

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

July 29, 2021

A.S.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00073
)	
AMAZON WEBSERVICES INC.,)	
Respondent.)	
_____)	

ORDER MEMORIALIZING PREHEARING CONFERENCE AND ORDER GRANTING
EXTENSION FOR DISCOVERY

I. BACKGROUND

On July 16, 2021, Respondent filed a Consent Motion for Status Conference requesting a prehearing conference regarding discovery in advance of the July 23, 2021 deadline associated with the close of discovery. Respondent stated that Complainant consented to the request.

Based on the motion and “the Court’s discretion to hold prehearing conferences[.]” *A.S. v. Amazon Web Services Inc.*, 14 OCAHO no. 1381d, 3 n.5 (2021) (citing 28 C.F.R. § 68.13(a)(1)),¹ the undersigned held a status conference on July 22, 2021.² That same day, and prior to the

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>.

² The Court initially attempted to hold the conference on July 21, 2021, and although the Court and the parties did confer for a brief period, due to scheduling constraints and the unavailability of a Hindi interpreter, the conference was rescheduled for the following day.

prehearing conference, Respondent filed a Motion for Extension of Discovery Period and Complainant filed his opposition entitled Response to Respondent's Motion to Extension of Discovery Period.

II. SUMMARY OF PREHEARING CONFERENCE AND PARTIES' POSITIONS

At the prehearing conference, Complainant A.S. appeared pro se and attorneys Leon Rodriguez and Charles Gusak appeared on behalf of Respondent, Amazon Web Services Inc. Also present was a court-provided Hindi interpreter pursuant to the Court's Order Granting Complainant's Request for Hindi Interpreting Services for OCAHO Proceedings, issued on July 7, 2021. *A.S. v. Amazon Web Services Inc.*, 14 OCAHO no. 1381g (2021). The interpreter interpreted everything the undersigned and Respondent's counsel said from English to Hindi. Complainant had the option to either speak in Hindi and have his responses interpreted to English, or to speak in English. Complainant elected to speak in English throughout the duration of the conference.

Respondent commenced by asking the Court to clarify the scope of the reframed allegations in this case. The Court reiterated that this case is limited to the six allegations articulated in the April 7, 2021 Order Reframing Scope of Complaint, *see A.S. v. Amazon Web Services Inc.*, 14 OCAHO no. 1381d, 17–18 (2021), and that **no other issues are properly before the Court.**

Respondent then provided an update on the state of discovery in the case. According to Respondent, Complainant has propounded over 100 discovery requests. It is Respondent's position that many of Complainant's requests exceed the scope of the case. Respondent provided objections to many of the requests. The parties continue to meet and confer over discovery-related issues. Respondent has already produced 89 documents consisting of 425 pages. Respondent intends to meet and confer again with Complainant and anticipates producing an additional 500 to 700 e-mails and various documents amounting to over 1,500 total pages, by August 14, 2021. Respondent also informed the Court that it intends to file a Motion to Compel against Complainant, as Complainant has failed to produce the material in Respondent's two discovery requests. In order to facilitate its remaining discovery obligations and have further discussion related to outstanding discovery, Respondent requested a twenty-one-day extension for the discovery period.

Complainant objected to Respondent's discovery extension in his filing and at the prehearing conference. Complainant indicated he was amenable to only a three day extension of the deadlines associated with discovery. Complainant bases his opposition to an extension on the amount of time that has elapsed since he initially filed his complaint.

Because Complainant is pro se, the Court explained to Complainant the practical implications of Complainant's objection. Specifically, the Court reminded Complainant that he bears the burden

of proof, and that presumably his ability to meet his burden may depend on receipt of the evidence he requested via discovery – the very evidence Respondent is actively producing.

In response to a query from the Court, Complainant indicated that should Respondent cease production of requested materials, he would file a motion to compel the production of the requested materials. Again, because Complainant is pro se, the Court explained to him that typically, the first remedy sought in such a scenario would be an order from the Court compelling the non-moving party to produce the relevant documents, which is the very thing Respondent is presently doing. Further, the Court explained that, presently, no motions to compel have been filed and a motions to compel filed after the deadline would be considered untimely and may not be considered by the Court.

Complainant expressed that he understood the dynamic explained by the Court, but ultimately maintained that a three day extension of discovery was “reasonable” and a twenty-one day extension of discovery was “unreasonable.” Complainant reiterated that his objection to the extension was based upon the proposition that the case is proceeding too slowly and Complainant has been prejudiced by such “delays.”

As to the amount of time that has elapsed from the date of the Complaint to present, the Court noted in the prehearing conference that both parties have requested extensions at various points in the litigation, and both parties have had their respective extension requests granted at various points in the litigation.³ Additionally, the Court reminded Complainant that Complainant’s decision to mislead the Court with respect to his prior and related EEOC filings caused considerable delay. Finally, the Court explained that it was Complainant’s filings which necessitated orders from the Court clarifying the scope of the litigation, all of which added time to the processing of the case.

III. ANALYSIS AND DISCUSSION

After carefully considering the written filings and the matters highlighted by the parties in the prehearing conference, the Court informed the parties that it would grant Respondent’s request for the discovery extension of twenty-one days.

In arriving at the decision to grant the extension request, the Court considered the potential prejudice to Complainant of the additional eighteen days in dispute but found that, on balance, concerns of fairness and judicial economy outweighed Complainant’s opposition to the extension.

³ The Court also noted that its prior grants of extensions was predicated upon a finding of good cause based on the parties’ representations of due diligence in each specific instance. The Court did also note that it would carefully scrutinize future requests for extensions.

In making its determination, the Court considered the volume of requests made by Complainant, and that Respondent has begun producing and is presently producing discovery. The Court concluded that Respondent's active production of discovery demonstrates good faith. The Court also considered that the parties have been actively meeting and conferring over discovery issues, a practice which should decrease the number or complexity of discovery disputes brought to the Court, and a practice which demonstrates that the parties, and in particular, Respondent, are acting in good faith to resolve disputes. Finally, the Court considered whether a twenty-one day extension or a three day extension followed by cross-motions with responses (and subsequent orders to potentially produce relevant, discoverable materials) would likely lead to the most expeditious resolution of discovery disputes.

Ultimately, the Court finds the twenty-one day extension to be a more efficient and fair option. It is the option which best preserves judicial resources. The factors articulated by the Court are not outweighed by the additional delay of eighteen days. *Cf. A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381f, 4 (2021) ("In determining whether good cause exists, a court should consider whether the moving party acted in good faith, the length of the delay and its effects, and whether the delay will prejudice the non-moving party.") (citing *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021)) (internal quotation marks omitted). Accordingly, Respondent's Motion for Extension of Discovery is GRANTED.

Taking into account the granted extension, the case schedule is updated as follows:

Discovery closes (i.e. all discovery-related motions due): August 14, 2021.

Dispositive motions due: September 13, 2021.

Responses to dispositive motions are due thirty days after the filing of the dispositive motion.

Tentative hearing date: December 2021.

SO ORDERED.

Dated and entered on July 29, 2021.

Honorable Andrea Carroll-Tipton
Administrative Law Judge