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

May 16, 2024

ZAJI OBATALA ZAJRADHARA, Complainant, v. JRP ENTERPRISES, INC., Respondent.	))))))))	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2021B00044

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Richard C. Miller, Esq., for Respondent

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 30, 2021. Complainant alleges that Respondent, JRP Enterprises, Inc., discriminated against him in violation of 8 U.S.C. § 1324b(a)(1) when he was not selected for a position with the company. Respondent filed an Answer and Affirmative Defenses as well as a Motion to Dismiss on September 7, 2021. Complainant filed a Response to the Motion to Dismiss on September 29, 2021.

II. POSITION OF THE PARTIES

Respondent argues first that Complainant has failed to state a plausible claim for relief. Mot. Dismiss 1. Respondent argues that Complainant's complaint does not sufficiently allege that a non-citizen or non-American national was hired instead of him, offering instead a generalized suspicion that "Chinese/Filipino Companies are using hiring/work visa positions in order to manipulate the work visa & naturalization process." *Id.* at 2. Secondly, Respondent argues that OCAHO lacks subject matter jurisdiction because Respondent employs three or fewer employees. *Id.* Respondent included a declaration of Dingfa Chen, President and Treasurer of

the company, who states that at the time Respondent advertised the job at issue in this Complaint, Respondent had no employees, and the company did not hire anyone to fill the posted position. Decl. Chen.

Complainant states, in relevant part, that he is an African-American, that Respondent did not reply to his application, and is committing visa fraud by "falsifying its E-VERIFY AND I-129 ATTESTION [sic]," among other violations. Resp. 2. Complainant argues that the position is/was for a renewal CW-1 visa, that the company must have more than three employees to carry out day-to-day operations, and that companies such as this regularly use illegal labor. *Id.* Complainant asks the Court for more time as he is attempting to obtain documents from the CNMI Departments of Labor, Tax and Revenue, and Commerce. *Id.* at 2.

III. STANDARD OF LAW

Like lower federal courts, OCAHO is a forum of limited jurisdiction "with only the jurisdiction which Congress has prescribed." *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1173 (1997).[1] Thus, the forum must first determine whether Congress has provided it authority to hear the case (subject matter jurisdiction), because if it does not have authoirty, the Court must dismiss the claim. *Id.* at 1172. *See also* Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by the suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

"While the OCAHO rules of practice do not specifically provide for motions to dismiss for lack of subject-matter jurisdiction, respondents may assert, on a motion to dismiss, that the Court lacks subject-matter jurisdiction on a claim . . . Rule 12(b)(1) of the Federal Rules of Civil Procedure may be used as a general guideline in assessing whether OCAHO has subject-matter jurisdiction over a particular claim." *Hossain v. Job Serv. N.D.*, 14 OCAHO no. 1352, 3 (2020) (citing 28 C.F.R. § 68.1).[2]

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[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.

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

A motion to dismiss for lack of subject matter jurisdiction may either assert that the allegations in the complaint do not establish jurisdiction, or may argue that facts will show that the Court does not have jurisdiction. *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (citations omitted)[3]; *see also Zajradhara v. E-Supply Enterprises*, 16 OCAHO no. 1438b, 4 n.7 (2022) (citing *Ruan v. U.S. Navy*, 8 OCAHO no. 1046, 714, 717 (2000)). In the latter circumstance, a "court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988) (citations omitted); *see also Younggil Kim Jung Windsor v. Captain Glen Landeen*, 12 OCAHO no. 1294, 5 (2016). A court may require that the party alleging jurisdiction justify its allegations by a preponderance of evidence. *Harris v. Rand*, 682 F.3d 846, 851 (9th Cir. 2012); *see also St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) ("It then becomes necessary for the party opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction.").

OCAHO does not have jurisdiction to hear citizenship status discrimination claims if the employer employs three or less individuals. 8 U.S.C. § 1324b(a)(2)(A). Moreover, OCAHO only has jurisdiction to hear national origin discrimination claims against employers with between four and fourteen employees. *Sivasankar*, 13 OCAHO no. 1343, at 3; 8 U.S.C. § 1324b(a)(2).

IV. DISCUSSION

Respondent asserts that OCAHO lacks subject matter jurisdiction to hear Complainant's claims for discrimination, and therefore, the Court should dismiss the Complaint. Specifically, Respondent asserts that at the time it posted the job on August 11, 2020, and for the year of 2020, it did not have any employees on the payroll. *See generally* Decl. Chen.

Respondent does not contest whether Complainant has adequately plead subject matter jurisdiction (although the Court notes that Complainant alleges that he does not know how many employees Respondent has, and therefore, he has not adequately alleged subject matter jurisdiction in the first instance). Rather, Respondent asserts that as factual matter, the Court does not have jurisdiction, which it does by providing proof in the form of a declaration from Respondent's President and Treasurer asserting that during the relevant time period, Respondent had no employees.

[3] Since the allegations at issue in this case occurred in Saipan in the Commonwealth of the Northern Mariana Islands (CNMI), the Court may look to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57.

Given the proof offered by Respondent that it had no employees—and therefore the Court does not have subject matter jurisdiction over Complainant's national origin and citizenship discrimination claims—it is Complainant's burden to "present affidavits or any other evidence necessary to satisfy [his] burden of establishing that the court, in fact, possesses subject matter jurisdiction." *St. Clair*, 880 F.2d at 201; *see also Zajradhara*, 16 OCAHO no. 1438b, at 4 ("Complainant cannot rest on the mere assertion that factual issues exist. He must come forward with evidence outside his pleadings to support his jurisdictional allegation . . . As Respondent has presented evidence regarding this Court's jurisdiction, Complainant must come forward with evidence showing that this Court has jurisdiction.") (citation omitted). In his response to Respondent's Motion, Complainant writes that it is "obvious" that Respondent has more than three employees because "many of th[]e Chinese companies in the CNMI are using some form of illegal labor" and because it "must also hire an individual (subcontracted) to process the visa applications"; that the Court should count the members of Respondent's board in counting employees; and that some number of employees must be required to carry out Respondent's "day to day operations, processing of regulatory CNMI government documents, permits, taxes, [and] compl[iance]." Resp. 2–3. Complainant asks the Court not to dismiss the Complaint at this time, as Complainant has requested "all relevant records" regarding Respondent from an "uncooperative" CNMI Department of Labor, Department of Tax and Revenue, and Department of Commerce. *Id*. at 3.

Through his response, Complainant has provided no evidence to controvert Respondent's proof that it employs less than three individuals, and therefore, Complainant has not met his burden to assure the Court of subject matter jurisdiction over his claims.

Complainant does request additional time to conduct further jurisdictional discovery on this issue. The court may permit discovery to determine whether it has jurisdiction, and "[d]iscovery . . . 'should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.'" *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977) (citation omitted).

Here, the parties were informed in the Notice of Case Assignment for Case Alleging Unfair Immigration-Related Employment Practices issued on July 12, 2021, that "[e]ither party may initiate discovery at any time after the answer has been filed." Notice Case Assignment 3. Complainant asserts in his September 19, 2021, Response to Motion to Dismiss that he requested "all relevant documents" from CNMI government offices, and that they have been "uncooperative," and asks the Court for "time, (and maybe subpoenas)," but Complainant has not filed either motions to compel discovery or motions for subpoenas with the Court since the time of his Response. Resp. 3. Complainant does not detail what information he has requested from these CNMI government offices, nor how that information would be relevant to determining Respondent's number of employees.

Given the length of time since Respondent's Motion to Dismiss, Complainant has had ample time to conduct jurisdictional discovery or to file discovery related motions with the Court. Therefore, the Court will not defer ruling on the Motion to Dismiss in order to afford Complainant additional time to conduct jurisdictional discovery. The Court notes Complainant's pro se status, but Complainant has had more than two years to conclude discovery, file discovery motions, and supplement his response. *See St. Clair*, 880 F.2d at 202 (citing *cf. Berardinelli v. Castle & Cooke Inc.*, 587 F.2d 37, 39 (9th Cir.1978) (per curiam) (affirming denials of requests for additional time to conduct jurisdictional discovery where the plaintiffs had not explained why they delayed in making an effort to conduct such discovery.).

Therefore, the Complaint is DISMISSED without prejudice for lack of subject matter jurisdiction. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) ("In general, dismissal for lack of subject matter jurisdiction is without prejudice.").

This is a Final Order.

SO ORDERED.

Dated and entered on May 16, 2024.

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Honorable Jean C. King
Chief Administrative Law Judge

APPEAL INFORMATION

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.