

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

October 8, 2020

ROBERT HEATH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00060
)	
VBEYOND CORPORATION AND AN)	
ANONYMOUS EMPLOYER,)	
Respondent.)	
_____)	

ORDER OF DISMISSAL

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 17, 2020, alleging that Respondent, Vbeyond Corporation and unknown client businesses of Vbeyond Corporation, discriminated against him based on his citizenship status and national origin by declining to hire him and engaged in document abuse.

On June 26, 2020, the undersigned issued a Notice of Entry of Default against Vbeyond Corporation, finding that Vbeyond Corporation was in default because it failed to file an answer. Respondent did not file a response to the Notice of Entry of Default, an answer, or otherwise file anything with OCAHO indicating that it intends to defend this action.

On August 12, 2020, this Court issued a Notice and Order to Show Cause to Complainant. The Notice stated that Complainant must show cause why his claims against Vbeyond Corporation should not be dismissed for lack of subject matter jurisdiction and why his claims against the unknown employer should not be dismissed as he has not identified the unknown party and the party has not been served with the complaint. Complainant was ordered to provide a response to the questions of 1) how many employees does Vbeyond Corporation employ; and 2) provide any information he has about the “unknown employer,” including its name and address or location. Complainant was ordered to respond by September 11, 2020.

Complainant responded on September 26, 2020. Complainant states that he is pro se and is not familiar with court procedures, he is working full time and does not have a lot of time to pursue this matter, he moved during this time, and mail is faulty. As to the questions, Complainant states that he does not know how many employees Vbeyond employs, that it could be more than fourteen, particularly if one includes the client employers, or it could be less. He again repeats that the Vbeyond website lists a number of employers, but he did not identify which employer he is alleging discriminated against him in this proceeding.

The Court will consider the Complainant's response, despite the fact that it is fifteen days late, in recognition of the Complainant's pro se status, as well as, concerns with United States Postal Service delays. The Court finds, however, that Complainant did not satisfy the Order to Show Cause.

II. JURISDICTION

As this Court noted in the Order to Show Cause, the Court may not issue a default judgment if the Court lacks subject matter jurisdiction over a complainant's claims. *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1170 (1997).¹ OCAHO Administrative Law Judges (ALJs) have the authority to determine whether OCAHO has jurisdiction over a dispute. *Windsor v. Landeen*, 12 OCAHO no. 1294, 4–5 (2016); *Wilson*, 6 OCAHO no. 919 at 1172 (citing *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986) (“when entry of a default judgment is sought against a party who has failed to plead or otherwise defend, the court . . . has an affirmative duty to look into its jurisdiction over the subject matter[.]”)). The party invoking jurisdiction bears the burden to establish that the court has jurisdiction. *Windsor*, 12 OCAHO no. 1294 at 4.

A. Lack of Subject Matter Jurisdiction

Complainant asserts that Vbeyond Corporation discriminated against him based on his national origin and citizenship status. From the face of the complaint, it is not clear how many employees

¹ 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 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 website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Vbeyond Corporation employs. In the complaint, Complainant stated the number of employees Vbeyond Corporation employs is unknown, but in the Immigrant and Employee Rights Section of the Department of Justice charge form attached to the complaint, Complainant stated that Vbeyond Corporation employs fifteen or more employees. In his response to the Order to Show Cause, Complainant asserts that he does not know how many employees Vbeyond has, that it could be more than fourteen, or less.

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 does not have jurisdiction to hear national origin or citizenship status discrimination claims if the employer employs three or less individuals. § 1324b(a)(2)(A). Further, OCAHO only has jurisdiction to hear national origin discrimination claims against employers with between four and fourteen employees. *Sivasankar v. Strategic Staffing Solutions*, 13 OCAHO no. 1343, 3 (2020). Since Complainant has not asserted enough facts in the complaint to support OCAHO’s exercise of jurisdiction to hear claims against Vbeyond Corporation, the Complaint is DISMISSED WITHOUT PREJUDICE as to Vbeyond.

B. Unknown Employer

Complainant also brings claims against Vbeyond Corporation’s unknown client businesses. Complainant alleges that Vbeyond Corporation is a staffing and placement firm that provides employees for other businesses, including Infosys, HCL, Larsen & Toubro, Tech Mahindra, and others. Complainant names the unknown client businesses of Vbeyond Corporation as a respondent, but does not otherwise identify the unknown respondents. He alleges that the unknown businesses also discriminated against him based on his citizenship status and national origin. The complaint does not contain any information about the unknown employer’s identity or location, and in his response to the Order to Show Cause, Complainant does not clarify the allegation.

As noted in the Order to Show Cause, while fictitiously-named defendants are routinely used, fictitiously-named defendants must be dismissed if a defendant is not identified. *Hindes v. F.D.I.C.*, 137 F.3d 148, 155 (3d. Cir. 1998) (quoting *Scheetz v. Morning Call, Inc.*, 130 F.R.D. 34, 36 (E.D. Pa. 1990)). In *Heath v. F18 Consulting*, 14 OCAHO no. 1365, 3–4 (2020), the ALJ relied on Ninth Circuit case law regarding fictitiously-named respondents and found that a complainant has 120 days from the date of the complaint to identify the unnamed respondent.

Here, Complainant named Vbeyond Corporation as a respondent and also named the unknown clients of Vbeyond Corporation. Complainant alleges that Vbeyond Corporation was recruiting for the UI developer position at issue for an unknown employer. As the unknown employer has not been identified, OCAHO cannot serve the unknown employer with the complaint without further information. Further, Complainant filed the complaint on March 20, 2020, and July 20, 2020, is 120 days from that date. “OCAHO case law demonstrates that in instances when a

complaint cannot be effectively served, it is dismissed without prejudice so that a complainant can refile the complaint if the Respondent is located and service can be accomplished.” *United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 510, 512 (1996); *United States v. Baches-Corado*, 3 OCAHO no. 571 (1993) (8 U.S.C. § 1324c document fraud complaint dismissed without prejudice when neither OCAHO nor the Immigration and Naturalization Service could serve the complaint and notice of hearing upon the respondent).

As the claim against Vbeyond is dismissed for lack of subject matter jurisdiction, and Complainant has not identified the relevant companies in the six months since the complaint was filed, the Complaint as to the unknown employers is also **DISMISSED WITHOUT PREJUDICE**.

III. CONCLUSION

Complainant did not show that OCAHO has subject matter jurisdiction to hear his claims against Vbeyond. As such, his claims against Vbeyond are **DISMISSED WITHOUT PREJUDICE**. Additionally, Complainant did not identify the unknown employers in the six months since he filed the Complaint. Thus, Complainant’s claims against the unknown employers are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

Dated and entered on October 8, 2020.

Jean C. King
Chief Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.