

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

March 6, 2025

MIKHAIL NAZARENKO,)	
Complainant,)	
)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00056
)	
SUPPORTYOURAPP, INC.,)	
Respondent.)	
_____)	

Appearances: Mikhail Nazarenko, pro se Complainant
Petro Bondarevskyi, for Respondent

ORDER GRANTING WITHDRAWAL OF COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Mikhail Nazarenko, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 5, 2024. Complainant alleges that Respondent, SupportYourApp, Inc., discriminated against him based on his citizenship status and national origin in violation of 8 U.S.C. § 1324b(a)(1) when he was not hired for a customer support consultant position, and asserts retaliation and unfair documentation practices in violation of 8 U.S.C. §§ 1324b(a)(5) & (6). Respondent filed an Answer and Motion to Dismiss on April 30, 2024.

On June 12, 2024, Complainant submitted a filing titled Response and Motions, requesting, among other things, additional time to respond to the Respondent’s Answer and to oppose the Motion to Dismiss. Resp. and Motions 1. In its August 1, 2024 Order on Motions, the Court granted Complainant extensions to respond to the Answer and to the Motion to Dismiss, until August 28, 2024. On August 10, 2024, Complainant submitted a filing that the Court construed as a Response to the Motion to Dismiss.

On February 12, 2025, the Court issued an Order Granting Motion to Dismiss and to Show Cause. *Nazarenko v. SupportYourApp, Inc.*, 19 OCAHO no. 1532c (2025).¹ The Court granted Respondent’s motion to dismiss, which addressed Complainant’s citizenship status and national origin discrimination claims. *Id.* at 3-4. Because the Motion to Dismiss did not address Complainant’s retaliation or documentary practices claims, the Court issued Orders to Show Cause as to why those allegations state claims. *Id.* at 4-6. The Court also denied Complainant’s motion to amend the Complaint to add an additional Respondent, *id.* at 6, and stayed discovery pending adjudication of the Orders to Show Cause, *id.* at 7.

Also on February 12, 2025, Complainant responded to the Court’s Order. Complainant first explained that if he “stated . . . a [claim] (for retaliation), it was an accidental unconscious mistake.” Resp. Order 1. Next, Complainant addressed his documentary practices claim, stating that “an employee” of Respondent had “mistakenly called [him] a person subject to US sanctions” which Complainant viewed as a violation of 8 U.S.C. § 1324b’s documentary practices provision. *Id.* Finally, Complainant made clear that he “would . . . like to waive absolutely all [his] complaints” against Respondent. *Id.* After researching Respondent, Complainant learned about the company’s efforts to support “Ukrainians affected by the war” and, given this, he now finds that “making any claims against [Respondent]” would be a “violation of [his] . . . ethics.” *Id.*

To date, Respondent has not submitted a response to Complainant’s filing and the default 10-day deadline for a response has now passed. *See* 28 C.F.R. § 68.11(b). Complainant’s filing is now ripe for adjudication.

II. LEGAL STANDARDS

OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024),² do not directly address voluntary dismissal upon motion from the Complainant. *United States v. La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, 2 (2021). OCAHO’s Administrative Law Judges, instead, look to the Federal Rules of Civil Procedure, a permissible guideline in a situation not provided for in OCAHO’s Rules or applicable statutes. *See* 28 C.F.R. § 68.1. Federal Rule of Civil Procedure 41(a)(1) allows voluntary dismissal of a complaint without a court order where the complainant

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>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

dismisses the complaint before an answer or motion for summary judgment are filed, or where the parties submit a jointly signed stipulation of dismissal. Federal Rule of Civil Procedure 41(a)(2) allows courts to dismiss a complaint that plaintiffs request by court order, “on terms that the court considers proper.”

“Under OCAHO case law, ‘[i]t has been consistently recognized that the Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless the opposing party will suffer some plain legal prejudice as a result.’” *Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373f, 3 (2024) (quoting *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381p, 2 (2024)). “‘Legal prejudice’ is prejudice to some legal interest, some legal claim, or some legal argument.” *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citing *Zajradhara v. Changxing Corp.*, 14 OCAHO no. 1356, 1 (2020)). “[T]he threat of future litigation does not constitute plain legal prejudice.” *Id.* Likewise, in the jurisdiction of the Third Circuit, in which this case arises,³ a court has discretion over whether to grant a motion to withdraw the Complaint once either an answer or motion for summary judgment has been filed, but “must consider ‘the presence of any prejudice to the defendant by the draconian measure of dismissing [a] plaintiff’s complaint.’” *Est. of Ware v. Hosp. of the Univ. of Pa.*, 871 F.3d 273, 285 (3d Cir. 2017) (quoting *Ferguson v. Eakle*, 492 F.2d 26, 28 (3d Cir. 1974)). Again, the threat of future litigation is insufficient to constitute prejudice. *Id.*

A dismissal under Rule 41(a)(2) is without prejudice unless the Court orders otherwise. This Court “has broad discretionary power over whether to grant a motion for voluntary dismissal, with or without prejudice, pursuant to Rule 41(a)(2).” *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3. A dismissal with prejudice means that “a subsequent complaint between the same parties involving the same or substantially similar issues . . . is typically barred by *res judicata*.” *US Tech Workers v. Slalom, Inc.*, 21 OCAHO no. 1617, 6 n. 3 (2024) (CAHO Order).

III. ANALYSIS

Here, an Answer (titled Response to Complaint) was filed and Complainant’s request to withdraw the Complaint was not a joint stipulation. The Court therefore considers the request under Federal Rule of Civil Procedure 41(a)(2). Complainant wishes to withdraw his Complaint after learning information about Respondent that led him to conclude it would be a “violation of [his] own ethics” to continue this litigation. Resp. Order 1. Respondent’s Answer contains a number of affirmative defenses, but Respondent did not file any counterclaims.

The Court has not been made aware of any plain legal prejudice that would result from dismissal of the Complaint and Respondent did not file any opposition to Complainant’s request. Although an answer and a motion to dismiss were already filed and the motion to dismiss has been adjudicated, the parties have not engaged in discovery. As the record does not reflect any legal prejudice and Respondent has no motions pending and raised no objection to the withdrawal of

³ Since the Respondent is located in Delaware, the Court may look to the case law of the relevant United States Court of Appeals, here the Third Circuit. See 28 C.F.R. § 68.57 (designating the United States Court of Appeals “in which the violation is alleged to have occurred or in which the employer resides or transacts business” as the appropriate Court of Appeals for review of a final agency order from OCAHO).

the Complaint, the Court finds voluntary dismissal under Federal Rule 41(a)(2) proper. The Court will dismiss with prejudice, however. The Court has already dismissed the primary causes of action in the case, and Complainant's response to the Orders to Show Cause indicated that he did not intend to raise a retaliation claim. His clarification of the final claim, the documentary practices claim, reveals that it, too, is likely dismissible were the Court to adjudicate it on the merits.⁴ In weighing the equities to Respondent, dismissal with prejudice places the Respondent in the same position as he would have been had the Court adjudicated the motion on the merits, and given that the Court has all but resolved the issue on the merits, it is the most appropriate disposition.

Complainant's request to withdraw the Complaint is GRANTED. The case is now DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on March 6, 2025.

Honorable Jean C. King
Chief Administrative Law Judge

⁴ To establish a case of document abuse in violation of 8 U.S.C. § 1324b(a)(6), a complainant must show that the requests for documents occurred in connection with the employment verification process required by 8 U.S.C. § 1324a(b). *Johnson v. Progressive Roofing*, 12 OCAHO no. 1295, 4 (2017). Complainant clarifies that his claim relates to an allegedly mistaken statement about whether he is subject to U.S. sanctions, which related to who could qualify for the position.

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. *See* 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.