The Court has an independent duty³ to ensure it only adjudicates matters over which it has subject matter jurisdiction. Because the Complainant is pro se, the Court read the provision of the statute implicated and further explained "[f]or claims based upon national origin, OCAHO has subject matter jurisdiction if the employer employs between four and fourteen workers." *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022) (citing *Sinha v. Infosys*, 14 OCAHO no. 1373, 2–3 (2020), and then citing 8 U.S.C. §§ 1324b(a)(1)(A), 1324b(a)(2)(B)). Additionally, "[t]he party invoking jurisdiction has the burden to establish that OCAHO has subject matter jurisdiction." *Id.* (citations omitted).

Accordingly, the Court ORDERS Complainant to submit a filing explaining his position on subject matter jurisdiction and his national origin discrimination claim. This filing shall be served on opposing counsel and provided to the Court within 10 calendar days of receipt of this Order.

Respondent shall have 10 calendar days to submit its response (10 days calculated from receipt of Complainant's submission or the Complainant's deadline outlined above, whichever is sooner.)

Discovery may begin on the date the Court issues this Order.⁴ The Court also provides the following guidance to parties:

The parties must cooperate with each other in honoring discovery requests. In advance of bringing any discovery dispute to the Court's attention, the parties must meet and confer in good faith to attempt to resolve the matter without the Court's intervention. *See* 28 C.F.R. § 68.23(b)(4).

Pursuant to 28 C.F.R. § 68.6(b), except when the discovery is used as an exhibit for a motion or as evidence during the hearing, copies of Interrogatories, Requests for Production of Documents, Requests for Admissions, Deposition Notices and transcripts, and responses to such should not be sent to the Court.

policies and procedures for use of settlement officers in OCAHO cases (<https://www.justice.gov/eoir/page/file/1300746/download>).

³ The Court has both the authority, and the duty, to determine *sua sponte* if it has subject matter jurisdiction. *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411, 2 (2022) (citing *Windsor v. Landeen*, 12 OCAHO no. 1294, 4–5 (2016)).

⁴ The Court clarified that any regulatory response deadlines for discovery requests filed before the issuance of this order will be adjusted to be calculated from the date of this Order.

A party must respond to a request for discovery within 30 calendar days from receipt of the request. Requests for discovery and objections to such requests must be specific. A notice of deposition does not require a written response; however any objection to a notice of deposition must be served promptly on the moving party.

The parties are expected to make a good faith effort to coordinate deposition dates with the opposing party before noting a deposition. An agreed-upon deposition date is presumptively binding. A party seeking to change an agreed-upon date has a duty to coordinate a new date before changing the agreed-upon date. Unless otherwise ordered by the Court or agreed upon by the parties, 14 days shall be deemed reasonable notice for noting a deposition occurring within the continental United States, 21 days shall be sufficient for a deposition conducted outside of the continental United States.

All discovery requests must be issued at a sufficiently early time to assure that they are answered before the expiration of the discovery deadline set by the Court. Unless otherwise ordered by the Court, no discovery deadline will be extended because written discovery requests remain unanswered at its expiration.

Discovery motions, including motions to compel, must be filed within 21 calendar days after receipt of a deficient response or after the response to the discovery is due, whichever occurs first. Motions to compel and other discovery motions must be accompanied by the discovery requests and responses and a declaration stating that the moving party has made a good faith effort to resolve the discovery dispute. 28 C.F.R. § 68.23(b). The declaration shall indicate the efforts made to resolve the dispute and identify which items remain in dispute. The failure to timely file objections to discovery may result in the objections being deemed waived.

Respondent requested a stay of discovery until its pending motion was resolved and, in the alternative, 180 days for discovery.⁵ Complainant opposed both a stay of discovery and the length of time proposed. The Court concluded discovery would begin at issuance of this Order with the caveat that parties were not to conduct discovery related to the national origin allegation until the issue of subject matter jurisdiction was resolved.

⁵ Any discovery-related motions must be filed in advance of the discovery deadline date. Motions filed after the deadline may be deemed untimely.

The Court also referenced the following two precedential decisions (noting there are other decisions available through the OCAHO Topical Index): *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450d (2023), and *United States v. Facebook, Inc.*, 14 OCAHO no. 1386e (2021).

The Court sets the following case schedule:

Discovery Closes: July 7, 2024

Summary Decision Motion deadline:⁶ August 6, 2024

Response to Summary Decision: 30 days after Summary Decision motion filed

Tentative Hearing: Winter 2024

As a final matter, the Court provides the following guidance and reminders to the parties:

If parties wish to extend a deadline in this matter, they should first meet and confer, and then file a motion requesting the extension.

Parties may request additional prehearing conferences with the Court at any time; if the parties need an additional conference, they should first meet and confer, and then file a motion with the Court proposing 2–3 dates and times for the conference.

Replies are generally not permitted. *See* 28 C.F.R. § 68.11(b). If parties wish to file a reply, they should first seek leave of the Court to do so.

Finally, and in response to a question from Complainant, the Court explained there is no regulatory deadline for replies to answers, *see* 28 C.F.R. § 68.9(d). The Court did separately caution Complainant that any argument advanced or evidence submitted in a reply to an answer would not be considered as part of an opposition filing to a future motion.

SO ORDERED.

Dated and entered on January 11, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁶ Absent a contrary ruling from the Court, all dispositive motions and opposition briefs shall be limited to a maximum of 50 pages. This limitation is exclusive of the cover page, index, table of cases relied upon, and exhibits.