

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

April 13, 2026

MICHAEL BROWNE,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2026B00004
	)	
UBER TECHNOLOGIES, INC.,	)	
Respondent.	)	
_____	)	

Appearances: Daniel L. Low, Esq., and Lindsey M. Grunert, Esq., for Complainant  
Molly Jennings, Esq., and April N. Williams, Esq., for Respondent

AMENDED ORDER<sup>1</sup> - ORDER GRANTING RESPONDENT’S MOTION TO DISMISS, IN PART (HELD IN ABEYANCE), DENYING MOTION TO DISMISS, IN PART, AND GRANTING LEAVE TO AMEND

I. PROCEDURAL HISTORY

On November 14, 2025, Complainant, Michael Browne, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Uber Technologies, Inc., alleging it violated the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b(a)(1)(B).

On February 6, 2026,<sup>2</sup> Respondent filed a Motion to Dismiss for Failure to State a Claim.

On February 11, 2026, Complainant filed an Opposition to Respondent’s Motion to Dismiss.

On February 23, 2026, Respondent filed a Motion for Leave to File Reply in Support of Its Motion to Dismiss along with an attached Reply in Support of Its Motion to Dismiss.

On February 24, 2026, the Court granted the motion and accepted Respondent’s Reply in Support of Its Motion to Dismiss as a filing.

<sup>1</sup> This Amended Order leaves the body of the Order issued on March 5, 2026 unchanged. The Amendment only revises the title, which now more accurately captures the posture of the decision outlined in the final section.

<sup>2</sup> Respondent (timely) filed its Answer on the same day.

## II. COMPLAINT

Complainant alleges he is a U.S. citizen and that Respondent discriminated against him based on his citizenship status. Compl. 4, 7-21.

According to the Complaint,<sup>3</sup> Complainant applied for ten jobs with Respondent between March and August of 2025. *Id.* at 9-10, 15-21. He asserts that he was qualified for the roles but was rejected from each. *Id.* He alleges that “non-citizen, foreign workers were slotted into the roles to which [he] applied.” *Id.* at 10. On nexus between non-selection and protected class, Complainant states eight of the ten jobs were advertised in the Seattle Times or the San Francisco Chronicle.<sup>4</sup> *Id.* at 10. He alleges this advertising method indicates Respondent intended to permanently hire foreign workers (i.e. that Respondent sought to acquire labor certification through Department of Labor’s (DOL) Permanent Labor Certification (PERM) program.<sup>5</sup>

<sup>3</sup> Complainant includes an “Addendum” which identifies specific job titles, job duties, reference numbers, and dates of application. Compl. at 15-21.

<sup>4</sup> For each job, Complainant identifies how the job was advertised. Compl. at 9, 15-20. He claims five jobs were advertised in the San Francisco Chronicle, three jobs were advertised in the Seattle Times, and two jobs were advertised on Uber’s career website. *Id.*

<sup>5</sup> As the Department of Labor explains:

A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. In most instances, before the U.S. employer can submit an immigration petition [to U.S. Citizenship and Immigration Services (USCIS)]... the employer must obtain a certified labor certification application from... [DOL].

The DOL must certify to the USCIS that there are not sufficient U.S. workers able, willing, qualified, and available to accept the job opportunity in the area of intended employment and that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Dep’t of Lab., <https://flag.dol.gov/programs/perm> (last visited March 3, 2026) (on file with Court).

As USCIS explains in its Policy Manual:

A significant percentage of Immigrant Petitions for Alien Workers ([Forms I-140](#)) are based on permanent labor certification applications approved by the [DOL]. When adjudicating a permanent labor certification application, DOL does not generally review the beneficiary’s qualifications for the position; this authority and responsibility rests with USCIS.

USCIS, Policy Manual, Vol. 6, Part E, Ch. 6, § A (current as of Feb. 3, 2026) (available at <https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-6>).

Germane to this case, employers seeking labor certification must meet minimum advertising requirements, which include “advertisements in newspaper or professional journal.” *See* 20 C.F.R. § 656.17(e)(1)(i)(B); *see generally See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 3 (2021).

### III. POSITIONS OF THE PARTIES

#### A. Respondent’s Motion to Dismiss

Through its motion, Respondent argues Complainant did not state a claim because he did not identify a nexus between his non-selection and his citizenship status. Mot. Dismiss 3 (citing *Jablonski v. Kelly Legal Services, Et Al.*, 12 OCAHO no. 1282 (2016)<sup>6</sup>).

Respondent argues its use of (and compliance with) the PERM program precludes the possibility of a Complainant stating a claim upon which relief can be granted. *Id.*

Respondent notes two of the positions identified were advertised on Respondent’s website and not through newspapers, arguing “the allegations related to those roles can therefore be dismissed out of hand.” *Id.* at 5. Respondent argues that, for the other jobs, the mere fact that it “places PERM-related postings in the same publications as the postings [Respondent] applied to does not give rise to an inference that Uber discriminated against any U.S. citizens.” *Id.* at 5.

#### B. Complainant’s Opposition

Complainant argues his allegations “are sufficient to put [Respondent] on notice.” Opp’n 3. He disagrees with Respondent’s analysis and argues that his Complaint alleged more specific facts than the ones present in precedential cases referenced by Respondent. *Id.* at 6-7 (citing *Jablonski*, 12 OCAHO no. 1282; *A.S. v. Amazon Web Services, Inc.*, 14 OCAHO no. 1381d (2021); *Zajradhara v. American Sinopan, LLC*, 20 OCAHO no. 1581 (2024)).

He notes that Respondent admitted in its answer “that it did, in fact, file PERM applications for visa holders for three of the roles [Respondent] applied to” and argues that this demonstrates “the company’s preference for visa workers over U.S. citizens.” *Id.* at 6.

In the alternative, Complainant requests leave to amend<sup>7</sup> to remedy any deficiencies. *Id.* at 1.

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<sup>6</sup> 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>.

<sup>7</sup> While embedding motions within opposition filings is generally disfavored in this forum, it is understandable a Complainant opposing dismissal would desire to flag for the Court the prospect of amendment as a cure to any pleading deficiency (vice dismissal without prejudice). See *A.S. v. Amazon Web Services, Inc.*, 14 OCAHO 1381f, 3 (2021); but see generally *U.S. Tech Workers, Et Al., v. Illinois Institute of Technology*, 19 OCAHO no. 1563b (2024).

### C. Respondent’s Reply

In its reply, Respondent argues that allowing Complainant’s “case to proceed would require this Court to hold, contrary to logic, that a company’s participation in [DOL’s] highly regulated [PERM] program raises an inference of discrimination,” because its conduct is “entirely consistent with an employer conducting a labor market test pursuant to the PERM regulations” (noting it is not required to hire U.S. workers identified in labor tests). Reply 1, 3.

## IV. LAW AND ANALYSIS

### A. Law – Failure to State A Claim Upon Which Relief Can Be Granted

Under 28 C.F.R. § 68.10(b),<sup>8</sup> an Administrative Law Judge (ALJ) “may dismiss the complaint” if “the complainant has failed to state a claim upon which relief can be granted.” “In considering a motion to dismiss, the court must limit its analysis to the four corners of the complaint.” *Udala v. New York State Dep’t Educ.*, 4 OCAHO no. 633, 390, 394 (1994). The factual allegations are accepted as true and all reasonable inferences derived therefrom are drawn in the complainant’s favor. *Id.*

Complaints before OCAHO must 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(b)(1)-(4); *see also Qun Wang v. Meta Platforms, Inc.*, 21 OCAHO no. 1656a at 2 (2025).

“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.’” *Qun Wang*, 21 OCAHO no. 1656a at 2-3 (quoting *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022)).

Complaints “must contain sufficient minimal allegations to satisfy § 68.7(b)(3) and give rise to an inference of discrimination.” *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c, 7 (quoting *Jablonski*, 12 OCAHO no. 1272 at 6). Such an inference is drawn when a complaint “include[s] information that links the protected class and the employment action in question.” *Qun Wang*, 21 OCAHO no. 1656a at 3. The complaint must “‘identif[y] a theory by which [the] Respondent allegedly violated 8 U.S.C. § 1324b’ in a way that ‘succinctly yet clearly’ informs a respondent why a complainant has brought the suit.” *Id.* (quoting *Sharma*, 17 OCAHO no. 1450 at 7). “[P]leadings are sufficient if ‘the allegations give adequate *notice* to the respondents of the charges made against them.’” *Sharma*, 17 OCAHO no. 1450 at 3 (quoting *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 10 (2003) (emphasis added in *Sharma*)).

### B. Analysis – Failure to State A Claim Upon Which Relief Can Be Granted

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<sup>8</sup> OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2025), generally govern these proceedings and are available on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

Complainant alleges he is a U.S. citizen. Compl. 4.

Complainant's allegations refer to ten distinct jobs to which he claims he applied. Compl. 9, 15-20. He included the job titles to which he applied, dates he applied, job duties, and specific reference numbers for the eight of the ten job postings. *Id.* at 9-10, 15-21. Such specificity allows Respondent to "divine each position at issue." *Qun Wang*, 21 OCAHO 1656a at 3.

He alleges that he was qualified for each job to which he applied and was not selected, alleging "non-citizen, foreign workers were slotted into the roles." Compl. 9-10, 15-21.

As to nexus to protected class, the Complaint is sufficient as to the eight jobs alleged to be advertised in the San Francisco Chronicle or Seattle Times.<sup>9</sup> Complainant's theory for these positions relies on the PERM process and its requirements pertaining to use of newspapers to advertise vacancies. Specifically, newspaper or professional journal advertisements are a required part of the PERM process, which is a step in hiring certain workers who are not U.S. citizens. *See* 20 C.F.R. § 656.17(e)(1)(i)(B) (explaining the requirement that PERM applicants *must* place [a]dvertisements in newspaper or professional journals" (emphasis added)).

It is this additional alleged fact which causes Complainant to infer a "non-citizen" was selected over him, despite his alleged qualifications. *See Wangperawong*, 18 OCAHO no. 1510c at 8.

Respondent argues "[h]olding that these allegations were sufficient to survive a motion to dismiss would be tantamount to holding that any employer's participation in the PERM program was sufficient to raise an inference of discrimination." Reply 2-3.

This argument is not persuasive. Certainly, there is nothing inherently discriminatory about the PERM process itself, which serves as a valuable tool for employers when there are not sufficient qualified and available U.S. workers. *Supra* note 4. As the Court previously concluded, however, "[w]hile the PERM process and adherence to DOL regulations may prove relevant in this forum, compliance with DOL regulations does not, in and of itself, eliminate the possibility of an employer acting in a discriminatory manner in violation of § 1324b." *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 8 n.12 (2021).

At this stage, the Court must only consider whether the Complaint, with all factual allegations accepted as true and inferences drawn in Complainant's failure, has articulated "'a theory by which [the] Respondent allegedly violated 8 U.S.C. § 1324b' in a way that 'succinctly yet clearly' informs a respondent why a complainant has brought the suit." *Qun Wang*, 21 OCAHO 1656a at 3 (quoting *Sharma*, 17 OCAHO no. 1450 at 7); *Udala*, 4 OCAHO no. 663 at 394. With respect to the eight jobs discussed, Complainant has done so.

In total, the allegations pertaining to those eight jobs provide a clear theory for how Respondent

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<sup>9</sup> These jobs are: Data Scientist (Reference No. U7941), Data Scientist (Reference No. U5221), Data Scientist (Reference No. U299), Data Scientist (Reference No. U7199), Data Scientist (Reference No. U7887), Data Scientist (reference No. U1363), Applied Scientist (Reference No. U604), and Data Scientist (Reference No. U238). *Id.* at 9, 15-19.

violated 8 U.S.C. § 1324b— that, the vacancies advertised were anticipated to be filled by “non-citizen, foreign workers” (as evidenced by their advertisements in publications associated with the PERM process), and “non-citizen, foreign workers” were hired over Complainant despite his qualifications. Compl. 9-10, 15-19; *see Qun Wang*, 21 OCAHO no. 1656a at 3; *see also Sharma*, 17 OCAHO no. 1450 at 5 (holding that a complaint alleging that a company “may have alternatively hired a non-citizen into this specific position ... because of that candidate’s citizenship status” met “the notice pleading standard”); *Facebook, Inc.*, 14 OCAHO no. 1386b at 9 (explaining that “allegations of manipulating the hiring practice to disqualify individuals based on citizenship, meet the legal standard in this forum for stating a claim upon which relief can be granted”). Accordingly, Respondent’s Motion to Dismiss will be denied, in part, as it relates to these eight jobs.

Conversely, the allegations related to jobs advertised on Uber’s career website and not in the San Francisco Chronicle or Seattle Times do not satisfy the pleading standard.<sup>10</sup> Complainant has not explained how the fact that they were advertised on Uber’s career website supports his claim. While advertising in a certain newspaper or professional journal is a requirement of the PERM process, advertisement on an employer’s website is one of several “[a]dditional recruitment steps” an employer may choose to further the application. *See* 20 C.F.R. § 656.17(e)(1)(i)-(ii). Thus, the advertisements on the employer’s website alleged for these positions, without a claim that they were also advertised in a newspaper or professional journal, provide minimal, if any, support for Complainant’s allegation that they were “earmarked for visa workers” Compl. 10. The Complaint also provides no other explanation for Complainant’s allegation of a discriminatory intent. *Id.* at 9-10, 19-21. Absent such explanation, his assertion “in a general and conclusory fashion that Respondent discriminated against him based on his citizenship status” is insufficient. *A.S.*, 14 OCAHO no. 1381d at 16; *see also Wangperawong*, 18 OCAHO no. 1510c at 8; (explaining that “Complainant must at least identify why he believes the decision was discriminatory”).

### C. Leave to Amend Complaint

The Court may permit amendment of a complaint under certain conditions as outlined in regulation and with additional guidance from the Federal Rules of Civil Procedure. *See* 28 C.F.R. § 68.9(e); *see also* 28 C.F.R. § 68.1.<sup>11</sup>

Applicable here, Rule 15 of the Federal Rules of Civil Procedure at (a)(2) states: “[t]he court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Sharma v. Nvidia Corp.*, 17 OCAHO no. 1450k, 3 (2023). The Court may also consider case law from the United States Court of Appeals for the Ninth Circuit (the applicable circuit here). In cases arising in the Ninth Circuit, the Court should consider whether “the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).

<sup>10</sup> These jobs are Senior Scientist, “Eats Growth,” and Senior Scientist, “Competitive Intelligence.” Compl. 20.

<sup>11</sup> “The Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1.

“Requests for leave to amend should be granted with ‘extreme liberality.’” *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (quoting *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009)).

The Court now provides Complainant leave to amend the complaint. Under these circumstances, where Complainant has satisfied the forum’s pleading standard for most jobs discussed in his complaint and has noted his desire to correct any deficiencies at an early stage of litigation, the record does not indicate any bad faith, futility, or any undue delay. *See AmerisourceBergen Corp.*, 465 F.3d at 951; *see also United States v. JS Design and Build, LLC d/b/a/ Spectra Kitchen and Bath*, 17 OCAHO no. 1460a, 3 (2022) (considering “the early stage in litigation” in granting a motion for leave to amend). Respondent will also not be unduly prejudiced by amendment at this stage, as it will have an opportunity to respond to any amended allegations. *See AmerisourceBergen Corp.*, 465 F.3d at 951. In the absence of such factors, providing an opportunity to amend is appropriate. *See id.*; *Brown*, 953 F.3d at 574.

## V. CONCLUSION

Because Complainant has satisfied this forum’s notice pleading standard for the jobs identified in Footnote 8 and has stated a claim upon which relief can be granted, Respondent’s Motion to Dismiss is DENIED, in part, as to these eight allegations.

As to the remaining two allegations (the positions advertised only on the website), those allegations do not meet the pleading standard and could be dismissed. Complainant shall have until March 18, 2026, to submit its proposed amendment.

If no such filing is timely filed, the Court will execute an order dismissing those allegations.

If such a filing is timely filed, Respondent shall have 14 calendar days from the date of proposed amendment filing to file any motion to dismiss or amended answer.

If a motion to dismiss is filed, the Respondent may separately file a motion requesting an extension to file its amended answer.

SO ORDERED.

Dated and entered on April 13, 2026.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge