

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

August 7, 2024

ZAJI ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00013
JIN JOO CORPORATION,)	
Respondent.)	
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ORDER GRANTING COMPLAINANT LEAVE TO AMEND HIS COMPLAINT &
DISMISSING RETALIATION CLAIM

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 17, 2023, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Officer (OCAHO), alleging that Respondent, Jin Joo Corporation, discriminated against him (national origin and citizenship) and retaliated against him in violation of 8 U.S.C. § 1324b(a)(1) and (a)(5).

On April 30, 2024, the Court issued an Order to Show Cause – Jurisdiction. The Complaint alleged Respondent had at least 15 employees, *Zajradhara v. Jin Joo Corp.*, 19 OCAHO no. 1554, 3 (2024);¹ Compl. 4, and Complainant had not “articulate[d] the alleged retaliatory action and its connection to § 1324b,” *Zajradhara*, 19 OCAHO no. 1554 at 3. The Court ordered Complainant to submit a filing explaining why his national origin discrimination claim should not be dismissed based on a lack of subject matter jurisdiction and why his retaliation claim should not be dismissed for failure to state a claim upon which relief can be granted. *Id.*

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, 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 in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

On June 12, 2024, Complainant filed Layman’s Response to Court’s Order on Jurisdiction. In his Response, Complainant states that there was “a clerical error in the original Complaint concerning the number of individuals employed by the [Respondent,” and that, in fact, Respondent “employs between 4 and 14 employees” Resp. Order Show Cause 2. Additionally, Complainant argues he “sufficiently states a claim upon which relief can be granted” because “Complainant alleges a pattern and practice of discriminatory conduct by the [Respondent]” *Id.* Complaint also lists relief that he requests the Court grant him. *Id.* at 4. He does not, however, explain the nature of the protected activity which gave rise to his retaliation allegation.

II. NATIONAL ORIGIN CLAIM – COMPLAINANT GRANTED LEAVE TO AMEND

An OCAHO complaint must contain “[a] clear and concise statement of facts, upon which an assertion of jurisdiction is predicated.” 28 C.F.R. § 68.7(b)(1). “

Complainant clarified Respondent employs between 4 and 14 employees, rendering a national origin allegation jurisdictionally viable. Resp. Order Show Cause 2. Based on his submission, Complainant may be able to cure the pleading deficiencies related to his national origin claim, and he will be provided an opportunity do so.

The Court may allow amendments to pleadings “[i]f a determination of a controversy on the merits will be facilitated thereby.” 28 C.F.R. § 68.9(e). In sua sponte permitting an amendment, the Court is considering Complainant’s pro se status, and the likelihood pleading deficiencies may be remedied through amendment. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curium) (a pro se litigant must be given leave to amend his complaint unless it is “absolutely clear” that its deficiencies cannot be cured by amendment).

Complainant may file an amended complaint by October 15, 2024. If Complainant fails to amend his Complaint, the allegation may be dismissed because the pleading is deficient. *See* 8 U.S.C. § 1324(a)(2)(B) and 28 C.F.R. § 68.10(b).

III. RETALIATION CLAIM - DISMISSED WITHOUT PREJUDICE

Although Complainant addresses the employee numerosity issue outlined in the Order to Show Cause, he does not adequately address issues related to his retaliation allegation.

Complainant’s retaliation allegation is now DISMISSED WITHOUT PREJUDICE because the allegation fails to state a claim upon which relief can be granted. *See* 28 C.F.R. § 68.10(b).

As this Court previously explained, “[t]o 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 right or privileges secured specifically under § 1324b.’” *Zajradhara v. Jin Joo Corp.*, 19 OCAHO no. 1554, 2 (2024) (quoting *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 2 (2020)).

In support of his retaliation allegation, Complainant states he “repeatedly attempted” to report Respondent for fraudulent visa-related practices, and he “filed for Countless Positions with this Company” and “been ignored . . . as a form of retaliation.” Compl. 7, 9. Attempts to expose visa fraud do not constitute protected activity. Further, application to and then non-selection for a position is not a protected activity within the meaning of the statute.

Because the Complainant is pro se, the Court notes this dismissal is without prejudice. Consequently, Complainant may “reinstitute the matter at any time by filing a new complaint.” *Zajradhara v. CL Corp.*, 16 OCAHO no. 1429, 3 (2022) (citation omitted).

IV. CLARIFICATION OF COMPLAINT CONTENTS

Parties should note that, at present, only the Complainant’s citizenship discrimination allegation can survive. Complainant’s national origin allegation will be dismissed if Complaint fails to timely amend his Complaint. Respondent should understand that at present, the Court has yet to receive his Answer to the original Complaint. As was noted in the Complaint package, a failure to file an answer may lead to default judgment.

Because the Court has sua sponte granted Complainant an opportunity to amend his deficient pleading, the Court will now permit Respondent additional time to file its Answer. Once the issue of amendment is resolved, Respondent will be provided with a deadline by which it must file its answer (with further clarification to the parties as to what allegations remain before the Court).

SO ORDERED.

Dated and entered on August 7, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge