

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

PRAKASH SINHA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2020B00064
INFOSYS,)	
)	
Respondent.)	

ORDER OF INQUIRY

I. PROCEDURAL BACKGROUND

This case arises under the Immigration and Nationality Act as amended, 8 U.S.C. § 1324b. Complainant, Prakash Sinha, filed a complaint with the Office of the Chief Administrative Hearing Officer (“OCAHO”) on April 15, 2020, alleging that Respondent, Infosys, discriminated against him based on his citizenship and national origin by declining to hire him, in violation of the anti-discrimination provisions of the Immigration and Nationality Act (“INA”), as amended by the Immigration Reform and Control Act of 1986 (“IRCA”), 8 U.S.C. § 1324b.

On April 17, 2020, the Chief Administrative Hearing Officer sent Respondent the complaint by certified mail along with a Notice of Case Assignment for Complaint Alleging Unlawful Employment. The Notice directed Respondent to answer the complaint by June 12, 2020 and cautioned that failure to do so could lead the Court to enter a judgment of default. Respondent did not file an answer.

On July 2, 2020, the Court issued a Notice of Entry of Default finding Respondent in default for its failure to answer the complaint. The Court ordered Respondent to file an answer within fifteen days and show good cause for its failure to file a timely answer. The Court warned that it could enter a judgment of default against Respondent if it failed to do so. Respondent has not answered or filed anything with the Court indicating that it intends to defend this action.

Given the record before the Court and Respondent’s failure to participate in this action, the Court needs additional information from Complainant to determine

if OCAHO has jurisdiction to hear Complainant's claims against Respondent and enforce a judgment. See *Strauss v. Rite Aid Corp.*, 4 OCAHO no. 721, 1136 (1994).

II. DISCUSSION AND ANALYSIS

The question before the Court is whether OCAHO has subject matter jurisdiction over Complainant's claims. The Court has both the authority, and the duty, to determine *sua sponte* if it has subject matter jurisdiction. *Windsor v. Landeen*, 12 OCAHO no. 1294, 4-5 (2016) (citing *Horne v. Town of Hampstead*, 6 OCAHO no. 906, 946 (1997)); *Kim v. Getz*, 12 OCAHO no. 1279, 2-4 (2016). Should the Court find that it lacks subject matter jurisdiction, it may not issue a default judgment and may dismiss the case. *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1170, 1172-73 (1997).

The party invoking jurisdiction bears the burden to establish that the Court has jurisdiction. *Windsor*, 12 OCAHO no. 1294 at 5 (internal citations omitted). Here, that party is the Complainant. As such, the Court now issues this Order of Inquiry to Complainant, Prakash Sinha, seeking information about (a) the number of employees employed by Infosys; (b) his case against Infosys before the Equal Employment Opportunity Commission ("EEOC"); and (c) the timeliness of his filing before the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER").

A. Number of Employees

Complainant alleges that Respondent, Infosys, discriminated against him by refusing to hire him based on his national origin and citizenship status. Given the nature of his claims, Complainant must detail the number of employees employed by Respondent to establish subject matter jurisdiction. He has failed to state that information clearly in the complaint. Specifically, in Section 4 of the complaint and Section 5 of the attached IER charge, Complainant stated that he does not know, or cannot estimate, how many employees Respondent employs, although he later mentioned in Section 7 of the complaint that Respondent employs over 80,000 employees in the United States.

The employee information is crucial in determining jurisdiction because, similar to lower federal courts, OCAHO is a forum of limited jurisdiction "with only the jurisdiction which Congress has prescribed." *Wilson*, 6 OCAHO no. 919 at 1173. OCAHO's jurisdiction varies based upon the type of claim. Two types of claims are

presented in this case: national origin and citizenship status. Although this does not appear to be the situation here, OCAHO lacks jurisdiction to hear national origin or citizenship status discrimination claims where the employer employs three or less individuals. 8 U.S.C. § 1324b(a)(2)(A). Yet OCAHO's jurisdiction with larger employers is likewise limited with certain types of claims. OCAHO only has jurisdiction to hear national origin discrimination claims against employers with between four and fourteen employees, while the EEOC has jurisdiction over national origin discrimination claims against employers with more than fourteen employees. *Sivasankar v. Strategic Staffing Solutions*, 13 OCAHO no. 1343, 3 (2020); *Basua v. Walmart #1554*, 3 OCAHO no. 535, 1351, 1355 (1993). This Court has dismissed national origin charges pending before OCAHO where evidence established that the respondent employed more than fourteen employees and the case was properly before the EEOC. See *DeGuzman v. First American Bank*, 3 OCAHO no. 585, 1889, 1891 (1993); *Caspi v. Triglid Corp.*, 7 OCAHO no. 991, 1064, 1065 (1998); *Nickman v. Mesa Air Group*, 9 OCAHO no. 1113, 7 (2004). Here, if Respondent employs over 80,000 employees, it would be excluded from IRCA coverage with respect to Complainant's national origin claim. *Yohan v. Central State Hospital*, 4 OCAHO no. 593, 17 (1994) (internal citations omitted). Therefore, Complainant must provide the Court with information as to the size of Infosys so it can determine subject matter jurisdiction over his claims. Specifically, Complainant shall tell the Court, in writing, the total number of employees employed by Infosys.

B. EEOC Case

Before filing his complaint with this Court, Complainant filed charges before the Equal Employment Opportunity Commission against Infosys seemingly based on the same allegations of employment discrimination. See Compl. at 18-19. He has asserted that the EEOC asked him to file a complaint with the United States Department of Justice. *Id.* at 18. In addition to the employee information requested above, the Court needs additional information about the nature and status of Complainant's EEOC case to determine which agency properly has subject matter jurisdiction over his claim.

Section 1324b(b)(2) states that when a complainant files a national origin discrimination claim both under Title VII and the INA, only one agency has subject matter jurisdiction over the claim. To determine jurisdiction in this matter, the Court must ascertain whether the charges pending before OCAHO and the EEOC are based on the same set of facts. Section 7 of Complainant's IER charge makes it appear that they are. Compl. at 18.

The Court orders Complainant to describe with specificity any and all charges that he filed with the EEOC based on the same set of facts of employment discrimination as those in this case. The Court likewise orders Complainant to describe the status of his case before the EEOC, including whether the matter is ongoing or has concluded. If his EEOC case has concluded, Complainant shall provide this Court with a description of the outcome, e.g., by stating whether his case was resolved by way of a dismissal, a summary judgment decision, or a decision following a hearing. Complainant shall also provide the Court with a copy of any decision issued in his EEOC case and/or explain the reasons for the outcome.

C. Timeliness of IER Filing

An individual, like Complainant, who alleges an unfair immigration-related employment practice under 8 U.S.C. § 1324b must file a charge with the United States Department of Justice's Immigrant and Employee Rights Section within 180 days of the date of the alleged discrimination, retaliation, and/or document abuse. 8 U.S.C. § 1324b(d)(3); 28 C.F.R. § 68.4(a). The timely filing of a charge with IER is "a prerequisite for filing a private action with OCAHO." *Toussaint v. Tekwood Assocs., Inc.*, 6 OCAHO no. 892, 793 (1996). Here, there is a question as to the timeliness of Complainant's IER filing.

Complainant filed his charge with IER on February 12, 2020. Compl. at 1. In Section 6 of his IER charge, Complainant represented that the alleged discrimination occurred on October 12, 2019, a date within the 180-day filing window. However, when asked to provide specific information about the alleged discrimination in his IER filing, Complainant generally referenced job interviews "[d]uring 2019 and the prior two years." *Id.* at 17. Much of the referenced conduct fell well outside the 180-day filing period. On March 3, 2020, IER told Complainant by letter that his submission was incomplete and requested the following information:

1. Identify each date you applied for a position with Infosys for which you allege you were discriminated against.
2. Identify the dates of any interviews you received in response to an application you submitted.
3. State whether you were informed about the reason for your non-selection for each application, and, if so, describe the reason provided in detail, how it was communicated and by whom.
4. Identify all information that forms your belief that Infosys

discriminated against you based on your citizenship, including your allegation that Infosys prefers to employ H1B visa holders over U.S. citizens.

Id. at 13-14. It is unclear if Complainant provided the requested information to IER. What is clear is that on April 3, 2020, IER dismissed Complainant's charge, concluding that it "was not filed with IER within 180 days of the date of the alleged discrimination and thus is untimely." *Id.* at 15.

After Complainant's charge was dismissed by IER, he filed an action before this Court representing that IER told him that he could file his own complaint with OCAHO. Compl. at 1. Section 7 of his complaint alleged unfair immigration-related employment discrimination by Infosys pertaining to a job for which he applied on September 30, 2019. *Id.* at 6. This is a different date than the date given in Complainant's IER charge. As he did in his IER charge, Complainant then referenced job interviews with Infosys over a broader two-year period falling outside the 180-day filing period. *Id.* at 7.

Given the discrepancies between the dates Complainant alleged in the complaint and before IER, the Court needs clarification as to the nature and extent of the alleged discriminatory conduct at issue to determine the timeliness of the charges and its jurisdiction over those claims. Therefore, Complainant shall: (1) identify each date when he has applied for a position with Infosys for which he has alleged he was discriminated against; and (2) identify the dates of any job interviews he received in response to one of the above-referenced applications for a position with Infosys.

Further, if Complainant did not file his charge with IER within 180 days of the date of the alleged discriminatory conduct, he shall explain, in writing, the reasons for his late filing so that the Court can determine if equitable modification of the 180-day deadline is warranted. *See, e.g., Toussaint v. Tekwood*, 6 OCAHO no. 892, 784, 794 (1996) (explaining that equitable modification of the 180-day deadline may be warranted when the complainant can show that "(1) the employer held out hope of employment or the applicant was not informed that he was not being considered; (2) the employer lulled the applicant into inaction during the filing period by misconduct or otherwise; or (3) the charging party timely filed his charge in the wrong forum."). However, "equitable tolling is a rare remedy available only where a party has exercised due diligence in preserving [his] legal rights." *United States v. Chen's Wilmington, Inc.*, 11 OCAHO no. 1241, 7-8 (2015). Likewise,

negligence and ignorance of the law usually do not justify equitable tolling. *Seaver v. BAE Systems*, 9 OCAHO no. 1111, 7 (2004) (citations omitted).

III. CONCLUSION

IT IS SO ORDERED that Complainant shall provide this Court, in writing, with the following information by October 30, 2020:

1. The total number of employees employed by Respondent, Infosys;
2. Any and all charges he filed with the EEOC based on the same set of facts of employment discrimination as those in this case;
3. The status of his case before the EEOC, including whether the matter is ongoing or has concluded. If his EEOC case has concluded, Complainant shall provide this Court with the following information: (a) a description of the outcome; and (b) a copy of any decision issued in his EEOC and/or an explanation of the reasons for the outcome;
4. Each date when he applied for a position with Infosys for which he has alleged he was discriminated against;
5. The dates of any job interviews he received in response to one of the above-referenced applications for a position with Infosys; and
6. An explanation for his late filing if he did not file his charge with IER within 180 days of the date of the alleged discrimination.

The Court cautions Complainant that his failure to respond to this Order may result in dismissal of the complaint.

ENTERED:

Honorable Carol A. Bell
Administrative Law Judge

DATE: September 15, 2020