

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

January 18, 2023

RAVI SHARMA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00023
)	
NVIDIA CORP.,)	
Respondent.)	
_____)	

Appearances: Ravi Sharma, pro se Complainant
Patrick Shen, Esq., K. Edward Raleigh, Esq., and Samantha Caesar, Esq.,
for Respondent

ORDER DENYING MOTIONS TO COMPEL

I. BACKGROUND

On December 13, 2022, the Court issued an Order Extending Discovery Deadline and Modifying Case Schedule, in which it addressed Complainant’s November 22, 2022 Discovery Motion¹ and Respondent’s December 6, 2022 Opposition. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450a, 1 (2022).² The Court granted Complainant’s motion in part, specifically as to a 60-day extension of

¹ The full name of this motion is “Motion to Seek Resolution Regarding Respondent NVIDIA Corporation’s Responses to Complainant’s Discovery Requests.”

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>.

discovery.³ *Id.* at 3–4. The Court deferred its decision on the remaining issues raised in the motion, noting it would issue a separate order addressing those issues. *Id.* at 4.

On December 16, 2022, Complainant filed a Motion to Request Additional Discovery, to which Respondent filed an Opposition on December 27, 2022.

On December 21, 2022, Complainant filed a Motion for Leave to Reply (with a reply attached), to which Respondent filed an Opposition on December 27, 2022.⁴

II. MOTION FOR LEAVE TO REPLY

As an initial matter, Complainant moves the Court to allow a reply to his November 22, 2022 Motion.⁵ Mot. Leave Reply. Complainant’s reply states the Court should disregard Respondent’s December 6, 2022 Opposition because it is “untimely” per 28 C.F.R. § 68.11(b),⁶ and should not be accepted absent a showing of good cause by Respondent. *See* Reply (citing OCAHO caselaw on failure to timely file an answer, which is inapposite here). The reply further states that “[a]cceptance of the [December 6, 2022 Opposition] would prejudice Complainant because it would impact Complainant’s ability to conduct full and meaningful discovery.” *Id.*

A decision to accept a reply filing is a purely discretionary one. *See* 28 C.F.R. § 68.11(b) (“Unless the Administrative Law Judge [(ALJ)] provides otherwise, no reply to a response . . . shall be filed.”); *see Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 1 (2021) (citations omitted) (“The Court has discretion in accepting replies.”); *see also Hsieh v. PMC–Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003) (“Absent leave of [C]ourt, a party does not have a right to file a reply[.]”). If a party seeks leave to file a reply, the ALJ may consider whether *that party* has shown good cause to warrant accepting the reply. *See Brown v. Pilgrim’s Pride Corp.*, 14 OCAHO no. 1379b, 1 (2022); *cf. R.S. v. Lattice Semiconductor*, 14 OCAHO no. 1362b, 2 (2021) (applying the good cause standard to evaluate the complainant’s motion for leave to file a supplemental response to the respondent’s motion for summary decision).

Complainant (the moving party) has not demonstrated good cause for the Court to exercise discretion and accept his reply. As referenced in the December 13, 2022 Order, the Court considered both the “Motion to Seek Resolution Regarding Respondent NVIDIA Corporation’s Responses to Complainant’s Discovery Requests” and Respondent’s opposition as timely filed.

³ That is, discovery would now close on February 6, 2023.

⁴ The full name of this motion is “Motion for Leave of Court to File Reply to Respondent’s Opposition to Complainant’s Motion to Seek Resolution Regarding Respondent Responses to Complainant’s Discovery Requests.”

⁵ For reasons made clear below, the Court finds it unnecessary to further discuss Respondent’s December 27, 2022 Opposition to this motion.

⁶ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

Sharma, 17 OCAHO no. 1450a, at 2; *see* 28 C.F.R. §§ 68.11(b), 68.8(b)–(c).⁷ The reply rationale on prejudice also does not support good cause. Specifically, Complainant does not explain the nexus between this reply and discovery efforts, or what specific harm he would suffer in discovery if not allowed to file a reply. *See also Brown*, 14 OCAHO no. 1379b, at 2–3 (crediting information in the reply as “essential to determining the exact nature of the dispute between the parties” when granting leave).

Accordingly, Complainant’s December 21, 2022 Motion for Leave to Reply is DENIED.

III. DISCOVERY ISSUES BEFORE THE COURT⁸

Through his November 22, 2022 and December 16, 2022 motions, Complainant requests that the Court order Respondent to:

1. Identify which document(s) are responsive to which individual interrogatory and which individual request for production (i.e., through Bates-labelling). *See* Disc. Mot. 3–8, 12.
2. Produce unredacted documents in response to Complainant’s discovery requests. *See* Disc. Mot. 8–12.
3. Provide responses to Interrogatories 7, 8, 9, and 10 without objections as to exceeding discovery parameters. *See* Disc. Mot. 11–12.

Through his November 22, 2022 and December 16, 2022 motions, Complainant also requests:

1. 20 additional interrogatories and 20 additional requests for production (in total). *See* Disc. Mot. 12; Add’l Disc. Mot. 1.
2. 30 additional days to file a motion to compel discovery (from the date that Respondent rectifies its “deficient” discovery responses). *See* Disc. Mot. 13.
3. A 90-day extension of the date the discovery window closes (that is, March 8, 2023).⁹ *See* Add’l Disc. Mot. 1.

⁷ Even if a filing is untimely, OCAHO ALJs “have the discretion to accept late-filed submissions.” *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381m, 3 (2021) (citing *Zajradhara v. Donghui Kengxindun Corp.*, 14 OCAHO no. 1382, 3 (2020), and then citing *Villegas-Valenzuela v. INS*, 103 F.3d 805, 911 n.5 (9th Cir. 1996)).

⁸ The Court finds that Complainant’s November 22, 2022 motion references but does not ultimately seek relief related to Respondent serving discovery requests by mail. *See* Disc. Mot. 2–3; Disc. Mot. Opp’n 8.

⁹ As this request predates the Court’s order granting a 60-day extension of discovery, the Court construes this as a 90-day extension request from the original date discovery closed.

IV. POSITION OF THE PARTIES ON DISCOVERY ISSUES

A. Complainant

1. November 22, 2022 Discovery Motion

Complainant asserts Respondent’s “deficient” discovery responses hinder his ability to engage in “meaningful discovery.” *See generally* Disc. Mot. 1–2. Accordingly, Complainant posits he is “forced to file the [November 22, 2022] motion, requesting a Court order compelling [R]espondent to serve full and complete responses[.]”¹⁰ *Id.* at 2. Complainant’s motion seeks multiple forms of discovery relief (as highlighted above).

First, Complainant argues Respondent failed to precisely identify which of the produced documents correspond to each interrogatory and request for production via Bates-labelling. *See* Disc. Mot. 4–7. Complainant acknowledges Respondent provided him an “excel cross reference sheet” that identifies produced documents. *Id.* at 6. However, he argues use of this chart is too time-intensive and impractical. *Id.* at 5–6. Complainant requests Respondent be compelled to Bates-label its interrogatory and requests for production responses, because, in his estimation, Respondent has a “lesser burden.” *See id.* at 4–8, Ex. G.

Second, Complainant argues Respondent redacted “important relevant information” pertaining to candidates in its discovery responses. *See* Disc. Mot. 8–11, Exs. D, H.¹¹ Complainant maintains his discovery requests “narrowly target” discoverable information,¹² and the redactions hinder his ability to interpret documents such as the interview schedule. *See id.* at 8–10 (citing Ex. A–B, H). Complainant believes he suffered prejudice, stating unredacted responses “are critical to discovery and also to provide evidence to the Court.” *Id.* at 11.

Third, Complainant argues Respondent improperly objected to certain interrogatories as exceeding discovery limits. *See* Disc. Mot. 11–12. While Respondent nonetheless responded to some of these interrogatories, *see id.* at Ex. E ¶¶ 7–10 (“Without waiving these objections, Respondent

¹⁰ Nevertheless, Complainant argues that the November 22, 2022 Discovery Motion “should not be construed as a motion to compel discovery,” as it “cannot satisfy the requirements of OCAHO rules 28 C.F.R. § 68.23 (b).” Disc. Mot. 2.

¹¹ For example, pages 2–3 of Exhibit H contain a resume of another candidate for the relevant position with redactions applied. The document (with redactions applied) still shows: education information (degree type, with honors, and GPA); skills description almost in its entirety; professional experience description almost in its entirety; academic projects descriptions; relevant coursework descriptions almost in its entirety; and that the candidate has published work and engaged in service as a steering committee member. This document has the name, contact information, and dates of employment/activities redacted.

¹² Both parties opine on redaction of personal identifiable information (PII) in Respondent’s discovery responses. *See* Disc. Mot. 8–10; Disc. Mot. Opp’n 8–10. For the reasons outlined in this Order, the Court finds it unnecessary to address these arguments.

provides the following Response . . .”), Complainant takes issue with Respondent’s determination that Interrogatory 1’s sub-parts were individual and distinct interrogatories. *See id.* at 11–12. Accordingly, Complainant seeks an additional 5 interrogatories and 5 requests for production (also in part to modify Request for Production 4), and compelled responses to Interrogatories 7–10 “without objection.” *See id.* at 12–13.

Further, Complainant moves the Court to extend the deadline to file a motion to compel discovery until at least 30 days after service of “appropriately cited responses, non-blacked out document records and responses to interrogatories Nos. 7, 8, 9, 10, and modified RFP 4.” *Id.* at 13.

2. Motion for Additional Discovery¹³

Following the Court granting his request for a 60-day extension of the discovery window, Complainant sought further discovery relief (as highlighted above).

Complainant states that he received declarations from two NVIDIA employees, and “would like to propound additional discovery in order to prove that these two employees are untruthful and dishonest in their declarations.” Add’l Disc. Mot. 1. These declarations were executed on November 29, 2022 and November 30, 2022, respectively. *Id.* at 8, 11. Specifically, Complainant requests 15 additional interrogatories, 15 additional requests for production, and “to request the closing date for these additional discovery requests by 90 days.” *Id.* at 1.

B. Respondent

1. December 6, 2022 Opposition

Respondent argues it has met its discovery obligations for the produced responses (including redactions and objections). *See generally* Disc. Mot. Opp’n 1–2. Respondent further argues that Complainant has not met his burden on why he needs additional interrogatories and requests for production. *See id.* at 2–3.

As to Bates-labelling, Respondent argues it met its production obligations per 28 C.F.R. § 68.20 (requests for production) and § 68.19 (interrogatories). *See id.* at 17–19. Respondent notes OCAHO’s rules “do not require a party to identify what documents pertain to what [request for production].” *Id.* at 18. Respondent further states that its “Interrogatory Responses Numbers with Corresponding Bates-numbers” table sufficiently identifies which document is responsive to which interrogatory, in accordance with OCAHO’s rules. *Id.* at 18–19.

¹³ Complainant’s motion also discusses Respondent’s Second Affirmative Defense. *See* Add’l Disc. Mot. 1–2; *see also* Add’l Disc. Mot. Opp’n 3–4. Disputes related to Respondent’s Answer fall outside the scope of discovery. These issues are best addressed by way of dispositive motions or at hearing. While the Court declines to address arguments related to Respondent’s Answer, Complainant should understand he is not precluded from raising them once more at a later stage in these proceedings.

Separately, the record, as developed by the parties, indicates that Complainant deposed no one.

As to redactions, Respondent argues its redactions remove irrelevant or otherwise protected (identity) information. *See id.* at 9–10. (“While framed as challenges to redactions, Complainant essentially disputes the scope of discovery.”) (citing 28 C.F.R. § 68.8(b), and later citing *Heath v. Consultadd*, 15 OCAHO no. 1395a (2022)). On relevance, Respondent contends “the only potentially relevant material is information about nonimmigrant workers who received a job offer for the FGPA position over Complainant.” *See id.* at 11–13 (asserting that information or documents, about U.S. workers or applicants who did not receive offers, is irrelevant to Complainant’s non-selection claim). Respondent further contends that Complainant has not met his burden, i.e. he has not demonstrated why the information redacted within the three resumes of the nonimmigrant workers hired for the FGPA position, or information on its use of visa programs, is relevant. *See id.* at 12–14.

As to the specific interrogatory objections, Respondent argues that, despite the requests exceeding discovery limits, it nonetheless answered some additional interrogatories and their sub-parts. *Id.* at 19–20.

Finally, Respondent argues Complainant fails to identify what further relevant information would be produced (that has not been produced already) through additional interrogatories and requests for production. *See id.* at 20–21 (citing *Consultadd*, 15 OCAHO no. 1395a, at 3) (internal citations omitted).

2. December 27, 2022 Opposition

According to Respondent, Complainant has not met his burden relative to 15 additional interrogatories, 15 additional requests for production, and a 90-day discovery deadline extension, as he cannot show the relevance to his § 1324b non-selection claim. *See Add’l Disc. Mot. Opp’n* 1–4.

Specifically, Respondent disputes the need for additional discovery (either through tools or time) to explore the two NVIDIA employee declarations. *See id.* at 1–2, Ex. A (noting that the Court previously granted a 60-day extension, and Complainant already submitted rebuttals to these declarations). Respondent also observes that Complainant’s discovery requests “concerned Respondent’s use of the H-1B or other legal immigration programs,” arguing queries about this topic exceed the scope of Complainant’s claim. *See id.* at 3–4. Finally, Respondent contends that it will suffer prejudice if required to further respond to Complainant’s discovery. *Id.* at 4–5.

V. LEGAL STANDARDS

A. Motion to Compel

The Court “has the authority to ‘compel the production of documents’ and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28.” *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016); e.g., *Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440, 2–6 (2022); *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no.

1388d, 2–13 (2021). A party may file a motion to compel discovery if the responding party fails to adequately respond or objects to discovery requests. 28 C.F.R. § 68.23(a); *see United States v. Tuesday Line, Inc.*, 16 OCAHO no. 1425a, 2 (2022).

Pursuant to 28 C.F.R. 68.23(b), a motion to compel must set forth:

- (1) The nature of the questions or request;
- (2) The response or objections of the party upon whom the request was served;
- (3) Arguments in support of the motion; and
- (4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.

As explained in *Ravines de Schur*, “an objecting party may ultimately defeat the motion by demonstrating that the requested material is irrelevant, or, alternatively, that ‘its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.’” 15 OCAHO no. 1388d, at 3 (citing 28 C.F.R. § 68.40(b)).

“Separate from a party’s burden to lodge a timely objection, the Court has independent authority to decline to compel a party’s response to discovery requests.” *Contreras*, 16 OCAHO no. 1440, at 3 (citing 28 C.F.R. § 68.23).

B. Discovery Obligations

The scope of discovery extends to “any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” 28 C.F.R. § 68.18(b). In the context of discovery, relevance is broadly construed “to encompass any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.” *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381j, 6 (2021). “The party seeking discovery bears the burden of proof on relevancy.” *Consultadd*, 15 OCAHO no. 1395a, at 2 (citations omitted).

OCAHO’s rules outline a party’s obligations when responding to discovery, including provisions for specific discovery tools. *See* 28 C.F.R. § 68.18 (general provisions); *e.g.*, § 68.19 (interrogatories); § 68.20 (requests for production). For interrogatories, the responding party shall answer “separately and fully in writing . . . unless it is objected to, in which event the reasons of objections shall be stated in lieu of an answer.” 28 C.F.R. § 68.19(b). For requests for production (of documents), the responding party shall provide, if permitted as requested, copies of the “designated documents or things.” *See* 28 C.F.R. §§ 68.20(a)(1), (e)(1). If the responding party objects to the request for production, it shall provide a response that states the objection, and the reasons for objection. 28 C.F.R. § 68.20(e)(2).

C. Expansion of Discovery Parameters

OCAHO’s rules “permit the Court to rule on the extent or frequency of discovery.” *Consultadd*, 15 OCAHO no. 1395a, at 3 (citing 28 C.F.R. § 68.18). As this Court very recently explained, the

authority includes “a decision on a motion to extend the discovery timeframe.” *See Sharma*, 17 OCAHO no. 1450a, at 3–4 (citations omitted) (stating that the party seeking to modify the date discovery closes must demonstrate good cause). The authority also includes a decision to allow parties to propound additional discovery requests (beyond the original discovery limits). *See, e.g., Carlos v. Armstrong Painting and Waterproofing and Modesto Sevilla*, 1 OCAHO no. 231, 1524, 1525 (1990) (granting an intervenor’s motion to propound additional interrogatories). In making this decision, the Court may consider, inter alia, “the importance of the discovery in resolving the issues [raised in the case].” *Consultadd*, 15 OCAHO no. 1395a, at 3 (citing *United States v. Durable, Inc.*, 11 OCAH no. 1221, 3 (2014)).¹⁴

VI. DISCUSSION

A. Motion to Compel

As a threshold matter, the Court finds it appropriate to characterize Complainant’s filing as a motion to compel pursuant to 28 C.F.R. § 68.23(b) (even though Complainant does not characterize it as such). *See* Disc. Mot. 2. Complainant requests the Court “order Respondent to provide . . . discovery responses,” which is another way of saying that he seeks an order **compelling** discovery. *Id.*; *see* 28 C.F.R. § 68.23(a) (“[T]he discovering party may move the [ALJ] for an order compelling a response[.]”); *see also* Motion to Compel Discovery, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A party’s request that the court force the party’s opponent to respond to the party’s discovery request[.]”).

Complainant’s motion meets the procedural requirements set forth at 28 C.F.R. § 68.23. First, Complainant’s motion provides, with sufficient specificity, the nature of the requests. 28 C.F.R. § 68.23(b)(1); *see* Disc. Mot. 2. Second, Complainant attaches the discovery responses which he believes are deficient. 28 C.F.R. § 68.23(b)(2); *see* Disc. Mot. Exs. D–F, H. Third, Complainant’s motion includes arguments on why the Court should compel Respondent to provide updated interrogatory and request for production responses. 28 C.F.R. § 68.23(b)(3); *see* Disc. Mot. 2–12. Fourth, Complainant attaches emails showing the parties conferred or attempted to confer on discovery. 28 C.F.R. § 68.23(b)(4); *see* Disc. Mot. 2, Ex. C.

For these reasons, the Court will treat Complainant’s motions (and Respondent’s opposition filings) as motions (and oppositions) to compel discovery and will analyze them accordingly.

B. Discovery Obligations

For the following reasons, the Court concludes that Respondent has met its discovery obligations for both its interrogatory and request for production responses.

¹⁴ The Court also consults caselaw arising from the United States Court of Appeals for the Ninth Circuit. *See* 28 C.F.R. §§ 68.1, 68.57. In considering similar discovery-related issues, district courts in the Ninth Circuit likewise emphasize relevance. *See, e.g., Castenada v. Burger King Corp.*, No. C 08-4262 WHA (JL), 2009 WL 428596, at *1 (N.D. Cal. Nov. 25, 2009) (citation omitted) (stating that a party seeking more interrogatories must make a “particularized showing of [why] the discovery is necessary”).

Respondent answered 10 interrogatories¹⁵ separately and fully in writing. *See* 28 C.F.R. § 68.19(b); Disc. Mot. Opp’n Ex. D (full interrogatory responses stating objections and, nonetheless, responding to the substance of Complainant’s interrogatories). Respondent answered each request for production by stating its objections or producing responsive records. *See* 28 C.F.R. § 68.20(e); Disc. Mot. Opp’n Ex. E (full requests for production responses).

For produced documents, Respondent provides Complainant a table that cross-references documents by name with corresponding interrogatories. *See* Disc. Mot. Opp’n, Ex. H. This meets Respondent’s discovery obligations under the regulations.¹⁶ Complainant cites an unrelated OCAHO case wherein a different Respondent elected to “Bates-label” discovery responses, *see* Disc. Mot. 6; however, this practice is not required by regulation or precedent in this forum.

Further, Respondent’s redactions do not preclude the Complainant from determining which records correspond to which candidate because Respondent provided a candidate ID number. This ID number system permits Complainant to discern which records belong to which prospective workers, (to include status as a nonimmigrant worker).¹⁷ Complainant has not demonstrated why candidates’ names, dates of employment, previous employers, and educational background are relevant.¹⁸

¹⁵ An interrogatory is generally defined as a “[w]ritten question . . . submitted to an opposing party in a lawsuit as part of discovery.” Interrogatory, BLACK’S LAW DICTIONARY (11th ed. 2019) (citing Fed. R. Civ. P. 33)). In determining whether sub-parts of an interrogatory count as separate questions, district courts in the Ninth Circuit look to whether the interrogatory “has more than one logically or factually-related theme.” *See, e.g., Superior Comm’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 218–19 (C.D. Cal. 2009) (citations omitted). Even so, a “demand for information about a certain event and for the documents about it should be counted as . . . separate interrogatories.” *Id.* at 218 (quoting *Banks v. Off. Of the Senate Sergeant–At–Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004)).

Here, Complainant’s Interrogatory 1 asks whether Respondent hired nonimmigrant workers for the FGPA position. Complainant then uses the sub-parts to request three different types of documents related to the nonimmigrant workers. Therefore, Interrogatory 1 is compound and was correctly counted as 4 interrogatories (out of the 10 permitted).

¹⁶ Indeed, a party producing discovery does not have a duty to create records. Rather, the producing party is tasked with disclosing relevant information and records that already exist. *See generally Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D. 652, 655 (C.D. Cal. 2005) (citation omitted) (“Generally, the purpose of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute.”).

¹⁷ The Court finds that Respondent sufficiently clarified confusion on Candidate C1767827, which was caused by a typographical error. *See* Disc. Mot. Opp’n 13, n. 6.

¹⁸ Complainant alleged that Respondent did not select him for a specific FGPA position on account of his citizenship status, in violation of 8 U.S.C. § 1324b(a)(1). *See* Compl. ¶¶ 6–9. While the filings indicate Complainant desires information pertaining to Respondent’s general hiring

Based on the above provided analysis, the Court will refrain from ordering Respondent to: identify which document(s) are responsive to which individual interrogatory and which individual request for production (i.e., through the Bates-labelling); produce unredacted documents in response to Complainant's discovery requests; and provide responses to Interrogatories 7, 8, 9, and 10 without objections as to exceeding discovery parameters.

C. Expansion of Discovery Parameters

1. Additional Discovery Tools

The Court finds that Complainant has not met his burden to show, with sufficient particularity, why 20 (cumulative) additional interrogatories and 20 (cumulative) additional requests for production are necessary.

As explained above, Respondent already provided sufficient responses to the allotted discovery requests. Complainant requests additional discovery, but only cites to his Request for Production 4 wherein Respondent objected to the "form and substance" of the Request. Disc. Mot. Ex. F ¶ 6.¹⁹ Complainant provides no justification as to why he should be permitted to revise his inartfully crafted request. A discovery request cannot be "fixed" to reflect the question the party it believes it asked (or "should" have asked). See *Consultadd*, 15 OCAHO no. 1395a, at 9–10 ("A discovery request rises or falls on its own merit."). Further, he provides no explanation as to why revising this request for production would necessitate five additional interrogatories and five additional requests for production.

As to the 15 additional interrogatories and 15 additional requests for production, Complainant has not demonstrated how any additional discovery related to the declarations would be relevant. Providing sufficient particularity and demonstrating relevance are hallmark requirements for an expansion of discovery as is outlined by applicable case law.²⁰

Further, Complainant appears to have available to him one deposition and requests for admission. Complainant fails to explain why he needs an increase in the number of a particular discovery tools when he has failed to utilize other tools.

Accordingly, the Court is not inclined to issue an order that provides Complainant with 20 additional interrogatories and 20 additional requests for production.

practices/use of various visa programs, Complainant has not argued or demonstrated the relevance of these practices to his particular allegations.

¹⁹ Specifically, Respondent objects to the form because "(1) the Request includes an improper premise . . . and (2) the request is compound." Disc. Mot. Ex. F ¶ 6.

²⁰ See, e.g., *Carlos*, 1 OCAHO no. 231, at 1525; *Consultadd*, 15 OCAHO no. 1395a, at 3; *Castenada*, No. C 08-4262 WHA (JL), 2009 WL 428596, at *1.

2. Extension of Discovery Timeframe

The Court further finds that Complainant has not met his burden of proof on why the Court should modify the discovery timeframe.

As to the 30 additional days to file a motion to compel discovery, the Court determined that Respondent did not provide Complainant with “deficient” discovery responses. Complainant thus has not demonstrated good cause to push back the date discovery closes based on this reason.

As to the 90-day discovery deadline extension, Complainant has not demonstrated good cause for the Court to extend the deadline until March 8, 2023; specifically, the Court has not allowed additional discovery related to the NVIDIA employee declarations.

Accordingly, the Court is not inclined to order that: Complainant have 30 additional days to file a motion to compel discovery (from the date that Respondent rectifies its “deficient” discovery responses; and that the discovery window closes on March 8, 2023.

VII. CONCLUSION

Complainant’s December 21, 2022 Motion for Leave to Reply is DENIED.

Complainant’s November 22, 2022 Discovery Motion is DENIED. Complainant’s December 16, 2022 Motion to Request Additional Discovery is DENIED.

The Court reminds the parties that the discovery window remains open (through February 6, 2023) to confer on discovery issues or utilize remaining discovery tools. To the extent additional discovery motions contain repetitive content, they will be adjudicated as motions for reconsideration. *E.g., A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381(I), 2, 5–7 (2021).

SO ORDERED.

Dated and entered on January 18, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge