

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

March 17, 2022

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| RICHARD R. ROGERS, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | OCAHO Case No. 2022B00016 |
| |) | |
| SERVICE EXPERTS, |) | |
| Respondent. |) | |
| _____ |) | |

Appearances: John P. Hagan, Esq., for Complainant
Amanda A. Sonneborn, Esq. and Peter J. Wozniak, Esq., for Respondent

ORDER GRANTING COMPLAINANT AN EXTENSION OF
TIME TO FILE REPLY TO ANSWER TO COMPLAINT

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Richard R. Rogers, filed a complaint, through counsel, with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 19, 2022, alleging that Respondent, Service Experts, violated § 1324b by discriminating against him based upon his citizenship status and retaliating against him. On February 14, 2022, Respondent’s counsel filed a Notice of Appearance and an answer.

On March 1, 2022, the Court received a letter sent via facsimile from Complainant requesting an extension of time until March 22, 2022 to file a reply to Respondent’s answer. Complainant sent Respondent’s counsel a copy of the letter via certified mail.

As a preliminary matter, “requests for relief must be submitted in the form of a motion, not a letter.” *Hsieh v. PMC – Sierra, Inc.*, 9 OCAHO no. 1089, 1 (2003); *see also United States v. Facebook, Inc.*, 14 OCAHO no. 1386, 1–2 (2021) (citing 28 C.F.R. §§ 68.2, 68.7(a)).¹

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,

Additionally, 28 C.F.R. § 68.6(c) dictates that:

[a]ny party filing documents by facsimile must include in the certification of service a certification that service on the opposing party has also been made by facsimile or by same-day hand delivery, or, if service by facsimile or same-day hand delivery cannot be made, a certification that the document has been served instead by overnight delivery service.

Method of service is not an insignificant detail. Complainant's service via certified mail affords opposing counsel less time to respond.

Ultimately, in an exercise of discretion, the Court will accept this otherwise non-compliant filing, and construe it as a motion. In doing so, the Court allowed for an additional five days in the response window to ensure fairness to Respondent following Complainant's non-compliant method of service. With this additional time, Respondent's response was due on or before March 16, 2022. *See* 28 C.F.R. §§ 68.11(b), 68.8(c)(2). To date, the Court has not received Respondent's response; thus, Complainant's motion is unopposed.

As such, the Court GRANTS Complainant's request such that its reply to Respondent's answer is due March 22, 2022.

The parties are instructed to review OCAHO's regulations, contained at 28 C.F.R. pt. 68 (2022), to ensure future compliance. The Court may reject future filings that are not compliant with the regulations.

SO ORDERED.

Dated and entered on March 17, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

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>.