

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

August 6, 2025

US TECH WORKERS ET AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00105
	)	
ULTA, INC.,	)	
Respondent.	)	
	)	

Appearances: John M. Miano, Esq., for Complainants
Jennifer Roeper, Esq., and Stephanie C. Generotti, Esq., for Respondent

ORDER GRANTING LEAVE TO AMEND THE COMPLAINT AND DENYING MOTION
TO DISMISS IN PART

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainants, US Tech Workers et al., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on April 23, 2024. Complainants allege that Respondent, Ulta, Inc., discriminated on the basis of citizenship, in violation of 8 U.S.C. § 1324b. This Order addresses Respondent's Motion to Dismiss and Complainants' Motion to Amend the Complaint.

On June 18, 2024, Respondent filed an Answer and Affirmative Defenses to Complainants' Complaint. The Court issued a General Litigation Order on July 9, 2024, scheduling a prehearing conference. On July 30, 2024, Complainants filed a Motion to Consolidate, Stay Discovery, and for Leave to File a Consolidated Amended Complaint to which Respondent had previously filed a response, anticipating the filing. On August 6, 2024, this Court granted a limited stay of proceedings, staying discovery but permitting dispositive motions and cancelling the prehearing conference. *US Tech Workers v. Ulta, Inc.*, 20 OCAHO no. 1595a (2024).¹

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

On November 6, 2024, this Court issued an order denying Complainant's Motion to Consolidate and for leave to file a Consolidated Amended Complaint. *US Tech Workers v. Ulta, Inc.*, 20 OCAHO no. 1595b (2024). On November 8, 2024, Complainants filed a Motion to File an Amended Complaint along with the proposed First Amended Complaint (FAC), to which Respondent filed an opposition on December 3, along with a Motion to Dismiss. Complainants filed a timely Response to the Motion to Dismiss, and at a prehearing conference on December 9, the Court issued a stay of discovery pending resolution of the motions.

II. POSITION OF THE PARTIES

This case arises from an effort a group called Chicago H-1B Connect undertook to “target workers in H-1B status for recruitment.” Compl. 21. Respondent is alleged to be a member of this group along with other Chicago businesses. *Id.* Complainants seek to amend the Complaint to “shift from notice pleading to fact pleading to add factual details” to the complaint. Mot. to Amend 1. The FAC also seeks to clarify that Complainants are asserting shared liability among the various member companies of Chicago H-1B Connect, not the common law tort of conspiracy, which this Court had found was not a cognizable claim in this Court. *Id.* at 3. Complainants also assert that they intend to rely on evidence of discrimination that is explicit, direct, and documented, thus Complainants need not demonstrate, and thus need not plead a prima facie case of discrimination. Further, a job application is not necessary to show discrimination when an employer has made its discriminatory intent known. *Id.*

Respondent asserts that the Court should deny the Complainants' motion because the amendment would be futile and is unduly prejudicial. R's Opp. Mot. To Amend 1. Specifically, Respondent argues that the FAC fails to establish standing and jurisdiction, and presents legal conclusions without factual support. *Id.* Respondent argues that the newly added Complainants, nine individuals, did not comply with the necessary actions to bring the complaint. *Id.* at 8-9. Respondent argues that the Complaint does not state a claim upon which relief can be granted. *Id.* at 9-10. First, the organization US Tech Workers is not a protected individual, secondly none of the named individuals allege a claim of discrimination – only one individual (J.D.) alleges discrimination, but that allegation does not allege how he applied for the job, how or why he was qualified, why Respondent did not hire him, whether the position remained open, and whether someone else was hired for the job, who was hired and why. *Id.* 11. Respondent argues that Complainants do not establish joint liability because the Complainants must establish liability as to each Respondent, and they have not named any other Respondents. *Id.* at 13-14. Respondent's Motion to Dismiss raises similar arguments. Mot. Dismiss.

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>.

In response to the motion to dismiss, Complainants argue that they are presenting a “common law principle of concerted action...creating joint and several liability,” or “joint liability for concerted action.” Opp. Mot. To Dismiss 4. Complainants argue that they are asserting discrimination in recruitment, that the campaign itself was discriminatory on its face because the parties sought to recruit H-1B nonimmigrants. *Id.* at 6. Finally, Complainants cite to Title VII prohibition against discriminatory advertisement, and argue that a job application is not necessary as such applications are futile. *Id.* at 3, 7.

III. LEGAL STANDARDS

A. Motion to Dismiss

“OCAHO’s rules permit dismissal of a complaint for failure to state a claim upon which relief may be granted[.]” *United States v. Spectrum Tech. Staffing Servs., Inc.*, 12 OCAHO no. 1291, 8 (2016) (citations omitted); 28 C.F.R. § 68.10.² 28 C.F.R. § 68.10 is modeled after Federal Rule of Civil Procedure 12(b)(6). *Spectrum Tech. Staffing*, 12 OCAHO no. 1291, at 8; *see* 28 C.F.R. § 68.1 (providing that “[t]he Federal Rules of Civil Procedure may be used as a general guideline” in OCAHO proceedings). When considering a motion to dismiss for failure to state a claim, the Court must “liberally construe the complaint and view ‘it in the light most favorable to the [complainant].’” *Spectrum Tech. Staffing*, 12 OCAHO no. 1291, at 8 (quoting *Zarazinski v. Anglo Fabrics Co., Inc.*, 4 OCAHO no. 638, 428, 436 (1994)). OCAHO’s Rules of Practice and Procedure require the complaint to contain “[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred.” 28 C.F.R. § 68.7(b)(3). Motions to dismiss for failure to state a claim are generally disfavored and will only be granted in extraordinary circumstances. *United States v. Split Rail Fence Co., Inc.*, 10 OCAHO no. 1181, 6 (2013) (CAHO declined to modify or vacate interlocutory order) (citing *Lone Star Indus., Inc. v. Horman Family Trust*, 960 F.2d 917, 920 (10th Cir. 1992); and then citing *United States v. Azteca Rest., Northgate*, 1 OCAHO no. 33, 175 (1988)).

OCAHO’s Rules of Practice and Procedure provide, as relevant here, 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).

“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) (quoting *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 10 (2012), and then quoting *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5 (2021)). “[P]leadings 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 generally* *Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, at 9-10.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

While there is no requirement in a case pursuant to § 1324b that a complainant plead a prima facie case, a § 1324b complaint must nevertheless contain sufficient minimal factual allegations to satisfy 28 C.F.R. § 68.7(b)(3) and give rise to an inference of discrimination. *Jablonski v. Robert Half Legal*, 12 OCAHO no. 1272, 6 (2016).

B. Motion to Amend

OCAHO's regulations provide that an Administrative Law Judge may amend a pleading "[i]f a determination of a controversy on the merits will be facilitated thereby . . . upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties." 28 C.F.R. § 68.9(e). See *U.S. Tech Workers v. Northwestern Memorial Healthcare*, 19 OCAHO no. 1566e, 7 (2024). This rule is "analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure, a permissible guidance in OCAHO proceedings, see 28 C.F.R. § 68.1." *Talebinejad v. MIT*, 17 OCAHO no. 1464a, 2 (2023) (citing *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998)).

Rule 15 states, "The court should freely give leave [to amend] when justice so requires." See also *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015)(citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) (reversing denial of leave to amend by citing to Rule 15(a)(2)'s mandate to freely give leave to amend and stating "this mandate is to be heeded").

Despite this exhortation, "this liberality does not extend to a proposed amendment that would not survive a motion to dismiss, the usual test for determining whether or not a proposed amendment is futile." *Jablonski*, 12 OCAHO no. 1272, at 7–8 (citing *United States v. Ronning Landscaping, Inc.*, 10 OCAHO no. 1149, 6 (2012), *Cf. Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 7 (2003)). If there is no reasonable possibility that the amendment will cure a pleading defect, leave to amend need not be granted.

IV. COMPLAINTS

In the original Complaint, Complainants allege that Respondent engaged in discrimination based on citizenship status when Respondent, "collectively operating with other employers under the name 'Chicago H-1B Connect'" targeted recruitment efforts toward persons in H-1B visa status.³ Compl. at 21.⁴ Specifically, Complainants allege that "Respondent and other Chicago H-1B Connect members promoted their efforts to target workers in H-1B status along with other employers" on the Chicago H-1B Connect website, in a press release, on Twitter, and in the news media. *Id.* at 21-22. Complainants then allege that one of the named Complainants applied for an IT Product Development Manager position at the company and received a rejection two weeks

³ See *U.S. Tech Workers v. BMO Bank*, 20 OCAHO no. 1586b, 5 n.4 (2024) (taking notice of the U.S. Citizenship and Immigration Services' website's explanation of the H-1B visa classification).

⁴ When citing the Complaint, the Court uses the PDF pagination rather than the numbering at the bottom of the page for the form.

after applying. *Id.* at 22. Complainants filed similar claims against approximately forty other Chicago-area businesses.

The Complaint form contains a box where the Complainants answered in the affirmative to the question, “[w]ere you discriminated against because of your citizenship.” Compl. at 6. Also checked in the affirmative is the question, “[d]id the Business/Employer refuse to hire you?” *Id.* In the box that asks for job title and duties Complainants indicate, “[s]ee attached charge for application details.” Also checked are the boxes asking whether Complainants were qualified for the job and whether the business employer was looking for workers. *Id.* The box asking when Complainants applied is left blank. *Id.* The boxes asking if the job remained open, whether the Business/Employer continued taking applications and whether someone else was hired for the job are also left blank. *Id.* at 7. Complainants are seeking lost wages as a remedy. *Id.* at 11.

In the attachment, Complainants allege that by “specifically targeting nonimmigrants in H-1B [status] for employment, Respondent affirmatively discouraged protected individuals from applying for employment and has engaged in unlawful discrimination based upon citizenship status.” *Id.* at 22. Complainants then list an individual (J.D.) as an “injured party,” and asserts that he applied, was rejected, and is a United States citizen. *Id.* at 23-24. The Complaint lists names of companies who are the “participants in the unlawful conspiracy.” *Id.* at 29-35. At the end, the Complaint lists individuals as members of US Tech Workers. *Id.* at 30.

In the FAC, Complainants do not include the OCAHO complaint form, instead asserting the allegations in 154 numbered paragraphs. These paragraphs include a number of additional facts, beginning by providing some background about the “individual complainants” who are members of US Tech Workers, including the specific individual who applied in this complaint. Complainants assert J.D. is a software developer with a BA in Philosophy and Computer Science and a Master’s Degree in MIS, who is currently looking for a job related to his education and experience. FAC 3. The FAC indicates he applied through the Chicago H-1B Connect Coalition job board for a position for which he was qualified. *Id.* at 32.

Complainants assert that Chicago H-1B Connect Coalition is, or was, a group name without a legal entity that exists solely as the sum of its members, or it may have dissolved after complaints were filed. *Id.* at 3. Complainants assert that Respondent was a member of this coalition, that it held itself out to the public as such, and it acted with common design with the other members. *Id.* at 4. Complainants again cite to a number of media articles and interviews, this time providing more text from these sources, by coalition members and other media figures promoting the group’s objective, with some specifically mentioning H-1B visa employees and some not. *Id.* at 6-10. The FAC lists financial contributions of many of the members to P33, allegedly the Chicago H-1B Connect organizer, though not Respondent in this case. *Id.* at 11-12.

Complainants assert that all members of Chicago H-1B Connect Coalition are jointly and severally liable for the “tortious acts of the Chicago H-1B Connect Coalition.” *Id.* at 18. “By publicly and repeatedly expressing the desire to recruit H-1B Nonimmigrants, the Chicago H-1B Connect coalition engaged in direct discrimination against U.S. workers.” *Id.*

Exhibit B is a screenshot of the Chicago H-1B Connect Coalition web site (which no longer exists), which states, “Chicago business leaders are uniting to assist current H-1B visa holders impacted by recent layoffs in the tech industry across the U.S. Explore careers open to all including highly skilled H-1B visa holders in our thriving ecosystem.” *Id.* at 40. The second page discusses the difficulties of being an H-1B visa holder, and then states, “[e]xplore the job board for vetted and trusted positions (local + remote) open to H-1B visa holders” and then displays the trademark symbols of a number of companies, including Respondent, along with promotional statements. *Id.* at 41.

V. DISCUSSION

A. Standing

As an initial matter, the Respondent challenges whether the Complainant, US Tech Workers, has standing to bring the case. In several related cases, the Court found that as a matter of pleading, Complainant US Tech Workers fulfilled the regulatory requirements for a § 1324b complainant under 28 C.F.R. § 68.2, because Complainant has at least nominally pled that it is a “private organization” that has filed a charge on behalf of injured parties. *U.S. Tech Workers v. Vivid Seat*, 20 OCAHO no. 1593b, 5 (2024); *see also U.S. Tech Workers v. BMO Bank*, 20 OCAHO no. 1586b, 6 n.7 (2024).

Complainants have muddled the waters with its Motion to Amend Complaint and First Amended Complaint. In the original complaint, Complainants listed US Tech Workers as the Complainant, and listed individuals at the end of the attachment as members of US Tech Workers. The original Complaint also listed the individual who applied as an “injured party,” as well as “US Tech Workers”. Compl. 1, 23. The charge form filed with the Immigrant and Employee Rights Section of the Department of Justice (IER) has a separate section to list injured parties, and Complainant included a reference to the attachment, which presumably is the same attachment as included in the Complaint. Compl. 17, 23. In the FAC, Complainants amend the caption to include all the names previously listed as members of US Tech Workers, and then list the nine individuals as individual complainants and members of the US Tech Workers. Unlike in the original Complaint, the FAC does not specifically list any injured parties.

It is thus unclear whether the individuals listed in the caption are bringing the complaint as individuals or as an organization, and if they are the organization, there is no injured party on whose behalf the complaint is brought.

Nevertheless, the case need not be dismissed for lack of standing because it is clear that the individual who applied has standing, and US Tech Workers has standing to bring the case on his behalf.⁵ The FAC clearly alleges that J. D. “applied for an IT Product Development Manager job,

⁵ Any “person,” defined as “an individual or organization” may file a charge with IER. 8 U.S.C. §§ 1324b(b)(1), 1101(b)(3). Under IER’s regulations, [a] “charging party,” may be “[a]n injured party who files a charge” with IER *or* “[a]n individual or entity authorized by an injured party to file a charge” with IER that “alleges the injured party is adversely affected directly by unfair immigration-related employment practice[.]” 28 C.F.R. § 44.101(b)(1)-(2); 28 C.F.R. §

for which his experience and education made him qualified” at Respondent company, and that he was rejected. FAC 27. The FAC also alleges that “the Chicago H-1B Connect Coalition discriminated against U.S. workers in recruitment based on citizenship status” and that “all members of the . . . Coalition are . . . liable.” *Id.* at 18, Exhibit M. This is enough to show that, regardless of how the FAC labels J.D., he is an injured party, alleging non-selection based on citizenship status.⁶ Although it is true that J.D. did not file his own separate IER charge form, the statute allows an organization to file a charge on an injured party’s behalf. 8 U.S.C. § 1324b(b)(1). J.D. and US Tech Workers have standing to bring a citizenship status discrimination claim.

To the extent the other named individual complainants are part of US Tech Workers bringing the claim on behalf of J.D., they have organizational standing, and may remain as named Complainants in that capacity. As noted below, however, to the extent the other named complainants are asserting individual claims, the case is dismissed as to them.

B. Motion to Dismiss

Because the Respondent challenges the FAC on the basis of futility, the Court will first consider whether the FAC would survive a motion to dismiss.

Under 8 U.S.C. § 1324b, “[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual...” based on national origin or citizenship status, “with respect to the hiring, or recruitment or referral for a fee, of the individual for employment...” 8 U.S.C. § 1324b(a)(1)(A)-(B).

Complainants assert that the campaign to promote employees in H-1B status (which I will assume for purposes of this motion, without deciding, is synonymous with citizenship status) in and of itself states a claim for discrimination. As noted above, the statute prohibits discrimination in three circumstances: “recruitment or referral for a fee,” hiring, and firing. 8 U.S.C. § 1324b (a)(1)(A)-(B). In *Vivid Seat*, 20 OCAHO no. 1593b, 5-6, this ALJ found that “recruitment” in the statute is “recruitment for a fee” which is a term of art, and which is inapplicable here because it has specific requirements that make it clear it refers to a recruitment agency. *Id.* at 6. However, discrimination in hiring is a catchall, broad term, and has been considered to include the entire selection process. *Id.* n.8 (citing *McNier v. San Francisco State Univ.*, 8 OCAHO no. 1030, 425, 442-43 (1999) (citing *Lasa Mtk.*, 1 OCAHO no. 141, at 971 n. 1); *Mid-Atlantic Reg’l Org. Coal.*, 10 OCAHO no. 1134, at 7-8 (citing *Iron Workers Loc. 455 v. Lake Const. & Dev. Corp.*, 7 OCAHO no. 964, 632,

44.300(a)(2). An injured party is “an individual who claims to be adversely affected directly by an unfair immigration-related employment practice.” 28 C.F.R. § 55.101(i).

⁶ Respondent also argues that there is no standing because US Tech Workers does not fulfill the definition of a protected individual. Resp. Mot. Leave File 10-11. The Court notes that the protected individual requirement is best understood as a substantive element of a citizenship status claim. 8 U.S.C. § 1324b(a)(1)(B). In any case, that element has been successfully pled because the FAC states that all “individual complainants are . . . U.S. citizens,” making J.D. a protected individual under 8 U.S.C. § 1324b(a)(3)(A), and US Tech Workers is bringing the case on behalf of J.D.

681 (1997)). The statute is a remedial statute, whose purpose is to ensure that there are no unlawful barriers to opportunities for employment. *McNier*, 8 OCAHO no. 1030, 442. This is supported further by the inclusive phrase “with respect to...hiring”.⁷ Thus the alleged discrimination must be tied to an actual hiring effort, but what occurred in the recruitment process is relevant to determining whether there were any lawful barriers to the hiring.

The Seventh Circuit held, in *Rudin v. Lincoln Land Community College*, 420 F.3d 712 (7th Cir. 2005) that while efforts to recruit applicants of a certain class do not on their own constitute discrimination, “when considered with other factors in a case,” they “can constitute circumstantial evidence of race discrimination.”⁸ In that case, the Court found that insertion of a racial minority into a candidate pool without going through the same steps as other candidates due to an affirmative action program, along with statements by the hiring manager was sufficient to create a genuine issue of material fact. See also *Mlynczak v. Bodman*, 442 F.3d 1050, 1058 (7th Cir. 2006) (finding that company policy aimed at expanding “the pool of persons under consideration” is permissible “as long as it is not followed by an explicit policy of preferring the minority candidates in the group”). See also *Lumpkin v. Brown*, 898 F.Supp. 1263 (N.D. Ill. 1995) ([gov’t agency] discriminated based on age in recruitment when it marketed and recruited solely on college campuses and created special noncompetitive career ladders for college graduates). These cases indicate that promotion of certain classes of persons in order to increase the candidate pool in an open recruitment process is not, in and of itself, discrimination. Additional factors, however, such as closed recruitment, preference in the selection process, or discriminatory comments, make the difference.

Here, none of the citations to the various promotions, websites, media articles, specifically allege that the companies preferred H-1B candidates. See, e.g. FAC. Ex. A - Press Release describing Chicago H-1B Coalition as a “a united effort to assist current H-1B visa holders who have been impacted by layoffs in the tech industry...help support and to retain highly skilled and valuable international talent...”; Ex. C – Article by Chicago H-1B Coalition organizers: “Our goal is to provide support and resources for current H-1B visa holders who are seeking new employer sponsors.... Assisting our immigrant population and supporting our local residents are not mutually exclusive goals. With the help of organizations ... as well as the robust community college systems and universities in the region, we are actively working to improve the skills of our residents.” However, in this case, Complainant alleges that one of the named individuals applied for a position, was qualified for the position, and was not selected for the position. Respondent acknowledges this, but asserts there are no allegations explaining how J.D. applied for the position, whether he was qualified, why Respondent refused to hire him, whether the position remained open, whether someone else was hired for the job, and who was hired and why. R’s Opp. Mot. To Amend 10-11. Respondent argues that the FAC merely speculates that discrimination occurred

⁷ In contrast, Title VII uses the more direct language “fail or refuse” to hire. 42 U.S.C. § 2000e-2(a)(1). Title VII also includes, however, a specific prohibition against discrimination in advertising. 42 U.S.C. § 2000e-3(b). See *Vivid Seat*, 7, n. 10.

⁸ This case cites *Duffy v. Wolle*, 123 F.3d 10261038-9 (1997) (rev’d on other grounds) which states, “[a]n employer’s affirmative efforts to recruit minority and female applicants does not constitute discrimination.”

because of the H-1B Connect website, without asserting that any of the individuals knew about H-1B Connect.

As noted above, there is no requirement that Complaint plead a prima facie case, which is what Respondent cites is lacking. The Complaint must, however, plead sufficient facts to give rise to an inference of discrimination. To give rise to an inference of discrimination, a complaint must include information that links the complainant's protected class and the employment action in question. *See Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 5 (2022). In other words, the Complainant must allege facts to identify causation. *See, e.g., A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381d, 16 (2021) (dismissing claim of citizenship status discrimination claim when the complainant merely asserted "in a general and conclusory fashion that Respondent discriminated against him based on his citizenship status, without citing to specific facts giving an inference to causation") (citing, *inter alia*, *Thompson v. Sanchez Auto Servs., LLC*, 12 OCAHO no. 1302, 7–8 (2017) (dismissing discrimination claim where the complaint was "bereft of any allegations related to [] national origin apart from cursory assertions"))).

As an initial matter, the FAC does assert that J.D. applied to a position through the Chicago H-1B Connect website, that he was qualified and that Respondent refused to hire him. FAC 32. The FAC further alleges that this job posting was placed pursuant to a recruitment campaign targeted to a particular class, and the website where the job was posted focused almost exclusively on that class. In an attachment, Complainants included a linked-in post stating that Respondent "is a proud employer partner in the campaign announced today to connect H-1B visa holders...to companies that would be open to considering hiring them." FAC Ex. M. The website in which J.D. applied states that "Chicago business leaders are uniting to assist current H-1B holders." It then says all may apply, including H-1B visa holders, but then states, "[e]xplore the job board for vetted and trusted positions (local + remote) open to H-1B visa holders." FAC Ex. B. While this is a close case, these exhibits, which are included in the Complaint, arguably provide the link to the protected class, at last as a matter of pleading. Whether the websites served merely to increase the pool of candidates or served to limit the pool of people that were considered for the position, or are evidence that Respondent was only intent on hiring H-1B visa holders are issues for record development. Given the low pleading standards of this forum and the exhortation that motions to dismiss are disfavored, as well as the requirement to construe the pleading in the light most favorable to Complainant, these allegations are sufficient to allow this case to move forward.

To be clear, this Court has found a number of similar cases subject to dismissal where there were no allegations that the companies did any actual recruiting, or that the injured parties sought employment from Respondent and were discouraged from applying. *Vivid Seat*, 20 OCAHO no. 1593b, 6-8; *US Tech Workers et al. v. Northwestern Medicine*, 20 I&N Dec. 1566e (2025); *US Tech Workers v. Northern Trust*, 19 OCAHO no. 1578b (2024).⁹ This is not that case, however.

⁹ To the extent that the original or FAC states a claim under the futility doctrine, where an application is not necessary because "[a] consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection," *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 365 (1977) neither complaint states a claim. To merit relief under the futility doctrine, the nonapplicant plaintiff must meet "the not always easy burden of providing that he would have applied for the job had it not been for [the employer's discriminatory] practices." As

Further, in its prior decision, the Court rejected the notion that tort-based conspiracy claims are cognizable in this jurisdiction. *US Tech Workers v. Ulta, Inc.*, 20 OCAHO no. 1595b, 4 (2024). This case is moving forward because there is an allegation that a person in a protected class, who was qualified for the position, applied and was not hired in circumstances that may raise an inference of discrimination.

Accordingly, the Court finds that the FAC would not be futile, and GRANTS the Motion to Amend, and denies the motion to dismiss.

C. Other Named Complainants – In-concert Liability

To the extent the FAC asserts individual claims as to the other named Complainants, by contrast, the Complaint does not state a claim. Neither the original Complaint nor the FAC allege that the other individual named plaintiffs applied to Respondent company, nor that they were specifically discouraged from applying to *this* Respondent. Although the FAC alleges that “[b]y publicly and repeatedly expressing the desire to recruit H-1B Nonimmigrants, the Chicago H-1B Connect coalition engaged in direct discrimination against U.S. workers” and that Respondent company was a member of the coalition, there are no allegations that *this specific Respondent’s* association with Chicago H-1B Connect dissuaded any of the named individual plaintiffs from applying. FAC. 13. This Court has heard cases where individual members of unions were listed as Complainants along with the union filing on their behalf, but in those cases each of the named individuals applied for positions. *See, e.g. Iron Workers Local 455, et al., v. Lake Constr. & Dev. Corp.*, 7 OCAHO no. 964 (1997).

The Complainants’ theory appears to be that Respondent should be liable for all the hiring actions of all the members of the Chicago H-1B Connect Coalitions through the doctrine of in-concert liability, or shared liability. Mot. to Amend 3. Complainants assert that in Illinois, the nomenclature is “Common Law Doctrine of Joint and Several Liability.” *Id.* Complainant cites to an Illinois case describing in-concert liability adopted in Illinois. *Hutchison v. Fitzgerald Equip. Co.*, 910 F.3d 1016, 1025 (7th Cir. 2018).

As an initial matter, it is unclear whether the Complainants are pursuing this aspect of the claim as a separate cause of action, like conspiracy. If so, this Court has already pointed out that it is a Court of limited jurisdiction, and it cannot create causes of action based on common laws. In *Summerland v. Exelong Gen. Co.*, 510 F. Supp.3d 619 (N.D. Ill. 2020), in discussing conspiracy, the Court found that such an action must be founded upon a “tortious act,” and that it does not appear that Illinois law recognizes violations of federal employment law to be tortious. *Summerland*, 510 F.Supp. 3d at 631, citing *Atanus v. S&C Elec. Co.*, 454 F. Supp. 2d 753, 756 (N.D. Ill. 2006) (“A violation of a federal regulation is not a tort.”).

in *Vivid Seat*, the original complaint contained conclusory statements of law and no factual support. *Vivid Seat*, 20 OCAHO no. 1593b, 8. The FAC alleges that the other individual members of the US Tech Workers applied unsuccessfully to other companies, but it does not allege that those other members saw a job posting from Respondent and were discouraged from submitting an application to Respondent.

The Court goes on to explain, however, that federal employment discrimination laws create statutory torts in some instances, and cites a case involving whether a parent company is liable for the Title VII violations of its subsidiaries when “the traditional conditions [are] present for piercing the veil.” *Id.*, citing *Papa v. Katy Industries, Inc.*, 166 F.3d 937, 940 (7th Cir. 1999). This is the situation where this agency has applied joint and several liability. In the case cited by Complainants, *United States of America v. Symmetric Solutions*, 10 OCAHO no. 1209, 6 (2014) the Department of Homeland Security sought sanctions from a company for violations of 8 U.S.C. § 1324a. The Company argued that it had transferred all its assets to another company. The Court found that the company had retained substantial ownership over assets, the owners were the same for both, and thus co-owners over an enterprise should be jointly and severally liable. *Id.* at 6. Notably, the Court had established that there were violations of the statute first and then used joint and several liability to determine questions of ownership and thus who should pay the fine. No OCAHO ALJ has applied these concepts to bootstrap liability onto wholly separate entities – it has only been used in the circumstances of ownership questions in cases involving a wholly separate part of the statute.

Here, Complainants have named Respondent company. To the extent the other named Complainants suffered discrimination when they applied to other companies, Complainants may (and have) filed separate complaints as to those companies. At this stage in the proceedings, the Court has found that the Complaint states a claim of failure to hire by Respondent as to J.D, as to this particular position. There is no basis to invert this concept to hold this company also liable for hiring actions of other companies.

VI. CONCLUSION

The Motion to Dismiss is DENIED as to J.D. and U.S. Tech Workers and their members, and is GRANTED as to the remaining eight US Tech Workers to the extent they are filing as individual Complainants. The Motion to Amend is GRANTED and the FAC is the operating Complaint in this manner.

SO ORDERED.

Dated and entered on August 6, 2025.

Honorable Jean C. King
Chief Administrative Law Judge