

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

July 15, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00061
)	
ALJERIC GENERAL SERVICES, LLC a.k.a.)	
ALJRIC GENERAL SERVICES, LLC,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Colin Thompson, Esq., for Respondent

POST-HEARING ORDER – DISMISSING NATIONAL ORIGIN CLAIM

I. BACKGROUND

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b.

On September 27, 2022, the Court issued an Order to Show Cause. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432b (2022).¹ The Court noted Complainant alleged national origin

¹ 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>.

discrimination (among other theories), but for the reasons outlined in that Order, it was unclear whether the Court had subject matter jurisdiction over this allegation based on the number of Respondent employees. *Id.* at 4 n.2. Complainant also filed an Equal Employment Opportunity Commission (EEOC) complaint based on the same facts outlined in his Complaint. *Id.* at 4. The Court ordered the Complainant to submit a filing addressing these issues. *Id.* at 4–5.²

On January 11, 2023, the Court issued an Order addressing the issues raised in the September Order. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432c (2023). For reasons outlined in the January Order, the Court previewed an inclination to dismiss the national origin allegation, but ultimately stayed the dismissal. *Id.* at 7 (citing, *inter alia*, *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021)). The Court later denied a motion for reconsideration. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432d, 3–6 (2023).

On September 13–15, 2023, the Court held an in-person hearing on Complainant’s citizenship discrimination and retaliation claims. 28 C.F.R. § 68.39.³ During the hearing, the Court received credible evidence pertaining to the number of employees (Respondent credibly testified she had five employees.). If Respondent had five employees at the time of the alleged discrimination, the Court would have subject matter jurisdiction over a national origin allegation. *See* Hearing Tr. vol. 3, 52; *see also* 8 U.S.C. § 1324b(a)(2) (limiting OCAHO’s jurisdiction over national origin

² The Court explained:

8 U.S.C. § 1324b(b)(2) provides that “[n]o charge may be filed respecting an unfair immigration-related employment practice [related to a complainant’s national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title.” In other words, when a complainant files a national origin discrimination claim under both Title VII and the INA, only one agency has subject matter jurisdiction over the claim. *Heath*, 15 OCAHO no. 1411, at 2. At the heart of the statute is the prohibition on OCAHO from exercising jurisdiction over national origin claims when the employer has less than 4 or more than 14 employees. *See* 8 U.S.C. §§ 1324b(a)(2)(A), 1324b(a)(2)(B). The statute precludes OCAHO jurisdiction when EEOC exercises jurisdiction, without regard to whether EEOC is correct that it is authorized to reach a merits determination. *Adame v. Dunkin Donuts*, 4 OCAHO no. 691, 904, 906-908 (1994).

Zajradhara, 16 OCAHO no. 1432b, at 3–4.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

claims to employers with between four and fourteen employees). The Court closed the record on November 21, 2023. Order Closing Record 2.

While the Court’s potential jurisdiction over the national origin allegation became clear following this development in the record, there was no further record development on the status of the EEOC charge, a claims processing requirement which would preclude consideration of a national origin allegation based on the same set of facts.⁴

On May 13, 2024, the Court issued a Post-Hearing Order Re-Opening Record - National Origin Basis Only. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432k (2024). The Court re-opened the record for the parties to submit evidence on this issue, and set the following schedule:

June 14, 2024 – Record Closes (all evidentiary submissions must be received by this date)
 June 28, 2024 – Complainant’s written brief due (national origin allegation only)
 July 12, 2024 – Respondent’s written brief due (national origin allegation only)

Id. at 4. The Court explained it “will not disturb the status quo conclusion reached in its January 2023 Order – i.e. the Complainant has an active EEOC Complaint, and this forum will not consider a national origin allegation unless Complainant can provide evidence that his EEOC Complaint was “dismissed as being outside the scope of [the EEOC’s purview].” *Id.* (citing 8 U.S.C. § 1324b(b)(2)).

On May 15, 2024, Complainant filed a “Laymans’ Response to Courts’ Order on National Origin – Only.” Complainant attaches a March 28, 2022 letter from the Honolulu EEOC District Office, which states the “EEOC determined that there was insufficient evidence to establish a violation of Title VII and terminated its investigation.” The letter further explains the EEOC “concluded its investigation of the above-referenced charge of employment discrimination . . . EEOC management reviewed the information that you and the Respondent provided; however, it does not appear that additional investigation will result in the finding of a violation.” EEOC Letter 1.

On June 14, 2024, Respondent filed an Evidentiary Submission in Response to OCAHO’s Post-Hearing Order Re-Opening Record – National Origin Basis Only. Respondent attaches a copy of Complainant’s Charge of Discrimination against Respondent with the EEOC. EEOC Charge 1.

⁴ “No charge may be filed respecting an unfair immigration-related employment practice . . . if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission . . . *unless the charge is dismissed as being outside the scope of such title.*” 8 U.S.C. § 1324b(b)(2) (emphasis added).

On July 12, 2024, Respondent provided a written submission arguing the national origin allegation should be dismissed, arguing several theories supporting this conclusion. Consistent with the Court's observations in its May 2024 Order and specific citations to the evidentiary record, Respondent notes Complainant filed a charge with the EEOC, which was investigated on its merits (and was not dismissed as being outside the scope of Title VII). Respondent's Brief 12.

II. DISCUSSION

While the subject matter jurisdiction concerns may be resolved in Complainant's favor, the Court may still dismiss for failure to state a claim upon providing notice and an opportunity to respond. *See* Hearing Tr. vol. 3, 52; *see also* 8 U.S.C. § 1324b(a)(2); *see also* 28 C.F.R. § 68.10(b). Here, the Court provided notice that, even if it has subject matter jurisdiction over the claim, "[n]o charge may be filed respecting an unfair immigration-related employment practice [related to a complainant's national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title." *Zajradhara*, 16 OCAHO no. 1432k, at 3 n.4. The Court cautioned Complainant it would dismiss his national origin claim, unless he could produce evidence it was dismissed as outside the scope of Title VII. *Id.* at 3.

Respondent's proffered evidence shows Complainant filed a charge of discrimination with the EEOC based on the same set of facts alleged in the Complaint, alleging discrimination on the basis of (among other things) his national origin. EEOC Charge 1. Complainant's proffered evidence, the letter from the Honolulu EEOC District Office, reveals the EEOC investigated his charge of national origin discrimination on the merits. *See* EEOC Letter 1. Critically, the EEOC letter does not show the EEOC dismissed the claim as outside the scope of Title VII. As such, Complainant's national origin claim will be dismissed now. *See, e.g., Adame v. Dunkin Donuts*, 4 OCAHO no. 691, 904, 906–08 (1994) (dismissing a national origin claim the complainant filed an EEOC determination "as to the merits," which stated that the evidence did not establish a violation of the statute and that processing of the charge had concluded, and closed with a "right to sue" authorization); *Wockenfuss v. Bureau of Prisons*, 5 OCAHO no. 767, 373, 376 (1995) (same).⁵

The stay of proceedings as to Complainant's national origin discrimination claim is LIFTED, and the claim is DISMISSED. The Court will issue a final order on Complainant's remaining citizenship discrimination and retaliation claims.

⁵ 8 U.S.C. § 1324b(b)(2) "precludes ALJ jurisdiction when EEOC exercises jurisdiction, without regard to whether EEOC is correct that it is authorized to reach a merits determination." *Adame*, 4 OCAHO no. 691, at 907; *see also Caspi v. Trigild*, 6 OCAHO no. 907, 957, 965 (1997).

SO ORDERED.

Dated and entered on July 15, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge