

ZAJI OBATALA ZAJRADHARA,
 Complainant,
 v.
 COSTA WORLD CORPORATION,
 Respondent.

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) 8 U.S.C. § 1324b Proceeding
) OCAHO Case No. 2024B00011
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¹ An answer filed at this juncture would be untimely; however, Respondent is not precluded from submitting an untimely answer with an explanation providing good cause for the delay. *See United States v. Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022) (“As to the consideration of untimely filed submissions, the Court employs a standard of good cause in deciding whether to credit a party’s explanations and exercises discretion in accepting a late filing.”).

On April 16, 2024, this Court issued an Order to Show Cause – Jurisdiction & Deficient Complaint, ordering Complainant to submit a filing explaining his position on subject matter jurisdiction and his national origin claim within 30 days of receipt of the order. *Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546, 3 (2024).² The Court also ordered Complainant submit a filing explaining why his retaliation claim under § 1324b(a)(5) should not be dismissed for failure to state a claim upon which relief can be granted within 30 days of receipt of this order. *Id.*

Because Complainant sent *ex parte* communications to the Court staff via email (providing a status update on his progress towards submitting a filing), the Court issued a Notice & Order to Complainant – Status Following Order to Show Cause on October 31, 2024. *Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546a (2024). In that Notice, the Court ordered Complainant to “provide a status update on whether he is in a position presently to respond to the Order to Show Cause” by December 20, 2024. *Id.* at 2.

On November 25, 2024, Complainant submitted a filing labeled Layman’s Response to Court’s Order & Status. In the filing, Complainant addresses the Court’s Order to Show Cause regarding the Court’s jurisdiction over Complainant’s national origin discrimination claim, raises other, unrelated matters, and requests a variety of relief. Resp. Order 2-3. Given Complainant’s pro se status, the Court construes the filing as Complainant’s Response to the April 16, 2024 Order to Show Cause.

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 states that there was “a clerical error in the Complainant’s initial calculations regarding the number of employees” but that this “does not invalidate the core facts of case.” Resp. Order 2. Although it is unclear based on Complainant’s filing how many employees he is alleging Respondent employees, 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

² 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>.

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 February 14, 2025. 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). As guidance, the Court notes Complainant may use the “Complaint Form” to provide an amended complaint.

III. RETALIAION 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.

In support of his retaliation allegation, Complainant states the Respondent “has repeatedly ignored [his] applications . . . because [he has] in the Past filed both federal and local Complaint – pointing out this Companies [sic] fraudulent Practices.” Compl. 9. Complainant also asserts that he is being retaliated against for “repeatedly attempting to bring” Respondent’s fraudulent visa practice to the attention of federal authorities. Compl. 7. In his Response to Court’s Order, Complainant provides no clarity as to his protected activity in this forum, rather he makes broader arguments regarding “a systemic pattern of corruption and discrimination within the CNMI labor system” and asserts that Respondent has failed “to adequately document its compliance” with certain visa programs. Resp. Order 2, 3. As this Court has previously explored, “[a]ttempts to expose visa fraud do not constitute protected activity” under 8 U.S.C. § 1324b. *Zajradhara v. Jin Joo Corp.*, 19 OCAHO no. 1554a, 3 (2024).

As this Court previously explained, “[t]o state a claim for retaliation under [8 U.S.C.] § 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 proceedings, or to interfere with her rights or privileges secured specifically under § 1324b.’” *Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546 at 3 (quoting *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 2 (2020)).

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).

IV. CLARIFICATION OF COMPLAINT CONTENTS & ANSWER STATUS

Parties should note that, at present, only the Complainant’s citizenship discrimination allegation remains with any certainty. 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 its 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 December 12, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge