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

May 13, 2024

ZAJI OBATALA ZAJRADHARA, Complainant, v. ALJERIC GENERAL SERVICES, LLC a.k.a. ALJRIC GENERAL SERVICES, LLC, Respondent.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2021B00061

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Colin Thompson, Esq., for Respondent

POST-HEARING ORDER RE-OPENING RECORD - NATIONAL ORIGIN BASIS ONLY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b.

On September 27, 2022, the Court issued an Order to Show Cause. *Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432b (2022).[1] In that Order, the Court noted Complainant alleged discrimination on the basis of his national origin (among other theories). *Id*. at 3–4. For the reasons outlined in that Order, it was unclear whether the Court had subject matter jurisdiction

[1] Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

over this allegation based on the number of Respondent employees. *Id*. at 4 n.2. Additionally, Complainant filed an Equal Employment Opportunity Commission (EEOC) complaint based on the same facts outlined in his Complaint. *Id*. at 4. The Court ordered the Complainant to submit a filing addressing these issues. *Id*. at 4–5.[2]

On January 11, 2023, the Court issued an Order addressing the issues raised in the September Order. *Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432c (2023). Complainant provided no responsive filing despite bearing the burden (to establish subject matter jurisdiction and to clarify the status of his EEOC Complaint), and by submitting nothing he had invariably not met that burden. *Id*. at 5–7. For reasons outlined in the January Order, the Court previewed an inclination to dismiss the national origin allegation, but ultimately stayed the dismissal. *Id*. at 7 (citing, inter alia, *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021)). The Court later denied a motion for reconsideration. *Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432d, 3–6 (2023).

On September 13–15, 2023, the Court held an in-person hearing in this matter pursuant to 28 C.F.R. § 68.39, on Complainant's remaining citizenship discrimination and retaliation claims.[3] Following receipt of post-hearing evidence on damages, the Court closed the record on November 21, 2023. Order Closing Record 2.

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[2] The Court explained:

> 8 U.S.C. § 1324b(b)(2) provides that "[n]o charge may be filed respecting an unfair immigration-related employment practice [related to a complainant's national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title." In other words, when a complainant files a national origin discrimination claim under both Title VII and the INA, only one agency has subject matter jurisdiction over the claim. *Heath*, 15 OCAHO no. 1411, at 2. At the heart of the statute is the prohibition on OCAHO from exercising jurisdiction over national origin claims when the employer has less than 4 or more than 14 employees. *See* 8 U.S.C. §§ 1324b(a)(2)(A), 1324b(a)(2)(B). The statute precludes OCAHO jurisdiction when EEOC exercises jurisdiction, without regard to whether EEOC is correct that it is authorized to reach a merits determination. *Adame v. Dunkin Donuts*, 4 OCAHO no. 691, 904, 906-908 (1994).

Zajradhara, 16 OCAHO no. 1432b, at 3–4.

[3] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

During the hearing, the Court received credible evidence pertaining to the number of employees (Respondent credibly testified she had five employees.). If Respondent had five employees at the time of the alleged discrimination, the Court would have subject matter jurisdiction over a national origin allegation. *See* Hearing Tr. vol. 3, 52; *see also* 8 U.S.C. § 1324b(a)(2) (limiting OCAHO's jurisdiction over national origin claims to employers with between four and fourteen employees).

While the Court's potential jurisdiction over the allegation became clear following this development in the record, there was no further record development on the status of the EEOC Complaint, a claims processing requirement which would preclude consideration of a national origin allegation based on the same set of facts.[4]

The Court now concludes the most prudent course of action is to re-open the record for a brief period of time to allow for parties to submit evidence on this issue. In coming to this conclusion, the Court was mindful of Complainant's pro se status, its responsibility to exercise subject matter jurisdiction evenly, and its duty to ensure a fully developed record. For clarity, Complainant must understand several points.

First, the Court will not disturb the status quo conclusion reached in its January 2023 Order – i.e. the Complainant has an active EEOC Complaint, and this forum will not consider a national origin allegation unless Complainant can provide evidence his EEOC Complaint was "dismissed as being outside the scope of [the EEOC's purview]." 8 U.S.C. § 1324b(b)(2).

Second, if Complainant can provide such evidence, and the Court considers the national origin allegation, the Complainant bears the burden to demonstrate (through evidence and argument) that his non-selection was because of his national origin. Complainant is encouraged to refer to the guidance previously provided in the prehearing phase.[5]

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[4] "No charge may be filed respecting an unfair immigration-related employment practice . . . if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission . . . *unless the charge is dismissed as being outside the scope of such titl*e" 8 U.S.C. § 1324b(b)(2) (emphasis added).

[5] Complainant must: 1) provide preponderant evidence of his national origin; 2) provide preponderant evidence that Respondent employed between four and fourteen employees during the relevant time period; 3) provide preponderant evidence of the existence of the position referenced in the Complaint, his application to that position, and his non-selection for that position; and 4) provide preponderant evidence to demonstrate the reason he was not selected for the position was "because of" his national origin. *See Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432f, 6–7 (2023); 8 U.S.C. § 1324b(a)(1)–(2).

The Court now re-opens the record[6] to allow for evidentiary submissions on the national origin allegation ONLY.
The following schedule serves to supplement, not replace the schedule provided in the April 18, 2024 Order.

June 14, 2024 – Record Closes (all evidentiary submissions must be received by this date)
June 28, 2024 – Complainant's written brief due (national origin allegation only)
July 12, 2024 – Respondent's written brief due (national origin allegation only)

If parties wish to modify this schedule, or the schedule outlined in the April 18, 2024 Order, they may submit a written motion with their proposal and rationale.

SO ORDERED.

Dated and entered on May 13, 2024.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

[6] "Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Law Judge." 28 C.F.R. § 68.50. *See also United States v. Moyle*, 1 OCAHO no. 173, 1166, 1167 (1990) ("Pursuant to 28 C.F.R. 68.48 [sic], the Administrative Law Judge has the discretion to re-open the record of a closed hearing and accept late evidence for good cause shown."); *United States v. Mester Mfg. Co.*, 1 OCAHO no. 18, 53, 81 (1988) (granting a motion to reopen the record as "[the] exhibits serve the record by reducing uncertainty")