

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

July 30, 2024

MARIA E. CONTRERAS,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2021B00055
)	
CAVCO INDUSTRIES, INC., D/B/A)	
FLEETWOOD HOMES,)	
Respondent.)	
)	

Appearances: Maria E. Contreras, pro se Complainant
 Kevin Cloutier, Esq., Victoria Wojciechowski Hubona, Esq., and Denise Giraudo, Esq., for Respondent

ORDER DISMISSING DISCRIMINATION CLAIM

I. BACKGROUND

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

On September 7, 2021, Complainant, Maria E. Contreras, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Cavco Industries, Inc., d/b/a Fleetwood Homes. Complainant alleged Respondent discriminated¹ against her, retaliated against her, and engaged in document abuse in violation of 8 U.S.C. §§ 1324b(a)(1), (a)(5), and (a)(6).

On September 20, 2022, Respondent filed a Motion for Summary Decision. Respondent argues for summary decision in its favor because: (1) Complainant cannot show disparate treatment; (2) Complainant was not qualified; (3) Complainant cannot show Respondent intimidated, threatened, coerced, or retaliated against her due to protected activity; and (4) Respondent followed USCIS protocol when it requested additional documents for the Form I-9. *See generally* Mot. Summary

¹ Complainant originally referenced citizenship and national origin as proposed bases for a discrimination allegation; however on January 26, 2022 at a prehearing conference, the Complainant clarified she was not pursuing an allegation based on national origin. Order Memorializing Prehr'g Conf. 2.

Decision. Complainant did not file an opposition. The Court declined to treat the Motion as conceded. *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440a (2023).²

On June 27, 2024, the Court issued an Order to Show Cause – Complaint May Be Dismissed in Part. *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440b (2024). The Court noted that, pursuant to 8 U.S.C. § 1324b(a)(1), “[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual . . . in the case of a protected individual . . . because of such individual’s citizenship status.” *Id.* at 2. The Court explained that a “protected individual” is defined in 8 U.S.C. § 1324b(a)(3), and that the definition does not include “an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986.” *Id.*

Complainant notes in the Complaint she became a lawful permanent resident in February 2000, and became eligible for apply for naturalization on February 10, 2005. *Id.* (citing Compl. 4). Further, she has not applied for naturalization. *Id.* Consequently, Complainant appears to fall outside the ambit of the statute. *Id.* The Court’s June 2024 Order was the first instance in which parties were placed on notice of this issue. Thus, the Court provided an opportunity to Complainant to file a submission showing good cause why her discrimination claim (citizenship) should not be dismissed for failure to state a claim. *Id.* at 2–3 (citing 28 C.F.R. § 68.10(b)³). The Court ordered Complainant to provide her submission by July 30, 2024, noting Respondent may provide a filing within 14 days of receipt of Complainant’s submission or the July 30, 2024 deadline, whichever comes first. *Id.* at 3.

Complainant did not provide a response to the Order to Show Cause by the July 30, 2024 deadline. Because the Court now dismisses the claim at issue, it need not wait for Respondent’s submission.

II. LAW & ANALYSIS

OCAHO’s Rules of Practice and Procedure for Administrative Hearing provide that an OCAHO ALJ may dismiss a complaint for failure to state a claim upon which relief may be granted either upon motion by the respondent, or without a motion, provided the ALJ affords the complainant an opportunity to show cause why the complaint should not be dismissed. 28 C.F.R. § 68.10(b). In

² 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>.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

resolving a motion to dismiss, the Court limits its analysis to the four corners of the Complaint and construes the Complaint in the light most favorable to the complainant. *Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 3 (2022) (citing *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997), and then citing *Heath v. Optnation*, 14 OCAHO no. 1374, 2 (2020)).

To succeed on a citizenship discrimination claim under the statute, a complainant bears the burden of establishing they were a protected individual at the time of the alleged discrimination. *See Zu v. Avalon Valley Rehab. Ctr.*, 14 OCAHO no. 1376, 6 (2020) (citing, *inter alia*, *McNier v. San Francisco State Univ.*, 7 OCAHO no. 947, 411, 417 n.3 (1997) (explaining that the key date for assessing an individual's protected status is the date of the alleged discrimination); *Pioterek v. Anderson Cleaning Sys., Inc.*, 3 OCAHO no. 590, 1919, 1922–23 (1993) (dismissing citizenship status discrimination claim when the complainant was not a protected individual at the time of the alleged discrimination, but later became a protected individual)).

Based on the four-corners of the Complaint, Complainant has failed to state a claim for citizenship discrimination under 8 U.S.C. § 1324b(a)(1), as she has not alleged that she was a protected individual as defined by 8 U.S.C. § 1324b(a)(3) at the time of the alleged discrimination. After providing Complainant an opportunity to demonstrate the contrary, the Court now finds Complainant is indeed not a protected individual as defined by 8 U.S.C. § 1324b(a)(3). Specifically, Complainant became a lawful permanent resident in February 2000 and was eligible for apply for naturalization on February 10, 2005. Compl. 4. At the time of the Complaint (signed on August 20, 2021), Complainant had not applied for naturalization.

As to her discrimination claim, Complainant was initially hired by Respondent on January 4, 2021, and was “pulled out from work” on her second day. Compl. 8–9; IER Charge 2–3. Complainant again applied for work with Respondent, but that application was unsuccessful (by February 8, 2021). Compl. 8–9; IER Charge 2–3. Based on these dates, the alleged discrimination occurred between January and February 2021.

At the time of the alleged discrimination, Complainant was a permanent resident who had not applied for naturalization within six months of eligibility. 8 U.S.C. § 1324b(a)(3)(B) expressly excludes those who do not “timely” apply for naturalization from the definition of protected individuals. *See, e.g., Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449a, 3, 9 (2024) (dismissing citizenship status discrimination claim where the complainant had not applied for naturalization with six months of eligibility).

Therefore, the Court finds that Complainant has not stated a claim for which relief can be granted and DISMISSES Complainant’s discrimination claim (citizenship). Her remaining claims (document abuse and retaliation) shall be addressed in subsequent orders.

SO ORDERED.

Dated and entered on July 30, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge