

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

November 29, 2022

PRAKASH SINHA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2020B00064
	)	
INFOSYS LIMITED,	)	
Respondent.	)	
_____	)	

Appearances: Prakash Sinha, pro se Complainant  
Patrick Shen, Esq., for Respondent

NOTICE OF INTENT TO CONVERT MOTION

I. INTRODUCTION

This case arises under the antidiscrimination 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(a) (2018). On April 15, 2020, Complainant, Prakash Sinha, filed a complaint, pro se, with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Infosys Limited, discriminated against him based on his citizenship and national origin by declining to hire him, in violation of the anti-discrimination provisions of § 1324b.

Due to Respondent’s failure to timely answer the complaint, the Court issued a Notice of Entry of Default on July 2, 2020. Respondent did not respond to the Notice of Entry of Default by the deadline of July 17, 2020. Given the record before the Court and Respondent’s lack of participation in the case, the Court issued an Order of Inquiry to Complainant on September 15, 2020. *Sinha v. Infosys*, 14 OCAHO no. 1373 (2020).<sup>1</sup> To ascertain whether the Court has

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<sup>1</sup> 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

subject matter jurisdiction over Complainant's claims, the Court ordered Complainant to provide additional information regarding (1) the number of employees employed by Respondent; (2) the charges he filed against Respondent before the EEOC and the status of that case; and (3) the nature and extent of the alleged discriminatory conduct by Respondent to determine the timeliness of Complainant's filings. *Id.* at 5–6. Complainant responded to the Order on October 20, 2020, attaching evidence including correspondence with Infosys employees. *See* C's Resp. to Order of Inq.

On or about October 27, 2020, counsel for Respondent entered his appearance and filed a Request for Administrative Record and Motion for Enlargement of time, noting that "Respondent's legal department only learned recently that Respondent was a party to the above-captioned matter when it discovered OCAHO's Order of Inquiry . . . on the Internet." On November 25, 2020, the Court ordered Respondent to file both its answer to the complaint and its response to the Notice of Entry of Default by December 11, 2020, showing good cause as to why it failed to timely file its answer.

On December 10, 2020, Respondent filed its answer to the complaint and response to the Notice of Entry of Default. On January 29, 2021, the Court determined that Respondent established good cause for its untimely answer, ordered the answer accepted, and discharged the Notice of Entry of Default against Respondent.

On February 23, 2021, Respondent filed a Motion to Dismiss for failure to state a claim. *See* MTD 1 (citing 28 C.F.R. § 68.10). Respondent first argues that OCAHO does not have subject matter jurisdiction over Complainant's national origin discrimination claim because Respondent has 15 or more employees, asking the Court to take administrative notice of a page on Infosys' website containing its annual report, and citing to Complainant's response to the Order of Inquiry. *Id.* at 8. Respondent next argues that Complainant's claims are "legally stale and must be dismissed because he filed his charge of discrimination with IER more than 180 days after Infosys rejected his employment." *Id.* at 9. In support of this argument, Respondent refers to allegations in the complaint as well as information contained in Complainant's response to the Order of Inquiry. *See id.* Finally, Respondent argues that Complainant has failed to plead sufficient facts to support a prima facie claim of discrimination. *Id.* at 11–14.

Complainant filed a Response to Respondent's Motion to Dismiss on May 20, 2021.

## II. DISCUSSION

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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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

As the Court noted in its Order of Inquiry, an individual, like Complainant, who alleges an unfair immigration-related employment practice under 8 U.S.C. § 1324b must file a charge with the United States Department of Justice’s Immigrant and Employee Rights Section (IER) within 180 days of the date of the alleged discrimination, retaliation, and/or document abuse. 8 U.S.C. § 1324b(d)(3); 28 C.F.R. § 68.4(a). The timely filing of a charge with IER is “a prerequisite for filing a private action with OCAHO.” *Toussaint v. Tekwood Assocs., Inc.*, 6 OCAHO no. 892, 793 (1996).

A party may move for dismissal based on an affirmative defense, such as statute of limitations, but the defense must “appear[] on the face of the complaint,” and it “must be apparent from ‘the plaintiff’s own allegations’ that a defense is fatal to the claim.” *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.*, 27 F.4th 313, 320 (5th Cir. 2022) (citing, inter alia, 5B Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1357 (3d ed. 2021)); *see also Ndzerre v. Wash. Metro. Area Transit Auth.*, 13 OCAHO no. 1306a, 5 (2020) (noting that prior to discovery and based off the face of the complaint, the Court was “unable to discern” whether a discrimination claim was untimely).

Here, as discussed in the Order of Inquiry, a statute of limitations defense based on the untimely filing of Complainant’s charge with IER is not clear from the face of the complaint and its attachments. In Complainant’s IER charge, he alleges that the discrimination took place on October 12, 2019, but when asked to provide specific information about the alleged discrimination in his IER filing, Complainant generally references job interviews “[d]uring 2019 and the prior two years.” Compl. 17. In contrast, Section 7 of his complaint alleges unfair immigration-related employment discrimination by Respondent pertaining to a job for which he applied on September 30, 2019. *Id.* at 6. Complainant then references job interviews with Infosys over a broader two-year period falling outside the 180-day filing period. *Id.* at 7. Given these discrepancies, it is not clear from these allegations whether Complainant’s claims are time-barred, nor whether a defense such as equitable estoppel may be appropriate.

In support of its motion to dismiss Complainant’s claims as untimely, Respondent relies on information found only in Complainant’s response to the Court’s Order of Inquiry, not in the complaint or its attachments. Respondent argues that the most recent rejection of one of Complainant’s job applications occurred on May 27, 2019. MTD 9. Respondent asserts that Complainant was interviewed for a job on June 19, 2019, and before receiving a response, he sent a letter to Respondent threatening legal action on August 10, 2019. *Id.* Moreover, Respondent writes that it invited Complainant to “explore career opportunities” on September 19 and 30, 2019, and Complainant sent emails on September 27 and October 29, 2019 demanding payment for not pursuing legal action. *Id.*

“When matters outside the pleadings are considered, a motion to dismiss may be converted to one for summary decision.” *Barone v. Superior Wash & Gasket Corp.*, 10 OCAHO no. 1176, 2

(2013). If the Court converts a motion to dismiss, “the parties must be given appropriate notice so that they have a reasonable opportunity to present relevant materials.” *Id.* Because a statute of limitations defense is not clear from the face of the complaint and its attachments, and because Respondent relies on Complainant’s response to the Order of Inquiry in support of its motion to dismiss on this ground, the Court will convert the motion to dismiss on timeliness grounds to a motion for summary decision, and provide the parties an additional opportunity to submit additional relevant materials, to the extent they wish the Court to consider materials not already in the record.<sup>2</sup>

### III. CONCLUSION

It is hereby ORDERED that Respondent’s motion to dismiss is CONVERTED TO A MOTION FOR SUMMARY DECISION as to the motion to dismiss Complainant’s claims as untimely. Within twenty-one (21) days of this Order, Respondent may file materials of evidentiary quality in support of summary decision on this ground, after which Complainant will have an additional twenty-one (21) days in which to file materials in opposition.

SO ORDERED.

Dated and entered on November 29, 2022.

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Jean C. King  
Chief Administrative Law Judge

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<sup>2</sup> Respondent refers to information from outside the complaint throughout the motion to dismiss, not only in relation to its timeliness argument. However, as to Respondent’s motion to dismiss Complainant’s national origin discrimination claim for lack of subject matter jurisdiction, in determining whether there is a factual basis to support the Court’s exercise of subject matter jurisdiction, the Court is not limited to the allegations in the complaint and may consider other material in the record. *Ugochi v. N.D. Dep’t Human Servs.*, 12 OCAHO no. 1304, 2 (2017) (citing *Osborn v. United States*, 918 F.2d 724, 728–30 (8th Cir. 1990)). Moreover, as to Respondent’s motion to dismiss for failure to state a claim, in “considering a motion to dismiss, the [C]ourt must limit its analysis to the four corners of the complaint.” *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997) (citations omitted). However, as discovery has not occurred in this matter, and the parties were not directed to provide information related to whether Complainant has adequately alleged discrimination in the Order of Inquiry, the Court finds it would be premature to convert this motion to one for summary decision as to this ground for dismissal.