

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

July 15, 2020

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2020A00066
)	
FRC BALANCE, LLC dba TRUE FOOD)	
KITCHEN,)	
Respondent.)	
_____)	

ORDER ON AMENDED COMPLAINT

On April 20, 2020, the United States Department of Homeland Security, Immigration and Customs Enforcement (Complainant or the government) filed a complaint against Respondent, FRC Balance LLC, d/b/a True Food Kitchen (Respondent or the company) alleging two counts of violations of the employer sanctions provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324a. The complaint reflects that the government served a Notice of Intent to Fine (NIF) on January 10, 2020, and Respondent thereafter made a timely request for hearing. Respondent filed an answer to the complaint on May 18, 2020.

On June 18, 2020, Complainant filed an amended complaint and a prehearing statement. The amended complaint alleges four counts of violations of the employer sanctions provisions of the INA. Respondent has not responded.

The OCAHO Rules of Practice and Procedure permit 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 interest and the rights of the parties[.]” 28 C.F.R. § 68.9(e) (2018). This rule is analogous to and is modeled after the Federal Rule of Civil Procedure 15(a), and accordingly, it is appropriate to look for guidance in federal case law to determine whether to permit requested amendments under Rule 15(a). 28 C.F.R. § 68.1. See *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998); *United States v. Mr. Z Enters.*, 1 OCAHO no. 162, 1128, 1129 (1990). Rule 15(a) provides that a party may amend his or her complaint once “as a matter of course” before a responsive pleading is served; after a responsive pleading is served, the “party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.”

FED. R. CIV. P. 15(a). As Respondent filed an answer, the complaint may only be amended by leave of this court.

In the Ninth Circuit Court of Appeals, the circuit in which this cases arises, the propriety of a motion for leave to amend is generally determined by reference to several factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. *Hurn v. Ret. Fund Tr. of Plumbing, Heating & Piping Indus. of S. California*, 648 F.2d 1252, 1254 (9th Cir. 1981). None of these factors appears to be present in this case. The amended complaint was filed only two months after the complaint. The NIF attached to the original complaint and the amended complaint is the same NIF, and it included the additional two counts. It appears that Respondent had ample notice of the allegations, and no other negative factors are present on the record. Accordingly, the Court grants leave to amend the complaint.

Respondent must file an amended answer, responding to counts III and IV, within 30 days of this order.

SO ORDERED.

Dated and entered on July 15, 2020.

Jean C. King
Chief Administrative Law Judge