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

May 12, 2025

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 2024A00015
ZARCO HOTELS INCORPORATED, Respondent.	)	

Appearances: Jodie Cohen, Esq., for Complainant
Kian Zarrinnam, pro se Respondent

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

I. PROCEDURAL HISTORY

On November 9, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Zarco Hotels Incorporated.

On December 26, 2023, Respondent filed a Motion to Dismiss, which was denied. *United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518b (2024).[1]

On September 26, 2024, Complainant filed a Motion for Leave to Amend Complaint.

[1] 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 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 in the Westlaw database "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at https://www.justice.gov/eoir/office-of-the-chief1administrative-hearing-officer-decisions.

On October 22, 2024, the Court held a prehearing conference during which granted Complainant's Motion to Amend, and accepted Complainant's Amended Complaint. Parties received a revised case schedule, which accounted for additional time to conduct discovery. *United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518d (2024).

On November 20, 2024, Respondent filed its Answer to the First Amended Complaint.

On February 21, 2025, Respondent filed a Motion to Dismiss the First Amended Complaint.

On March 4, 2025, Complainant filed its Response.

On April 21, 2025, Respondent filed a Motion Seeking Leave to File a Reply to Complainant's Response to Respondent's Motion to Dismiss.

On April 24, 2025, the Court granted Respondent's motion, and he filed a Reply the same day.

For the reasons that follow, Respondent's Motion to Dismiss is DENIED.

II. COMPLAINT AND AMENDED COMPLAINT

The original Complaint contained two Counts, both alleging violations of 8 U.S.C. § 1324b(a)(1)(B). Count I alleged Respondent failed to timely prepare Forms I-9 for two employees. Count II alleged Respondent failed to ensure proper completion of one of the Forms I-9 Sections for ten employees. Compl. 9–10.

In amending the Complaint, Complainant sought "to dismiss Count I in its entirety and reduce the number of violations in Count II, while asserting an alternate charging theory alongside the original charging theory outlined in the Complaint." *Zarco Hotels, Inc.*, 18 OCAHO no. 1518d, at 2.

After providing Respondent an opportunity to be heard, the Court dismissed Count I (as requested by Complainant) and accepted the amendment to Count II (a reduction in alleged violations and the addition of a new charging theory). *Id.* The revised (amended) Complaint contained only one Count (formerly Count II) with fewer allegations.

Specifically, Complainant now alleges Respondent failed to prepare and/or present Forms I-9; or, alternatively, failed to complete Section 2 of the Form I-9 for nine employees. Am. Compl. 3.

It is this revised allegation in the Amended Complaint that Respondent now seeks to dismiss based on several theories, specifically a theory based on the statute of limitations and theories related to a failure to state a claim.

III. DISCUSSION

A. Statute of Limitations

Respondent's first argues for dismissal based on a statute of limitations argument. "The alleged violations occurred more than five years ago, making the First Amended Complaint time-barred under the statute of limitations." Mot. Dismiss 4. Complainant does not directly address the statute of limitations issue.

"OCAHO case law has held that the five-year statute of limitations codified at 28 U.S.C. § 2462 is applicable to proceedings under § 1324a."[2] *United States v. El Paso Paper Box, Inc.*, 17 OCAHO no. 1451, 4 (2022) (collecting cases). "Therefore, a complaint is timely filed within five years of the date on which a violation accrues." *Id.* at 3 (internal quotes omitted).

"It is also well-established that different paperwork violations may accrue at different times and, thus, trigger the running of the statute of limitations in 28 U.S.C. § 2462 at different times." *United States v. El Paso Paper Box, Inc.*, 17 OCAHO no. 1451b, 6 (2023). For example, some violations, like failure to timely prepare Forms I-9, result in a statute of limitations accrual date that is "frozen in time;" because, on a certain date, the forms were properly completed. That completion date starts the statute of limitations "clock." *See id.* (citing *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 5 (2020)). That contrasts with instances where a business is alleged to either never have completed forms at all, or alleged to have never properly or fully completed them. Those kinds of allegations are characterized as "continuing;" because, from a statute of limitations perspective, the violations are not frozen, rather they continue until corrected or retention requirements lapse. *United States v. Kodiak Oilfield Servs. LLC*, 16 OCAHO no. 1436b, 9 (2023).

This case involves the latter kind of violation, and so the Court will look to the moving party to ascertain what, if any, date it proposes the continuing violations ceased to "continue" to then determine if five years has elapsed from that date.

In looking at this pro se Respondent's submission for the earliest possible date to "start" a statute of limitations "clock," the Court found November 20, 2023 (the date Forms I-9 were provided to Complainant). Mot. Dismiss 6. Even assuming those Forms I-9 were all properly completed (and in fact provided to Complainant), they were provided a little over a week after the original Complaint was filed, and less than a year before the Court accepted the Amended Complaint.

Because the facts here demonstrate Complainant acted well within the five years required by 28 U.S.C. § 2462, the Amended Complaint cannot be dismissed on this ground.

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[2] Specifically, 28 U.S.C. § 2462 provides, "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon."

B. Regulatory Compliance (Technical or Procedural Failures Opportunity to Correct)

Respondent claims Complainant failed to follow its own regulations, and this irregularity should result in dismissal. Respondent relies on 8 C.F.R. § 274a.2(b)(2)(ii), which states "[e]mployers must be given the opportunity to correct technical or procedural failures in Form I-9 documentation." Mot. Dismiss 4. Respondent asserts he was not given an opportunity to correct technical or procedural failures related to the Forms I-9 identified in the Count (in alleged contravention of the regulatory requirement). Mot. Dismiss 6. Complainant's Opposition does not address this issue, but OCAHO precedent is well-settled on this point.

"Failure to timely prepare an I-9 form for a new employee . . . cannot be characterized as a technical or procedural violation, and such a failure is not cured or 'corrected' by a subsequent belated or partial completion of the form." *United States v. Dr. Robert Schaus, D.D.S.*, 11 OCAHO no. 1239, 8 (2014). Moreover, failure to complete Section 2 of the Form I-9, which the government has alleged in the alternative, is also a substantive violation. *El Paso Paper Box, Inc.*, 17 OCAHO no. 1451, at 10–11.

Because the alleged violations are not "technical or procedural," there is no regulatory irregularity as Complainant has alleged. The Amended Complaint will not be dismissed on this ground.

C. Failure to State a Claim Upon Which Relief Can Be Granted

Respondent argues the Amended Complaint fails to state a claim for several additional reasons:[3] Respondent is not the proper "employer" of the individuals identified in the Count; several of the individuals identified in the Count "are shareholders, officers and directors of the company," and therefore Respondent was not obligated to prepare a Form I-9 for them; and the individuals named in the Count were hired between "September 1, 1995, and July 21, 2003, which are well beyond the three (3) year retention guidelines of 28 C.F.R. § 274a.2(b)(2)(i)(A)." Mot. Dismiss 6–8.

Complainant maintains that "[t]he Complaint states a claim upon which relief can be granted," and that it "allege[s] a violation of . . . 8 U.S.C. Section 1324a(a)(1)(B)." Opp'n 2.

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[3] In its reply, Respondent for the first time advances another argument for the Amended Complaint's dismissal. Specifically, that it fails to plead that Respondent's non-compliance with § 1324a was "willful." Reply 3. Apart from the propriety of raising new arguments in a Reply (that appear to have been available when the motion was filed), the Court notes that where a complaint alleges violations of an employer's "statutory requirement to comply with the employment verification system . . . the state of mind of the employer is irrelevant, the individual either having been hired or not, and the paperwork either having been perfected or not." *United States v. Big Bear Market*, 1 OCAHO no. 48, 285, 302 (1989).

Accordingly, whether Respondent's non-compliance was "willful" or not is irrelevant, and the Amended Complaint will not be dismissed on such grounds.

In adjudicating Respondent's previous motion to dismiss, the Court explained:

> "In considering a motion to dismiss, the court must limit its analysis to the four corners of the complaint." *Udala*, 4 OCAHO no. 633, at 394. The complainant's allegations of fact are accepted as true and all reasonable inferences derived therefrom are drawn in the complainant's favor. *Id.*
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> OCAHO's Rules of Practice and Procedure provide that complaints shall contain: (1) "A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated"; (2) "The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred"; and (3) "A short statement containing the remedies and/or sanctions sought to be imposed against the respondent." 28 C.F.R. § 68.7(a)–(b).
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> "Statements made in the complaint only need to be 'facially sufficient to permit the case to proceed further,' . . . as '[t]he bar for pleadings in this forum is low.'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022) (citing *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 10 (2012), and then citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5 (2021)).
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> "OCAHO's pleading standard does not require a complainant [to] proffer evidence at the pleadings stage . . . Rather, pleadings are sufficient if 'the allegations give adequate notice to the respondents of the charges made against them.'" *Id.* (quoting *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 10 (2003)); *see also Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, at 9 ("Unlike complaints filed in the district courts, every complaint filed in this forum, whether pursuant to § 1324a, § 1324b, or § 1324c, has already been the subject of an underlying administrative process as a condition precedent to the filing of the complaint . . . An OCAHO complaint thus will ordinarily come as no surprise to a respondent that has already participated in the underlying process.").

Zarco Hotels, Inc., 18 OCAHO no. 1518b, at 4.

The analysis requires the Court to only consider the contents of a complaint and its attachments. The Court should not consider any additional or extrinsic evidence, (like the exhibits attached to Respondent's Motion to Dismiss). *Udala*, 4 OCAHO no. 633, at 394 ("In considering a motion to dismiss, the court must limit its analysis to the four corners of the complaint.").

The Amended Complaint alleges Respondent was in violation of 8 U.S.C. § 1324a(a)(1)(B) (which makes it unlawful for an employer "to hire for employment in the United States an individual without complying with the requirements of subsection (b) [of the statute]."[4]). Am. Compl. 4.

The Amended Complaint alleges nine individuals were Respondent employees (hired after November 6, 1986) and Respondent either: failed to prepare and/or present the Form I-9 for them; or failed to complete Section 2 of the Form I-9 for those employees. Am. Compl. 3–4.

To show a violation of § 1324a(1)(B), Complainant need only allege covered employees and that one of the three requirements of subsection (b) were not met. In this case, the Amended Complaint has done so. Therefore, the Amended Complaint states a claim for a violation of § 1324a(a)(1)(B).

Similar to the analysis and outcome of the previously denied motion to dismiss, Respondent here asks the Court to evaluate factual issues through an tool (motion to dismiss) ill-suited for such a proposition. Summary Decision is the mechanism through which parties may ask the Court to evaluate evidence and use that evidence to resolve factual disputes. 28 C.F.R. § 68.38(c) (providing that the Court shall consider "the pleadings, affidavits, [and] material obtained" when ruling on a motion for summary decision).[5] Respondent may certainly file such a motion and supporting evidence by the deadline outlined in the scheduling order.

Respondent's Motion to Dismiss is DENIED.

SO ORDERED.

Dated and entered on May 12, 2025.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

[4] The statute at § 1324a(b) contains three separate requirements:

> (1) The employer must attest on the Form I-9 "that it has verified that the individual is not an unauthorized alien by examining" certain documents establishing identity and employment authorization. 8 U.S.C. § 1324b(b)(1). [and]
> (2) The employee must attest on the same Form I-9 that it possesses an immigration status authorized for employment in the United States. 8 U.S.C. § 1324b(b)(2). [and]
> (3) The employer must retain a physical or electronic copy of the Form I-9 for either three years after the date of hire or one year after the employee is terminated, whichever is later. 8 U.S.C. § 1324a(b)(3).

[5] OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).