

8 U.S.C. § 1324b Proceeding
OCAHO Case No. 2025B00028

Appearances: Syed Asad Hussain, pro se Complainant
Richard M. Wilner, Esq., for Respondent

NOTICE – APPLICATION TO APPEAR REJECTED PURSUANT TO 28 C.F.R. § 68.33(c)(3)

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. While this procedural history appears verbatim in a previously issued order, the Court finds it to be helpful context for the instant Order. *See Hussain v. Developplus, Inc.*, 21 OCAHO no. 1649b (2025).¹

On January 13, 2025, Complainant, Syed Asad Hussain, filed a Complaint against Respondent, Developlus, Inc., alleging Respondent discriminated against him and retaliated against him.

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-chief-administrative-hearing-officer-decisions>.

On March 10, 2025, the Court issued an Order Granting Stay of Answer Deadline, in which it noted that, if Complainant is represented, that representative must submit a Notice of Appearance in accordance with 28 C.F.R. § 68.33(f).

On March 18, 2025, the “NAB Council” submitted a filing titled “Notice of Appearance as Attorney² or Accredited Representative for Syed Asad Hussain” signed by “Aady” Hussain.

Because the status of the proposed representative was unclear, on March 20, 2025, the Court issued a Notice & Order wherein it identified several issues pertaining to the identity and status of the proposed representative. *Hussain v. Developplus, Inc.*, 21 OCAHO no. 1649a (2025). Specifically, the Court informed the Complainant and his proposed representative of the requirements of 28 C.F.R. § 68.33(c)(3):

If Complainant’s proposed representative is not a licensed attorney (or law student), then the proposed representative must submit a “written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceeding and is otherwise competent [to represent individuals or entities in the forum]” 28 C.F.R. § 68.33(c)(3). [footnote omitted]

Hussain, 21 OCAHO no. 1649a, at 2.³

On March 25, 2025, the Court received an Amended Notice of Appearance in which Mr. “Addy”⁴ Hussain informed the Court of his legal name (stating he is “also known as Syed Ahad Hussain”), and he is the “founder of NAB Council, a law firm.” Amended Not. Appear. 1. He identifies himself as “a paralegal governed by the California Business and Professions Code.” *Id.*

² Unlike a DHS Form G-28, a “Notice of Appearance” in OCAHO is not a fillable form; rather it is document created by the filing party. Here, this proposed representative would have typed the word “attorney” in the title of the initial Notice of Appearance – as in “attorney or accredited representative;” raising the specter that the signatory may be a licensed attorney (even though he is not).

It was only when pressed, by way of a Court Notice and Order, that the signatory revealed he is not licensed to practice law; rather he is a paralegal who is an accredited representative in other EOIR fora (but not OCAHO). Such a conscious inclusion of an inaccurate designation alongside an accurate one is not expressly false; however, it also could give rise to candor-related considerations.

³ In the March 20, 2025 Order, the Court noted that an application would be untimely based on the governing regulation; however, the Court, sua sponte, indicated Complainant’s proposed representative could have additional time to file an application.

⁴ There is variance in the spelling of this name throughout the Amended Notice of Appearance. In the body of the submission it is “Addy;” however, in the signature block it is “Aady.” This is certainly peculiar, and it was only when pressed, by way of a Court Notice and Order, that the signatory provided his legal name. This peculiarity, in tandem with the title of the filing, certainly does not reduce the potential for candor-related concerns.

As to his background and expertise, Mr. Hussain states the law firm he “founded” “specializes in advocacy related to regulatory compliance, equal employment opportunities, affirmative action legislation, and diversity, equity, and inclusion in the context of potential discrimination lawsuits.” Amended Not. Appear. 1. He further states he is “a fully accredited representative authorized to represent individuals before the Board of Immigration Appeals, the Immigration Courts, and the U.S. Department of Homeland Security . . . in immigration matters . . .” *Id.*

On April 1, 2025, the Court rejected Mr. Hussain’s application to appear. In making that decision, the Court noted:

OCAHO proceedings are unique within EOIR as they are governed by the Administrative Procedures Act (APA). *See* 28 C.F.R. § 68.1.⁵ APA proceedings have more or different requirements (vice proceedings not covered by the APA like removal proceedings or appeals to the BIA). *Compare* 28 C.F.R. pt. 68 (2024) *with* 8 C.F.R. pts. 1003, 1292 (2024) (For context, Title 8 covers Aliens and Nationality and Title 28 covers Judicial Administration.) . . .

Title 28 functionally requires the Administrative Law Judge to “accredit” on a case-by-case and representative-by-representative basis. *See* 28 CFR 68.33(c)(3)(i)-(iii) (detailing an “application” followed by an “inquiry on qualifications or ability,” and concluding with potential “denial.”).

Specifically, Title 28 requires “knowledge of administrative procedures, technical expertise, or other qualifications.” 28 C.F.R. § 68.33(a)(3). Stated more concretely, representation in OCAHO proceedings require an unsupervised non-attorney representative to have a sufficient expertise in APA-covered proceedings, including (but not limited to) motions practice, discovery, and hearings. Additionally, in cases arising under 8 U.S.C. § 1342b (like this one), an unsupervised non-attorney may also need sufficient expertise in citizenship and national origin discrimination matters (and retaliation).⁶

As the OCAHO regulations state, an unsupervised non-attorney must submit an application (in writing) in order to appear, and “[t]he application shall set forth *in detail* the requesting individual’s qualifications to represent the party.” 28 C.F.R. § 68.33(a)(3)(i) (emphasis added). That detail is crucial, because, without it, the

⁵ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

⁶ This expertise could, ostensibly, be garnered by a sufficient amount of experience litigating matters arising under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2.

Administrative Law Judge cannot properly conduct the “inquiry” required by regulation. 28 CFR § 68.33(c)(3)(ii) . . .

While there are no set criteria in regulation for the application or inquiry,⁷ in a case like this one, a sufficient application could have addressed (among other potential qualifications or experience): whether the proposed non-attorney representative has any attorney supervision (and if so, by whom); specificity as to the number and type of APA-covered (or similar) proceedings in which the proposed non-attorney representative has appeared or has otherwise participated (and what tasks that individual performed on the case); what, if any, technical expertise the proposed non-attorney representative has relative to federal employment discrimination matters; and whether or how the non-attorney would familiarize himself with the precedential case law and regulatory requirements of the forum.⁸

Because the written application of Mr. Syed Ahad Hussain does not demonstrate the requisite knowledge and expertise required by 28 C.F.R. § 68.33(c)(3), the undersigned now issues this Order DENYING (without prejudice) the privilege of appearing (on this matter) to Mr. Syed Ahad Hussain because he “does not possess the requisite qualifications to represent others” based on the application he provided. 28 C.F.R. § 68.33(c)(3)(iii).

Hussain, 21 OCAHO no. 1649b, at 3–5.

On July 29, 2025, Mr. Syed Ahad Hussain filed a three-page submission entitled “Exhibit B – Complainant’s Accredited Representative’s Supplemental Response to OCAHO’s April 1, 2025 Rejection of Amended Notice of Appearance Pursuant to 28 C.F.R. § 68.33(c)(3).” There is no motion accompanying the Exhibit (nor is there an Exhibit A). The submission is accompanied by a two-page Certificate of Service,⁹ which is dated June 29, 2025.

⁷ Precedential case law can provide some clarity, although competence of a “lay” representative is not a frequently-litigated issue. In one published decision, the Court determined a lay representative was qualified after he submitted an application noting his acquisition of a juris doctorate degree (but not current law license), familiarity with administrative processes, and a resume indicating relevant work experience in agencies and in courts. *See Alberto Izquierdo v. Victoria Nursing & Rehab. Ctr.*, 10 OCAHO no. 1131, 1–3 (2009).

⁸ This list in no way serves to limit future non-attorneys who seek to apply to represent individuals, rather it is provided only to serve as helpful explanation here –providing context and clarity by way of contrast.

⁹ The Certificate of Service is tangentially (but still meaningfully) problematic for several reasons.

First, it is dated a month prior to the submission of the “Exhibit,” which detracts significantly from its reliability as a document memorializing when and how a matter was filed and/or served.

Next, it places a “request” in the second page, which appears to be a motion to have “all official correspondence be directed via electronic mail . . .” Certificates of Service are not the place to make a motion.

II. ANALYSIS

As a threshold matter, the “Exhibit” creates ambiguity as it is unclear whether it is a “new” application or a motion to reconsider.¹⁰ Based on the text contained within the filing,¹¹ the Court is inclined to treat the submission as a new application.¹²

In Section II, Mr. Hussain clarifies that he is not an attorney, rather he is “an accredited representative under 8 C.F.R. § 1292.1, and a legally authorized legal preparer under the California Business and Professions Code.” Ex. B 1.

In Sections III and IV of the application (titled “. . . Application with Required Detail . . . [and] Compliance with 28 C.F.R. § 68.33(c) Requirements”), Mr. Hussain provides the following:

This resubmitted EXHIBIT B specifically addresses the deficiencies noted:

- Demonstrates Mr. Hussain’s direct qualifications (not general advocacy experience)
- Specifies APA-related knowledge and practice
- Confirms understanding of OCAHO regulations and procedural expectations
- Distinguishes immigration versus administrative forum knowledge

In line with the Court’s guidance:

- The undersigned has practiced in APA-regulated settings, including preparing administrative submissions for USCIS, EEOC,

Further, OCAHO has an E-Filing Program, which requires both parties to complete forms to opt into electronic filing. Parties here have not registered for e-filing. (This case is not approved for e-filing; however (purely as a courtesy, and in large part due to the August 1, 2025, deadline in the April 1, 2025 Order), this filing was not rejected even though it was impermissibly filed electronically. The entity which filed it was informed it would need to properly file the submission by mail.)

Finally, the Certificate of Service states the filing was “[f]iled and served electronically pursuant to 28 C.F.R. § 68.6(b), signature not required for service by official email.” This is not correct - signatures are absolutely required on all Certificates of Service. Also, the Certificate of Service drafter relies on the Court’s procedural regulations at 28 C.F.R. § 68.6(b) to justify its position it need not sign Certificates of Service; however, that regulatory provision instructs parties “not [to] file discovery . . . with [the Court],” and clearly does not address Certificates of Service. *See* 28 C.F.R. § 68.6(b).

Ultimately, the issues outlined in this footnote serve to complement, and perhaps even enhance the analysis and conclusion drawn by the undersigned – denial of the application is appropriate.

¹⁰ While it is styled as a “Response” to the Court’s Order, the Court did not request or invite a response in that Order.

¹¹ “[Mr. Hussain] . . . provides herewith an updated, compliant submission to meet the criteria set forth in 28 C.F.R. § 68.33(c).” Ex. B 1.

¹² Sections II–IV appear to contain the “application,” and Sections V, VI, and VII seem to address other matters (asserting a “good faith basis and [requesting] equitable relief, [and] preserv[ing] state remedies.” Ex. B 2–3.

DHS Office for Civil Rights and Civil Liberties (CRCL), and Department of State (LegalNet and Consular Affairs).

- The undersigned has not claimed automatic qualification based on EOIR or BIA credentials but instead submits this application fully acknowledging that OCAHO requires an independent showing of APA-specific competence.
- While unsupervised, NAB Council operates under an internal compliance framework that includes peer review and attorney oversight, where required.

Ex. B 2.

This appears to be the application in its entirety. This application, like the one before it, does not satisfy the requirements of 28 C.F.R. § 68.33(c).

In completing the regulatory inquiry (and mindful of the concrete guidance contained in the Court's April 1, 2025 Order), the Court considered that Mr. Hussain is "unsupervised" by an attorney (although he asserts the entity he founded has "internal compliance framework that includes . . . attorney oversight)." Ex. B 2. A lack of attorney supervision causes the Court to look more closely at the skills and experience of a proposed representative.

According to Mr. Hussain, the application "demonstrates Mr. Hussain's direct qualifications," but the application then proceeds to provide no objective descriptions of those qualifications, nor does it explain what his "administrative forum knowledge" is, even though the application purportedly "specifies" his "APA-related knowledge and practice."

Moreover, this application does not provide any specificity as to the number and type of APA-covered proceedings in which Mr. Hussain has participated. He refers to "APA-regulated settings" in which he has "practiced," but this characterization is confusing as the APA does not "regulate" fora. He then cites only "administrative submissions" to various executive branch agencies and components, which may be a euphemism for completing forms and submitting paper applications - actions which are patently dissimilar to practicing in an APA-covered forum.

In any event, the application lacks "specificity as to the number and type of APA-covered (or similar) proceedings in which the proposed non-attorney representative has appeared or has otherwise participated (and what tasks that individual performed on the case); what, if any, technical expertise the proposed non-attorney representative has relative to federal employment discrimination matters; and whether or how the non-attorney would familiarize himself with the precedential case law and regulatory requirements of the forum." *Hussain*, 21 OCAHO no. 1649b, at 5.

For these reasons, this application is DENIED.

III. CONCLUSION

Complainant remains pro se.

Once more, Complainant shall be provided with additional time to secure representation (if he chooses to do so). He may also, of course, continue to proceed pro se. If Complainant needs additional time to secure representation, he may request it by filing a written motion. *See* 28 C.F.R. § 68.11(a) (“[A]ny application for an order or any other request shall be made by motion . . . in writing . . .”).

Any proposed representative must file a Notice of Appearance. 28 C.F.R. § 68.33(f).

While this application is DENIED without prejudice, Complainant should be aware that a future denied application may not result in an extension of the deadline to respond to the pending motion to dismiss.

Complainant shall have until October 1, 2025 to respond to the pending motion to dismiss.

SO ORDERED.

Dated and entered on July 31, 2025.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge