

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

August 12, 2026

US TECH WORKERS, ET AL.,	)	
Complainant,	)	
	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00040
	)	
	)	
BOSTON CONSULTING GROUP (BCG), INC.,	)	
Respondent.	)	
	)	

Appearances: John M. Miano, Esq., for Complainant
Leon Rodriguez, Esq. and Dawn Lurie, Esq., for Respondent

ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant US Tech Workers filed its Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 9, 2024, alleging that Respondent Boston Consulting Group (BCG), Inc. discriminated against it on the basis of citizenship status in violation of 8 U.S.C. § 1324b(a)(1). On March 27, 2024, Respondent filed its Answer, denying these allegations.

II. FACTS

Complainant US Tech Workers describes itself as an advocacy organization based in Washington D.C. that is composed of nine “injured parties.” Complaint 23-24. Complainant asserts that all nine persons are U.S. Citizens. *Id.* at 23.

Respondent Boston Consulting Group is a Boston based company that participated in a now-defunct activity called “Chicago H-1B Connect,” which Complainant describes as targeting recruitment efforts towards H-1B holders in the Chicagoland area. *Id.* at 21. Complainant asserts that “by specifically targeting nonimmigrants in H-1B for employment, Respondent affirmatively discouraged protected individuals for employment and engaged in unlawful discrimination based upon citizenship status.” *Id.* at 22.

Two of the members of US Tech Workers, Stephen Elwood and John Robert, applied for employment at Respondent in 2023. *Id.* at 22. Robert applied as a “TDA/Platanion Core” Technology Senior IT Consultant on or about January 31, 2023; Elwood applied as a Forward Deployed Data Engineer on or about March 6, 2023. *Id.*

Respondent denied Elwood employment on March 17, 2023. Respondent interviewed Robert on February 15, 2023; he was rejected sometime after.¹

The Complaint does not describe the duties of the IT Consultant position, or the Data Engineer, in any detail. It does not state whether Elwood or Robert identified themselves as U.S. Citizens on their applications, or whether the job application materials they submitted could reasonably lead one to presume that they are U.S. Citizens. The Complaint also does not indicate what ultimately happened with the jobs—whether Respondent filled the positions with non-citizens, or whether the positions remained unfilled.²

III. RELEVANT PROCEDURAL HISTORY

On May 24, 2024, Respondent filed its Motion to Dismiss and Motion to Stay Proceedings. Complainant filed a Response to the Motion to Dismiss as Motion for Partial Summary Judgment on May 29, 2024.

Complainant filed similar claims of employment discrimination against several other companies it alleges participated in the Chicago H-1B Connect program. It subsequently moved to consolidate all cases. This Court rejected that motion on January 30, 2025. US Tech Workers v. Boston Consulting Grp. (BCG), Inc., 20 OCAHO no. 1580b, 2 (2025).

Of note, Complainant has alleged that Respondent’s advertising of its job vacancy through Chicago H-1B Connect creates an independent cause of action for advertising discrimination. Unlike Title VII, 8 U.S.C. § 1324b does not have an independent statutory provision prohibiting advertising efforts which discriminate on the basis of national origin or citizenship status. *Compare* 42 U.S.C. § 2000e-3(b) (prohibiting employers from publishing or printing advertisements “indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin”) *with* 28 U.S.C. § 1324b(a)(1)(prohibiting

¹ Complainant identifies Robert as having been denied employment on February 10, 2023, five days before his interview. Complaint 22. The Court presumes this is a typographical error.

² In the motion to amend the Complaint, which this Court denies for the reasons identified [*infra*], Complainant describes Ellwood as a software engineer and Robert as a computer programmer, listing briefly their educational attainments. The amended complaint describes both Elwood and Robert as having accessed the jobs through the Chicago H-1B website, which linked to a job board. Complainant Mot. Amend Complaint 2, 3, 25, 28. Complainant does not describe the text of the job positions, indicating whether the announcements stated that they were restricted to [H-1B] holders or available to everyone. Complainant does not describe the duties of the positions, or how Elwood or Robert’s qualifications prepared them for the positions. Complainant does not describe whether the Respondent advertised widely, or whether it restricted its advertising efforts to [H-1B] holders. Complainant does not describe whether the job boards themselves were restricted only to people who accessed the Chicago [H-1B] website, or whether they were accessible to everyone. Complainant does not describe the job boards in any detail, specifically whether they were hosted on third party services that widely advertised vacancies (e.g. indeed.com, or ziprecruiter.com) or on systems that did not advertise their existence.

employment discrimination “with respect to the hiring, or recruitment or referral for a fee”). On January 30, 2025, this Court directed the parties to provide additional briefing on the legal question concerning advertising raised by Respondent’s submissions. The parties subsequently filed submissions addressing this question. On February 20, 2025, Complainant filed its Supplemental Brief on Respondent’s Motion to Dismiss. Complainant’s Supp Br. On March 13, 2025, Respondent filed its Supplemental Brief in Support of Motion to Dismiss. Respondent’s Supp. Br.

On February 20, 2025, Complainant moved to amend its Complaint. Complainant’s amended complaint appears to be the same for all the cases it has filed in this forum, consequently much of the information is not directly relevant to this Respondent. Of note, Complainant provided basic information about Robert and Elwood’s qualifications, and a statement that they applied for positions at Respondent, and that they were rejected. Complainant also alleged that Boston Consulting Group’s logo was attached to promotional material for Chicago H-1B Connect. Complainant offered no additional information about Respondent’s job vacancies, how they applied for the positions, whether Robert or Ellwood identified their citizenship status on their applications, what the job positions stated, or whether the positions were ultimately filled by noncitizens. Respondent opposed the motion to amend, filing its opposition on March 5, 2025.

On March 17, Complainant moved to recaption the Complaint to remove Dr. Xiaojing Wang from the First Amended Complaint. Respondent did not oppose the motion.³

IV. DISCUSSION

A. Standing

Respondent argues that Complainant does not have standing to bring this action because it is not a legal entity, and it has not shown it can bring a claim on behalf of the injured parties. Resp. Mot. Dismiss at 10-11. Respondent appears to rely on an Article III court conception of standing, however standing in administrative forums is informed first by the animating statute. Frequently, these statutes have a broader understanding of standing than their Article III counterparts. *See* 32 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 8228 (2d ed.) (June 2024 Update) (“Determinations of who may participate in agency proceedings are not subject to the constitutional standing restrictions ... in Article III,” and so-called “[a]dministrative standing’ may thus be more expansive than ‘judicial standing.’”). *See also* US Tech Workers v. CohesionIB Inc., 20 OCAHO 1594b, 2 n.7 (2024) (Discussing standing, the “starting (and ending) point of such a query in this administrative court leads to 8 U.S.C. § 1324b and 28 C.F.R. § 68.2.”); Eccc, Inc. v. Federal Energy Regulatory Comm'n 645 F.2d 339, 349–50 (5th Cir. 1981); Platinum Optics Technology Inc. v. Viavi Solutions Inc., 111 F.4th 1378, 1383 (Fed. Cir. 2024) (“A party does not need Article III standing to appear before an administrative agency....” (citing Cuozzo Speed Techs., LLC v. Lee, 579 U.S. 261, 279 (2016))).

³ Complainant does not allege either in the original Complaint or in the amended complaint that Dr. Wang applied for a job at Respondent. As noted later in this order, the Court denies Complainant’s motion to amend the Complaint. For both of these reasons, the Court DENIES Complainant’s motion as moot.

While the Complaint offers very little with regard to the nature of Complainant US Tech Workers, a fair reading of the submissions indicates that it is a U.S. citizens' advocacy organization that represents Elwood and Robert with regard to their claims of employment discrimination. It has counsel who has entered his appearance in this matter.

Either under the higher Article III standing requirements or by the statutory standard identified in [8] U.S.C. § 1324b and its attendant regulation 28 C.F.R. § 68.2, Complainant has cleared the bar in these proceedings. Elwood and Robert alleged that they applied for positions at Respondent and that they were denied employment. They claim that the nonselections occurred because of their citizenship status as U.S. Citizens. Consequently, the employment actions reflect quintessential "injuries in fact," meaning that they allegedly suffered "concrete, particularized, and actual or imminent" harm through denial of employment in violation of § 1324b. TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) concerning the elements of Article III standing). Complainants allege that Respondents caused the harm by failing to hire them due to their citizenship status, and Congress expressly provides a judicial remedy for violations of § 1324b through a regime of penalties and other relief. See 28 U.S.C. § 1324b(g)(2)(B) (outlining judicial remedies). Consequently, Elwood and Robert meet the standard of Article III standing.

In order for US Tech Workers to establish associational standing, Complainant must show that: 1) at least one of its members would have standing to sue in their own right, 2) the lawsuit protects interests germane to the organization's purpose, and 3) participation of individual members is not necessary. Wisconsin Voter Alliance v. Mills, 166 F.4th 627, 638 (7th Cir. 2026).

Complainant US Tech Workers meets each of these elements for associational standing. As asserted earlier, Elwood and Robert have standing to sue in their own right. One may reasonably infer from the Complaint and associated materials that the organization's purpose is germane to this litigation—indeed, from the materials presented it appears that the organization's sole purpose is to advance U.S. citizens' employment. Finally, the regulation's directive that "in cases arising under section 274B of the INA, 'complainant' means ... in private actions, an individual or *private organization*," 28 C.F.R. § 68.2 (emphasis added), appears to fulfill the final element.

Relying solely on the statute and regulation, the analysis is much shorter. In the context of § 1324b citizenship discrimination, an injury in fact means a person who was "discriminated against with respect to the hiring, or recruitment, or referral for a fee, of the individual for employment or the discharging of the individual from employment ... because of such individual's citizenship status." 8 U.S.C. § 1324b(a)(1)(B). An injured person who may bring a lawsuit includes "an individual or private organization." 28 C.F.R. § 68.2; see also US Tech Workers v. CohesionIB Inc., 20 OCAHO 1594b, 2 n.7 (2024).

Consequently, under either standard, Complainant has standing to bring this Complaint.

B. Motion to Amend

OCAHO Rule 68.9(e) provides that a party may amend the 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[.]” 28 C.F.R. § 68.9(e). The court is charged with balancing the interests to determine whether an amendment after an answer has been filed is permissible. Talebinejad v. Mass. Institute of Technology, 17 OCAHO no. 1464a, 2 (2023). The Seventh Circuit Court of Appeals relies on the factors announced in Foman v. Davis when evaluating the probity of an amendment. Campania Management Co. v. Rooks, Pitts & Poust, 290 F.3d 843, 849 (7th Cir. 2002) (citing Foman v. Davis, 371 U.S. 178, 181-82 (1962)). The Foman factors direct that courts should deny the motion when: 1) the movant unduly delayed filing its motion for leave to amend; 2) the opposing party would suffer some undue prejudice; or 3) the amended pleading would be futile. Id.

In this matter, the Court is inclined to deny the motion to amend. First, and perhaps most significantly, the motion to amend was filed eight months after the original complaint, and two months after the motion to dismiss. The timing of the motion does not suggest that Complainant moved with alacrity to address its potential pleading deficiencies, even when these issues were pointed out to Complainant through motions practice. To the extent that external circumstances conspired against Complainant, or there was an excusable delay due to events outside Complainant’s control, these explanations appear nowhere in Complainant’s motion.

While new facts or circumstances may often justify an amended pleading, the Court notes that the motion to amend contains information that was arguably in Complainant’s possession before this case was filed. The most relevant information in the amended complaint is Complainants Robert and Ellwood’s job qualifications, which presumably Complainant knew about previously. Complainant also offers some, but not much, in the way of new information about the application process. Again, this information would have been in Complainant’s possession at the outset of the case.

Consequently, due to the lack of other evidence or argument reflecting why Complainant postponed the motion to amend for eight months, this Court finds that Complainant unduly delayed its motion.

Moving to the second element, the Respondent opposes the motion, asserting that it would be prejudiced by this new information. Relevant for this factor, Respondent asserts that it has expended “significant time, expense, and effort in attempting to respond to Complainants’ filings.” Resp. Opp’n. Mot. Amend 2, 9. Complainant argues that Respondent would not be prejudiced because this litigation is far from a hearing on the merits, however Complainant offers no counter to the Respondent’s arguments concerning its expenditure of time and energy in addressing its original complaint and other motions.

Addressing the third element of the Foman factors, this Court must also separately conclude that the amendment would be futile. Even if this Court were to grant the amendment, Complainant’s pleading would still be materially deficient. First and most significantly, it does not offer any evidence that Respondent ever knew that Robert or Ellwood were [U.S. citizens]

when they were denied employment. It also does not plead that Respondent's advertising efforts targeted noncitizens to the exclusion of citizens, either implicitly or explicitly. Complainant's arguments concerning a civil conspiracy are, as will be discussed subsequently, outside the statutory authority of this court, and the amended complaint does not address this impediment. To the extent Complainant makes the argument that Respondent is engaging in recruitment discrimination, its additional pleadings do not allege that Respondent was a recruiting agency, or that Respondent was hiring for a fee.

On balance, the Court finds that, relying on its regulatory authority as well as Foman, Complainant has failed to demonstrate that the amendment would not prejudice the public interest and the rights of the parties. Consequently, Complainant's motion is DENIED.

C. Motion and Pleading Standards

Pursuant to Rule 68.10, the Court may dismiss a complaint for failure to state a claim upon which relief may be granted. 28 C.F.R. § 68.10(b). This rule is modeled after Federal Rule of Civil Procedure 12(b)(6). S. v. Discover Fin. Servs., LLC, 12 OCAHO no. 1292, 7 (2016) (citing United States v. Spectrum Tech. Staffing Servs., Inc., 12 OCAHO no. 1291, 8 (2016); and then citing 28 C.F.R. § 68.1). When considering a motion to dismiss, the Court must "liberally construe the complaint and view 'it in the light most favorable to the [complainant].'" Spectrum Tech. Staffing Servs., 12 OCAHO no. 1291 at 8 (quoting Zarazinski v. Anglo Fabrics Co., 4 OCAHO no. 638, 428, 436 (1994)).

There is no requirement in a case pursuant to § 1324b that a complainant plead a prima facie case; however, "a § 1324b complaint must contain sufficient minimal factual allegations to satisfy § 68.7(b)(3) and give rise to an inference of discrimination." Jablonski v. Robert Half Legal, 12 OCAHO no. 1272, 6 (2016) (citing Swierkiewicz v. Saremi, 534 U.S. 506, 508 (2002)).

While neither party has raised the pleading standards in Twombly or Iqbal in their submissions, the undersigned notes that OCAHO's precedent has rejected the application of the "facially plausible" standard that those cases announced as inapplicable in this forum. *See, e.g., United States v. Mar-Jac Poultry*, 10 OCAHO no. 1148, 9 (2012) (noting that cases filed in OCAHO are subject to an underlying administrative process in advance of a hearing⁴, and that 28 C.F.R. § 68.7(b)'s requirement that complaints have a "clear and concise statement" of facts, jurisdiction, and law differs from the "short and plain statement of the claim" language of Federal Rule of Civil Procedure 8); United States v. Chancery Staffing Solutions, 13 OCAHO no. 1326, 9 (2019) ("OCAHO does not demand the "plausibility" standard required in federal courts"); Sharma v. NVIDIA Corp., 17 OCAHO no. 1450, 2 (2022) ("Following Twombly and Iqbal, OCAHO has explicitly declined to invoke the stricter pleading standard from those cases."); *see also United*

⁴ The court in Mar-Jac Poultry raised several arguments in its rejection of the plausibility standard: 1) the linguistic difference between the Federal rule and OCAHO regulation, 2) the uncertainty as to what "facial plausibility" means, and attendant difficulty in applying the standard consistently, and 3) the administrative process which precedes the filing of the complaint. Mar-Jac Poultry, 10 OCAHO no. 1148, at 9. Addressing the third argument, the Mar-Jac court observed that the government conducts an administrative investigation prior to charge filings in all cases, and that IER has adopted a complaint form for § 1324b cases which is often used by pro se litigants and which it argues discourages "the pleading of extraneous, redundant, or overly detailed narratives." *Id.*

States v. Wal Mart Inc., 17 OCAHO no. 1475g, 13 n. 15 (2024) (Noting the difference in language between 28 C.F.R. § 68.7 and Federal Rule of Civil Procedure 8).

More pointedly, Rule 28 C.F.R. § 68.7(b) directs that any complaint shall contain “a clear and concise statement of facts, upon which an assertion of jurisdiction is predicated,” “the alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred,” as well as “a short statement containing the remedies and/or sanctions sought to be imposed against the respondent.” 28 C.F.R. § 68.7(b)(1), (b)(3), and (b)(4). Rule 8 employs a different formulation, requiring a “short and plain statement” of the grounds for the court’s jurisdiction, as well as a “short and plain statement” of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(1) and (2).

As with United States v. Wal Mart, neither party has argued for an overturning of Mar-Jac Poultry and for the application of the Twombly/Iqbal plausibility standard in forum; consequently, the undersigned declines to *sua sponte* address the matter here.

OCAHO’s jurisprudence adopts the prior pleading standard, amplified by Twombly and Iqbal, that boilerplate assertions, legal conclusions, and the formulaic recitation of the elements of a claim are insufficient to meet the standard of a well plead complaint. Twombly, 550 U.S. 544, 545 (2009) (“a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.”). See, e.g., Jablonski v. Robert Half Legal, 12 OCAHO no. 1272, 6 (2016) (“In assessing the facial validity of a complaint, well-pleaded factual allegations are taken as true, but a legal conclusion couched as a factual allegation need not be accepted.”) (internal citations omitted).

Addressing the need for specificity in the factual pleadings in a complaint, the court has stated:

We have interpreted Twombly and Iqbal to require the plaintiff to “provid[e] some specific facts” to support the legal claims asserted in the complaint. Brooks v. Ross, 678 F.3d 574, 581 (7th Cir. 2009). The degree of specificity required is not easily quantified, but “the plaintiff must give enough details about the subject-matter of the case to present a story that holds together.” Swanson v. Citibank, N.A., 614 F.3d 400, 404 (7th Cir. 2010). The required level of factual specificity rises with the complexity of the claim.

McCauley v. City of Chicago, 671 F.3d 611, 616-17 (7th Cir. 2011).

As our jurisprudence makes clear, the purpose of the complaint is to give the opposing party fair notice about how and why it believes it is entitled to relief. A mere recital of the legal elements in the cause of action does not tell the opposing party what facts and legal arguments the complainant intends to marshal to meet those elements, which effectively makes the complaint a dead letter. Further, such a pleading would fail to meet the express terms of 28 C.F.R. § 68.7, which requires a “clear and concise” statement of facts.

When considering a motion to dismiss, “the [C]ourt must limit its analysis to the four corners of the complaint.” Jarvis v. AK Steel, 7 OCAHO no. 930, 111, 113 (1997) (internal citations omitted). “The [C]ourt may, however, consider documents incorporated into the complaint by reference[.]” Id. at 113-14.

D. Complainant Fails to State a Claim of Discriminatory Hiring and Discriminatory Recruitment

The Court finds that Complainant failed to state a claim upon which relief can be granted. Complainant does not plead facts sufficient to give rise to an inference of discrimination regarding Robert’s or Elwood’s claims of non-selection due to their citizenship status.

Even assuming that all facts as Complainant pled them are true, the case does not hold together to create an actionable cause of employment discrimination. First, and as stated earlier, the Court disregards boilerplate legal claims without a factual basis; it similarly disregards conclusory allegations of discrimination without factual support. Consequently, Complainant’s unadorned allegations are that: 1) Respondent was in some way connected to Chicago [H-1B] Connect, 2) [H-1B] Connect stated that nonimmigrants could apply for jobs in Chicago, 3) Elwood and Robert applied for jobs at Respondent, a company based in Boston, and 4) Elwood and Robert were denied employment.

Missing from this factual recitation is any facts which would support the notion that: 1) Elwood or Robert were at least minimally qualified for the positions they applied for, 2) Respondent ever knew that Elwood or Robert were nonimmigrants or U.S. Citizens, or 3) based on their citizenship Elwood and Robert were denied employment. Indeed, from these facts it is impossible to tell if anyone was ever hired for these job vacancies, and if so whether they were noncitizens. It is not even clear whether the jobs were exclusively publicized on the [H-1B] Connect website, which Complainant asserts (without any real elaboration) was targeted to noncitizens, whether it ran on the [H-1B] Connect website and on Respondent’s website, or whether it ran on both websites as well as third party job aggregator websites. Consequently, the facts as pled cannot support even the weakest inference that Respondent’s non-selection of Elwood and Robert was motivated by an anti-U.S. citizen bias.

Complainant’s claim is distinguishable from Heath, 15 OCAHO no. 1410, at 4-5. In that case, the Court concluded that dismissal was not appropriate when the complainant stated that he was a U.S. citizen and that the respondent refused to hire him after he applied for work for a job for which he claimed to be qualified. Id. Additionally, the complainant alleged that the respondent advertised the position for a “H-1B Transfer” and that the job remained open and the respondent continued to take applications from other people after complainant was not hired. Id. Here, by contrast, the Complainant does not describe the positions advertised by Respondent, whether they were limited to non-citizens, how they were advertised, whether the positions were filled, and if so by whom. See Mid-Atlantic Reg'l Org. Coal., Laborer's Int'l Union of N. Am. v. Heritage Landscaping Services, LLC, 10 OCAHO no. 1134, 7-8 (2010) (identifying elements to be pled in a discriminatory hiring claim).

For the same reasons, Complainant fails to state a claim for discriminatory recruitment. The statute and regulations encompass all aspects of the pre-hiring process in the context of potential claims of employment discrimination, including recruitment. 28 C.F.R. § 44.101(h) (“*Hiring* means all conduct and acts during the entire *recruitment*, selection, and onboarding process undertaken to make an individual an employee.”) (emphasis added).

As stated above, the Complainant’s conclusory statements regarding two members who were denied employment does not provide information regarding the positions and how they were promoted for recruitment. *See US Tech Workers v. Matter*, 19 OCAHO no. 1567b, 7 (2024) (“Conclusory statements of law and fact are simply not enough to meet even the low pleading standard in this forum.”). Nor does the Complainant identify whether any listed opening was advertised elsewhere. *See, e.g., Hailes v. United Air Lines*, 464 F.2d 1006, 1009 (5th Cir. 1972) (holding that it was significant that the airline did not provide a corresponding ad in the help wanted males column); *Facebook*, 14 OCAHO no. 1386b, 9 (recognizing that recruitment methods specifically designed to solicit minimal if any responses were evidence of discrimination). The Complainant’s conclusory allegation that the Chicago H-1B Connect program discriminated against U.S. citizens is not supported by the facts alleged in the pleadings (Response 3-6). *See Jablonski*, 12 OCAHO no. 1272, at 6 (“[A] legal conclusion couched as a factual allegation need not be accepted.”). Moreover, Complainant does not provide clarifying information regarding the positions that Respondent recruited for and the Respondent’s recruitment efforts specifically. The undersigned therefore concludes that Complainant has failed to state a claim under § 1324b based on recruitment in the context of discriminatory hiring.

E. Discriminatory Recruitment for a Fee

The Complainant asserts that its claim is not for discriminatory hiring but discriminatory recruitment. *See* Response 3 (“The complaint sets out a clear case of recruitment discrimination.”); Response 14 (“Respondent shifts to a different cause of action: failure to hire.”); Response 13 (“Respondents focus on the wrong cause of action”).

Complainant’s arguments appear to conflate recruitment for a fee with recruitment unmoored from its statutory limits. *See* Response at 3 (“The Immigration and Nationality Act, 8 U.S.C. § 1324b creates causes of action for U.S. workers for discrimination with respect to (1) hiring, (2) recruitment, (3) referral for a fee, or (4) discharge from employment.”). 8 U.S.C. § 1324b provides no cause of action for recruitment unless the recruitment is for a fee. Section 1324b, in relevant part, prohibits discrimination “against any individual ... with respect to the hiring, or recruitment or referral for a fee, of the individual for employment...” 8 U.S.C. § 1324b(a)(1).

The regulation states that:

The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, and referring that person to another with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis

8 C.F.R. § 274a.1(e); *see also* 28 C.F.R. § 44.101(l) (“Recruitment or referral for a fee has the meaning given the terms ‘recruit for a fee’ and ‘refer for a fee,’ respectively, in 8 C.F.R. § 274a.1, and includes all conduct and acts during the entire recruitment or referral process.”).

As a general matter, recruitment or referral for a fee claims are generally brought against recruiting or staffing agencies. *See, e.g., Chancery Staffing Solutions, LLC*, 13 OCAHO no. 1326, at 1-2 (stating that respondent is a corporation that “hires temporary employees to perform work for third-party clients.”); *Jablonski*, 12 OCAHO no. 1272, at 4; *Williams v. Lucas & Assoc.*, 2 OCAHO no. 357, 424 (1991); *United States v. Lasa Mkt.*, 1 OCAHO no. 141, 962 (1990) (the parties stipulated that Respondent recruiting company was “a covered entity under § 1324b . . . because . . . it is a recruitment or referral for a fee entity . . .”). The court has stated that it applies similar burdens “to recruitment discrimination cases brought against recruiting firms as it does to hiring discrimination cases brought against employers.” *Matter*, 19 OCAHO no. 1567b, at 4. These recruitment cases typically involve an employer paying a third-party a fee to recruit or refer employees. *See* 8 C.F.R. § 274a.1(e).⁵

The Complaint and attendant pleadings fail to articulate a legally cognizable recruitment for a fee case against Respondent.⁶ Complainant does not allege that Respondent is a recruiting agency and that the Respondent recruited an individual for remuneration. The Complainant does not allege that any money was exchanged between the Respondent and Chicago H-1B Connect or another organization. *See, e.g., Matter*, 19 OCAHO no. 1567b, 5 (“[T]here are no allegations regarding the arrangement between Respondent and Chicago H-1B Connect as the recruitment agency.”). Accepting *arguendo* that Chicago H-1B Connect is engaged in recruiting for a fee, then Chicago H-1B Connect should be a named party in a claim based on discriminatory recruitment under § 1324b.

F. Civil Conspiracy

Separate from its individual discrimination claims, Complainant also alleges that Respondent is part of a civil conspiracy and that it should be liable in tort for the alleged discriminatory acts of other parties.⁷ Complainant argues that the crux of the case is the

⁵ In the absence of a third party and the exchange of a fee, claims involving discrimination in recruitment are treated as discriminatory hiring cases. *See, e.g., Tringapps*, 15 OCAHO no. 1410, at 4-5; *see also Facebook*, 14 OCAHO no. 1386b, at 2 (considering the respondent’s recruiting and hiring practices together under a pattern or practice analysis). The regulations recognize recruitment not for a fee in the context of discriminatory hiring. *See* 28 C.F.R. § 44.101(h). The court has found, “[w]here recruitment discrimination has come up, it has either been in cases brought against recruitment firms, or considered in the context of a broad understanding of the hiring process when looking at *hiring discrimination claims*.” *Matter*, 19 OCAHO no. 1567b, at 4 (emphasis added). The distinction between recruitment in hiring generally and recruitment for a fee is consistent with the statute and regulations which require remuneration to a party in cases involving recruitment for a fee. *See* 8 U.S.C. § 1324b; 8 C.F.R. § 274a.1(e).

⁶ The burden for establishing a prima facie claim for hiring and recruitment discrimination is similar. *Matter*, 19 OCAHO no. 1567b, at 5 n.7 (“OCAHO ALJs appear to apply the same or similar analytical steps to recruitment discrimination cases brought against recruiting firms as it does to hiring discrimination cases brought against employers.”).

⁷ The Complainant’s claim is thus unlike *United States v. Facebook*, where the respondent was charged with maintaining “a scheme of set-asides of certain positions for only temporary visa holders and ineffective methods of

conspiracy, and that the complaints together present one case of conspiracy to recruit based on citizenship status. Complainant appears to be proceeding under either a theory of civil conspiracy, where pursuant to an agreement between two or more actors to participate in an unlawful act, the injury caused by one of the parties creates liability for all, or joint liability, where, presumably, Complainant is alleging that each company acted in concert to produce a single injury. *See, e.g. Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 614 (2009) (citing Restatement (Second) of Torts, § 875 (1976)).⁸

Complainant cites to state law to support its contention that it has pled the elements of civil conspiracy. Mot. Consol. 5. Complainant has not cited, nor has the undersigned found, any cases applying civil conspiracy in OCAHO's proceedings. OCAHO only has the jurisdiction prescribed by Congress in its enabling statute, and a claim under § 1324b is a statutory claim, not a tort. *See Patel v. USCIS Boston*, 14 OCAHO no. 1353, 3 (2020) ("OCAHO is a forum of limited jurisdiction 'with only the jurisdiction which Congress has prescribed.'") (internal citations omitted); *BMO Bank*, 20 OCAHO no. 1586b, at 6.

G. Joint Liability

This court has in past cases recognized the joint employer theory of liability. *See, e.g., United States v. Burns and Intra-Continental Ent.*, 5 OCAHO no. 759, 301 (1995); *United States v. Tech. Marine Maint. & Gulf Coast Workforce*, 13 OCAHO 1312b, 2 (2018). In such cases, a complainant must establish liability as to each Respondent. *See, e.g., Fillmore v. Page*, 358 F.3d 496 (7th Cir. 2004) ("[j]oint liability is appropriate only where all of the defendants have committed the negligent or otherwise illegal act, and so only causation is at issue."). "Joint and several liability is appropriate whenever a plaintiff can 'establish that each defendant acted in concert to 'produce a single, indivisible injury.'"" *F.T.C. v. Day Pacer LLC*, 125 F.4th 791, 812 (7th Cir. 2025) quoting *Harper v. Albert*, 400 F.3d 1052, 1061–62 (7th Cir. 2005). "[I]n order for defendants to be held jointly and severally liable, *all* of the named defendants must have visited some manner of wrong (here a constitutional violation) on the plaintiff." *Harper v. Albert*, 400 F.3d at 1062 (emphasis in original).

However, the Complaint only asserts in a bald statement that concerted activity existed. Missing is how the companies acted in concert, such as what each entity's agreements, financial ties, procedures for recruitment were with Chicago H-1B, and relationships among the employers and whether they were common to all. Or that there was a common injury, given the presence of individual applicants for some employers but not others, and a lack of detail regarding how the other individuals listed in the complaints were injured. *See Mid-Atlantic Reg'l Org. Coal., Laborer's Int'l Union of N. Am.*, 10 OCAHO no. 1134, at 8 ("Discrimination suits require some evidence of discrimination."). Given the dearth of concrete information, the Court does not find

recruitment designed to solicit minimal, if any, response..." *See United States v. Facebook*, 14 OCAHO no. 1386b, 9 (2021).

⁸ "A list of the separate elements of civil conspiracy includes: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme." *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983). "To establish liability [for civil conspiracy], the plaintiff also must prove that an unlawful overt act produced an injury and damages." *Id.*

that a common issue of fact or law has been presented by these cases. *See CohesionIB, Inc.*, 20 OCAHO [no.] 1594b, at 11 (holding that the existence of a collaborative job board available to individuals with H-1B status is not a per se violation of § 1324b).

H. Cause of Action for Discriminatory Advertising

The parties dispute whether 8 U.S.C. § 1324b provides for an independent cause of action for advertising discrimination. Complainant argues that it does, relying on the language of 8 U.S.C. § 1324b(a)(1), which prohibits national origin or citizenship based discrimination “with respect to the hiring, or recruitment or referral for a fee, of the individual for employment....” 8 U.S.C. § 1324b(a)(1). In support of this argument, the caselaw in this forum interprets the statute broadly to include many aspects of the pre-employment process. Mid-Atlantic Reg'l Org. Coal., Laborer's Int'l Union of N. Am. v. Heritage Landscape Servs., LLC, 10 OCAHO no. 1134, 8 (2010) citing McNier v. San Francisco State Univ., 8 OCAHO no. 1030, 442-43 (1999); *see also* United States v. Robinson Fruit Ranch, 4 OCAHO no. 594, 25 (1994) (“Courts have firmly established a policy of liberally construing remedial statutes so as to ‘suppress the evil and advance the remedy’” (citing 3 Singer, Southerland Statutory Construction, sec. 60.01 (5th ed. 1992))).

Complicating this matter is that Complainant can cite to no OCAHO caselaw, or for that matter any cases in any court, which have recognized a cause of action due to a discriminatory advertisement under § 1324b based solely on the ad, separate and apart from whether a person ever attempted to find employment.⁹

Complainant analogizes his case to a Title VII case alleging advertising discrimination. However, Title VII has an explicit provision banning advertising discrimination, one which the courts have recognized as creating an independent cause of action. Section 1324b does not possess a corresponding statute or implementing regulation which specifically targets discriminatory advertisements. *See* 42 U.S.C. § 2000e-3(b) (“It shall be an unlawful employment practice ... to print or publish or cause to be printed or published any notice or advertisement relating to employment ... indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin ...”); *see also* Illinois v. Xing Ying Emp. Agency, 2018 U.S. Dist. WL 1397427, *2-3 (N.D. Ill. March 20, 2018) (discussing 42 U.S.C. § 2000e-3(b), or Section 704b claims, in the context of Title VII).

⁹ Complainant cites Hailes v. U.S. Airlines for the proposition that to be an aggrieved person of advertising discrimination in a Title VII case, a party “must be able to demonstrate that he has a real, present interest in the type of employment advertised.” Complainant’s Supp. Br. Mot. Dismiss 4. Hailes states more: to satisfy a claim under the anti-advertising discrimination provision of Title VII a party must present a discriminatory ad, and must show “that he has a real, present interest in the type of employment advertised.... [and] he was effectively deterred by the improper ad from applying for such employment.” *See Hailes v. United Air Lines*, 464 F.2d 1006, 1008 (5th Cir. 1972). The Complainant asserts that “[t]he plaintiff/appellant in Hailes alleged that the placement of a job advertisement for cabin crew in a newspaper under the ‘Help Wanted—Female’ column was discriminatory.” Compl’s Supp. Br. Mot. Dismiss 4. The court, however, relied on “the tendentious selection of the feminine term, ‘stewardesses’, and the placing of the ad in the ‘Help Wanted—Female’ column without a corresponding ad in the ‘Help Wanted—Male’ column [which] so plainly indicates a preference for females it cannot be neutralized by the self-conferred title of ‘Equal Opportunity Employer.’” Hailes, 464 F.2d at 1008.

Other civil rights statutes which have been read to ban advertising discrimination do so through explicit statutory language or an implementing regulation which accomplishes the same. *See, e.g.* 42 U.S.C. § 3604(c) (the Fair Housing Act’s prohibition on advertisements which indicate a “preference, limitation, or discrimination based on race ...”); 12 C.F.R. § 1002.4(b) (Equal Credit Opportunity Act’s implementing regulation prohibiting discriminatory advertisements); 29 C.F.R. § 1630.4(a)(1)(i) (Americans with Disabilities Act’s anti-discrimination advertising rules); 29 C.F.R. § 1625.4 (Age Discrimination in Employment Act implementing regulations prohibiting advertisements which deter older individuals from employment.)

Consequently, it militates against a reading of § 1324b to include advertising discrimination when the drafters of the statute, who were aware of analogous civil rights statutes which included a ban on advertising discrimination, decided to not include one in § 1324b. *Cf. Dean v. United States*, 556 U.S. 568, 573 (2009) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely.” (citation omitted)); *Veprinsky v. Fluor Daniel, Inc.*, 87 F.3d 881, 888 (7th Cir. 1996) (explaining that in interpreting the scope of a cause of action “we begin with the plain language of the statute we are called upon to apply”); *Mir v. Fed. Bureau of Prisons*, 3 OCAHO no. 510, 1073, 1081(1993); (“Congress enacted IRCA as a complement to Title VII”); *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449a, 6 (2024) (discussing the origins of § 1324b and its relation to Title VII); *but see Areola-Castillo v. United States*, 889 F.3d 378, 389 (7th Cir. 2018) (holding that presumption that Congress acts intentionally when it omits language from a statute is entitled to less weight when a party compares language used in different federal statutes).

Further, the lack of a rule addressing advertising discrimination nearly 40 years after the Immigration Reform and Control Act was passed into law augurs against this Court reading one into the statute now.

While there is no indication of a court previously recognizing § 1324b to have created an independent cause of action for advertising discrimination, the courts have considered discriminatory advertising as evidence supporting a claim of discriminatory hiring, recruitment, or referral. In *United States v. Chancery Staffing Solutions, LLC.*, for example, the court considered discriminatory advertising as an element in a claim for discriminatory referral for a fee. 13 OCAHO no. 1326, 2 (2019). That case involved respondent, a corporation that “hires temporary employees to perform work for third-party clients.” *Id.* at 1. The complainant alleged that discriminatory messaging in an email blast by the respondent excluded non-U.S. citizens from consideration for an employment position. *Id.* at 1-2. “Respondent sent a blast email advertising the Project and stating that the candidates ‘must be able to demonstrate U.S. citizenship.’” *Id.* at 9. The complainant alleged that “Respondent recruited, nominated, and referred over forty candidates for the Project.” *Id.* The court found that the complainant identified two individuals who were harmed by the discriminatory promotion. *Id.* at 7. The court considered advertising practices as an element of a claim for discriminatory recruitment and determined that the complainant sufficiently asserted a claim for a pattern or practice of discrimination based on citizenship status. *Id.* at 9.

Allegations of discriminatory advertising may also support a claim for discriminatory hiring. See Heath v. Tringapps, Inc., 15 OCAHO no. 1410, 5 (2022) (holding that complainant's allegations that he was a U.S. citizen, applied for a job for which he was qualified, that the position was advertised as a "H1B Transfer," and that the employer refused to hire him and kept the position open for other applicants were sufficient to state a claim upon which relief can be granted). OCAHO cases also treat discriminatory advertising as an element in determining whether an individual was discriminated against in the hiring process. See Matter, 19 OCAHO no. 1567b, at 6 n.8 (noting in dicta, that a recruitment claim based on advertising "likely would ... have to both meet the elements of a claim under § 1324b, and a complainant would have to show that a person was injured by the advertisement"); Facebook, 14 OCAHO no. 1386b, 9 (discriminatory advertising practices used as evidence of discriminatory hiring practices).

Upon a review of the relevant authority, the undersigned concludes that allegations of discriminatory advertising to promote an employment opportunity may support a claim under 8 U.S.C. § 1324b, but that discriminatory advertising does not represent a discrete cause of action under the INA. Said differently, the lack of corresponding language in the statute or regulations, as well as the lack of case law in this forum or in others which reads § 1324b to create an independent cause of action for advertising discrimination, leads to the conclusion that the statute and regulations limit evidence of advertising discrimination to part of a case alleging non-selection, recruitment, or termination, rather than as independently actionable violations of the INA.

Even if the statute supported a cause of action for discriminatory advertising, it is questionable whether the Complainant could maintain such a claim. Cases applying Title VII distinguish between advertising designed to expand the pool of applicants and discriminatory advertising. See Duffy v. Wolle, 123 F.3d 1026, 1038-39 (8th Cir. 1997) (holding that alleged interest in obtaining a larger pool of applicants did not support a finding of pretext) (abrogated in part by Torgerson v. City of Rochester, 643 F.3d 1031, 1043 (8th Cir. 2011)); Shuford v. Alabama State Bd. of Educ., 897 F.Supp. 1535, 1553-54 (M.D. Ala 1995) (distinguishing between inclusion and exclusion and holding that encouraging applications did not discriminate but expanded the pool of applicants). Complainant argues that the Respondent engaged in discriminatory advertising by targeting workers in H-1B status. See Response at 3, 4; Compl's Supp. Br. Mot. Dismiss 2. However, Complainant does not identify advertisements excluding U.S. citizens (Response 10). See, e.g. Chancery Staffing Solutions LLC., 13 OCAHO 1326, 9 (denying motion to dismiss when "Respondent allegedly only considered, nominated, referred, and hired U.S. citizens to work on the Project and, ..., Respondent sent a blast email advertising the Project and stating that the candidates 'must be able to demonstrate U.S. citizenship.'"). Nor does the Complainant address whether the Respondent advertised in other forums or platforms. See Hailes, 464 F.2d at 1008.

V. CONCLUSION

For the reasons outlined above, the Complaint is DISMISSED.

SO ORDERED.

Dated and entered on August 12, 2026.

Honorable John A. Henderson
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.