

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

VALENTIN AGUILERA VILLANUEVA,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2025B00019
)	
PEPBOYS-MANNY, MOE & JACK, LLC,)	
Respondent.)	
)	

ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On November 22, 2024, Complainant Valentin Aguilera Villanueva filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent Pepboys, alleging it discriminated on the basis of citizenship status and asked for more or different documents than required for the employment eligibility verification process, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6).

On December 11, 2024, the Chief Administrative Hearing Officer (CAHO) mailed a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices and a copy of the complaint (NOCA) to Respondent and its corporate counsel at the addresses Complainant provided in the complaint. Through the NOCA, the CAHO informed Respondent that it “has the right to file an answer to the complaint. The answer (and two copies) must be filed within thirty (30) days after receipt of the attached complaint by either Respondent or its attorney (or representative) of record.” Notice Case Assign. ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9). The CAHO advised that “[i]f the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived its right to appear and contest the allegations of the complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.” Id. (citing 28 C.F.R. § 68.9(b)).

Postal service tracking information for the NOCA indicates that it was delivered to Respondent’s corporate counsel on December 16, 2024, and to Respondent’s corporate address on December 18, 2024. Accordingly, the answer was due by January 21, 2025.¹ To date, Respondent has not filed an answer or otherwise participated in these proceedings.

¹ Per 28 C.F.R. § 68.8(b), five days are added to the date of compliance with a document transmitted by mail. Per 28 C.F.R. § 68.8(a), the date of the triggering event (in this case, the receipt of the order) is not counted in determining the date of compliance.

II. ORDER TO SHOW CAUSE – ANSWER

Under OCAHO’s Rules of Practice and Procedure, to contest a material fact alleged in the complaint, a respondent must file an answer. 28 C.F.R. § 68.9(c). “If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived its right to appear and contest the allegations of the complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.” Notice Case Assign. ¶ 4 (citing 28 C.F.R. § 68.9(b)). “When default is entered as a result of the respondent’s failure to file an answer, the Court ‘accept[s] as true all of the factual allegations of the complaint[.]’” United States v. Commander Produce, 16 OCAHO no. 1428c, 5 (2022) (quoting United States v. Cont’l Forestry Serv. Inc., 6 OCAHO no. 836, 140, 142 (1996)).

“However, it has long been OCAHO’s practice to issue an order to show cause before entering a default.” United States v. Glen Echo Pharmacy, 18 OCAHO no. 1520, 2 (2024) (citing United States v. Shine Auto Serv., 1 OCAHO no. 70, 444 (1989) (Vacating Order Denying Default Judgment)).

Respondent’s answer was due January 21, 2025, and to date, Respondent has not filed a submission. Accordingly, Respondent is ORDERED to file an answer, pursuant to 28 C.F.R. § 68.9(c), within 21 days of the date of this Order. Respondent is FURTHER ORDERED to file a submission that demonstrates good cause for its failure to timely file an answer within 21 days of the date of this Order.

Should Respondent fail to respond as ordered or if it cannot show good cause, the Court may enter a default judgment against Respondent pursuant to 28 C.F.R. § 68.9(b).

III. ORDER TO SHOW CAUSE – COMPLAINANT’S PROTECTED STATUS

OCAHO’s Rules of Practice and Procedure provide that “[t]he Administrative Law Judge may dismiss the complaint, based on a motion by the respondent or without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted.” 28 C.F.R. § 68.10(b). However, “the Administrative Law Judge shall not dismiss a complaint in its entirety for failure to state a claim upon which relief may be granted, upon on his or her own motion, without affording the complainant an opportunity to show cause why the complaint should not be dismissed.” Id.

Under 8 U.S.C. § 1324b(a)(1), “[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual . . . in the case of a protected individual . . . because of such individual’s citizenship status.” “Protected individuals” are defined in § 1324b(a)(3) and include: (1) United States citizens, (2) certain legal permanent residents, (3) certain individuals admitted for temporary residence under sections 1160(a) or 1255a(a)(1) of the INA, and (4) individuals admitted to the United States as refugees or asylees. 8 U.S.C. § 1324b(a)(3)(B).

Further, “[d]ocument abuse covers acts with an intent to discriminate based on national origin or citizenship status, but to the extent it involves a claim of an intent to discriminate based on citizenship status, . . . the undersigned finds that the provisions of 8 U.S.C. § 1324b(a)(6) . . . only apply to protected individuals as defined in 8 U.S.C. § 1324b(a)(3).” United States v. Mar-Jac Poultry, 12 OCAHO no. 1298, 33 (2017).

Complainant states in the complaint that he is neither a United States citizen nor a lawful permanent resident, but rather, an “alien authorized to work in the United States.” Compl. 2 § 3a. When prompted to identify his citizenship status or visa type, as well as the type of work authorization document he possessed at the time of the alleged discrimination, Complainant wrote, “Category (c)(10) Cancellation of Removal Applicant,” and “Form I-766 EAD and Form I-797C Notice of Action (providing extension),” respectively. Compl. 2 §§ 3a.6–7, 3 § 3b.2–3.

Given these statements made by Complainant in the complaint, it is uncertain to this Court whether he meets the definition of a “protected individual”, as applicants for cancellation of removal are not mentioned in 8 U.S.C. § 1324b(a)(3). Failure to plead his status as a “protected individual” would result in Complainant’s failure to state a claim of citizenship status discrimination and document abuse, which are the only two claims alleged in the complaint. As a result, the entire complaint is potentially subject to dismissal for failure to state a claim.

Therefore, pursuant to 28 C.F.R. § 68.10(b), the Court ORDERS Complainant to file a submission showing good cause why his citizenship status discrimination and document abuse claims should not be dismissed for failure to state a claim. Complainant must submit the filing within 21 days of the date of this Order. Failure to respond to the Court’s order or to show good cause may result in the complaint’s dismissal for failure to state a claim.

IV. ORDERS

Respondent is ORDERED to file an answer, pursuant to 28 C.F.R. § 68.9(c), within 21 days of the date of this Order.

Respondent is FURTHER ORDERED to file a submission that demonstrates good cause for its failure to timely file an answer, within 21 days of the date of this Order.

Complainant is ORDERED to file a submission that demonstrates good cause for his meeting the definition of a “protected individual” as defined in 8 U.S.C. § 1324b(a)(3), within 21 days of the date of this Order.

SO ORDERED.

Dated and entered on February 27, 2025.

Honorable John A. Henderson
Administrative Law Judge