

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

CASSANDRA MONTY,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00036
USA2GO QUICK STORES,)	
Respondent.)	
)	

SUPPLEMENTAL BRIEFING ORDER

This action arises under the unfair immigration-related employment practices provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On June 2, 2021, Complainant Cassandra Monty filed a complaint asserting claims arising under 8 U.S.C. § 1324b against Respondent USA2GO Quick Stores.

In her complaint, Complainant makes varying allegations regarding unfair documentary practices. In the section titled Basis of Discrimination, Complainant answered “Yes” to the question “Were you asked for more or different documents than required for the employment eligibility verification process[?]” Compl. 8. Also, in the section titled “Discrimination in Hiring, Recruitment, or Referral for a Fee,” for the reason she was not hired, Complainant wrote:

I did not submit the application for employment provided by new ownership because of too much personal information being repeated[ly] asked for and an included Form I-9, expired as of 08/31/2012. My refusal to submit these documents resulted in being fired via telephone call, the day after the deadline to submit the application.

Id. However, in the Documentation Practices section, Complainant answered “No” to the questions “Did the Business/Employer reject or refuse to accept the documents you presented to prove your identity and/or show that you are authorized to work in the United States?” and “Did the Business/Employer ask you for more or different documents than required for the employment eligibility verification process . . . to show you are eligible to work in the United States?” *Id.* at 12.

On May 5, 2022, Respondent filed its Motion for Summary Decision (R’s MSD). In its motion, Respondent asserts that “Complainant cannot demonstrate a genuine issue of material fact

that would support any of her claims,” and requests that the Court “grant its Motion for Summary Decision, in its entirety, and dismiss Complainant’s claims as a matter of law.” R’s MSD 11. In its briefing, Respondent argues that the Court must dismiss Complainant’s claims for (1) national origin discrimination; (2) citizenship status discrimination; and (3) retaliation. *Id.* at 8–10. Complainant did not respond to Respondent’s motion, nor did she request an extension of time to do so.¹

The Court construes the pleadings of pro se litigants such as Complainant liberally. *See Zu v. Avalan Valley Rehab. Ctr.*, 14 OCAHO no. 1376, 9 (2020)² (citation omitted); *Williams v. Curtis*, 631 F.3d 380, 383 (6th Cir. 2011) (“Pro se complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” (citation omitted)). Although Complainant’s allegations are inconsistent, they raise a question as to whether Complainant’s complaint may be liberally construed to assert a claim for unfair documentary practices under 8 U.S.C. § 1324b(a)(6), a distinct claim from claims of discrimination under 8 U.S.C. § 1324b(a)(1). *See, e.g., U.S. v. Mar-Jac Poultry, Inc.*, 12 OCAHO no. 1298, 1821 (2017).

Neither party has briefed whether Complainant’s allegations can be liberally construed to raise a claim for unfair documentary practices pursuant under 8 U.S.C. § 1324b(a)(6), or, if so, whether the pleadings, affidavits, or material obtained in this case show that there is no genuine issue as to any material fact and that Respondent is entitled to summary decision on this claim. Therefore, the Court orders supplemental briefing on this issue.

Respondent’s supplemental brief is due by Nov. 28, 2022. If Complainant wishes to respond, she may do so by Dec. 12, 2022. The Court emphasizes that the parties’ supplemental

¹ The Court notes that in her Final Prehearing Statement filed June 26, 2022, Complainant makes several arguments in opposition to Respondent’s Motion for Summary Decision and attaches several exhibits. *See* R’s FPHS 2–3. To the extent that this submission can be construed to constitute Complainant’s opposition to Respondent’s motion, it was filed after the deadline to do so—June 6, 2022—and Complainant did not seek an extension, nor express an intent that her Final Prehearing Statement serve as her response to Respondent’s motion. Thus, the Court declines to consider this submission as a response to Respondent’s motion. *See, e.g., Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (“Where, for example, a pro se litigant fails to comply with an easily understood court-imposed deadline, there is no basis for treating that party more generously than a represented litigant.”).

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 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 “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

briefing must be limited to the issue of whether the complaint may be read to raise an unfair documentary practices claim, and if so, whether Respondent is entitled to summary judgment for such a claim. This order has no effect on the stay of proceedings pending disposition of Respondent's Motion for Summary Decision previously instituted in this case.

SO ORDERED.

Dated and entered on November 14, 2022.

Honorable John A. Henderson
Administrative Law Judge