

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

July 30, 2024

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

ORDER BY THE CHIEF ADMINISTRATIVE HEARING OFFICER

This case arises under the employment discrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On September 29, 2021, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (“OCAHO”) alleging that the Respondent discriminated against him based on his national origin and citizenship status and retaliated against him for exercising his rights under 8 U.S.C. § 1324b. Respondent filed an answer denying that it discriminated or retaliated against the Complainant and asserting several affirmative defenses.¹ The case was initially assigned to Administrative Law Judge (“ALJ”) Andrea Carroll-Tipton but was reassigned to Chief Administrative Law Judge (“Chief ALJ”) Jean King on December 15, 2021.

On January 11, 2023, Chief ALJ King issued an order finding that the Complainant had not met his burden of establishing that OCAHO had subject matter jurisdiction over his national origin discrimination claim. *Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432c, 6 (2023). Chief ALJ King also stayed any further proceedings in the case related to Complainant’s national origin discrimination claim, though Complainant’s other claims proceeded. *Id.* at 7. On February 27, 2023, the case was reassigned back to ALJ Carroll-Tipton, who held an in-person hearing on September 13-15, 2023, as to the Complainant’s citizenship status discrimination and retaliation claims.

After the hearing, ALJ Carroll-Tipton briefly reopened the record to allow for evidentiary submissions on the Complainant’s national origin allegation, *see Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432k (2024), and subsequently issued a post-hearing order lifting the stay of

¹ This case has a lengthy procedural history. *See Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432 (2022) *et seq.* This order summarizes only those events within that procedural history that are most directly relevant to the questions at issue in this order. Previous published decisions in this case (<https://www.justice.gov/eoir/listing-volume-16-decisions>) contain a more complete summary of the full procedural history of the case.

proceedings² and dismissing the national origin claim, *see Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 14321 (2024). On July 18, 2024, ALJ Carroll-Tipton issued a Final Decision and Order finding that the Complainant could not establish a *prima facie* case of discrimination based on citizenship status or a *prima facie* case of retaliation; therefore, ALJ Carroll-Tipton dismissed the case with prejudice.³ *Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432m (2024).

On July 23, 2024, Complainant filed with OCAHO a “Laymans Appeal to the Courts’ Final Order.” The heading of the filing is captioned for OCAHO; however, the body of the filing is addressed to “Your Honor” and includes a title “Petition for Review of Final Order of the Office of the Chief Administrative Hearing Officer.” Further, in the filing, Complainant describes himself as the “Appellant,” and “respectfully requests this Court to review and reverse the Final Decision and Order of the Office of the Chief Administrative Hearing Officer (OCAHO) dated July 18, 2024.” The conclusion of this filing further argues that “[t]his Court should remand the case to the OCAHO for further consideration of the evidence and analysis of the law under the appropriate legal framework” The document also contains an additional copy of Complainant’s “Laymans Rebuttal to Respondent’s Proposed Findings of Fact and Conclusions of Law,” which he previously filed with OCAHO on May 28, 2024. The certificate of service accompanying the filing indicates that copies of it were sent to the Immigrant and Employee Rights Section, representatives of the Respondent, and Chief ALJ King.⁴

² Chief ALJ King had issued a stay of proceedings related to Complainant’s national origin discrimination claim in light of questions stemming from the Supreme Court decision in *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021), regarding an ALJ’s ability to issue final orders in cases arising under 8 U.S.C. § 1324b. *See Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432c, at 7. On October 12, 2023, the Department of Justice published an interim final rule addressing those questions, *see Office of the Chief Administrative Hearing Officer, Review Procedures*, 88 Fed. Reg. 70,586 (Oct. 12, 2023) (to be codified at 28 C.F.R. pt. 68), obviating the need for any further stay of proceedings.

³ As is standard practice in OCAHO final orders, the ALJ’s Final Decision and Order in this case included information about how to appeal the decision. This appeal information as set forth in the ALJ’s final order read as follows:

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.

Aljeric Gen. Servs., LLC, 16 OCAHO no. 1432m, at 38.

⁴ For orders regarding post-final-order filings—*e.g.*, a motion to reconsider or a request for administrative review—as well as for orders following a request for interlocutory administrative review, OCAHO normally retains the same service format and the same list of individuals to be served that were used in the primary proceedings. Thus, the instant Order will be served electronically on the parties and the presiding ALJ. However, certain circumstances—*e.g.*, a substitution of counsel during an administrative review, the unavailability of the presiding ALJ, a significant delay in an administrative review, a sudden lack of communication with a party, or any other case-specific circumstances raising questions as to the appropriateness of the service format or the list of individuals to be served—may require deviation from that practice and default to the relevant regulatory requirements for service.

Based on how and to whom the filing was addressed, styled, and submitted, it is unclear what the Complainant intended it to be.⁵ The filing could potentially be viewed as any of the following: (1) a petition for review by the appropriate United States Court of Appeals of the ALJ's final order; (2) a request for reconsideration of the ALJ's final order; or, (3) a request for administrative review by the Chief Administrative Hearing Officer ("CAHO") of the ALJ's final order.⁶ However, even construing the filing liberally in light of Complainant's pro se status, none of its three procedural possibilities can be granted in its present posture.

The Complainant's filing is captioned as an "Appeal," and further described within the body of the document as a "Petition for Review." Relatedly, the Complainant represents himself as the "Appellant" in this filing and seeks to have his case remanded to OCAHO for further consideration. Taken together, these characteristics suggest that the Complainant may have intended his filing to be a petition for review of the ALJ's Final Decision and Order. To the extent the Complainant's filing was intended as a petition for review by the appropriate United States Court of Appeals pursuant to 8 U.S.C. § 1324b(i), the Complainant must follow the instructions provided in the "Appeal Information" section of the ALJ's Final Decision and Order. Specifically, any such petition for review must be filed "**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.**" *Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432m, at 38 (emphasis added). Indeed, as an administrative tribunal, OCAHO has no authority to adjudicate a petition for review. *See id.*; *see also* 8 U.S.C. § 1324b(i). Additionally, as the Appeal Information further notes, "[a] petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure." *Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432m, at 38; *see also* FED. R. APP. P. 15(a)(1) ("Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order."). Thus, if Complainant's filing was intended as a petition for review of the ALJ's Final Order and Decision under 8 U.S.C. § 1324b(i), it must be denied as having been filed in the incorrect forum.⁷

To the extent that the Complainant's filing was intended as a motion for reconsideration—because it challenged the ALJ's Final Order and Decision and reiterated arguments Complainant previously filed—such a motion should be addressed to the presiding ALJ.⁸ *See generally*

⁵ The filing appears to be an original document and not a courtesy copy of a document filed elsewhere. Moreover, a review of publicly-available docket information does not show a petition for review filed by Complainant regarding the instant case in any federal court as of the date and time this Order was signed.

⁶ It is this third possible basis which warrants the undersigned to issue the instant order, and that basis necessarily encompasses consideration of the other two possibilities.

⁷ In Complainant's case, the violations were alleged to have occurred and the employer resides and transacts business in the Commonwealth of the Northern Mariana Islands, which is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"). Consequently, if the Complainant intends to file a petition for review of the ALJ's Final Decision and Order, he may wish to consult the filing procedures for the Ninth Circuit, which are publicly available at <https://www.ca9.uscourts.gov/forms/>. In particular, Form 3 is utilized to file a petition for review of a federal administrative action at the Ninth Circuit and is available at <https://cdn.ca9.uscourts.gov/datastore/uploads/forms/form03.pdf>. *See also* FED. R. APP. P. 15(a)(3) (suggesting the use of Form 3 for a petition for review of federal administrative action). The Complainant may also wish to consult the Ninth Circuit's webpage containing information, links, and forms for pro se and self-represented litigants, available at <https://www.ca9.uscourts.gov/forms/pro-se-litigants/>.

⁸ In a unique situation, the presiding ALJ may no longer be available to adjudicate a motion for reconsideration. In such a case, the Chief ALJ would assign another ALJ to preside and adjudicate the motion. *See* 28 C.F.R. § 68.29. In

Zajradhara v. GIG Partners, 14 OCAHO no. 1363d (2021) (addressing a motion for reconsideration and setting forth the procedural requirements and standards for considering such motions). Here, the body of the Complainant’s motion is addressed generically to “Your Honor,” and the certificate of service accompanying the filing indicates that it was sent to Chief ALJ King. Although Chief ALJ King presided over part of Complainant’s proceedings, she was not the presiding ALJ who conducted the hearing and issued the Final Decision and Order; rather, ALJ Carroll-Tipton was. Accordingly, if the Complainant’s filing was meant to be a motion for reconsideration, it was submitted to the incorrect ALJ for consideration and is denied as having been improperly filed.⁹

Finally, because the Complainant’s filing was filed with OCAHO and requests review and reversal of the ALJ’s Final Decision and Order, it could also be construed as a request for administrative review by the CAHO. *Cf. United States v. Bhattacharya*, 14 OCAHO no. 1380b, 4 (2021) (collecting cases construing various types of irregular filings occurring after the entry of a final order and raising substantive challenges to that final order as requests for administrative review by the CAHO). However, the CAHO does not have authority to review ALJ final orders¹⁰ in cases arising under 8 U.S.C. § 1324b.¹¹ *See A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381h, 2 (2021); *Wong-Opasi v. Sundquist*, 8 OCAHO no. 1051, 799 (2000); *Banuelos v. Transp. Leasing Co.*, 1 OCAHO no. 259, 1682 (1990); *cf. 28 C.F.R. § 68.54* (authorizing the CAHO to review ALJ final orders in cases arising under 8 U.S.C. §§ 1324a and 1324c). Accordingly, even if Complainant’s filing is construed as a request for administrative review by the CAHO, that request must be denied.

In short, regardless of the actual intent of Complainant’s filing, OCAHO cannot grant it in its present posture. Accordingly, for the foregoing reasons, the Complainant’s July 23, 2024 filing titled “Laymans Appeal to the Courts’ Final Order” is hereby DENIED.

SO ORDERED.

James McHenry
Chief Administrative Hearing Officer

Complainant’s case, the ALJ who issued the Final Decision and Order is still available to adjudicate any motion for reconsideration. Thus, any such motion should have been addressed to that ALJ.

⁹ To the extent Complainant’s filing is construed as a motion for reconsideration and is denied accordingly, such denial is without prejudice to the filing of a proper motion for reconsideration before the presiding judge, ALJ Carroll-Tipton. Complainant should be aware, however, that such a motion may be subject to timeliness limitations or other procedural requirements. *See generally GIG Partners*, 14 OCAHO no. 1363d, at 2-3 (setting forth the procedural requirements and standards for a motion for reconsideration).

¹⁰ OCAHO’s current regulations are silent on the question of review of an interlocutory order by an ALJ in a case arising under 8 U.S.C. § 1324b, though OCAHO has long considered that at least the Attorney General, as the agency head, possesses such review authority. Because Respondent’s filing follows a final order, however, it provides no basis for consideration of the conditions, if any, under which an interlocutory ALJ order in a case arising under 8 U.S.C. § 1324b may be reviewed.

¹¹ Although OCAHO regulations do not allow Complainant to appeal directly to the Attorney General for review of the ALJ’s final order, the regulations do authorize the Attorney General to “direct the [CAHO] within no more than sixty (60) days of the entry of a final order by the [ALJ]” to refer a case arising under 8 U.S.C. § 1324b for his review. Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. at 70,591 (to be codified at 28 C.F.R. § 68.55(a)). However, as of the date of this Order, no such directive has been issued in Complainant’s case.