

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

December 28, 2022

R.S.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 19B00048
)	
LATTICE SEMICONDUCTOR,)	
Respondent.)	
_____)	

Appearances: R.S., pro se Complainant
Ulrico S. Rosales and Aleksandr Katsnelson, Esq., for Respondent

ORDER FOR SUPPLEMENTAL BRIEFING

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant R.S. filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 12, 2019, alleging that Respondent Lattice Semiconductor refused to hire him based on his citizenship status in violation of 8 U.S.C. § 1324b(a)(1). Respondent filed an answer.

In his Complaint, Complainant alleges that Respondent discriminated against him based on his citizenship status as a United States citizen when it failed to hire him for a position he applied to on November 28, 2018, and instead hired Sukruth Kumar Krishnamurthy, who was on an H-1B visa. Compl. 6–7.

On July 27, 2020, Respondent filed a Motion for Summary Decision. In the Memorandum of Points and Authorities supporting its Motion, Respondent asserts that Complainant “alleges [Respondent] discriminated against him on the basis of his United States citizenship when he applied for a vacant Application Engineer position (the ‘First Opening’) in November 2018, *as well as a second Application Engineer position that subsequently became available* (the ‘Second Opening’) at Lattice (together, the ‘Open Positions’).” R’s Mem. MSD 1 (emphasis added). Respondent argues that Complainant has not established a *prima facie* case because he “has failed to satisfy his burden of demonstrating that Lattice’s decisions to select candidates other

than him for the Open Positions were made under circumstances giving rise to an inference of unlawful discrimination based on citizenship.” *Id.* at 13.

In response, Complainant asserts that there was no Second Opening, but rather, Respondent hired both Mr. Krishnamurthy and another candidate, Ajay Kumar, for the same position Complainant interviewed for. C’s Opp’n 15 (“Respondent has lied under oath in stating that there was a second Application Engineer position.”), 16 (referring to evidence that “all three candidates . . . were interviewed for the same position and that there was no other Application Engineer position”). Complainant also argues that the decision to hire Mr. Kumar for the Second Opening was “pretext.” *See id.* at 15 (“According to Respondent, it hired Ajay Kumar when second Application Engineer became available. This is a pretext because it means that Respondent had already decided whom to hire even before the so-called ‘second Application Engineer position’ became available.”).

Although both parties address the Second Opening in their briefing, Complainant does not raise a claim of discrimination based on Respondent’s failure to hire him instead of Mr. Kumar for the Second Opening in the Complaint, but solely Respondent’s hiring of Mr. Krishnamurthy for the First Opening.¹ Complainant has not moved to amend his Complaint to include a claim for citizenship discrimination based on Respondent’s failure to hire him for the Second Opening. *See* 28 C.F.R. § 68.9(e)² (providing that a complainant may amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties”); Fed. R. Civ. P. 15(a) (providing that a party may amend his or her complaint once “as a matter of course” before a responsive pleading is served; after a responsive pleading is served, the “party may amend its pleading only with the opposing party’s written consent or the court’s leave”); *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370, 2 (2020).³ The OCAHO rules further

¹ The Court notes that Complainant attached to the Complaint the Charge Form he filed with the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER), including an email from Kyoho Lee indicating that although Respondent decided to give an offer to a different candidate, Complainant was “currently listed for the other position that we also decided to fill with more time with more candidates.” Compl. 27.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ 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>.

provide that issues tried by the express or implied consent of the parties may be treated as if they had been raised in the pleadings, provided the issues are reasonably within the scope of the original complaint. 28 C.F.R. § 68.9(e); *see also* Fed. R. Civ. P. 15(b)(2).

Therefore, the Court ORDERS the parties to submit briefing addressing whether the Court should construe the Complaint as amended to include a claim for citizenship discrimination based on failure to hire Complainant instead of Mr. Kumar for the Second Opening. Moreover, if the parties contend that the Complaint has been amended to include such a claim, the Court provides the parties an additional opportunity to submit evidence regarding this position, particularly evidence relating to the job description and/or qualifications for the position.

Within thirty (30) days of this Order, Respondent may file its briefing and additional evidence, after which Complainant will have an additional thirty (30) days to file its briefing and additional evidence.

SO ORDERED.

Dated and entered December 28, 2022

Honorable Jean C. King
Chief Administrative Law Judge