494UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

JOANNA C. USIFO, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2025B00014
TRUVETA INC., Respondent.	)	

Appearances: Joanna C. Usifo, pro se Complainant
Simonne Lawrence, for Respondent

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

I. INTRODUCTION

The Court grants in part and denies in part Respondent's Motion to Dismiss. Complainant has alleged discrimination on the bases of her national origin and citizenship status, and that Respondent retaliated against her for her complaints of discrimination, in violation of 8 U.S.C. §§ 1324b(a)(1) and (5). While the Respondent's motion to dismiss is unopposed, the Court's review of the Complaint reveals that Complainant's allegations of retaliation sufficiently state a claim to withstand Respondent's motion. Concerning the numerosity claim, the Court permits the parties a short window to engage in discovery to bear out this allegation. Addressing the citizenship-based discrimination claim, Complainant's own assertions in her Complaint make clear that she is not within the statutorily protected class. Consequently, Respondent's motion on this basis will be granted.

Finally, the Court directs Complainant to provide additional details concerning her allegations of alleged unfair documentary practices and illegal termination to clarify whether she intends to pursue these claims, what the nature of the allegations are, and who she contends discriminated against her.

II. PROCEDURAL HISTORY

On October 28, 2024, Complainant Joanne Usifo filed a complaint against Respondent Truveta, Inc. Respondent filed an answer on November 26, 2024.

Complainant alleges that Respondent discriminated against her on the bases of her citizenship status and national origin by refusing to hire her. Compl. § 7. She applied for a Senior Clinical Informatics Analyst or Clinical Data Scientist position, but was referred to a Director of Clinical Informatics position instead. Id. She alleges that she was qualified for the job she applied for, but Respondent did not hire her and continued looking for other persons to fill the position. She further alleges that she complained about discriminatory treatment and was told she would not be considered for any other positions. Compl. § 9.

Complainant states she is an "[a]lien authorized to work in the United States," that she was a citizen of Nigeria at the time of the alleged discrimination, and that she was authorized to work via an "F-1 OPT EAD (Post Completion OPT)" from May 10, 2023, to May 9, 2024.[1] Compl. § 3a.[2]

Also on November 26, 2025, Respondent filed a Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim.

On December 18, 2024, the Court issued an Order Setting Deadline for Response to Motion to Dismiss, Scheduling Prehearing Conference and General Litigation Order. The Court set January 6, 2025, as the deadline for Complainant's response. Order Deadline 1.

On February 11, 2025, the Court issued a stay of discovery pending adjudication of the motion to dismiss. Order Summ. Prehr'g Conf. 1.

To date, Complainant has not filed a response to the Motion to Dismiss. Because the response deadline has passed, the motion is ripe for adjudication.

III. LEGAL STANDARDS

A. Motion to Dismiss and Pleading Standards

Under OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), an OCAHO Administrative Law Judge (ALJ) may dismiss a complaint for failure to state a claim upon which

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[1] Elsewhere, Complainant indicates that she was eligible to work from September 29, 2021. She does not indicate a date by which she was no longer work eligible. Compl. § 3b.

Complainant appears to be referring to the status of "Optional Practical Training (OPT) for F-1 Students." The United States Citizenship and Immigration Services' website explains that "[o]ptional practical training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies (pre-completion) and/or after completing their academic studies (post-completion)." U.S. Citizenship and Immigration Servs., Optional Practical Training (OPT) for F-1 Students, https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students.

[2] Complainant indicates that she may have been in the process of "adjustment of status" to becoming a Legal Permanent Resident (LPR) but does not indicate she was an LPR at the time of the alleged discrimination. Compl. § 3b.

relief can be granted, with or without a motion from respondent. 28 C.F.R. § 68.10.[3] OCAHO's motion to dismiss rule is modeled after Federal Rule of Civil Procedure 12(b)(6). Shater v. Shell Oil Co., 18 OCAHO no. 1504b, 3 (2024) (citing S. v. Discover Fin. Servs., LLC, 12 OCAHO no. 1292, 7 (2016)); *see also* 28 C.F.R. § 68.1 (noting that OCAHO ALJs may use the Federal Rules of Civil Procedure as "a general guideline in any situations not provided for" by OCAHO's Rules or applications statutes, executive orders, or regulations.). "When considering a motion to dismiss, the Court accepts the facts alleged in the complaint as true and construes the facts in the light most favorable to the complainant." Woods v. Philips N. Am., LLC, 14 OCAHO no. 1371c, 9 (2024) (citing Osorno v. Geraldo, 1 OCAHO no. 275, 1782, 1786 (1990)). The Court must "limit its analysis to the four corners of the complaint." Id. (quoting Jarvis v. AK Steel, 7 OCAHO no. 930, 111, 113 (1997)). When matters outside the pleadings are considered, the motion to dismiss is converted into a motion for summary decision. Barone v. Superior Washer & Gasket Corp., 10 OCAHO no. 1176, 2 (2013). The parties must be given notice of the conversion and an opportunity to present any relevant materials. Id., *see also* Sivasankar v. Strategic Staffing Solutions, 13 OCAHO 1343, 2 (2020) (same).

To meet OCAHO's pleading standard, a complaint must 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). "At the pleading stage, '[s]tatements made in the complaint only need to be facially sufficient to permit the case to proceed further . . . as the bar for pleadings in this forum is low.'" Zajradhara v. Am. Sinopan, LLC, 20 OCAHO no. 1581, 6 (2024) (quoting Sharma v. NVIDIA Corp., 17 OCAHO no. 1450, 2 (2022)). "Pleadings are sufficient 'if the allegations give adequate notice to the respondents of the charges made against them.'" Id. (quoting NVIDIA Corp., 17 OCAHO no. 1450, at 3).

B. National Origin Discrimination Coverage

8 U.S.C. § 1324b makes clear that its provisions do not apply to employers "that employ[] three or fewer employees" or employers covered by Title VII of the Civil Rights Act. 8 U.S.C. § 1324b(a)(2)(A)–(B). In turn, Title VII, which also prohibits discrimination on the basis of national origin, defines an employer as one with "fifteen or more employees for each working day in each of twenty or more calendar weeks in the preceding calendar year[.]" 42 U.S.C. § 2000e(b). As a result, any employers with fifteen or more employees during the appropriate time period are covered not by 8 U.S.C. § 1324b, but by Title VII. Allegations of national origin discrimination by such employers should be filed with the Equal Employment Opportunity Commission.

Although 8 U.S.C. § 1324b itself is silent as to what time period to use to calculate the Respondent's number of employees, this Court has applied Title VII's twenty-week time period. *See, e.g.*, Zajradhara v. E-Supply Enters., 16 OCAHO no. 1438b, 5 n.8 (2023); *see also* 28 C.F.R. § 44.202.

Where complainants have stated they do not know the number of respondent's employees, this Court has ordered the complainant to submit a filing providing the Court "with information as

[3] 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.

to the size of [the employer]." Sinha v. Infosys, 14 OCAHO no. 1373, 2–3 (2020); *see also* Zajradhara v. HDH Co., Ltd., 16 OCAHO no. 1417, 2 (2022).

C. Protected Individual Requirement for Citizenship Status Discrimination Claims

Under 8 U.S.C. § 1324b, discrimination "because of . . . citizenship status" is an unfair immigration-related employment practice if the individual is a "protected individual." The statute defines a protected individual as a U.S. citizen or national, a lawful permanent residence (LPR), a refugee, or an asylee. 8 U.S.C. § 1324b(a)(3). "To succeed on a citizenship status discrimination claim under the statue, a complainant bears the burden of establishing they were a protected individual at the time of the alleged discrimination." Contreras v. Cavco Indus., Inc., 16 OCAHO no. 1440c, 3 (2024). Being a protected individual "is a necessary element the Complainant must prove to succeed in [her] claim." Nazarenko v. SupportYourApp, Inc., 19 OCAHO no. 1532c, 3 (2025) (citing United States v. Mar-Jac Poultry, Inc., 10 OCAHO no. 1148, 7 (2012).

D. Retaliation Claim

Although complainants at OCAHO need not plead a full prima facie case at the motion to dismiss stage, the Court lays out the elements of retaliation for clarity.

> "To establish a prima facie case of retaliation under [8 U.S.C. § 1324b], Complainant must show that: (1) [s]he engaged in a protected activity; (2) Respondent was aware of the protected activity; (3) [s]he suffered adverse treatment following the protected activity; and (4) a causal connection exists between the protected activity and the adverse action."

Cruz v. Able Serv. Contractors, Inc., 6 OCAHO no. 837, 144, 150–51 (1996) (citing United States v. Hotel Martha Washington Corp., 5 OCAHO no. 786 (1995)).

"[P]rotected activity includes contact with IER, opposition to discrimination, and, more straightforwardly, the filing of a charge or complaint, or assisting or participating in an investigation related to the types of discrimination falling under the statue's coverage." Sperandio v. United Parcel Serv., Inc., 15 OCAHO no. 1400e, 12 (2024) (internal citations omitted); *see* 8 U.S.C. § 1324b(a)(5). Retaliatory adverse employment actions are not circumscribed to failure to hire or discharge, but "have . . . included reprimands, surveillance, interrogation, harassment, denial of overtime, layoff, denial or promotion, or other acts which customarily take place in the context of an employment relationship." Ipina v. Mich. Jobs Comm'n, 8 OCAHO no. 1036, 559, 569 (1999).

IV. DISCUSSION

A. Retaliation

Respondent argues that Complainant's claims of retaliation should be dismissed because

Complainant does not articulate facts which would establish the elements of a retaliation claim. Mot. Dismiss 3–4.

As stated above, at the motion to dismiss stage the prima facie evidentiary standard often applied when reviewing a motion for summary decision should not be used to dismiss a claim that otherwise describes with some particularity the statutory violation at issue and the reason why the Complainant believes the Respondent is at fault.

In the matter presently before the Court, Complainant states that the alleged retaliation took place on March 22, 2024. Compl. § 9. Complainant asserts that when she inquired about next steps over email, she was informed that she would not be considered for any other positions. Id. She also states that she was told that "[her] interviewer shared [her] inquiry and plan to file for discrimination." Id.

Complainant checks both the boxes for retaliation and the box indicating that no retaliation occurred, but viewing the facts in the light most favorable to the nonmoving party, the Court presumes that the "no" tick mark was in error. Complainant's narrative description makes clear that she believes she has been retaliated against; she told the interviewer that she believed Respondent engaged in discrimination in the workplace, and Respondent told her that it would not consider her for any vacancies.

While the sequence of these events is not described in perfect detail, the Court finds that the allegations meet the bare requirement of stating a claim sufficient to plead relief, and accordingly the Court denies Complainant's motion to dismiss with respect to this claim.

B. National Origin Based Discrimination Claim

Complainant asserts in her Complaint that she does not know how many people Respondent employs. Respondent counters that it employs more than 14 people, and that consequently Complainant's national-origin-based claim must be dismissed as Section 1324b cases may only proceed against employers who employ between 3 and 14 people.

In prior OCAHO cases, the Court has resolved this type of uncertainty by directing the Respondent to state on the record how many people it employs. *See* Sinha v. Infosys, 14 OCAHO no. 1373, 2–3 (2020); *see also* Zajradhara v. HDH Co., Ltd., 16 OCAHO no. 1417, 2 (2022).

Arguably, that condition is already met in this case, in that Respondent volunteered the information in its motion. Mot. Dismiss Ex. 1. Complainant could have argued in its response that the number Respondent asserted was inaccurate, or self-serving, or otherwise unworthy of credence. It did not. Without the benefit of a response to the motion, the Court does not know whether Complainant opposes or takes no position on this proffer, or whether it contends that it is incapable of making a representation about the validity of Respondent's claim without discovery. *See* Fed. R. Civ. P. 11(b)(3) (certifying that "the factual contentions [in the filing] have evidentiary support"); 56(d) ("When facts are unavailable to the nonmovant").

In the undersigned's view, the prudent course is to defer a decision on the motion to dismiss and provide both parties with an opportunity to interrogate the question of numerosity. This tack resolves the procedural difficulty surrounding the consideration of evidence outside the Complaint, and it provides the nonmoving party with a procedural safeguard against a claim which she would otherwise be unable to defend against. Accordingly, the undersigned will phase the proceedings to permit discovery first on the question of the number of people that Respondent employs. The parties may, for a period of 40 days following this order, engage in oral and written discovery solely related to the numerosity question, with the amounts of written discovery limited to three interrogatories, three requests for production of documents, and three requests for admission per party. The parties are similarly limited to two depositions per party.

Ten days following the close of limited discovery, the parties may supplement, or file, their motion or response to the motion related solely to the numerosity component of the motion to dismiss. The Court will thereafter attempt to rule expeditiously on this question.[4]

C. Citizenship Status Discrimination Claim Dismissed

Complainant alleges that she was in F-1 OPT status at the time of the alleged discrimination. Compl. §§ 3b, 7. On the face of the Complaint, Complainant has failed to plead an essential element of citizenship status discrimination. Based on her allegations there appears to be no way for her to remedy the issue, given her immigration status at the time of the alleged discrimination. "Because section 1324b(a)(3) provides a clear definition of 'protected individual'; the Court lacks the authority to override the clear statutory text." Garcia v. Farm Stores, 17 OCAHO no. 1449a, 4 (2024) (internal quotes omitted); *see also* Ndusorouwa v. Prepared Foods, Inc., 1 OCAHO no. 192, 1277, 1282 (1990) (finding that complainant with F-1 OPT status at time of alleged discrimination did not meet § 1324b(a)(3)'s definition and therefore failed to state a claim of citizenship status discrimination). The claim must therefore be dismissed.

Respondent's Motion to Dismiss is GRANTED as to Complainant's citizenship status claim.

V. ORDER DIRECTING COMPLAINANT TO FILE A MORE DEFINITE STATEMENT

It is impossible to discern Complainant's intent in the sections of the Complaint related to termination and unfair documentary practices. Compl. §§ 8, 10. In the termination section, Complainant denies that she was fired but provides a date for the termination. The narrative for the termination section mentions a "second employer," who is never identified, and she states that she experienced difficulties with an unknown state board. Compl. § 8.

[4] The Court need not address the form of the Respondent's proffer at this juncture, as the Court has deferred considering the numerosity question until both parties have an opportunity to engage in discovery. However, the Court notes that a party wishing to bring a potentially disputed factual representation to the Court's attention typically does so through an affidavit of a witness with knowledge of the fact, and that Respondent's exhibit to its motion does not appear to include an affidavit or declaration. Even a business record, which Respondent includes as Exhibit 1 to its motion, should in the main be accompanied by a statement of a person with knowledge attesting to the veracity of the claim in the business record, or to the regularity of the business process by which the record was created and maintained. Fed. R. Civ. P. 56(c)(1)(A), 56(c)(4); Fed. R. Evid. 602, 803(6).

In the section addressing unfair documentary practices, Complainant identifies several documents which she tendered for employment, but she contends that the "second employer" refused to accept them. Compl. § 10. It is unclear to the Court what role, if any, Respondent is alleged to have had or how Section 1324b is alleged to have been violated.

The Court therefore ORDERS Complainant to supplement her complaint with a filing describing in detail the nature of her termination and unfair documentary practices claims. Complainant shall state whether she believes Section 1324b was violated, by whom, and in what manner. Complainant shall submit her filing within 14 days from the date of this Order. Respondent may supplement its motion to dismiss within 50 days of this Order to address these claims. The Court further advises Complainant that absent a filing which describes in detail the nature of the allegations, the Court will dismiss these claims for failure to state a claim upon which relief may be granted.

VI. ORDERS

It is SO ORDERED that Respondent's Motion to Dismiss is GRANTED as to Complainant's citizenship status discrimination claim, which is now DISMISSED.

It is FURTHER ORDERED that the parties have 40 days from the date of this order to engage in limited discovery concerning the question of the number of persons Respondent employs. The parties may, ten days after the completion of discovery, file any appropriate filings or supplements to their filings addressing the numerosity question. All other proceedings in this matter are STAYED.

It is FURTHER ORDERED that Respondent's Motion to Dismiss is DENIED as to Complainant's retaliation claim.

It is FURTHER ORDERED that Complainant shall submit a filing within 14 days of the issuance of this order describing the nature of the unfair documentary practices and illegal termination claims discussed in the Complaint. Respondent may supplement its motion to dismiss to address these new allegations within 50 days from the issuance of this order.

Complainant is advised that failure to respond to Court orders may lead to the Court finding that she has abandoned her Complaint.

SO ORDERED.

Dated and entered on August 8, 2025.

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Honorable John A. Henderson
Administrative Law Judge