

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

August 28, 2020

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|--------------------------|---|-----------------------------|
| ZAJI OBATALA ZAJRADHARA, | ) |                             |
| Complainant,             | ) |                             |
|                          | ) |                             |
| v.                       | ) | 8 U.S.C. § 1324b Proceeding |
|                          | ) | OCAHO Case No. 2020B00010   |
|                          | ) |                             |
| GIG PARTNERS,            | ) |                             |
| Respondent.              | ) |                             |
| _____                    | ) |                             |

ORDER ON MOTIONS TO REVOKE AND CURE

I. BACKGROUND

This office issued two Subpoena Duces Tecum for Commonwealth of the Northern Mariana Islands (CNMI) Department of Labor Employees (DOL) Bonifacio Castro and James Ulloa on August 12, 2020, seeking the production of and access to a number of documents and an audio file, as well as explanations. The subpoenas requested production of the requested items to a conference room at the Department of Labor on August 23, 2020. These subpoenas were issued after two previous failed attempts on the part of Complainant to secure the issuance of the subpoenas. On August 20, 2020, the Department of Labor, through the Office of the Solicitor, filed a motion to revoke the subpoenas or, in the alternative, to modify them. On August 27, 2020, Complainant filed a motion to cure the subpoenas.

II. DISCUSSION

The OCAHO rules permit an ALJ to issue subpoenas upon a party’s request, including subpoenas for production of documents or other tangible things in their possession or under their control. 28 C.F.R. § 68.25(a). “A subpoena may be served by overnight courier service or overnight mail, certified mail, or by any person who is not less than 18 years of age.” *Id.* The regulations require mileage and witness fees to be paid in advance.

Further, the OCAHO rules require that the “subpoena identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable.” § 68.25(b). When a nonparty is subpoenaed, “the requestor of the subpoena must give notice to all parties.” *Id.* The receipt of the subpoena or a copy of the subpoena constitutes “notice.” *Id.*

The party serving a subpoena must ensure that the date to respond to the subpoena is at least ten days after the date the subpoenaed party receives the subpoena. § 68.25(c).

The DOL objects to the subpoenas primarily because the subpoenas requested the individuals to appear, and the documents to be provided, on a Sunday. DOL also argues that, although Complainant appears to seek testimony in the attachment to the subpoena request, the subpoena itself does not. Further, mileage and witness fees have not been tendered. DOL also argues that Complainant must pay for copies and tape recordings pursuant to its policies and schedule. Alternatively, DOL states, “the subpoenas should be revised to only require the production of DOL records and documents at a date and time within normal government hours of operations (not on weekends). The location of production could be at DOL’s conference room provided that Complainant agrees to pay the copying fees as set forth in DOL policy.”

The Court agrees that the requirement to produce witnesses and documents outside of business hours is burdensome and oppressive. As Complainant seeks a revision to the date as well because his selection of a date outside business hours was inadvertent, the Court will issue new subpoenas with a return date that is during the business week.

Complainant has not indicated a willingness to tender fees for witness travel; accordingly, the Court adjusted the subpoenas to request only the production of documents. The regulations make no provision for fees in conjunction with the production of documents. *See* 28 C.F.R. § 68.25(a). Further, the Ninth Circuit has held that under Federal Rule of Civil Procedure 45(d)(2)(B)(ii), courts can only shift a non-party’s costs of compliance with a subpoena if those costs are significant. *Legal Voice v. Stormans, Inc.* 738 F.3d 1178, 1184 (9th Cir. 2013). DOL has not shown that costs of compliance with the subpoenas would be significant. Thus, Complainant does not need to tender payment for the costs of subpoena compliance according to the DOL fee schedule and Complainant does not need to tender payment for the costs of copying the requested documents.

Complainant’s Motion to Cure is GRANTED. CNMI DOL’s Motion to Revoke, or Alternatively Modify the Subpoenas is DENIED IN PART regarding request for costs associated with compliance with the subpoena. The Motion to Revoke is MOOT IN PART because the Court will issue new subpoenas with a return date that is during the business week.

SO ORDERED.

Dated and entered on August 28, 2020.

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Jean C. King  
Chief Administrative Law Judge