

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

August 20, 2026

RAVI SHARMA,	)	
Complainant,	)	
	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2026B00017
	)	
	)	
CISCO SYSTEMS, INC.,	)	
Respondent.	)	
	)	

Appearances: Ravi Sharma, pro se Complainant
K. Edward Raleigh, Esq., Anna Perina, Esq., and Samatha Caesar, Esq.,
for Complainant

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT

I. PROCEDURAL HISTORY

On February 18, 2026, the Complainant filed his Complaint alleging he applied for a “Hardware Engineer – FPGA” position on August 27, 2024 with Respondent, Cisco Systems, Inc. Compl. 7. He relays he was qualified for the position, but was not selected because of his citizenship status. Compl. 8. He alleges the position did not remain open, and that “Cisco hired non-immigrant H1B/Optional Practical Training (OPT) workers.” *Id.*

On April 10, 2026, Respondent timely filed its Answer. In its Answer, Respondent admits Complainant applied for the position, and admits it did not select Complainant for the position. Answer 4. The Answer states:

The hiring process for the position continued after [Complainant] was disqualified on or around October 2, 2024. [Respondent] extended an offer to the selected candidate on or around October 10, 2024... [Respondent] denies it hired an H-1B or OPT worker for the position at issue; [Respondent] selected a lawful permanent resident.

Answer 4.

On May 19, 2026, the Court conducted an initial prehearing conference. During the conference, the Court informed the parties that Initial Disclosures would be required. The parties exchanged initial disclosures by June 22, 2026.

On June 23, 2026, the Court held a second prehearing conference, wherein it confirmed exchange of initial disclosures and gave the parties permission to begin discovery (under the parameters set forth by the Court).

II. COMPLAINANT’S MOTION TO AMEND & RESPONDENT OPPOSITION

A. Complainant’s Motion to Amend the Complaint

On July 14, 2026, Complainant filed a motion seeking leave to amend his Complaint pursuant to 28 C.F.R. § 68.9(e). He does not provide the proposed amended Complaint, but does explain that, if permitted to amend his Complaint, he would revise it as follows:

Section 7. question 8 of the complaint asks: “Did the job remain open and the Business/Employer continue taking applications from other people after you were not hired?” Complainant had answered No and requests to change it to YES.

Mot. to Amend Compl. 1.

As rationale for seeking amendment, Complainant states he engaged in an “investigation” of Respondent’s “LCA’s for nonimmigrant workers for the position of Hardware Engineer, FPGA” after he was not selected. He then provides an assessment of how a complainant may meet his burden to establish a prima facie case, and then provides extraneous information about an unrelated OCAHO case.

Complainant also provides correspondence he received from the Department of Labor regarding his Freedom of Information Act (FOIA) request and several Department of Labor Form ETA-9035/9035E for Labor Condition Application for Nonimmigrant Workers completed on behalf of Respondent (which were documents responsive to his FOIA request).¹

¹ Taken in tandem with the Complaint, the Court can construct the following timeline:

On August 27, 2024, Complainant applied to a vacant position with Respondent. Compl. 7.

On October 2, 2024, Complainant learns he was not selected for the position. Compl. 8.

On February 25, 2025, Complainant filed a FOIA request with the Department of Labor, seeking “details of H-1B Labor Condition Applications filed on or around October/November 2024 by [Respondent] for the position of FPGA Hardware Engineer.” Mot. to Amend Compl. 5.

On March 5, 2025, Complainant received responsive LCA documents. Mot. to Amend. Compl. 5.

On March 26, 2025, Complainant filed his Charge with Immigration and Employee Rights (IER). Compl. 1. With the benefit of the documents he received from his DOL FOIA request, Complainant informed IER:

B. Respondent's Opposition to Complainant's Motion to Amend

Respondent's Opposition provides additional context to the timeline. Opp'n 2. According to Respondent, it informed Complainant (through its Answer and Initial Disclosures) the individual selected for the vacancy at issue was not an "H-1B or OPT worker," rather the individual hired was a lawful permanent resident. With its Initial Disclosures, Respondent also provided "hiring records for the Position, interview records, and the successful candidate's Form I-9 documentation." Opp'n 2. Further, Respondent relayed through its initial disclosures that "there was a single vacancy for the position, a single successful candidate, and that single successful candidate was a lawful permanent resident at the time of hire." Opp'n 2.

Respondent opposes the amendment as "futile and unduly prejudicial." Opp'n 4.

As to futility, Respondent argues Complainant "does not allege he applied for any position other than the Hardware Engineer, FPGA Position (Req. No. 1427192) ("Position") identified in his Complaint. He cannot state a failure-to-hire claim based on unidentified positions for which he does not allege he applied." Opp'n 5. Respondent notes Complainant would not have exhausted claims related to other vacancies based on his IER Charge and correspondence. Opp'n 7.

As to prejudice, the Respondent argues:

The proposed amendment would prejudice the Respondent by expanding – or at least attempting to expand – the scope of this proceeding after the pleadings have closed and discovery has commenced... Requiring the opposing party to undertake a new course of defense may also result in significant prejudice and justify denial of leave to amend. *See Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

Opp'n 10.

Respondent proffers it "already answered the Complaint, served its Initial Disclosures, and served its First Set of Interrogatories, Requests for Production, and Requests for Admission based on the sole hiring decision identified in the Complaint: Complainant's application on or around August 27, 2024, for a single Hardware Engineer, FPGA requisition." Opp'n 10-11.

[Respondent] has hired H-1B visa candidates for the position even though I was equally qualified for the position and met the requirements in the job qualification posting. [Respondent] discriminated against me in hiring because of my US citizenship status and hired H-1B visa candidates who would require H-1B visa sponsorship and who were not equally qualified for the position.

Compl. 18.

On November 24, 2025, Complainant received his right to file letter from IER. Compl. 1.

On February 18, 2026, he filed his Complaint with OCAHO.

On August 3, 2026, Complainant filed a motion seeking leave to reply to Respondent's Opposition. On August 6, 2026, Respondent filed an Opposition to Complainant's motion.

The Motion Seeking Leave to Reply is DENIED.

The Reply filing will not be considered because it did not further develop the issues.² Specifically, the proposed Reply consists largely of Complainant's views regarding Respondent counsel, or his opinions about witnesses in other, unrelated cases.

Complainant (who is pro se) must understand that, while proceedings are inherently adversarial, parties must always remain professional. Respondent's counsel has done nothing more than advocate on behalf of his client - appropriately leveraging regulations, precedential caselaw and information to which he has access. Nothing about his filings or conduct in this case causes the Court concern. Complainant should consider this as notice that personal attacks on opposing counsel will not be tolerated in this forum. *See* 28 C.F.R. § 68.35.

Separately, Complainant must cease referencing information about unrelated OCAHO cases in his filings. In his Motion to Amend, Complainant requested the Court consider a declaration and witness testimony from a separate OCAHO case. Mot. 3. It is unclear how this information relates to his desire to amend the Complaint in this case, and including it renders it more difficult for the Court to maintain clear record of what was considered in each separate case, and likely creates additional concerns for the parties in the other OCAHO case.

² As the Court held (and Respondent notes in its Opposition):

Under OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), "no reply to a response, counter-response to a reply, or any further responsive document shall be filed" without permission from the presiding Administrative Law Judge. 28 C.F.R. § 68.11(b). As a result, parties "must seek leave of Court before filing a reply" *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003)); *see also* *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362g, 4 (2024).

The choice to permit a reply or sur-reply is discretionary. *US Tech Workers et al. v. Relativity*, 20 OCAHO no. 1579, 2 (2024) (citing *Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023)). The Court may consider whether permitting a reply would develop the case record or address novel issues or arguments. *Id.* at 3 (citing *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450j, 3 (2023)).

US Tech Workers, et al. v BMO Bank, N.A., 20 OCAHO no. 1586a, 2 (2024).

III. LAW & ANALYSIS

A. Amending a Complaint Under 28 C.F.R. § 68.9(e)

As was previously noted in OCAHO caselaw:

OCAHO Rule 68.9(e) permits a complainant to amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby,” and “upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties[.]” The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment. *United States v. Sal’s Lounge*, 15 OCAHO no. 1394, 1–2 (2020) (internal citations omitted).

OCAHO Rule 68.9(e) 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. *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998). Federal Rule of Civil Procedure Rule 15(a)(1) states that:

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Shater v. Shell Oil Company, 18 OCAHO no. 1504b, 2 (2024).³

In “balancing interests” and considering how a Court should apply its discretion when analyzing an amendment under Rule 15(a), the Supreme Court’s *Foman* case is both binding and highly instructive. *Foman v. Davis*, 371 U.S. 178 (1962). The Supreme Court explained:

“The Federal Rules reject the approach that pleading is a game of skill in which one misstep by [a party] may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Conley v. Gibson*, 355 U.S. 41, 48 (1957)... As appears from the record, the amendment would have done no more than state an alternative theory for recovery...

³ 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>.

Rule 15(a) declares that leave to amend “shall be freely given when justice so requires;” this mandate is to be heeded. *See generally*, 3 Moore, Federal Practice (2d ed. 1948), paras. 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.

Foman at 181-2.

When the Court analyzed an amendment in *Wangperawong v. Meta Platforms, Inc.* it noted:

“The principal factors to be considered are whether the determination on the merits will be facilitated by the proposed amendments, whether the proposed amendments would be futile, and whether prejudice to the public interest or parties will result . . . [the Court may also consider] [b]ad faith, undue delay and dilatory motive . . . ” *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 5 (2003).

These factors largely align with those outlined by the Ninth Circuit, which include: (1) undue delay, (2) bad faith, (3) futility of amendment, and (4) prejudice to the opposing party. *See AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).⁴

18 OCAHO no. 1510e, 3 (2024).

At footnote 4 of *Wangperawong*, the Court provided additional analysis on “undue delay,” which is a fact-specific inquiry. There, the Court noted:

Undue delay and prejudice can exist, for example, when a complainant seeks to amend his complaint eighteen months later, well after the close of discovery and the filing of summary decision motions. *See, e.g., Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450k, 4 (2023).

In contrast, [in the *Wangperawong* case], [that [c]omplainant sought] to amend his [c]omplaint rather expeditiously – within the deadline to amend the deficient components of his original [c]omplaint and during the initial stages of discovery.

Id. at 3-4.

Further, there is no requirement to give factors equal weight, indeed, futility, if present, can be dispositive. *See U.S. ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001). *See also Shater v. Shell Oil Company*, 18 OCAHO no. 1504b, 3 (2024).⁵

⁴ Since the allegations at issue in this case occurred in California, the Court may look to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57.

⁵ ““While the other elements tilt towards granting the motion to amend, the Court declines to grant the motion because the granting would be futile to the claims in the complaint. As the court has previously

B. Futility Via Exhaustion & Permissible Scope (Within, or Like and Related To)

If a complainant has not exhausted the administrative process with IER, he has not met a condition precedent to filing his complaint with OCAHO. If a complaint finds itself in this posture, then that defective complaint would not survive a motion to dismiss – meaning amendment would be futile.

A complainant has exhausted the administrative process when he receives his “right to sue” letter from IER. 28 C.F.R. §§ 68.4(b)(2), (c). This document permits a complainant to file a Complaint with OCAHO; however, “[t]he scope of a discrimination case pursuant to 8 U.S.C. § 1324b is ordinarily limited to matters within, or like and related to, the administrative charge and the scope of the administrative investigation upon which the action is based.

Wangperawong at 4. (internal quotations omitted).

“[T]he scope of the [IER] charge itself must be considered in order to determine whether the matters raised could reasonably be expected to grow out of the investigation of that charge.” *Wangperawong* at 5; citing *Santiglia*, 9 OCAHO no. 1097, at 7.

Additionally, “[i]n determining whether a plaintiff has exhausted allegations that she did not specify in her administrative charge it is appropriate to consider such factors as the alleged basis of the discrimination, dates of discriminatory acts specified within the charge, perpetrators of discrimination named in the charge, and any locations at which discrimination is alleged to have occurred.” *B.K.B. v. Maui Police Dep’t*, 276 F.3d 1091, 1100 (9th Cir. 2002).⁶

C. Analyzing the Proposed Amendment – No Bad Faith

In light of the above precedent, the Court first notes that, unless there is a compelling reason to deny amendment, it should be freely given. With this in mind, the Court notes there is no bad faith alleged regarding the proposed amendment.

noted, ‘a court may deny as futile a motion to amend a complaint when the proposed complaint would not survive a motion to dismiss.’” (internal citations omitted).

⁶ In *Wangperawong*, the Court concluded also relied on *B.K.B.*, and applied the Ninth Circuit analysis to the proposed amendment. *Wangperawong* at 4.

The Court concluded the proposed amendment in *Wangperawong* was not sufficiently “within, or like and related to” what IER investigated. Specifically, in *Wangperawong*, that complainant “filed a charge of discrimination with IER in April 2023, and IER issued its right to sue letter in August 2023, [with] IER’s investigation [then] centered around confirming facts surrounding the 2023 termination... The task before the Court [in that case was] to consider whether a different kind of personnel action related to a different position (possibly in a different location) in a different (future) year is sufficiently “within, or like and related to.”

D. Analyzing the Proposed Amendment – The Delay Is Not So Protracted as to Constitute Undue Delay & Prejudice to Respondent Overcome by *Foman*’s Mandate to Liberally Grant Amendment

Undue delay and prejudice are, in this particular case, inextricably linked, and will be analyzed together. Respondent advances several arguments regarding prejudice, and while some have merit, the Court is bound to balance interests as instructed by *Foman*, which, on these facts, augurs in favor of amendment.

First, Respondent advances an argument noting all the procedural steps which have already transpired – namely that Respondent already filed its Answer, provided initial disclosures, and served discovery. Respondent argues permitting Complainant to now return to the initial stage of litigation prejudices Respondent, who has already spent time and resources on the above mentioned filings and correspondence. This argument has merit.

Further, Complainant appears to have been aware of his new theory as early as April 10, 2026 – when the Answer was filed. According to Respondent, it provided documentation regarding its post non-selection actions via its initial disclosures by June 22, 2026. By the largest accounting of time (based on the Answer), Complainant waited 95 days to file his amendment; however, a more cautious approach to calculating the time (from initial disclosures to motion to amend) yields a delay of just 22 days.⁷ Complainant delayed in filing his motion to propose amendment, but the delay is not undue when compared alongside other OCAHO cases involving amendment.⁸

Aside from the delay outlined in Respondent’s Opposition, some of the Respondent’s concern related to prejudice stem from its assessment that the proposed amendment would “expand” the scope of the proceedings. This proffered prejudice can be resolved by the Court making clear to the parties the proposed amendment does not expand the scope of the allegation; rather, it only shifts Complainant’s non-selection theory from filling the role with an H-1B candidate to leaving the specific position to which he applied vacant. It would be difficult to conclude, even under the broader relevancy construct in discovery, how Complainant could bring other vacancies at Respondent business within the ambit of this allegation – namely because such an expansion would run afoul to the futility issue further explained below.

⁷ Separately, the documents Complainant attaches to his motion to amend pertain to a 2025 FOIA request, so they do not aid in narrowing the timeframe during which he had all the information he believed he required to lodge a proposed amendment.

⁸ Such a conclusion is consistent with OCAHO precedent on delay. Procedurally, this case is distinguishable from *Sharma v. NVIDIA Corp.*, where that complainant sought to amend after the conclusion of discovery and the filing of summary decision. Indeed, it is more analogous to *Wangperawong*, where amendment was sought just after discovery was initiated.

E. Analyzing the Proposed Amendment - The Amendment is Not Futile

As to futility, the potentially dispositive factor identified in Ninth Circuit and OCAHO precedent, the Court concludes the amendment as proposed would not be futile because the narrow language outlined by Complainant in his proposed amendment would survive an exhaustion analysis. To conduct this analysis, the Court first looks to the content of the IER Charge.

The IER charge was attached to the Complaint Form. Specifically, the IER charge identifies Cisco Systems as the proposed Respondent, and as to the type of discrimination alleged, the charge information relays “citizenship status discrimination.” Compl. 17.

As to the personnel action at issue, the Charge includes:

Complainant applied... for the job Hardware Engineer – FPGA on August 27, 2024... [He] was interviewed... on October 1, 2024... On October 2, 2024 [Complainant] received a voicemail... that [Respondent] was not interested [in hiring Complainant]... [Respondent] has hired H-1B visa candidates for the position... who [were] not equally qualified...

Compl. 17-8.

The Complaint Form mirrors the allegation contained in the Charge. Compl. 7-8.

The proposed amendment changes only the post-rejection action by Respondent (i.e. that the vacancy at issue remained unfilled vice the vacancy at issue was filled by an individual with a different citizenship status - a “non-immigrant H1B/Optional Practical Training (OPT) worker.”)

In considering the Ninth Circuit guidance outlined in *B.K.B. v. Maui Police Dep’t*, the Court concludes the amendment as presented would survive an exhaustion attack because it is sufficiently “like or related to” the original allegation. 276 F.3d 1091, 1100 (9th Cir. 2002). It is the same job vacancy, the same application and interview process (i.e. same date and location of discrimination, along with same alleged “perpetrators”), and the same discrimination basis.

IV. CONCLUSION

Because the amendment would not be futile, and because there is no bad faith and the undue delay and prejudice do not outweigh the mandate outlined in *Foman*, the Court grants Complainant leave to amend.

Complainant must file (and serve on Respondent) a revised OCAHO Form as the Amended Complaint by September 4, 2026.

Respondent shall have 21 days from the date it receives the Amended Complaint to file an Amended Answer. If no Amended Answer is filed, the Court will construe the Answer filed on April 10, 2026 as the Answer to the Amended Complaint.

After this issue of amendment has been fully resolved, the Court will invite the parties to file a status report on discovery.⁹ The Court will provide instructions for this report in a separate Order.

SO ORDERED.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁹ Because the proposed amendment is narrow and does not change the personnel action at issue or the basis for discrimination, the Court anticipates much of the discovery propounded already would remain well-suited to ascertain information necessary to present claims, defenses, or damages.

Once the Amended Complaint has been filed, the Court expects the parties to carefully review their Initial Disclosures, and exchange any necessary supplements. Parties can anticipate an inquiry regarding any supplements in the future order requiring a status report.