

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

June 27, 2019

BRENT LESLIE REED,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 19B00010
	)	
DUPONT PIONEER HI-BRED INTERNATIONAL, INC.,	)	
Respondent.	)	
_____	)	

ORDER GRANTING IN PART AND DENYING IN PART  
RESPONDENT’S MOTION TO DISMISS

I. INTRODUCTION

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b(a)(1)(B) (2017). Brent Leslie Reed (Complainant) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 1, 2019, alleging that Dupont Pioneer Hi-Bred International, Inc. (Respondent) violated 8 U.S.C. § 1324b by discriminating against him based on his citizenship status. Mr. Reed is pro se. Respondent’s Amended Motion to Dismiss is now pending. Respondent argues that the complaint fails to state a claim upon which relief can be granted. For reasons set forth herein, Respondent’s Motion is granted in part and denied in part.

II. BACKGROUND AND PROCEDURAL HISTORY

Complainant is a United States citizen who filed a charge with the Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER). On October 26, 2018, IER sent Complainant its letter of determination which stated that IER had not yet determined whether a violation of 8 U.S.C. § 1324b had occurred, and stated that Complainant could nevertheless present his claims by filing a complaint with OCAHO, which he did.

Complainant asserts in his complaint that he ran a crew of workers who detasseled seed corn seasonally for the Respondent. Compl. at 8. Complainant asserts that his crew, which was comprised of local workers, was replaced by workers with H-2A visas. Compl. at 9. OCAHO sent Respondent a Notice of Case Assignment For Complaint Alleging Unfair Immigration-Related Employment Practices and a copy of the complaint on February 6, 2019, via certified mail through the U.S. Postal Service (USPS). Respondent filed an Answer and Affirmative Defenses, as well as a Motion to Dismiss with a brief on March 8, 2019. Complainant filed an Opposition on May 2, 2019, and Respondent filed an Amended Motion to Dismiss on May 6, 2019. The parties both filed prehearing statements.

### III. STANDARDS

The Administrative Law Judge (ALJ) may dismiss the complaint, based on a motion by the respondent, if the ALJ determines that the complainant has failed to state a claim upon which relief can be granted. 28 CFR § 68.10(b). When considering a motion to dismiss, the Court accepts the facts alleged in the complaint as true and construes the facts in the light most favorable to the complainant. *Osorno v. Geraldo*, 1 OCAHO no. 275, 1782, 1786 (1990).<sup>1</sup> Additionally, complaints of pro se complainants “must be liberally construed and less stringent standards must be applied than when a [complainant] is represented by counsel.” *Halim v. Accu-Labs Research, Inc.*, 3 OCAHO no. 474, 765, 777 (1992).

### IV. DISCUSSION

In its Motion to Dismiss, Respondent asserts that Complainant does not allege that Respondent discriminated against him on the basis of citizenship or national origin, or that Respondent engaged in any unfair immigration-related practice whatsoever.<sup>2</sup> Respondent cites to the

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<sup>1</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents 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 “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the OCAHO website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders>.

<sup>2</sup> Respondent withdrew a second argument that Complainant did not seek employment with Respondent and Respondent has never employed Complainant, noting that upon investigation, Respondent confirmed that Complainant was a seasonal employee of Respondent at times relevant to his claims. Am. Mot. Dismiss.

complaint in which Complainant checked “no” for each of the listed bases for discrimination on the form. Compl. at 8.

The Respondent is correct that the statements contained within the four corners of the complaint filed with OCAHO do not state a claim for discrimination. An ALJ's analysis in deciding whether to dismiss a complaint for failure to state a claim is limited to the four corners of the complaint; however, a copy of a document attached to a pleading is a part of that pleading for all purposes. *See* FED. R. CIV. P. 10(c). “Although consideration of a motion to dismiss is ordinarily limited to a consideration of the pleadings, documents attached to a motion to dismiss may be considered without converting the motion to one for summary decision if the documents are referred to in the complaint and are central to the claim.” *Sharma v. Discover Fin. Servs.*, 12 OCAHO no. 1292 at 8 (citing *Rosenblum v. Travelbyus.com Ltd.*, 299 F.3d 657, 661 (7th Cir. 2002); *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113-14 (1997) (stating that although a court's analysis is generally limited to the four corners of the complaint when deciding a motion to dismiss, the court may consider documents incorporated in the complaint by reference)); *see also U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 388 (3d Cir. 2002). The IER Charge Form is attached to the complaint and may therefore be considered.

To state a claim for discriminatory hiring based on citizenship status under § 1324b(a)(1)(B), Complainant must allege that Respondent discriminated against him with respect to hiring based on his citizenship status. § 1324b(a)(1)(B). In the IER Charge Form, the Complainant checked the box indicating citizenship status discrimination. IER Charge Form at 2. In addition, he asserted that he had been employed by Respondent for seventeen years, but that, on February 2, 2018, he received notification that his service was no longer needed, with the work instead being done by “H2A crews”. IER Charge Form at 3.

Through the allegations in the Charge Form, the Complainant asserts that he is a United States citizen, that he was not hired for the seasonal work that he had performed for seventeen years, Respondent hired non-citizen workers instead, and Respondent discriminated against him based on his citizenship. *See* 28 C.F.R. § 44.101(a)(5). I find that this constitutes sufficient pleading to state a discriminatory hiring claim under § 1324b(a)(1)(B). *See U.S. v. McDonnell Douglas*, 2 OCAHO no. 351 (1991).

In his opposition, the Complainant also asserts that Respondent is in violation of the International Immigration Act, 8 U.S.C. § 1188. Opp’n at 1. This Court notes that it has no jurisdiction to enforce the requirements for approval of H-2A visa petitions under 8 U.S.C. § 1188. *See* § 1324b(a). To the extent that the Complainant asserts an action under 8 U.S.C. § 1188, Respondent’s motion to dismiss is granted.

V. CONCLUSION

Given the filings in this case, and given leniency accorded pro se complainants, the Complainant has set forth a cognizable claim under 8 U.S.C. § 1324b(a)(1)(B). Dismissal at this early stage in the litigation would be premature. As such, Respondent's Amended Motion to Dismiss is DENIED IN PART. To the extent that Complainant asserts a claim under 8 U.S.C. § 1188, the Amended Motion to Dismiss is GRANTED IN PART. This decision is made without comment or judgement as to the ultimate disposition of the claim.

SO ORDERED.

Dated and entered on June 27, 2019.

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Jean C. King  
Chief Administrative Law Judge