

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

February 18, 2021

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2021B00007
	)	
FACEBOOK, INC.,	)	
Respondent.	)	
_____	)	

ORDER GRANTING, IN PART, MOTION FOR EXTENSION TO FILE ANSWER

On January 4, 2021, the Court issued an order setting dates for submission of filings. Pursuant to that order, Respondent’s answer and motion to dismiss are due on or before February 18, 2021.

On February 16, 2021, the undersigned received a request, via letter,<sup>1</sup> from Respondent seeking an additional 45 days to file its answer. According to the letter, Respondent “did not anticipate requiring additional time until recently, [and] [d]ue to circumstances beyond its control, Respondent has not been able to obtain sufficient access to necessary facts and information[.]” Mot. Extension 1.

On February 17, 2021, Complainant filed United States’ Opposition to Respondent’s Request for Extension of Time to File an Answer (Opposition). Complainant did not unilaterally oppose an extension, rather Complainant seems to find the requested 45-day extension excessive. Opp’n 1. Complainant indicated it was “amenable” to a 15-day extension. Opp’n 1. Complainant argues the extension request should be denied because “Respondent has failed to justify such a lengthy extension, and Respondent’s request does not comply with OCAHO rules.” Opp’n 2.

Addressing the procedural matter of Respondent’s letter and compliance with OCAHO rules, the Court notes that “[p]leading[s] mean[] . . . motions,” and motions are defined as “oral or written request[s] made by a person or a party for some action[.]” 28 C.F.R. § 68.2. Additionally, “pleading[s] shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by [OCAHO], the names of all parties . . . , and a designation of the type of pleading (e.g., complaint, motion to

<sup>1</sup> Citations to Respondent’s letter will also be referred to as Motion for Extension.

*dismiss*.” 28 C.F.R. § 68.7(a) (emphasis added). While the regulations do articulate the standard, the Court notes that Respondent previously provided filings in the form of a letter, and it is possible, or perhaps even likely, that Respondent presumed the Court would continue to accept filings in that form.

Complainant cites relevant OCAHO case law on this procedural point; however, it is well-established that prior OCAHO administrative law judge (ALJ) decisions “do not necessarily bind a different ALJ in a future case.” *United States v. Pegasus Fam. Rest., Inc.*, 12 OCAHO no. 1293, 13 (2016) (citing *United States v. The Red Coach Rest.*, 10 OCAHO no. 1200, 4 n.3 (2013)).<sup>2</sup> Given the Court’s discretion to accept pleadings as it deems fit, *see Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.11(b)), the Court will accept Respondent’s letter as a motion, even with the procedural anomalies highlighted above.

Henceforth, Respondent is ORDERED to provide pleadings in compliance with OCAHO rules.

Addressing the substantive issue of an extension of time to file an answer, Respondent requested an extension due to “circumstances beyond its control,” with no additional information proffered. Mot. Extension 1. Complainant argued that Respondent failed to “state with particularity the grounds for the motion[,]” in abrogation of 28 C.F.R. § 68.11(a). Opp’n 1. Complainant ultimately opposes the request because it argues such an extension would not be “in the interest of the expedient resolution of this matter.” Opp’n 3.

OCAHO rules do not provide specific standards for granting extensions, but the standard routinely applied is good cause. *See United States v. Noriega-Perez*, 5 OCAHO no. 811, 680, 686 (1995); *United States v. Exim and Monardes*, 3 OCAHO no. 591, 1925, 1929 (1993); *United States v. Christie Automotive Products*, 2 OCAHO no. 361. 485, 487 (1991).

As Complainant noted, Respondent’s justification for the extension is vague. Presumably, if the circumstances were within the control of counsel, an extension would be unnecessary. Additionally, Complainant aptly reminds the Court of the importance of expediency in civil litigation.

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<sup>2</sup> 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>.

While the request is vague and lacks requisite specificity to demonstrate good cause, Respondent appears to have provided a similarly vague request for an extension previously in this case; and previously, the Court granted that extension without comment on good cause or specificity. Thus, it is possible, and even likely, that Respondent reasonably assumed that another extension request coupled with a vague rationale would suffice. Parties should consider themselves on notice of the standard for requesting extensions and are cautioned to provide detailed rationale demonstrating good cause for any future extension requests.

Ultimately, the Court must balance the principles of fairness to Respondent based on its likely reliance on past practice and expediency as noted by Complainant. Accordingly, the Court GRANTS Respondent an extension to file its answer, but only a 30-day extension. Respondent's answer is due on or before March 22, 2021.

SO ORDERED.

Dated and entered on February 18, 2021.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge