

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	OCAHO Case No. 2024A00112
)	
MAYA DEL SOL, LLC)	
D/B/A MAYA DEL SOL,)	
Respondent.)	
)	

Appearances: Elizabeth Earleywine, Esq. and Justin Burrows, Esq., for Complainant¹
Amy L. Peck, Sarah J. Millsap, Esq., and David A. Calles Smith, Esq., for
Respondent

ORDER GRANTING MOTION FOR LEAVE TO FILE
AMENDED ANSWER AND AFFIRMATIVE DEFENSES

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 14, 2024, alleging that Respondent, Maya del Sol, LLC, violated 8 U.S.C. §§ 1324a(a)(1)(B) and (a)(2). On July 24, 2024, Respondent filed its Answer.

On August 19, 2024, Respondent filed its Motion for Leave to File Amended Answer and Affirmative Defenses (Motion to Amend), along with its proposed Amended Answer and Affirmative Defenses. Complainant, after receiving an extension from the Court, filed its Response to Respondent's Motion to Amend on September 19, 2024.

¹ On December 4, 2024, Complainant filed a Motion to Substitute Counsel, with Elizabeth Earlywine replacing Ellen Krupp as counsel for Complainant. Complainant subsequently filed a Motion to Withdraw Ellen Krupp as counsel on December 5, 2024, and a Notice of Appearance for Elizabeth Earlywine on December 9, 2024. The Court finds good cause for the substitution and therefore Complainant's Motion to Substitute Counsel is granted. The certificate of service and appearances line have been updated accordingly.

II. LEGAL STANDARDS

OCAHO Rule 68.9(e) provides for the amendment of pleadings and “is ‘analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,’ a permissible guidance in OCAHO proceedings.” Talebinejad v. Mass. Inst. Tech., 17 OCAHO no. 1464a, 2 (2023) (quoting United States v. Valenzuela, 8 OCAHO no. 1004, 3 (1998) and citing 28 C.F.R. § 68.1). Federal Rule of Civil Procedure 15(a)(1) directs that “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it . . . ,” otherwise, Rule 15(a)(2) states that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

In that this case arises in Illinois, the Court will also look to the Seventh Circuit’s application of Federal Rule of Civil Procedure 15. The Seventh Circuit has held that “it is within the sound discretion of a district court to allow a defendant to amend his answer to a complaint if the plaintiff will not be prejudiced by the delay.” Wallace v. Baldwin, 55 F.4th 535, 541 n.6 (7th Cir. 2022) (citing Fed. R. Civ. P. 15(a)(2) and Burton v. Ghosh, 961 F.3d 960, 965 (7th Cir. 2020)).

III. DISCUSSION

Respondent filed its Answer on August 19, 2024. To amend the Answer “as a matter of course” pursuant to Rule 15(a)(1), Respondent would have needed to make the amendment before September 9, 2024. Respondent did not seek to amend its Answer by that date, and so it properly sought leave of the Court to amend the Answer on September 19, 2024.

In its motion, Respondent cites the position taken by Complainant in separate litigation “that a party may waive certain constitutional defenses, . . . if they are not raised in a party’s first responsive pleading filed before an administrative body.” Mot. Amend 1–2 (referencing constitutional defenses arising out of the Supreme Court’s holdings in SEC v. Jarkesy, 603 U.S. ____ (2024), and Loper Bright Enters. v. Raimondo, 603 U.S. ____ (2024)). Respondent “seeks to amend its Answer out of caution, in order to preserve all applicable defenses.” Id. at 2. Respondent adds that “Complainant will not suffer unfair prejudice because of the amendment to [Respondent’s] Answer.” Id. In its Response, Complainant stated it “is not opposed to respondent amending its answers but reserves argument on the substance of such positions taken, as well as the affirmative defenses posited.” C’s Resp. to Mot. Amend 1.

The Court finds the amendment will not prejudice Complainant and that the conditions of 28 C.F.R. § 68.9(e) and Federal Rule of Civil Procedure 15(a)(2) are met. Accordingly, Respondent’s Motion for Leave to File Amended Answer and Affirmative Defenses is GRANTED, and the Court accepts Respondent’s Amended Answer, attached as Exhibit A to its motion, in lieu of the original pleading.

SO ORDERED.

Dated and entered on December 11, 2024.

Honorable John A. Henderson
Administrative Law Judge