

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

February 16, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00006
)	
RED APPLE ENTERPRISE, INC.)	
D/B/A KOBE STEAKHOUSE,)	
Respondent.)	
_____)	

Appearances: Karen Smith, Esq., for Complainant
Baoguo Lin, for Respondent

NOTICE AND ORDER REGARDING SERVICE OF PROCESS

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on November 15, 2022. Complainant alleges that Respondent, Red Apple Enterprise, Inc., d/b/a Kobe Steakhouse, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for ninety-two individuals in violation of § 1324a(a)(1)(B).

On November 21, 2022, the Court sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the complaint, the Notice of Intent to Fine (NIF), and Respondent's request for a hearing, via U.S. certified mail to the one address listed for Respondent on the complaint, the NIF, and the request for a hearing—2876 Highway 54 West, Peachtree City, GA 30269. The U.S. Postal Service website reflects that the documents were unable to be served upon Respondent at the address provided.

Therefore, on January 11, 2023, the Court issued an Order Directing Complainant to Execute Service of Process (Service Order). The Court ordered Complainant to serve Respondent personally with the complaint, NOCA, NIF, and request for a hearing by January 31, 2023. Service Order 2 (citing 28 C.F.R. § 68.3(a)(1)). The Court further ordered that within five days of

effectuating service, Complainant provide the Court with proof of service on Respondent and identify a functional U.S. mailing address for Respondent. *Id.*

On February 6, 2023, Complainant filed a Proof of Service of Process and Motion to Accept Late Filing. Complainant provided a functional address for Respondent—2808 Highway 54 West, Peachtree City, GA 30269—and attached a document titled “Certificate of Service Kobe Steakhouse” as proof of service, signed by Special Agent James Jefferson, attesting that he personally served Bao Lin at the functional address on January 27, 2023. Proof of Service 1, 3. In its Motion to Accept Late Filing, Complainant writes that it was delayed in getting the proof of service to the Court because of being sick and out of the office. Mt. to Accept Late Filing 1.

Given that Complainant personally served Respondent on January 27, 2023, its Proof of Service of Process was due February 1, 2023. “[When considering] untimely filed submissions, the Court employs a standard of good cause in deciding whether to credit a party’s explanations and exercise discretion in accepting a late filing.” *United States v. De Jesus Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022) (citing *MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 5 (2022)).¹ As the OCAHO rules do not define what constitutes good cause to accept a late filing, the Court looks to Federal Rule of Civil Procedure 6(b), which further requires a movant to demonstrate excusable neglect when seeking to accept filings made after the expiration of the time period. *See GSR Mkts. Ltd. v. McDonald*, 593 F. Supp. 3d 1208, 1215 (N.D. Ga. 2022) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 395 (1993)) (providing four-factor test to determine “excusable neglect”).²

Given the five-day length of the delay, and the early stage of the proceedings, the Court does not find a danger of prejudice or a potential impact on the proceedings. *See, e.g., Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471, 3 (2023) (finding no substantial impact on proceedings from delay when the case was in its early stages). Moreover, the record reflects that illness outside of Complainant’s control was the cause of the delay, and there is no suggestion that Complainant

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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² Since the allegations at issue in this case occurred in Georgia, the Court may look to the case law of the relevant United States Court of Appeals, here the Eleventh Circuit. *See* 28 C.F.R. § 68.57.

acted in bad faith. Therefore, the Court exercises its discretion to accept Complainant's late-filed Proof of Service of Process.

Moreover, the Court finds that Complainant has effectuated personal service of the complaint and accompanying materials in accordance with the Court's January 11, 2023 Service Order, and in a manner that complies with OCAHO's Rules of Practice and Procedure for Administrative Hearings.³

A respondent has thirty days to file an answer after being served with a complaint. 28 C.F.R. § 68.9(a). Given that Complainant effectuated personal service of the complaint on Respondent on January 27, 2022, Respondent's answer in this case is due no later than February 26, 2023. *See id.*

SO ORDERED.

Dated and entered on February 16, 2023.

Honorable Jean C. King
Chief Administrative Law Judge

³ 28 C.F.R. pt. 68 (2022).