

ZAJI OBATALA ZAJRADHARA,
 Complainant,
 v.
 TAGA INC., D/B/A EZ OUTLET,
 Respondent.

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8 U.S.C. § 1324b Proceeding
 OCAHO Case No. 2024B00064

² The deadline accounts for the fact that May 4, 2024, was a Saturday. *See* 28 C.F.R. § 68.8(a).

After Respondent did not file an answer by that date, the Court issued an Order to Show Cause on May 30, 2024. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577 (2024).³ The Court directed Respondent to file an answer to the Complaint, as well as a filing showing good cause for its untimely answer, by June 20, 2024. *Id.* at 2. To date, Respondent has not filed an answer to the Complaint or a response to the Order to Show Cause.

II. STANDARDS OF LAW

Per OCAHO’s Rules of Practice and Procedure for Administrative Hearings, a “[f]ailure of the respondent to 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. The Administrative Law Judge may enter a judgment by default.” 28 C.F.R. § 68.9(b). “If a default judgment is entered . . . judgment is entered for the complainant without a hearing.” *United States v. Cabello Recovery & Auction Servs., Inc.*, 18 OCAHO no. 1514, 2 (2024) (quoting *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004)); *United States v. Glen Echo Pharmacy, Inc.*, 18 OCAHO no. 1520, 2 (2024) (same).

“However, ‘the Court may not issue a default judgment if the Court lacks subject matter jurisdiction over a complainant’s claims.’” *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553, 2 (2024) (quoting *Heath v. VBeyond Corp.*, 14 OCAHO no. 1368a, 2 (2020)). The Court “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 subject matter jurisdiction over national origin claims when an employer has more than fourteen employees. *See* 8 U.S.C. § 1324b(a)(2)(B).

Moreover, “[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).

III. ANALYSIS

Complainant alleges in the Complaint that Respondent has “15 or more employees.” Compl. 6. While the Court has subject matter jurisdiction over citizenship status discrimination claims if the employer has 15 or more employees, the Court does not have jurisdiction over national origin discrimination claims in this circumstance. *See* 8 U.S.C. § 1324b(a)(2)(B). The Complaint thus

³ Citations to OCAHO precedents after volume eight include the volume and case number of the particular decision. Pinpoint citations 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>.

raises a question as to the Court's subject matter jurisdiction over the claim based on national origin.

Complainant is ORDERED to show cause why his national origin discrimination claim should not be dismissed for lack of subject matter jurisdiction. Complainant's filing should explain the basis for subject matter jurisdiction, and Complainant should attach to his filing any relevant evidence regarding Respondent's number of employees at the time of the alleged discrimination. *See Sanchez v. Ocanas*, 9 OCAHO no. 1115, 3 (2005) ("[T]he count of employees is to be made as of the date the alleged discrimination occurred and that all who are employed on that date, whether full-time or part-time, and whether permanent or seasonal, are to be counted."). Complainant is warned that if he cannot assure the Court of its subject matter jurisdiction, this claim may be dismissed.

As to his retaliation claim, Complainant alleges the following: "This company disregard[ed]—not only this application; but numerous previous applications—due to my #1 winning a CNMI DOL settlement against it (and) #2—for my repeated attempts at bringing this rampant visa fraud of this company to your agency's attention." Compl. 11 (cleaned up).

"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.'" *Manbin Corp.*, 19 OCAHO no. 1553, at 3 (citing *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 2 (2020)). Complainant alleges that Respondent disregarded his employment application because of a Department of Labor settlement and complaints of visa fraud. Complainant does not clearly allege that Respondent took adverse action due to his filing of a charge with IER, participation in an OCAHO proceeding, or to interfere with a right or privilege under § 1324b (i.e. to be free of discrimination based on national origin or citizenship status).

Therefore, Complainant is FURTHER ORDERED to show cause why his retaliation claim under 8 U.S.C. § 1324b(a)(5) should not be dismissed for failure to state a claim. Complainant is cautioned that if he cannot show good cause, this claim may be dismissed.

The Complainant should respond by August 26, 2024.

SO ORDERED.

Dated and entered on July 11, 2024.

Honorable Jean C. King
Chief Administrative Law Judge