

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

April 8, 2025

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00064
)	
TAGA INC., D/B/A EZ OUTLET,)	
Respondent.)	
_____)	

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

ORDER GRANTING RESPONDENT’S MOTION TO LIFT DEFAULT JUDGMENT AND
FOR SUMMARY DECISION

I. PROCEDURAL HISTORY

This case has a rather lengthy and complicated history. On March 7, 2024, Complainant Zaji Zajradhara filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent Taga Inc. The complaint alleged claims of citizenship status discrimination, national origin discrimination, and retaliation in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5).

The Chief Administrative Hearing Officer sent Respondent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and a copy of the complaint on March 18, 2024, via United States Postal Service (USPS) certified mail. The NOCA directed Respondent to file an answer within thirty days or risk judgment by default. Notice Case Assign. 1 (citing 28 C.F.R. §§ 68.3(b), 68.9, 68.9(b)).¹ The USPS website’s tracking service indicates the Complaint and NOCA were delivered to and received by Respondent on April 4, 2024. Therefore, Respondent’s answer was due no later than May 6, 2024.²

¹ OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

² The deadline accounts for the fact that May 4, 2024, falls on a Saturday.

After receiving no submission or communication from Respondent, the Court issued two separate Orders to Show Cause, on May 30 and July 11, 2024, respectively. The first Order to Show Cause directed Respondent to file an answer within twenty-one days and to demonstrate good cause for its untimely filing. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577, 1–2 (2024).³ The Court again warned Respondent that failure to respond to the Order would result in a default judgment against it. *Id.* at 2. Respondent never responded to the Order.

The second Order to Show Cause directed Complainant to demonstrate the Court’s jurisdiction over his national origin discrimination claim, as well as why the Court should not dismiss his retaliation claim for failure to state a claim. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577a (2024). Complainant was given until August 26, 2024, to submit his response, which he did on August 27, 2024. The response, however, did not allege that Respondent employed between four and fourteen individuals, which would grant the Court jurisdiction over his national origin discrimination claim, and so the Court accordingly dismissed that claim. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577b, 3–4 (2024). The response also failed to allege that Complainant engaged in activity protected under § 1324b, and so the Court likewise dismissed Complainant’s retaliation claim for failing to state a claim. *Id.* at 4–5.

Through the same order dismissing these claims, the Court also acknowledged that Respondent was in default by not timely filing an answer, and that because it failed to respond to the Court’s Order to Show Cause, default judgment would be entered against it for Complainant’s remaining citizenship status discrimination claim. *Zajradhara*, 19 OCAHO no. 1577b, at 5–6. With liability established for that claim, the Court then ordered Complainant to submit an affidavit in support of his request for damages by December 20, 2024. *Id.* at 10.

On January 15, 2025, after receiving no timely submission on damages from Complainant, the Court issued a Notice & Order – Complainant’s Request for Damages May Be Waived. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577c (2025). Complainant was given a final deadline of February 24, 2025, to provide his submission. *Id.* at 2.

On January 28, 2025, Respondent participated in this matter for the first time when it submitted, through counsel, its Response to Complainant’s Request for Award of Backpay and Declaration of Hwang, Sung Ae (Respondent’s Response). Through the Response, Respondent explained that it ceased operations temporarily when the store manager (and business-owner’s husband) became ill and returned home to Korea in March 2023, and closed permanently on April 4, 2024, following his untimely death. According to Respondent, “[h]ad the General Manager . . . not died on April

³ 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>.

4, 2024, Complainant’s complaint would have been answered prior to its deadline on May 6, 2024.” Resp’t Resp. 2.

That same day, Complainant filed his Response to Notice & Order (Damages Calculation), through which he requested an award of front and back pay totaling \$43,476.75. Damages Calc. 2.

Then, on February 5, 2025, Complainant filed a Response and Opposition to Respondent’s Suggestion of Death and Complainant’s Request for Award of Backpay (Complainant’s Opposition to Response). The filing raised numerous issues; however, those relevant to this OCAHO proceeding were: (1) that the Court “consider whether it is appropriate” for Respondent’s counsel’s representation to continue due to his alleged “adverse interests in this matter”; (2) that Complainant’s citizenship status discrimination claim survives the death of Respondent’s store manager; (3) that a Mr. Cho Jin Koo be joined as a respondent pursuant to Federal Rule of Civil Procedure 19 and 20(a)(1); and (4) that the Court order certain discovery related to Respondent’s business practices and immigration records. Opp’n 1–4.

On March 18, 2025, Respondent filed a Response to Complainant’s Request for Damages and Motion to Lift Default Judgment and Motion for Summary Decision. On March 19, 2025, Complainant filed his Response to Respondent’s Motion to Lift Default Judgment and for Summary Decision.

Complainant filed three motions on April 3, 2025: Complainant’s Motion to Disqualify Stephen Nutting and Request Sanctions; Complainant’s pro se Motion to Close the Record and for Final Judgment of Default; Complainant’s Request for Status Hearing.

For the reasons explained below, the Court grants Respondent’s Motion to Lift Default Judgment and for Summary Decision. As a result, the Court sets aside the default judgment entered against Respondent on October 22, 2024, defers decision on the summary judgment motion, permits limited discovery, and denies all other pending motions as moot.⁴

II. LEGAL STANDARDS

a. Setting Aside Default Judgment

“Although OCAHO’s rules do not provide a standard to use in determining whether to set aside an entry of default or a default judgment, they specify that the ‘Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled’ by OCAHO’s rules.” *Sinha v. Infosys*, 14 OCAHO no. 1373a, 3 (2021) (quoting 28 C.F.R. § 68.1). Federal Rule of Civil Procedure 55(c) provides that a court may set aside a default judgment under Rule 60(b).

⁴ Complainant’s Motion to Disqualify Stephen Nutting and Request Sanctions is entirely baseless and is denied. *See Zajradhara v. Jin Joo Corp.*, OCAHO Case No. 2024B00013, “Order Denying Complainant’s Request for Sanctions” (Apr. 1, 2025).

Regarding the purpose and application of Rule 60(b), the United States Court of Appeals for the Ninth Circuit has stated the following:⁵

Rule 60(b) . . . grants district courts discretion to relieve a party from a judgment or order for reason of “mistake, inadvertence, surprise, or excusable neglect,” provided that the party moves for such relief not more than a year after the judgment was entered. As such, Rule 60(b)(1) guides the balance between the overriding judicial goal of deciding cases correctly, on the basis of their legal and factual merits with the interest of both litigants and the courts in the finality of judgments. The rule does so by limiting both the reasons for which relief from a judgment may be granted, and the time in which a party may seek relief, while at the same time providing district courts with discretion within those limits to undo the finality of judgments in order to reach the merits of questions that have been decided wrongly or not at all. . . .

[W]here there has been *no* merits decision, appropriate exercise of district court discretion under Rule 60(b) requires that the finality interest should give way fairly readily, to further the competing interest in reaching the merits of a dispute.

TCI Grp. Life Ins. Plan v. Knoebber, 244 F.3d 691, 695–96 (9th Cir. 2001) (internal citations omitted), *overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001).

The Ninth Circuit has adopted a three-factor standard for vacating a default judgment under Rule 60(b): (1) “whether the defendant’s culpable conduct led to the default”; (2) “whether the defendant has a meritorious defense”; and (3) “whether reopening the default judgment would prejudice the plaintiff.” *TCI Grp.*, 244 F.3d at 696 (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)); *see also United States v. Villardo Vineyards*, 11 OCAHO no. 1248, 5 (2015) (“In determining whether to grant relief from a default judgment, a court should consider whether: (a) the failure to respond was willful; (b) setting aside the default judgment will prejudice the opposing party; and (c) the defaulting party presents a meritorious defense to the action.”).⁶ “[T]he party seeking to vacate a default judgment bears the burden of demonstrating that these factors favor vacating the judgment.” *TCI Grp.*, 244 F.3d at 696.

⁵ OCAHO ALJs are bound by the decisions of the U.S. Court of Appeals in which the case arises, which here is the Ninth Circuit. *See United States v. A&D Maint. Leasing & Repairs, Inc.*, 19 OCAHO no. 1568a, 11 n.11 (2024).

⁶ Respondent cites an OCAHO decision the undersigned could not locate when stating that “[c]ourts have broad discretion to vacate default judgments where there is good cause, a meritorious defense, and no undue prejudice to the opposing party.” Mot. to Lift Default Judg. 4.

b. Summary Decision

Per OCAHO rules, the Administrative Law Judge (ALJ) “shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue of material fact and that the party is entitled to summary decision.” 28 C.F.R. § 68.38(c). “An issue of material fact is genuine only if it has a real basis in the record” and “[a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit.” *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986), and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 284 (1986)). “Subjective and conclusory allegations unsupported by specific, concrete evidence, provide no basis for relief. Neither do such allegations create a genuine factual issue where one does not otherwise exist.” *Hajiani v. ESHA USA, Inc.*, 10 OCAHO no. 1213, 6 (2014).

“Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution.” *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). “[T]he party opposing the motion for summary decision ‘may not rest upon the mere allegations or denials’ of its pleadings, but must ‘set forth specific facts showing that there is a genuine issue of fact for the hearing.’” *United States v. 3689 Commerce Pl., Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). The Court views all facts and inferences “in the light most favorable to the non-moving party.” *United States v. Primera Enters.*, 4 OCAHO no. 615, 249, 261 (1994) (internal citations omitted).

c. Number of Employees – Citizenship Status Discrimination

Under 8 U.S.C. § 1324b(a)(1), it is unlawful for an employer “to discriminate against any individual . . . with respect to the hiring . . . of the individual for employment” because of their national origin or citizenship status. However, § 1324b(a)(2)(a) provides that this prohibition does not apply to “a person or other entity that employs three or fewer employees.” See also *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022) (“OCAHO has subject matter jurisdiction for claims based upon citizenship status if the employer employs more than three employees.”). Nor can a Complaint state a claim for citizenship status discrimination if the employer employs three or fewer employees.

III. DISCUSSION

a. Respondent Has Met the Standard for the Default Judgment to Be Set Aside

i. Respondent’s Culpability

A court’s determination that a respondent was “culpable” in bringing the default judgment upon it is not simply based upon whether it “acted intentionally in failing to answer”; rather, “a defendant’s conduct [will be] culpable for purposes of the *Falk* factors where there is no explanation of the

default inconsistent with a devious, deliberate, willful, or bad faith failure to respond.” *TCI Grp. Life Ins. Plan*, 244 F.3d at 698. In *TCI*, the Ninth Circuit found the defendant’s conduct was not culpable where she was “a party unfamiliar with the legal system [who] defaulted at a time of extreme personal difficulty.” There, the defendant “had been widowed less than a year before [the] action against her,” and during the period in which she was to respond to the pleading, she “was in the process of selling her home and moving herself and her two small children from California to Florida.” *Id.* at 699.

Similarly, the owner of Respondent-business was a foreign citizen unfamiliar with the United States legal system who suffered the loss of her husband on April 4, 2024, the same day the NOCA and complaint were served on her. *See Resp’t Resp. 2; id. Ex. 2*, “Death Certificate of Ham, Kyung Rae.” She states that she was in Saipan for only four months in 2023 and six months in 2024 because she had to care for her ailing husband, who had left Saipan for Korea to receive care. *Mot. Lift Default Judg. 10–11; Decl. Sung AE Hwang*. She states that the primary business, the store, has been closed since March 2023 and states “if [her] husband was not sick during the relevant times alleged in the Complaint, he would have answered the Complaint of complainant.” *Mot. Lift Default Judg. 11*. This “extreme personal difficulty” at the time of default, coupled with her unfamiliarity with the legal system, leads the Court to conclude that Respondent was not culpable for the default.

ii. Meritorious Defense

“A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense . . . [b]ut the burden on a party seeking to vacate a default judgment is not extraordinarily heavy.” *TCI Grp. Life Ins. Plan*, 244 F.3d at 700 (citations omitted).

Here, Respondent argues that it, “a small business, employs at most two individuals, including its owner, Hwang Sung Ae, rendering this claim outside OCAHO’s jurisdiction.” *Mot. to Lift Default Judg. 5*. In support of this claim, Respondent submitted copies of its “Total Workforce Listing” for the period from Q1 2023 through Q4 2024, which demonstrates that Respondent at no time employed more than two individuals. *Id. Ex. 3*. Therefore, Respondent has presented a defense to Complainant’s citizenship-status discrimination claim, as, if found, Respondent does not have the requisite number of employees for the Court to have subject matter jurisdiction over the claim, or for the Complainant to be able to state a claim.

iii. Undue Prejudice to Complainant

“To be prejudicial, the setting aside of a judgment must result in greater harm than simply delaying resolution of the case. Rather, the standard is whether [plaintiff’s] ability to pursue his claim will be hindered.” *TCI Grp. Life Ins. Plan*, 244 F.3d at 701 (internal quotes omitted). “[T]he delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.” *Id.* (quoting *Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 433–44 (6th Cir. 1996)).

Here, Respondent argues that “[v]acating the default judgment will not unduly prejudice Complainant, as Respondent is asserting a jurisdictional defense that should have been addressed

at the outset.” Mot. to Lift Default Judg. 5. Complainant counters that “[v]acating the default would punish Complainant for Respondent’s misconduct,” however, he fails to explain with specificity the prejudice he would suffer. Resp. Mot. Lift Default Judg. 3. The Court finds none other than the delay in bringing the Complainant right back to his original position: bearing the burden to prove by a preponderance of the evidence that Respondent discriminated against him on the basis of citizenship status. The Court concludes Complainant will suffer no undue prejudice. And since all three of the Ninth Circuit’s factors are satisfied here, Respondent’s Motion to Lift the Default Judgment is GRANTED, and the default judgment is VACATED.

b. Summary Decision

With the default judgment now vacated, the Court turns to Respondent’s Motion for Summary Decision.

As explained above, “OCAHO has subject matter jurisdiction for claims based upon citizenship status if the employer employs more than three employees.” *Zajradhara*, 16 OCAHO no. 1417, at 2. Respondent included an affidavit from the owner of the business, who states that in 2023, when Complainant applied for the position, her husband was the only employee. Mot. Lift Default Judg. 12. She indicates that during 2023 and 2024, she was the only other employee. *Id.* Respondent also included forms entitled “Total Workforce Listing” for the first quarter of 2023 to the third quarter of 2023 showing two employees, the owner and her husband, and then the same forms for 2024 showing just the owner as an employee. Mot. to Lift Default Judg. Ex. 3.

Consequently, the burden then rests on Complainant to present any contravening evidence. Complainant has not done so, despite the fact that this Court issued an Order to Show Cause as to how many employees Respondent employed in the context of his claim based on nationality on July 11, 2024. *Zajradhara v. Taga Inc.*, 19 OCAHO no. 1577a (2024).⁷ In his response to the Order to Show Cause, Complainant included a letter from the CNMI Department of Labor responding to an inquiry for the job vacancy announcements and workforce listing for Respondent for October 2022 to October 2023 and the workforce listing for October 2023 to June 2024. Resp. to OTSC 5. The letter indicates that it did not have workforce listings for October 2022 to 2023, but indicated he could review the pages identified, presumably for October 2023 to June 2024. *Id.* Complainant has not provided the information. The Workforce Listings for 2024 provided by Respondent include certifications by the owner, whereas those from 2023 do not, raising a question as to whether they were submitted to the CNMI Department of Labor. Mot. to Lift Default Judg. Ex. 3. The remainder of Complainant’s response include various allegations. Unsupported statements about the number of employees, or citations to inapplicable statutes, are not evidence.

⁷ Complainant argues in his Opposition to the Motion for Summary Decision that “OCAHO’s jurisdiction under 8 U.S.C. § 1324b extends to citizenship status discrimination claims irrespective of employee count,” Opp’n 1, but this is a misstatement of the law. Indeed, the cases he cites in support of this proposition, *Kamal-Griffin v. Cahill Gordon & Reindel* and *United States v. Marcel Watch Co.*, state the opposite, namely, that 8 U.S.C. § 1324b(a)(1) does not apply to employers with three or less employees. See 3 OCAHO no. 568, 1641, 1658 (1993); 1 OCAHO no. 143, 988, 998–99 (1990).

See *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 32 (2022) (citation omitted) (“[A]rgument is not evidence.”).

However, the Court is cognizant of the fact that because Respondent had not appeared in the case until now, Complainant did not have an opportunity to engage in discovery. Accordingly, the Court will defer final resolution of the motion for summary decision and grant limited discovery for the sole purpose of permitting Complainant to seek further information about the number of employees employed by Respondent in 2023 and 2024. Discovery will be subject to the following:

- Complainant may file no more than two interrogatories, two requests for admission, and two requests for production of documents.
- Complainant must file the discovery requests with the Court by **April 22, 2025**. The Court will approve the requests and set a deadline for Respondent’s production.
- The discovery requests may only seek information related to the number of employees employed by Respondent.

IV. CONCLUSION

Respondent’s motion to vacate the default judgment is GRANTED. Respondent’s motion for summary decision is DEFERRED, and all other pending motions are DENIED. The Complainant may seek limited discovery consistent with the above instructions.

SO ORDERED.

Dated and entered on April 8, 2025.

Honorable Jean C. King
Chief Administrative Law Judge