

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

May 4, 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 ON STATUS OF THE RECORD
AND PENDING MOTIONS BEFORE THE COURT

I. BACKGROUND

On March 13, 2023, Respondent, NVIDIA Corporation, filed a Motion for Summary Decision. Following Respondent’s Motion for Summary Decision, the parties both filed motions.¹

On March 21, 2023, Complainant filed a “Motion to Strike Respondent’s Irrelevant Record Submitted in Support of it’s Motion for Summary Decision.”²

On April 10, 2023, Complainant filed a “Motion to Strike Declaration of [Hiring Official] and Exhibits of Declaration of [Hiring Official] Submitted in Support of Respondent’s Motion for Summary Decision.”³

¹ Additionally, Complainant filed a Motion for Perjury Charges on April 10, 2023, to which Respondent filed an opposition on April 17, 2023. This motion was denied through the Court’s April 18, 2023 Order. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450h, 1 (2023).

² Respondent filed an opposition to this motion on March 22, 2023.

³ Respondent filed an opposition to this motion on April 19, 2023.

On April 10, 2023, Complainant also filed a “Response to Respondent’s Motion for Summary Decision.”

On May 2, 2023, Respondent filed a “Motion for Leave to Reply to Complainant’s Response to Respondent’s Motion for Summary Decision,” with its proposed Reply attached.

II. LAW & DISCUSSION

The Court endeavors to clarify the status of the record and resolve the multiple pending motions.

The Court advised parties that, at this stage of proceedings, the appropriate method to submit evidence for substantive consideration was by way of attachment to a dispositive motion filing,⁴ and the appropriate time to do so was during the dispositive motions phase.⁵ The Court further advised that, pursuant to 28 C.F.R. § 68.11(b),⁶ parties were to seek leave in advance of filing a reply to a dispositive motion.⁷

Respondent timely filed a motion for summary decision, to which Complainant timely filed a response.⁸ Complainant did not seek leave of the Court to file a reply. Respondent (untimely) sought leave of the Court to file a reply.

As Complainant did not seek leave of the Court to file a reply, the Court accordingly **DENIES** Complainant’s March 21, 2023 and April 10, 2023 “motions to strike” as impermissible replies. Alternatively, to the extent that Complainant seeks discovery-related relief through these motions,

⁴ *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450e, 2 n.6 (2023) (citing in part 28 C.F.R. § 68.38).

⁵ *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450g, 5–6 (2023) (citing 28 C.F.R. § 68.40).

⁶ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

⁷ *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450f, 5 (2023); *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450g, at 6.

⁸ Courts generally deem an opposing party’s first submission after the filing of a dispositive motion as the response. In ordinary course, Complainant’s March 21, 2023 filing would then be his response to the motion for summary decision, and the April 10, 2023 filings would be rejected as impermissible replies. *See* 28 C.F.R. § 68.11(b).

However, the Court has considered that one of Complainant’s April 10, 2023 filings is separately captioned as a response to Respondent’s Motion for Summary Decision. Construing this filing as the response takes into account Complainant’s pro se status and clear development of the record, and the Court will do so here. *See generally* 5 U.S.C. § 556(e).

such motions are untimely and are denied as moot. To the extent that Respondent seeks relief by way of oppositions to these motions, the Court declines to address such relief.⁹

The Court has also weighed the untimeliness of Respondent's Motion for Leave to Reply with the good cause proffered; that is, the opportunity to address arguments first raised in Complainant's response to the Motion for Summary Decision, and to provide clarification on applicable law. *See also Brown et al. v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379b, 1–2 (2022) (citing 28 C.F.R. § 68.11(b)) (contemplating good cause as a factor in whether to grant leave to file a reply).¹⁰ On balance, the Court finds that permitting Respondent's reply promotes further clarity and record development.

Accordingly, the Court **GRANTS** Respondent's Motion for Leave to Reply. Respondent's Reply in Support of Respondent's Motion for Summary Decision, attached as Exhibit A to this motion, is now a part of the record.

The Court now permits Complainant to file a sur-response,¹¹ no later than May 19, 2023. Complainant is not precluded from renewing relevant arguments in his sur-response.

SO ORDERED.

Dated and entered on May 4, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁹ *See Sharma*, 17 OCAHO no. 1450h, at 1 n.1 (citing 28 C.F.R. § 68.11).

¹⁰ 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>.

¹¹ A sur-response is generally defined as "[a] second response by someone who opposes a motion . . . [it] comes in answer to the movant's reply." *Surresponse*, BLACK'S LAW DICTIONARY (11th ed. 2019).