

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

ORDER TO SHOW CAUSE – DOCUMENT ABUSE

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. Summ. 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).¹

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

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 citizenship status discrimination provision of 8 U.S.C. § 1324b(a)(1) only applies “in the case of a protected individual.”² *Id.* at 2. Based on the Complaint, Complainant did not appear to be a “protected individual.”³ Complainant was provided an opportunity to be heard on this issue, and she declined to provide a submission for the Court’s consideration. *Id.* at 2–3 (citing 28 C.F.R. § 68.10(b)⁴).

On July 30, 2024, the Court issued an Order Dismissing Discrimination Claim. Complainant failed to state a claim of citizenship discrimination under 8 U.S.C. § 1324b(a)(1), as she did not allege that she was a protected individual as defined by 8 U.S.C. § 1324b(a)(3) at the time of the alleged discrimination. Order Dismissing Discrimination Claim 3.

The Court now turns to Complainant’s claim for document abuse under 8 U.S.C. § 1324b(a)(6). This provision provides that “[a] person’s or other entity’s request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under such section . . . shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of [8 U.S.C. § 1324b(a)(1)].”

The Court previously determined:

[C]ognizable claims under 8 U.S.C. § 1324b(a)(6) include only allegations that an employer committed document abuse against a statutorily-defined protected individual because of the individual’s citizenship status and/or allegations that an employer, who has four or more employees and is not covered by Title VII, committed document abuse against any work authorized individual because of the individual’s national origin.

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>.

² A “protected individual” is defined in 8 U.S.C. § 1324b(a)(3), and 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.” *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440b (2024).

³ Complainant alleges that she became a lawful permanent resident in February 2000, became eligible for apply for naturalization on February 10, 2005, and had not applied for naturalization, the Court noted that Complainant, therefore, appears to fall outside the ambit of the statute.

⁴ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

United States v. Mar-Jac Poultry, 12 OCAHO no. 1298, 30 (2017);⁵ see also *MacKinnon v. The Fin. Times*, 13 OCAHO no. 1316, 3 (2019) (same); *Verdesi v. Ark Rustic Inn, LLC*, 13 OCAHO no. 1311, 2 (2018) (same).

Furthermore, Congress indeed intended to exclude from coverage those who do not apply for citizenship within six months of eligibility.⁶ See *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449a, 3–8 (2024).

Given this OCAHO precedent, Complainant is now ordered to show cause by August 23, 2024 why her document abuse claim under 8 U.S.C. § 1324b(a)(6) should not be dismissed for failure to state a claim, given that she is not a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3). Respondent may file any response to Complainant’s submission within 10 days of receipt.

Finally, the Court notes the Complainant’s lack of participation in this matter may raise the spectre of abandonment. Complainant declined to respond to Respondent’s two most recent motions. More critically, Complainant declined to submit a response to the Court’s most recent Order. OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that “[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it,” and that a party “shall be deemed to have abandoned a complaint . . . if . . . [a] party . . . fails to respond to orders issued by the Administrative Law Judge.” 28 C.F.R. § 68.37(b). If Complainant continues to fail to respond to Court orders, or to otherwise participate in these proceedings, Complainant is cautioned that the Court may deem her Complaint abandoned, and dismissal of the Complaint may result. Alternatively, if it is Complainant’s intent to abandon her Complaint, she may submit a filing indicating such at any time.

SO ORDERED.

Dated and entered on August 1, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁵ The Court in *Mar-Jac Poultry* came to this conclusion because “[t]he statutory language is circuitous but not unclear”; “[b]ecause subsection (a)(6) of 8 U.S.C. § 1324b cross-references subsection (a)(1) which, in turn, cross-references subsection (a)(3), the statutes must be read *in pari materia*”; and because a contrary reading would “produce anomalous results for non-protected individuals.” *Mar-Jac Poultry*, 12 OCAHO no. 1298, at 30–33.

⁶ In contrast, retaliation claims under 8 U.S.C. § 1324b(a)(5) are intended to be broadly remedial, and accordingly, there is no such limitation on coverage only for “protected individuals.” See *Monty v. USA2GO Quick Stores*, 16 OCAHO no. 1443c, 21 (2024) (citing *United States v. Robison Fruit Ranch, Inc.*, 4 OCAHO no. 594 (1994) (noting that “Congress had intended the 1986 Immigration and Reform and Control Act to have a broad, remedial purpose” and that “Courts have firmly established a policy of liberally construing remedial statutes so as to ‘suppress the evil and advance the remedy.’” (citations omitted))).