

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2024A00026
TEXAS EXCEL PROPERTY)	
MANAGEMENT SERVICES CORP.,)	
)	
Respondent.)	
)	

Appearances: Colin Maguire, Esq., for Complainant
Ahmet Kalkan, pro se Respondent¹

ORDER DIRECTING COMPLAINANT TO SERVE COMPLAINT

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On December 19, 2023, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Texas Excel Property Management Services Corp., violated 8 U.S.C. § 1324a(a)(1)(B) when it failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) at the time of hire, or in a timely manner, for individuals identified in the attached Notice of Intent to

¹ Complainant's counsel has identified Mr. Ahmet R. Kalkan as Respondent's registered agent and director and Katie Santmyer, Esq., as Respondent's counsel. Although Ms. Santmyer has represented via email that she is representing Respondent, she has yet to file a notice of appearance in this case. Per 28 C.F.R. § 68.33(f), all attorneys "[e]xcept for a government attorney filing a complaint . . . shall file a notice of appearance." As a courtesy, the Court has included Ms. Santmyer on the certificate of service for this Order, but to be considered Respondent's attorney of record, Ms. Santmyer must file her notice of appearance.

Fine Pursuant to Section 274A of the INA (NIF), it served on Respondent on May 1, 2023, seeking a fine of \$59,460 for the alleged violations.² Compl. Ex. A. Also attached to the complaint were an email dated June 12, 2023, from Mr. Fercan E. Kalkan³ denying the allegations in the NIF but seeking to cooperate, and the government auditor’s email dated November 29, 2023, in which the auditor indicated that the government was prepared to file a complaint with OCAHO. *Id.*, Ex. B. Finally, Complainant attached to the complaint a request that OCAHO serve the complaint on Mr. Ahmet R. Kalkan at an address in Spring, Texas. *Id.*, Attach. (citing 28 C.F.R. § 68.7).⁴ Complainant did not attach to the complaint a request for a hearing before OCAHO by Respondent (“request for hearing”). *See* 8 U.S.C. § 1324a(e)(3)(A).

On January 11, 2024, using the United States Postal Service’s (USPS) certified mail, OCAHO’s Chief Administrative Hearing Officer (CAHO) sent Respondent—via Mr. Ahmet R. Kalkan—a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the complaint, the NIF, and the parties’ emails (together, the “Complaint package”). Through the NOCA, the CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). Notice of Case Assignment ¶ 4.

The Complaint package, however, was not delivered to Respondent. The USPS certified mail tracking tool reflected that the Complaint package had been “in transit to the next facility” since January 26, 2024. OCAHO also did not receive a signed USPS Domestic Return Receipt Form (PS Form 3811) (“return receipt”) which would have confirmed delivery.

² 8 U.S.C. § 1324a(e)(3)(A) specifies that the government, before imposing an order for violations, “shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.” The NIF in this matter put Respondent on notice of the need to request a hearing before OCAHO “within 30 days from the service of this [NIF].” Compl. Ex. A. Likewise, OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), specify that a complaint “shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing.” 28 C.F.R. § 68.7(c).

³ Mr. Fercan E. Kalkan’s relationship to the Respondent business and its registered agent and director, Mr. Ahmet R. Kalkan, is unclear.

⁴ These proceedings are governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings. OCAHO’s Rules are available on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

On February 13, 2024, using the USPS certified mail, OCAHO again mailed the Complaint package to Respondent, along with a cover letter describing the delivery difficulties. A copy was provided to Complainant. Again, OCAHO did not receive the USPS proof of service of the Complaint package on Respondent. Rather, the USPS certified mail tracking tool indicated that the Complaint package had been “in transit to the next facility” since February 20, 2024, and OCAHO did not receive a return receipt.

On March 1, 2024, after having reviewed the cover letter detailing the delivery issues, Complainant’s counsel emailed OCAHO staff. He copied on his email Mr. Kalkan and an attorney named Katie Santmyer who was using an email address ending in “excelapts.com.” In the email, Complainant’s counsel represented that, on February 7, 2024, he had provided Respondent with the complaint and NOCA. He also represented that he had provided Respondent with OCAHO’s cover letter. Complainant’s counsel did not specify the manner of service. He also inquired as to the availability of electronic filing.

On March 8, 2024, Ms. Santmyer responded to the email and copied OCAHO and Complainant’s counsel. She attached to her email a document entitled Respondent’s Original Answer. She also requested to participate in electronic filing.

On March 18, 2024, OCAHO staff replied to the email and asked Respondent to confirm whether it received the Complaint package from OCAHO. If it did not receive the Complaint package, OCAHO staff instructed Respondent to provide OCAHO with its best mailing address and point of contact for service. OCAHO staff explained to Ms. Santmyer that, if she intended to represent Respondent in this matter, she must file a notice of appearance that comports with 28 C.F.R. § 68.33(f). Further, OCAHO staff rejected Respondent’s Original Answer and directed Respondent to file the answer by one of the means set forth in 28 C.F.R. § 68.6. OCAHO staff also provided the parties with information about OCAHO’s Electronic Filing Pilot Program⁵ and explained that OCAHO would invite the parties to register for electronic filing after receipt of Respondent’s answer to the complaint. On the same day, Ms. Santmyer responded via email and said she would ask Mr. Kalkan if he received the Complaint package.

On March 22, 2024, Ms. Santmyer submitted Respondent’s Original Answer to OCAHO by mail without filing a notice of appearance as Respondent’s counsel.⁶

⁵ OCAHO’s Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014). Chapter 3.7 of OCAHO’s Practice Manual also describes the program. *See* <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

⁶ The Court exercises its discretion to accept this filing, but again directs counsel to file a notice of appearance pursuant to 28 C.F.R. § 68.33(f).

On April 8, 2024, OCAHO staff spoke with Ms. Santmyer by telephone. During that conversation, Ms. Santmyer represented that she was the best point of contact for Respondent and that, although Mr. Kalkan did not recall receiving the Complaint package, he would check his records. Ms. Santmyer provided OCAHO with an updated mailing address for Respondent in Houston, Texas, but said that mail service to the business address could be unreliable.

On April 9, 2024, using the USPS certified mail, OCAHO mailed the Complaint package to Respondent using the updated mailing address. The Complaint package was returned to OCAHO as being undeliverable.

On April 25, 2024, and May 9, 2024, using the USPS certified mail, OCAHO mailed the Complaint package to Respondent using Ms. Santmyer's address in Houston, Texas. The USPS certified mail tracking tool indicated that the Complaint package mailed on April 25, 2024, was deemed "Unclaimed/Being Returned to Sender," on June 8, 2024. The certified mail tracking information for the Complaint package sent on May 9, 2024, was last updated on May 21, 2024, at which point it was "in transit to the next facility." OCAHO did not receive a return receipt for either package.

On April 30, 2024, Complainant's counsel emailed OCAHO and requested to participate in electronic filing. On May 2, 2024, OCAHO staff provided the parties with Attorney/Participant Registration Forms and Certifications to use to register for OCAHO's Electronic Filing Pilot Program. OCAHO staff, however, explained that the case could not be enrolled in electronic filing until Respondent's counsel confirmed receipt of the Complaint package from OCAHO.

On June 16, 2025, the Court issued an Order to File Respondent's Request for Hearing and Granting Complainant Leave to Amend Complaint.

To date, Respondent has not confirmed receipt of the Complaint package, and neither party has submitted its completed Attorney/Participant Registration Form and Certification to participate in OCAHO's Electronic Filing Pilot Program.

II. DISCUSSION AND ANALYSIS

As detailed above, OCAHO has attempted to serve the Complaint package on Respondent five times but has encountered issues with service at all three mailing addresses for Respondent. OCAHO's Rules of Practice and Procedure for Administrative Hearings explain that the filing of a complaint commences an adjudicatory proceeding before OCAHO. 28 C.F.R. § 68.2. However, "the formal stage of a case actually does not begin (the time deadlines do not start) until the OCAHO

serves the original complaint on the respondent employer.” *United States v. Arnold*, 1 OCAHO no. 119, 781, 785 (1989) (internal citations omitted).⁷

OCAHO’s Rules require Complainant to identify “the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3.” 28 C.F.R. § 68.7(b)(5). Complainant must include this information in a statement accompanying the complaint. *Id.* After receiving this information, OCAHO will serve the complaint through one of the following methods:

- (1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;
- (2) By leaving a copy at the principal office, place of business, or residence of a party; or
- (3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

Id. § 68.3(a)(1)–(3). Whichever method is chosen, “[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee.” *Id.* § 68.3(b).

OCAHO’s Rules of Practice and Procedure for Administrative Hearings “do not permit Complainant or this Judge to waive service of the complaint.” *United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 510, 513 (1996). Here, OCAHO has attempted to serve Respondent through its registered agent and director, Mr. Ahmet R. Kalkan, and its purported counsel, Ms. Santmyer, using the USPS certified mail in accordance with 28 C.F.R. § 68.3(a)(3), but has been unable to confirm Respondent’s receipt of the Complaint package as required by 28 C.F.R. § 68.3(b). Although Complainant’s counsel represented to OCAHO staff that he had provided the complaint and NOCA to Respondent, the method of service was unclear. As such, this Court cannot find that the complaint was served on Respondent in conformity with OCAHO’s Rules of

⁷ 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 after 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 “FIM–OCAHO,” the LexisNexis database “OCAHO,” or on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Practice and Procedure for Administrative Hearings which limit service of complaints to the methods identified in 28 C.F.R. § 68.3(a)(1)–(3). Email is not among the permitted methods of service.

When OCAHO “encounters difficulty with perfecting service,” the Court may direct a party to execute service of process. 28 C.F.R. § 68.3(c). Typically, when the Court orders a party to perfect service in a case arising under 8 U.S.C. § 1324a, it requires the complainant to execute service of process “by personally serving the complaint, the NOCA, the NIF, and the request for hearing on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1).” *United States v. DJ’s Transp.*, 18 OCAHO no. 1488, 4 (2023); *see also United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508, 4 (2023); *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428, 1–2 (2022); *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022).

The Court follows that practice here and now orders Complainant to execute service of process by personally serving the complaint, the NIF, the request for hearing, and the NOCA on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1). *See United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991) (ordering the complainant to make personal service of the complaint and notice of hearing). Given the Court’s Order dated June 16, 2025, which gave Complainant thirty days, or through July 16, 2025, to file Respondent’s request for hearing and, if desired, to file an amended complaint, the Court affords Complainant an additional thirty days—through August 15, 2025—to effectuate personal service pursuant to 28 C.F.R. § 68.3(a)(1) of the complaint, any amended complaint, the NIF, the request for hearing, and the NOCA.

Should Complainant perfect service on Respondent, it must file proof of personal service of the Complaint package with the Court. Complainant or its agent must attest in its submission to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(b). Complainant also must include the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual’s relationship to Respondent, and the date upon which personal service was effectuated. *See United States v. Sea Dart Trading Co.*, 2 OCAHO no. 336, 304, 305 (1991) (requiring the complainant to effectuate service of the complaint and notice of hearing and file “an explanatory pleading” advising the Court of the manner in which it served the respondent); *see also Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant to include in its filing the name of the party serving the pleadings, the date served, and the method used). Complainant may attest to service through an affidavit or declaration from its agent(s) and supporting documentation relevant to service. *See, e.g., United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 2–3 (2022) (describing the complainant’s perfection of service and subsequent filing of an affidavit and state business record identifying the individual who was served as the registered agent and director of the

respondent business). The Court also directs Complainant to provide OCAHO with a functional U.S. mailing address for Respondent. *See id.* at 3.

If Complainant is unable to perfect service, Complainant shall provide the Court with a filing describing its efforts to serve the complaint on Respondent and, if desired, it may move to dismiss the complaint without prejudice. *See Vector Xpress, Inc.*, 16 OCAHO no. 1431, at 4–5.

If service cannot be accomplished, the Court also has the option to dismiss the complaint sua sponte. *See United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1–2 (2020) (dismissing case sua sponte where the complainant was unable to perfect service of the complaint); *see also Sea Dart Trading Co.*, 2 OCAHO no. 336, at 305 (noting that if service is not effectuated, dismissal may be considered sua sponte). Under these circumstances, OCAHO courts typically dismiss the complaint without prejudice, allowing the complainant to “refile the complaint if it can locate the Respondent so that service may be effectuated in accordance with the Rules of Practice and Procedure.” *Iniguez-Casillas*, 6 OCAHO no. 870, at 514.

Given the parties’ preference for electronic filing and the lengthy delays in this case due to issues with Respondent’s mailing addresses, the Court encourages the parties to submit their completed Attorney/Participant Registration Forms and Certifications to participate in OCAHO’s Electronic Filing Pilot Program.⁸ All parties must elect to become electronic filers, or they will continue to file case documents by the means set forth in 28 C.F.R. part 68 for the duration of the case.

III. ORDERS

IT IS SO ORDERED that, on or before August 15, 2025, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, shall personally serve Respondent, Excel Property Management Services Corp., with the complaint, any amended complaint, the Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act, Respondent’s request for hearing, and the Notice of Case Assignment for Complaint Alleging Unlawful Employment, all in a manner that complies with 28 C.F.R. § 68.3(a)(1).

IT IS FURTHER ORDERED that, within five days of effectuating service, Complainant shall file with the Court proof of personal service on Respondent of the complaint, any amended complaint, the Notice of Intent to Fine Pursuant to Section

⁸ OCAHO staff provided the forms to the parties on May 2, 2024, and the electronic filing registration form is available on the United States Department of Justice’s website at <https://www.justice.gov/eoir/ocaho-filing>. The parties must complete the form and mail it to OCAHO. They also may email a courtesy copy of each completed form to OCAHO to facilitate its processing and registration of this case in OCAHO’s Electronic Filing Pilot Program.

274A of the Immigration and Nationality Act, Respondent's request for hearing, and the Notice of Case Assignment for Complaint Alleging Unlawful Employment. In its filing, Complainant shall attest to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(b). Complainant also shall provide to the Court the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual's relationship to Respondent, and the date upon which personal service was effectuated.

IT IS FURTHER ORDERED that Complainant shall provide a functional United States mailing address for Respondent to which the Court may direct orders in this matter.

IT IS FURTHER ORDERED that, should Complainant be unable to effectuate personal service on Respondent, it shall notify the Court in writing of its efforts to serve Respondent no later than thirty-five days from the date of this Order and may move to dismiss the complaint without prejudice.

SO ORDERED.

Dated and entered on July 1, 2025.

Honorable Carol A. Bell
Administrative Law Judge