

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

October 14, 2022

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00009
	)	
HDH CO., LTD,	)	
Respondent.	)	
_____	)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant  
Stephen J. Nutting, Esq., for Respondent

ORDER ON MOTIONS AND ISSUING STAY OF PROCEEDINGS

I. PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On December 1, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, HDH Co., Ltd., discriminated against him on account of his citizenship status and national origin. On February 17, 2022, the Court issued an Order to Show Cause to Respondent for its failure to file an answer.

On March 28, 2022, Complainant filed a Motion for Entry of Default Judgment. On March 30, 2022, the Court issued an Order to Show Cause on Jurisdiction. *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417, 1 (2022).<sup>1</sup> On April 25, 2022, the Court issued an Order Disclosing Ex Parte

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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 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



Communication. *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417a, 1 (2022). On May 18, 2022, Complainant filed a Motion for Extension to File Response to Court and Motion for Administrative Subpoena. On June 2, 2022, the Court issued an Order on Complainant's Motion for Extension of Time to File Response and Motion for Administrative Subpoena. *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417b, 1 (2022).

On June 28, 2022, the Court received Respondent's Notice of Appearance, Answer, and a Motion to Dismiss with supporting Memorandum and Declaration. On June 29, and again on September 28, 2022, Complainant filed a Motion for Addition of Third Party. On July 7, 2022, Complainant filed a Motion to Respond to Respondent's Motion to Dismiss, as well as an addendum on July 12, 2022. On October 6, 2022, Respondent filed an Opposition to Motion for Addition of Third Party and Request for Ruling in Motion to Dismiss. On October 13, Complainant filed a Layman's Motion to Respond to Respondent's Motion to Dismiss and Rule 14.

This Order will address the extant Order to Show Cause for Respondent's Answer, the Order to Show Cause to Complainant on Jurisdiction, Respondent's Motion to Dismiss, and Complainant's Motion for Addition of Third Party.

## II. ORDER TO SHOW CAUSE FOR FAILURE TO FILE AN ANSWER

The Court's February 17, 2022, Order to Show Cause ordered Respondent to file an answer that comports with 28 C.F.R. § 68.9(b)<sup>2</sup> and to demonstrate good cause for its failure to timely file an answer, within twenty-one days of the Order. Accordingly, the response was due March 10, 2022. No response was received during that time.

While it appears the Court rejected a faxed filing from Respondent for lack of certificate of service on March 17, 2022, nothing more was filed until June 28, 2022. *See HDH Co.*, 16 OCAHO no. 1417, at 1 n.1. The Answer and the Motion and Memorandum in Support of the Motion to Dismiss are dated April 25, 2022, but the certificate of service is dated June 14, 2022. Further, neither filing contains any explanation for the failure to timely file the answer or timely respond to the order to show cause.

"A party that fails to answer a complaint within the time specified is already in default, whether or not that fact is officially noted." *United States v. Quickstuff, LLC*, 16 OCAHO no. 1265, 4 (2015) (citing *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 90 (1998)). Default must be excused before the party is permitted to answer. *Id.* (citation omitted). A showing of good cause is

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

<sup>2</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).



therefore a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted. *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993).

Moreover, OCAHO precedent instructs that where no timely response was made to a request for the entry of a default judgment and the respondent proffered no good cause for the failure to file a timely answer, it was error for the administrative law judge (ALJ) to deny the motion for entry of a default judgment and to permit a late filed answer. *See United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445–46 (1989) (Vacation by the CAHO of the ALJ’s Order Denying Default Judgment); *see also United States v. Kirk*, 1 OCAHO no. 72, 455, 456–57 (1989) (granting default judgment where response to show cause order did not establish good cause for failure to answer).

In this case, Respondent made no attempt to show good cause for its failure to timely file an answer. Likewise, Respondent did not proffer good cause for its failure to timely respond to the Court’s February 17, 2022, Order to Show Cause. Hence, the Court will not accept Respondent’s Answer. The Court consequently accepts the uncontested facts alleged in the Complaint as true, and a grant of default judgment may thus be appropriate if Complainant pleaded sufficient facts indicating jurisdiction and a prima facie violation. *See United States v. Cont’l Forestry Serv., Inc.*, 6 OCAHO no. 836, 140, 142 (1996); *Monjaras v. Blue Ribbon Cleaners*, 3 OCAHO no. 526, 1285, 1293–96 (1993).

### III. JURISDICTION

This takes us to the second issue in this case: jurisdiction. On March 30, 2022, the Court issued an Order to Show Cause on Jurisdiction because Complainant did not plead in the Complaint the number of employees Complainant employs. *See generally HDH Co.*, 16 OCAHO no. 1417, at 1. The Court gave Complainant sixty days to respond to the Order to Show Cause, meaning, a response was due on May 30, 2022. *Id.* at 2. The Court provided Respondent thirty days to reply after Complainant’s response. *Id.*

#### A. Complainant’s Filings

While Complainant does not appear to have directly responded to the Order to Show Cause on Jurisdiction, he responded to Respondent’s Motion to Dismiss, which addresses the issue of jurisdiction. This response was filed on July 5, 2022, with an addendum filed on July 12, 2022.<sup>3</sup> Complainant’s Motion for Addition of Third Party, filed on June 29, 2022, also seeks to add Mr. Cho Jin Koo (or Cho Jin Joo), which is ostensibly related to jurisdiction. These filings were within

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<sup>3</sup> OCAHO’s Rules permit one response to a motion. No further responses are permitted without leave of the Court. The Court will not consider the October 13 response which is, in any event, repetitive of prior filings in this case, and contains irrelevant and inflammatory statements. *See* 28 C.F.R. § 68.11(b) and *infra* Part IV. Lastly, no discovery motions are pending.



the time set by the Court to respond to the Order to Show Cause; therefore, the Court will accept the filings as responsive to that Order.

Complainant's Motion to Dismiss response reasserts his claim generally, and provides a number of emails, decisions, and settlement documents in other cases against Mr. Cho Jin Koo. In the addendum, Complainant then argues that HDH is an agent of Cho Jin Koo, and that HDH uses the services of Cho Jin Koo in hiring and obtaining visas. *See* Add. C's Resp. Mot. Dismiss 2–3. Complainant also argues that Cho Jin Joo is the actual employer, as that is who responds to his emails and applications. *Id.* at 2. Complainant states that HDH sublets or contracts the employees' services out, and therefore Cho Jin Koo is the actual client. *Id.* Complainant also asserts that there is a corporation, Jin Joo Corp. or Cho Jin Joo Corp. *See* Mot. Third Party 2 (June 29, 2022). Complainant did not attach any evidence or make any proffer regarding the number of employees employed by HDH, Cho Jin Koo or Cho Jin Joo Corp. nor did he provide any evidence that Cho Jin Koo is an employee.

#### B. Respondent's Filings

Through its Motion to Dismiss, Respondent asserts that OCAHO does not have jurisdiction over Respondent's claims because HDH Co. only has one employee. Mot. Dismiss 2. The motion contains a declaration from Cho Jin Koo, who asserts that he is the duly appointed Secretary of HDH Co. Ltd. Mot. Dismiss, Cho Dec. 1. Cho Jin Koo states that HDH Co. Ltd. is a company that owns a small commercial building in Saipan which contains eight residential apartments and space for three commercial businesses, all of which are leased to tenants. *Id.* He further declares that the company only has one employee who manages the property. *Id.* Cho Jin Koo identifies the President as Huh Dong Ho, a citizen and resident of the People's Republic of Korea. *Id.* Attached to the declaration are HDH Co. Ltd.'s Quarterly Withholding Tax Returns for 2020 and 2021, which reflect only one employee. Mot. Dismiss, Cho Dec. 2–16.

Respondent's October 6, 2022 filing (hereinafter the Reply) opposes Complainant's Motion for Addition of Third Party. The OCAHO Rules provide that replies to a motion must be made within ten days of that motion. 28 C.F.R. § 68.11(b). While the filing is not a timely response to Complainant's initial motion, given that Complainant has filed a subsequent motion, the Court will consider the Reply. The Reply reiterates arguments made in the motion to dismiss, states that Complainant has not provided evidence of this Court's jurisdiction in response to the motion to dismiss, and has not supported his claim that Mr. Cho Jin Koo is either employed by Respondent or is the employer. *See generally* Reply 1–3.

#### C. Discussion

As explained in the Order to Show Cause on Jurisdiction:



OCAHO has subject matter jurisdiction for claims based upon citizenship status if the employer employs more than three employees. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7 (2021) (citing 8 U.S.C. §§ 1324b(a)(1)(B), 1324b(a)(2)(A)). For claims based upon national origin, OCAHO has subject matter jurisdiction if the employer employs between four and fourteen workers. *See Sinha v. Infosys*, 14 OCAHO no. 1373, 2–3 (2020); *see also* 8 U.S.C. §§ 1324b(a)(1)(A), 1324b(a)(2)(B). The party invoking jurisdiction has the burden to establish that OCAHO has subject matter jurisdiction. *Id.* at 2 (citing *Windsor*, 12 OCAHO no. 1294 at 2).

*HDH Co.*, 16 OCAHO no. 1417, at 2. Here, Complainant states in the Complaint “I do not know how many employees the Business/Employer has.” Compl. 4. Similarly, Complainant answered “Don’t know/Unable to estimate” to the IER charge form question regarding Respondent’s number of employees. *Id.* at 15. Without knowing how many employees Respondent has, the Court cannot determine whether it has subject matter jurisdiction to adjudicate either the citizenship status or national origin discrimination claims.<sup>4</sup>

Complainant has not sought to amend his Complaint to plead the requisite number of employees, nor has he provided any evidence, or any argument that HDH Co. has the requisite number of employees. Instead, Complainant seeks to add Mr. Cho Jin Koo under Federal Rule of Civil Procedure 14. This Rule permits a defendant to bring in a third party who may be liable, or allows a plaintiff to bring in a third party when a claim is asserted against it. Fed. R. Civ. P. 14(a)(3), (b). Rule 14 is, on its face, inapplicable to Complainant.

Rather, Complainant seeks to amend the Complaint to add another party. As Complainant is pro se, the Court will construe the filing as such. The OCAHO Rules permit a complainant to amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties[.]” 28 C.F.R. § 68.9(e); *see also Ogunrinu v. Law Resources*, 13 OCAHO no. 1332, 4 (2019). This rule is analogous to and is modeled after the Federal Rule of Civil Procedure 15(a), and accordingly, it is appropriate to look for guidance in federal case law to determine whether to permit requested amendments under Rule 15(a). *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998) (citing 28 C.F.R. § 68.1, and then citing *United States v. Mr. Z Enters.*, 1 OCAHO no. 162, 1128, 1129 (1990)). Rule 15(a) provides that after a responsive pleading is served, the “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.” Fed. R. Civ. P. 15(a).

The United States Court of Appeals for the Ninth Circuit, the jurisdiction in which this case arises, has held that leave to amend should be applied with “extreme liberality,” and only be denied when

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<sup>4</sup> Complainant indicated in the Complaint that he was not retaliated against under 8 U.S.C. § 1324b(a)(5). Compl. 8, 11.



the following factors are present: “undue delay, bad faith or dilatory motive . . . repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . [or] futility of amendment.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Even so, futile amendments should not be permitted. *Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (citations omitted).

The issue is whether the complainant’s amendment would be futile. Complainant’s motion suffers from the same defect as the Complaint: he does not plead sufficient facts to show that this Court has jurisdiction over the claim. It is unclear whether he seeks to add Cho Jin Koo individually, or a company bearing his name. In neither case, however, does he assert how many employees Mr. Cho Jin Koo employs, or whether Cho Jin Koo himself is even an employee. Complainant still has not alleged the requisite number of employees for this Court to take jurisdiction. The addition of Cho Jin Koo as a Respondent would therefore not cure the defect in the pleading. Further, according to Complainant, the intent in adding Cho Jin Koo is “as a means of demonstrating to the court the current and past ‘PATTERN AND PRACTICE’ OF CW-1 VISA FRAUD EXERCISED BY THE CW-1 VISA APPLICANT: JIN JOO CORPORATION AKA CHO JIN KOO.” See Mot. Third Party 2 (Sept. 28, 2022). This Court does not have jurisdiction over CW-1 visa fraud, and therefore the intent behind the motion is not relevant to this proceeding. See *Zajradhara v. Ranni’s Corp.*, 16 OCAHO no. 1426a, 4 (2022) (citing *Montalvo v. Kering Americas, Inc.*, 14 OCAHO no. 1350, 3 (2020)). Complainant’s Motion for Addition of Third Party is denied.

Respondent’s Motion to Dismiss contains evidence indicating that the Court lacks jurisdiction over the Complaint.<sup>5</sup> See Mot. Dismiss 1–3, Cho Dec. 2–16. While Respondent furnished evidence showing that HDH only employs one person, the Court need not consider the evidence because Complainant has not alleged, nor sought to amend his Complaint to allege, how many employees HDH employs, despite this Court’s Order to Show Cause and the Respondent’s Motion to Dismiss. The Complaint does not plead sufficient facts to establish jurisdiction.

The appropriate disposition of a jurisdictionally deficient complaint is dismissal of the case. See *Boyd v. Sherling*, 6 OCAHO no. 916, 1113, 1120 (1997). However, the Court finds itself in a position wherein it is unable to execute this case disposition. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021); see, e.g., *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2–3 (2022); *Ravines de Schur v. Easter Seals Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no.

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<sup>5</sup> OCAHO precedent distinguishes between “facial” and “factual” motions to dismiss. “[A] ‘facial’ motion to dismiss alleges a mere defect in pleading that can be cured if the non-moving party makes appropriate amendments to the complaint. A [‘factual’] motion to dismiss, by contrast, alleges an incurable jurisdictional defect that deprives the court of any authority to adjudicate the dispute.” *Ruan v. United States Navy*, 8 OCAHO no. 1046, 714, 717 (2000).



1388g, 2 (2022); *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449, 2–3 (2022). Accordingly, it now issues a stay of these proceedings.<sup>6</sup>

During the stay of proceedings the Court will not consider or adjudicate submissions filed by the parties. The parties are not precluded from contacting the Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

#### IV. CONDUCT

All persons appearing in proceedings before an ALJ are expected to act with integrity and in an ethical manner. 28 C.F.R. § 68.35(a). The ALJ may exclude from proceedings parties who, among other conduct, refuse to “adhere to reasonable standards of orderly and ethical conduct.” 28 C.F.R. § 68.35(b); *see also* § 68.28(a).

Unsubstantiated accusations and inflammatory language have *no place* in this forum. *See M.S. v. Dave S.V. Hoon-John Wayne Cancer Institute*, 12 OCAHO no. 1305, 7–8 (2017) (personal vilification and ad hominem attacks and “any other behavior that falls below OCAHO's expected standards of conduct by either party or any individual appearing in these proceedings will not be tolerated.”). In the “Layman’s Motion of Addendum to Motion in Opposition to Dismiss” as well as the “Motion to Respond to Respondent’s Motion To Dismiss And Rule 14” Complainant attacks Respondent’s attorney, specifically referencing his son.

These attacks are entirely inappropriate and irrelevant in this forum. The Court instructs the Complainant to comport himself with dignity, and refrain from using inflammatory language and making personal attacks against Respondent. Given the nature of this conduct, the Court will reject any future filings that mention Respondent’s attorney’s son. 28 C.F.R. § 68.28(a). If Complainant continues, the Court warns that it will take further appropriate sanctions. 28 C.F.R. § 68.35(a).

SO ORDERED.

Dated and entered on October 14, 2022.

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Honorable Jean C. King  
Chief Administrative Law Judge

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<sup>6</sup> A stay of proceedings is generally defined as “a ruling by a court to stop or suspend a proceeding . . . temporarily or indefinitely. A Court may later lift the stay and continue the proceeding.” *Heath v. I-Servs., Inc.*, 15 OCAHO no. 1413a, 2 n.4 (2022) (citations omitted).