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

December 17, 2020

ZAJI OBATALA ZAJRADHARA, Complainant, v. DONGHUI KENGXINDUN CORPORATION DBA DH KENGXINDUN APARTMENT RENTAL, Respondent.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 19B00060

ORDER GRANTING MOTION FOR SUMMARY DECISION

I. BACKGROUND

On September 23, 2019, Complainant, Zaji Obatala Zajradhara, filed a pro se complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Donghui Kengxindun Corporation, alleging discrimination based on citizenship status and national origin in violation of 8 U.S.C. § 1324b. Respondent filed an answer on November 7, 2019. Complainant asserts that he responded to a job vacancy announcements posted by the Commonwealth of the Northern Marianna Islands (CNMI) Department of Labor for General Manager positions with Respondent in December 2018. Compl. 8. Complainant alleges that Respondent did not contact him, and that Respondent does not hire United States citizens, instead hiring "cheap foreign workers." Compl. 8. On December 3, 2019, the undersigned issued an Order for Prehearing Statements requiring Complainant to file his prehearing statement no later than January 3, 2020, and Respondent to file its prehearing statement no later than February 3, 2020. Respondent filed its prehearing statement on January 6, 2020. Complainant did not file his prehearing statement by January 3, 2020.

On January 16, 2020, the undersigned issued a Notice and Order to Show Cause requiring Complainant, within twenty days of the Order, to show cause as to why he did not file his prehearing statement and to file his prehearing statement. On January 27, 2020, Complainant filed his prehearing statement. In an order dated February 11, 2020, the undersigned discharged the Order to Show Cause and set the case schedule. Pursuant to that order, dispositive motions were due on June 3, 2020, and responses were due on July 6, 2020. Neither party filed a dispositive motion. On June 18, 2020, the undersigned issued an order requiring the parties to file a status report regarding the

status of filing dispositive motions. Status reports were due on July 10, 2020. On July 6, 2020, Complainant filed a status report focusing on his attempts to discuss settlement. On August 11, 2020, Respondent filed its status report stating that settlement discussions have not been fruitful, Respondent does not seek discovery, and dispositive motions are necessary. Respondent requested that the undersigned reset the dispositive motions deadline. The new dispositive motions deadline was September 21, 2020, with responses due October 21, 2020. On October 8, 2020, the Respondent filed a motion, dated September 21, 2020, for an extension of time, stating that while he has prepared a summary decision motion, none of the representatives of the corporation are on the island of Saipan, and he needs more time to locate a representative in order to submit an affidavit. On October 15, 2020, the Court granted the request with the summary decision deadline set for October 23, 2020, and responses due November 13, 2020. On November 12, 2020, this Court received a motion to dismiss[1] filed by Respondent, dated October 22, 2020. Complainant has not filed a motion for summary decision or a response.

II. LEGAL STANDARDS

Under the OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." Rules of Practice and Procedure, 28 C.F.R. § 68.38(c) (2020). "An issue of material fact is genuine only if it has a real basis in the record" and "[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).[2]

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving

[1] The Court construes the motion as a motion for summary decision because, while Respondent styled the motion a motion to dismiss, it was filed pursuant to a scheduling order for summary decisions, Respondent sought an extension to file a motion for summary decision, and it is in substance a motion for summary decision.

[2] 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.

party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc*., 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). "[T]he party opposing the motion for summary decision 'may not rest upon the mere allegations or denials' of its pleadings, but must 'set forth specific facts showing that there is a genuine issue of fact for the hearing.'" *United States v. 3679 Com. Place, Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). The Court views all facts and reasonable inferences "in the light most favorable to the non-moving party." *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

III. DISCUSSION

A. Filing dates

As an initial matter, while the motion was mailed in a timely fashion, this Court uses the "mailbox" rule, which is to say that "[p]leadings are not deemed filed until received. . . ." 28 C.F.R. § 68.8(b). However, the Court "maintains discretion to accept pleadings within a time period [it] may fix." *Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996). The Court will accept the late-filed motion.

B. Lack of Subject Matter Jurisdiction

Respondent argues that the company was established and owned by Mr. Tang Xiao Dong, and had one part-time employee at the time the position was posted, but the company has since disbanded. Mot. Summ. Dec. 1; Decl. ¶¶ 4–5, 7. Respondent submitted a declaration of Kaiqui Lin, who states that the company was established by Mr. Tang Xiao Dong, who is a Chinese investor who would come to the CNMI periodically, and purchased a number of properties. Decl. ¶ 3. Lin worked part time as a translator and consultant to assist in handling documents. *Id.* ¶¶ 3–4. Lin states that he was the only employee at the time the job announcement was posted, and has been the only employee since the company's inception and dissolution. *Id.* ¶¶ 6–7. Another person who was a contractor would occasionally do maintenance on the properties. *Id.* ¶ 6. Lin attached documents on file with the CNMI Department of Revenue and Taxation and Department of Labor from the third and fourth quarters of 2019, which reflect Lin as the only paid employee. Decl. Exs. 1 and 2.

Similar to lower federal courts, OCAHO is a forum of limited jurisdiction "with only the jurisdiction which Congress has prescribed." *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1173 (1997) (citing *Chicot Cnty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940)). 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 Sols.*, 13

OCAHO no. 1343, 3 (2020) (citations omitted); § 1324b(a)(2). In the complaint, Complainant indicated that he did not know how many employees the company employed. Compl. 6.

As Respondent has submitted competent evidence that this Court does not have jurisdiction over the case because it employed only one individual, and Complainant has not produced any contravening evidence, Respondent's motion is GRANTED and the complaint as to Donghui Kengxindun Corporation is DISMISSED.

IV. FINDINGS OF FACT

1. Donghui Kengxindun Corporation DBA DH Kengxindun Apartment Rental was a real estate company owned by a Chinese National.

2. Donghui Kengxindun Corporation posted for two General Manager positions in December 2018.

3. Donghui Kengxindun Corporation employed one part-time employee from the time of its establishment to its dissolution.

V. CONCLUSIONS OF LAW

1. OCAHO does not have jurisdiction over Complainant's complaint because OCAHO does not have jurisdiction to hear national origin or citizenship status discrimination claims if the employer employs three or less individuals. 8 U.S.C. § 1324b(a)(2)(A).

SO ORDERED.

Dated and entered on December 17, 2020.

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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.