

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

September 17, 2024

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| MARIA E. CONTRERAS, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | 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 DOCUMENT ABUSE CLAIM & TO SHOW CAUSE –
RETALIATION 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 discriminated 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. 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

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). Through the Order, the Court provided an opportunity for the Complainant to demonstrate she was covered by the statute² as a “protected individual.” 8 U.S.C. § 1324b(a)(3).³ *Id.* at 2. After the Complainant declined to provide a response to the Order to Show Cause, the Court issued an Order Dismissing Discrimination Claim on July 30, 2024. *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440c (2024).

On August 1, 2024, the Court issued an Order to Show Cause – Document Abuse. *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440d (2024). Through the Order, the Court gave the Complainant the opportunity to be heard on the same issue relative to her document abuse claim arising under 8 U.S.C. § 1324b(a)(6). *Id.* As the Court noted in that Order, Congress intended for § 1324b(a)(6)’s protections to extend only to “protected individuals” as defined in 8 U.S.C. § 1324b(a)(3). *Id.* at 2–3 (quoting *United States v. Mar-Jac Poultry*, 12 OCAHO no. 1298, 30 (2017) and citing *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449a, 3–8 (2024)).

In the Order to Show Cause – Document Abuse, the Court also warned Complainant that her failure to participate in the proceedings may result in her entire complaint’s dismissal based on a finding of abandonment. *Contreras*, 16 OCAHO no. 1440d, at 3 (citing 28 C.F.R. § 68.37(b))⁴ (authorizing ALJs to dismiss a complaint due to abandonment if a complainant fails to respond to orders issued by the ALJ)).

Complainant did not respond to the August 1, 2024 Order to Show Cause – Document Abuse.

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 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 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.

³ 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).

⁴ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

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 complain should not be dismissed. 28 C.F.R. § 68.10(b). In 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) (internal citations omitted).

To succeed on a document abuse claim under the statute, a complainant bears the burden of establishing they were a protected individual at the time of the alleged discrimination. *See Mar-Jac Poultry*, 12 OCAHO no. 1298, at 30; *Rodriguez Garcia*, 17 OCAHO no. 1449a, at 3–8; *Vieri Verdesi v. Ark Rustic Inn, LLC*, 13 OCAHO no. 1311, 7–9 (2018) (“claims under 8 U.S.C. § 1324b(a)(6) based on citizenship status only apply to protected individuals as defined in 8 U.S.C. § 1324b(a)(3).”).

Based on the four-corners of the Complaint, Complainant has failed to state a claim for document abuse under 8 U.S.C. § 1324b(a)(6), 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 document abuse. Based on this record, Complainant is not a protected individual as defined by 8 U.S.C. § 1324b(a)(3). *Contreras*, 16 OCAHO no. 1440c, at 3 (explaining that Complainant became eligible to apply for naturalization on February 10, 2005, but had failed to do so at the time of filing the Complaint).

At the time of the alleged document abuse (which presumably preceded the Complaint), 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., Vieri Verdesi*, 13 OCAHO no. 1311, 9 (dismissing complaint alleging document abuse where complainant was found to not be “protected individual” where they did not apply for citizenship until five years after becoming eligible).

For these reasons, the Court finds that Complainant has not stated a claim for which relief can be granted relative to her document abuse claim, and DISMISSES the document abuse claim.

III. ORDER TO SHOW CAUSE – RETALIATION CLAIM

Complainant's only remaining claim is her claim of retaliation. 8 U.S.C. § 1324b(a)(5). While this claim appears to state a claim upon which relief can be granted, Complainant's decision not to participate in these proceedings (demonstrated through her lack of response to the Court's last two orders), causes the Court to conclude she may have abandoned her Complaint. Abandonment of the Complaint could result in its dismissal, a point previously raised to Complainant through the Court's recent orders.⁵

Prior to dismissing this Complaint that may have been abandoned, the Court will provide an opportunity to Complaint to be heard. Complainant must to show cause by October 8, 2024, as to why her retaliation claim under 8 U.S.C. § 1324b(a)(5) should not be dismissed based on abandonment (i.e. she must submit a filing stating she does not intend to abandon her Complaint). Respondent may file any response to Complainant's submission within 10 days of receipt. If no response to this Order is received by the prescribed date, Complainant's remaining retaliation claim will be deemed abandoned and dismissed.

SO ORDERED.

Dated and entered on September 17, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁵ As the Court stated in its previous order, “[i]f 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.” *Contreras*, 16 OCAHO no. 1440d, at 3 (referring to 28 C.F.R. § 68.37(b)'s authorization to dismiss complaints based on abandonment).