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

October 7, 2026

JOHN WEIS,	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2026B00059
AZURITY PHARMACEUTICALS,	)	
	)	
Respondent.	)	
	)	

Appearances: John Weis, pro se Complainant
Sean M. McCrory, Esq., for Respondent

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, John Weis, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on **July 28, 2026**. Complainant alleges that Respondent violated 8 U.S.C. § 1324b(a)(1). On **September 11, 2026** Respondent filed a Motion to Dismiss the Complaint and Brief in Support. On **September 15, 2026** Respondent filed an answer. On **September 16, 2026** the Court issue an Order Setting Prehearing Conference and General Litigation Order. On **September 20, 2026**, Complainant filed its Opposition to Respondent's Motion to Dismiss. Complainant's Initial Prehearing Statement was filed **September 23, 2026**. Respondent's Initial Prehearing Statement was filed **September 25, 2026**. The initial prehearing conference originally scheduled for **October 1, 2026** was moved **to October 8, 2026** upon a showing of good cause at the request of the Complainant, with no opposition from Respondent. Respondent's Motion to Dismiss is the only motion pending before the Court.

II. CONTENTS OF THE FOUR CORNERS OF THE COMPLAINT

Pursuant to 28 C.F.R. § 68.7(b)(3) complaints must only allege violations of law with a *clear and concise statement of facts* for each violation alleged. OCAHO precedent interprets 68.7(b)(3) as determining that such allegations in complaints are not required to plead detailed evidence or a *prima facie* case. *See* 28 C.F.R. § 68.7(b)(3); *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO 1148, 8–10 (2012); *United States v. Facebook, Inc.*, 14 OCAHO 1386b, 5 (2021); *Sharma v. Nvidia Corp.*, 17 OCAHO 1450, 3 (2022).

Here, the contents of the Complaint are the following:

- Section 1 of the Complaint contains the contact information of the Complainant, including the date when a charge was filed with the Immigrant and Employee Rights Section (IER), as well as the date when IER notified Complainant when he could file a complaint with OCAHO.

- Section 2 of the Complaint states Complainant is unrepresented in the matter.

- Section 3a states Complainant was a United States Citizen or National at the time of the alleged discrimination, also indicating that he was not a naturalized citizen.

- Section 3b states that Complainant is currently a United States Citizen or National.

- Section 4 identifies the Respondent, along with its contact information, as the business who allegedly discriminated against him.

- Section 5, which inquires into the Respondent's attorney or representative, if known, is left blank.

- Section 6, identifies Complainant's citizenship status (e.g. either because you were or were not a U.S. Citizen) as the basis for discrimination alleged.

- Section 7 states that Complainant was not hired by Respondent, gives the date of application for the position of Data Scientist along with the job posting requirements. Section 7 also states that Complainant was qualified for the job, that Respondent was looking for workers, and that Respondent refused to hire Complainant based upon Citizenship status only.

- Section 7, question 7 further asks Complainant to "*please list any other reason(s), if any, why you were not hired*" to which Complainant responds:

"*Job posting appears highly likely to be a PERM recruitment notice by virtue of the unusual advertising method (print newspaper) and other indicators. By law, this employer cannot sponsor a green card for their desired foreign-national employee until attesting that no US workers (i.e. US citizens and legal permanent residents) were qualified and willing to take the job. Accordingly, they appear to have pretextually disqualified me to complete their PERM LCA*."

- Section 7, question 8 states that the job remained open and Respondent continued taking applications after Complainant was not hired.

- Section 7, question 9 states that someone else was hired for the position.

- Section 7, question 10 inquires *"if you answered YES to question 9 above, to the extent you know, who was hired and why?"* to which Complainant responds:

"Presumably, the PERM process was completed and the desired foreign citizen was hired."

- Section 7, question 11 states that Complainant wanted to be hired by Respondent.

- Section 8 states that Complainant was not fired by Respondent.

- Section 9 states that Complainant was not intimidated, threatened, coerced, or retaliated against by Respondent.

- Section 10 states that Respondent did not reject or refuse documents to prove Complainant's identity or show that he is authorized to work in the United States.

- Section 11 states that Complainant is seeking back pay (wages lost because of the Respondent's alleged actions), and seeks the removal of a false performance review or false warning document in his personnel file if such documents exist.

- Section 12 contains the Complainant's declaration and signature under penalty of perjury that the information provided is true and correct.

- The last pages of the Complaint contain the IER right to sue letter informing Complainant of OCAHO being the appropriate forum to pursue his claim, along with the IER Charge Form.

- The IER Charge Form, section 6, contains Complainant's detailed explanation of his citizenship status, educational background, practical experience, job application process, interaction with Respondent's HR contact and receipt of rejection.

The total Complaint, including the IER supporting documents totals 19 pages. Pages 16 and 17 of the Complaint give the following timeline of events:

- July 11, 2025 Complainant applies for the Data Scientist position via email to the contact mentioned in the posting

- 90 calendar days follow without any contact or update from Respondent regarding Complainant's application

- Complainant reaches out to Respondent on August 23, and October 8 and cites INA obligations under 20 C.F.R. 656.10(c)(8) and 656.24(b)(2)

- On October 9 Complainant receives the notice of rejection for the Data Scientist position

III. RESPONDENT'S MOTION TO DISMISS

Respondent's motion to dismiss is made on the basis that the Complaint fails to state a claim for discrimination under the INA, 8 U.S.C. § 1324b because *"1) it alleges no facts supporting a nexus between Complainant's citizenship status and Respondent's hiring decision; 2) it fails to allege facts showing that Complainant met the minimum qualifications for the position; and 3) it relies on speculation and assumptions regarding Respondent's motives rather than well-pleaded factual allegations."* (Resp't's Mot. to Dismiss the Complaint and Brief in Support 1).

A summary of each argument is the following:

A. *Lack of Nexus Argument*

Respondent's first legal argument is that the Complaint fails to allege facts supporting a nexus between Complainant's citizenship status and Respondent's hiring decision. (Resp't's Mot. to Dismiss the Complaint and Brief in Support 3). The motion claims that the Complaint contains no factual allegations suggesting Respondent considered Complainant's citizenship status in evaluating his application. (Resp't's Mot. to Dismiss the Complaint and Brief in Support 4). The heart of the argument revolves around the claim that "*even on the face of the pleadings, Plaintiff's claim fails because the Complaint does not plausibly allege that Plaintiff was qualified for the Data Scientist position.*" *Id.*

B. *Reliance on Speculation; No Minimum Qualifications*

Respondent's second legal argument is that the Complaint relies on speculation concerning Respondent's motives and hiring practices, while not meeting minimum qualifications for the position. (Resp't's Mot. to Extend Deadline for Answer to Compl. 5). Respondent notes how no statement regarding citizenship status, or policy favoring foreign nationals, or facts indicating the position was tied to a PERM application were ever identified. *Id.*

C. *Lack of Allegations Supporting Inference of Discrimination*

Respondent's third legal argument is that *"the Complaint offers no factual basis from which OCAHO could reasonably infer that Respondent declined to hire Complainant because of his citizenship status*." (Resp't's Mot. to Extend Deadline for Answer to Compl. 7).

IV. APPLICABLE LAW

A. *Standard in a Motion to Dismiss*.

Pursuant to 28 C.F.R. § 68.10(b) "*the Administrative Law Judge may dismiss the complaint, based on a motion by the respondent or without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted*."

In considering such motions, the Court accepts the alleged facts listed in the Complaint as being true and valid, while also viewing such facts in a light most favorable to the complainant. *See Mbitaze v. Greenbelt Police Department, 14 OCAHO 1360, 1 (2020) (citing Osorno v. Geraldo*, 1 OCAHO 275, 1782, 1786 (1990)).

The analysis of a motion to dismiss for failure to state a claim is limited to the *four corners* of the complaint, while allowing for incorporation by reference of documents attached to the pleading. *See Federal Rule of Civil Procedure 10(c).*

OCAHO precedent holds that complaints filed by *Pro Se* Complainants "*must be liberally construed and less stringent standards must be applied than when a [complainant] represented by counsel*". *See Leola Branch v. Duong Schumacher, 14 OCAHO 1358, 2 (2020) (citing Halim v. Accu Labs Research, Inc*., 3 OCAHO 474, 765, 777 (1992)).

B. *Arguments Outside the Purview of the Motion to Dismiss*

Both Respondent and Complainant improperly bolster their arguments at times with facts outside the purview of the inquiry of a motion to dismiss which the Court will address, but will nonetheless disregard in its analysis.

Respondent seeks to bolster his argument of a lack of nexus in stating that "*plaintiff cannot plausibly allege that he was qualified for the job he references in the Complaint*" by referencing in *Footnote 1* the fact that "*Complainant admits in his intake questionnaire to the Immigrant and Employee Rights Section, attached to his Complaint, that he was not eligible for the Regulatory Affairs Position he applied for*."(Resp't's Mot. to Dismiss the Complaint and Brief in Support 5).

This statement, while accurately reflecting the record, makes an argument which is misplaced given that the dispute before this Court does not involve the additional Regulatory Affairs position Complainant applied for, but rather the Data Scientist position referenced in the Complaint. As such, the Court finds it improper to consider Complainant's self-admitted lack of eligibility for the position not in dispute as transferrable to the question of eligibility for a different position which is in dispute. The Court is not aware of any precedent allowing it to apply such a novel approach in its analysis and refuses to consider this argument in its decision.

Complainant's response likewise seeks to bolster its argument that Respondent's Answer admits the Data Scientist position constituted a PERM recruitment by citing the PERM attestation

reason given in Respondent's Answer as an additional factor to consider as conduct by this Court (Complainant's Opp'n to Resp't's Mot. to Dismiss 9-10). The Court has no authority to consider such an argument as it is limited in its analysis to the *four corners* of the complaint.

Additionally, with the understanding that Complainant is appearing in a *pro se* capacity, the Court expressly notes that it views any statements contained in a respondent's answer as specific pleadings of affirmative defenses upon which a respondent is legally entitled to rely upon to contest liability and/or damages at various stages of the proceedings. Generally, the omission of any affirmative defense from a respondent's initial answer will be deemed as a waiver of that particular affirmative defense. The practical reason for requiring the upfront pleading of all affirmative defenses is self-evident in that it seeks to prevent trial by ambush and unfair surprises to the opposing party. Furthermore, the practice of pleading affirmative defenses is made explicit under 28 C.F.R. § 68.9. The assertion of an affirmative defense does not void the burden placed on a complainant, and by implication cannot serve as *prima facie* evidence in meeting that burden. The Court will not take this argument into account during its analysis.

C. *OCAHO'S Pleading Standard*

Under 28 C.F.R. § 68.7(b) a complaint made pursuant to section 274B is required to contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents, and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

The interpretation of these factors in judging whether a Complaint meets them or not is inherently tied to the pleading standard existing in this forum. *See Sharma v. NVIDIA Corp.*, 17 OCAHO 1450, 2 (2022).

It is instructive to note that the heightened pleading standard enunciated by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009)* mandating a plaintiff's ability to state plausible, as opposed to conceivable, claims in an initial complaint in order to survive a motion to dismiss is not the established standard of OCAHO. OCAHO's Chief Administrative Hearing Officer discussed concerns tied to the *Twombly/Iqbal* standard in disputes before OCAHO in *Footnote 15* of the Order issued in *United States v. Walmart., Inc. (Bethlehem)*, 17 OCAHO 1475g, 13 (2024). wherein he states:

"Respondent previously suggested that OCAHO should consider, "in an appropriate case," raising and conforming its pleading standard to the well-established standard used in civil litigation in federal court as articulated in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Respondent's Mot. for Interlocutory Review at 4 n.2. Respondent's point merits serious consideration. However, it is not clear that OCAHO could adopt such a standard through adjudication rather than rulemaking given the differences in wording between its pleading standard in 28 C.F.R. § 68.7 and the one in Fed. R. Civ. P 8 from which the Iqbal/Twombly standard flows. Moreover, Respondent did not further press its argument on this point in the instant interlocutory review, and the present posture of the case provides no basis to reconsider or deviate from OCAHO's prior rejection of the Iqbal/Twombly standard in 2012, see United States v. Mar-Jac Poultry, Inc, 10 OCAHO no. 1148, 8-10 (2012)."

Based upon this interpretation, OCAHO is vested with its authority, and is, a creature of the Code of Federal Regulations. It can venture no further than the authority granted allows it to go. Inversely, it can disclaim no authority it has been properly vested with by those same regulations.

Precedent recognizes that OCAHO's pleading standard is more permissive than that of *Twombly/Iqbal*. Respondent's own motion aptly recognizes that "*OCAHO's pleading standard is liberal*" (Resp't's Mot. to Dismiss the Complaint and Brief in Support 5).

V. ANALYSIS

Guided by the understanding of what OCAHO's pleading standard is and is not, the Court can determine whether a Complaint withstands the scrutiny of a motion to dismiss.

A. *Factual Allegations Based on Speculation*

While Respondent is correct in asserting that Complainant relies on speculation in certain answers contained in the Complaint, this does not automatically translate to a lack of allegations supporting a nexus between citizenship status and the hiring decision, or a lack of support for an inference of discrimination where other factual allegations exist which do not rest on speculation.

The first instance of speculation which Complainant engages in is found in *Section 7, question 7* where the form asks Complainant to "*please list any other reason(s), if any, why you were not hired*" to which Complainant responds that the job posting "*appears highly likely to be a PERM recruitment notice". Question 7 of Section 7* is optional seeing as it inquires into additional reasons for Complainant not being hired. The answers given related to PERM recruitment notices are not necessary to support the validity of the Complaint in light of the other alleged facts pled, and will not be considered by the Court in its analysis.

The second instance of speculation which Complainant engages in is found in *Section 7, question 10* where the form asks Complainant *"if you answered YES to question 9 above, to the extent you know, who was hired and why?"* to which Complainant responds with "*presumably, the PERM process was completed and the desired foreign citizen was hired*". *Question 10, of Section*

7 is also optional given its language conditioned on knowledge of the person hired. The answer given using the '*presumably'* language is not necessary to support the validity of the Complaint in light of the other alleged facts pled, and will not be considered by the Court in its analysis.

B. *Protected Group Membership*

The Complaint identifies Complainant as being part of a protected group under the antidiscrimination provisions of the Act by stating he both was, and presently remains a U.S. Citizen, at the time of application and rejection for the Data Scientist position.

It is instructive that in analyzing this particular alleged fact contained in the Complaint there is no detailed pled evidence such as the attachment of a passport, or birth certificate, showing this alleged fact to be plausible or certain, save for Complainant's attestation to its truth.

Under OCAHO's pleading standard this is sufficient for Complainant to establish membership in a protected group under the antidiscrimination provisions of the Act for purposes of a motion to dismiss a complaint analysis.

C. *Notice Pleading*

All three of Respondent's arguments in its motion to dismiss revolve around whether the Complaint identifies its factual allegations in a clear enough fashion to place Respondent on notice, allowing it to then assert its defenses. It is instructive that the remaining factual allegations in the Complaint are subject to the same *clear and concise statement of facts* analysis pursuant to 28 C.F.R. § 68.7(b)(3) as the alleged facts surrounding membership in a protected group discussed above.

Respondent makes the argument that the Complainant pleads no facts showing that Plaintiff possessed any of these qualifications and does not meet the minimum requirements for the position. (Resp't's Mot. to Dismiss the Complaint and Brief in Support 4-5). Respondent references the Data Scientist position which requires a "*master's degree in data science, computer science, or a related STEM field, as well as six months of experience or an internship in data analysis, data science, statistical modeling, or a related analytical field*". *Id* 4. The Complaint pleads that Complainant is qualified for the position based upon having a Ph.D. in Chemical and Biological Engineering from Princeton University (2024) in addition to various programming skills, publications in various journals, and teaching experience as found in the *IER Charge Detail View* which is incorporated by reference towards the end of the Complaint.

Where Respondent possesses the relevant records which shed light upon the validity of allegations "*the Respondent cannot complain that it does not have notice of those particular facts." See U.S. Tech Workers Et Al v. Matter,* 19 OCAHO 1567b*, 3 (2024)(citing United States v. Split Rail Fence Co., Inc.*, 10 OCAHO 1181, 6 (2013)). Here, Respondent is in the best position to know whether the allegations made in the Complaint are valid, allowing it to assert its best defense(s) on nexus, reliance on speculation, and lack of allegations supporting an inference of discrimination grounds. Moreover, Respondent does not assert in his motion that he is unable to assert any defense(s) due to a lack of detail related to allegations found in the Complaint, but rather asks the

Court to engage in an analysis to determine whether Complainant is minimally qualified by arguing that the job posting requirements differ from Complainant's qualifications.

The Court will not engage in the task of determining whether a Ph.D. in Chemical and Biological Engineering is akin to a Master's degree in Data Science, or whether Chemical and Biological Engineering is or is not a related STEM field, to determine if Complainant met the minimum requirements for the position since that is not within the scope of the Court's inquiry.

As OCAHO precedent clarifies *"the task here is not to assess evidence and predict at the outset what [the complainant] will be able to prove. The only question to be addressed in considering a motion to dismiss for failure to state a claim is whether the complaint is facially sufficient to permit the case to proceed further*." *See, United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO 1148, 10 (2012). The Court finds that the Complaint's facts as pled are sufficient to permit the case to proceed.

D. *Alleged Facts Stemming from Interaction Detailed in the Timeline*

Complainant's inclusion of the timeline of his rejection, including his explicit mention of employer obligations under the law towards U.S. Citizens, and permanent legal residents, are not contested as resting on speculation.

Here, the Complainant's application was followed by a 90 calendar day period of silence interrupted by Complainant's initiating contact. Upon initiating contact on August 23, and October 8, the alleged facts of the Complaint recount how Complainant expressly mentioned Respondent's INA obligations under 20 C.F.R. 656.10(c)(8) and 656.24(b)(2). This was followed by a rejection notice the following day, October 9th.

When applying the pleading standard which does not require detailed evidence or a *prima facie* case, and viewing these facts in a light most favorable to the Complainant, coupled with the less stringent standards which must be applied to a *pro se* Complaint, the Court finds that the factual allegations stemming from the interaction as pled in the Complaint's timeline are sufficient to permit the case to proceed further.

E. *Alternatives to Dismissal*

OCAHO precedent establishes that when a Respondent requires further detail with the accompanying allegations, the appropriate vehicle is a motion for a more definitive statement, or the discovery process itself rather than outright dismissal. *See United States v. Aguar-Arabs*, 4 OCAHO 642, 468-69 (1994). Additional OCAHO precedent states that *"motions to dismiss for failure to state a claim are generally disfavored and will only be granted in extraordinary circumstances*." *See U.S. Tech Workers Et Al v. Matter,* 19 OCAHO 1567b*, 3 (2024)(citing United States v. Split Rail Fence Co., Inc*., 10 OCAHO 1181, 6 (2013)).

Here, the Court finds no such extraordinary circumstances mandating dismissal of the Complaint.

VI. FINDINGS

The Court finds that the Complaint satisfies the pleading requirements of 28 C.F.R. § 68.7(b).

The Court finds no extraordinary circumstances exist mandating dismissal of the Complaint.

The Court finds that the factual allegations contained in the Complaint are facially sufficient to survive Respondent's Motion to Dismiss.

Respondent's Motion to Dismiss the Complaint is DENIED.

SO ORDERED.

Honorable Paul M. Marian
Administrative Law Judge