

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

June 15, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00061
)	
ALJERIC GENERAL SERVICES, LLC a.k.a.)	
ALJRIC GENERAL SERVICES, LLC,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Colin Thompson, Esq., for Respondent

ORDER ON COMPLAINANT’S MOTIONS FOR SUBPOENAS AND FEE WAIVER

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. On September 29, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint¹ with the Office of the Chief Administrative Hearing Officer (OCAHO). This matter is currently poised for a hearing in July 2023 in Saipan in the Commonwealth of the Northern Mariana Islands (CNMI). *See Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432f (2023).²

¹ Complainant claims non-selection based on citizenship status and retaliation by Respondent stemming from its decision not to hire Complainant in June 2021 for an Operations Manager position which was posted as a Job Vacancy Announcement (JVA) on the CNMI Department of Labor (DOL)’s website. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432f, 6 (2023); Compl. 5, 13.

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

Presently before the Court is Complainant's May 29, 2023 Layman's Motion for Subpoena of Documents: Telephonic or Physical Testimony and May 28, 2023 Layman's Motion for Waiver from Witness Fees due to Severe Poverty.

II. COMPLAINANT'S SUBMISSIONS³

a. Motion for Subpoena

Complainant requests that the Court issue a subpoena to Mr. James Ulloa of the CNMI DOL for documents and testimony in order to "clearly demonstrate the historical and ongoing 'pattern and practice' of the Respondent[']s alleged CW-1 Visa fraud, and their [l]ack of 'good faith' hiring in this matter with regards to hiring an otherwise qualified American citizen or any American citizen." Mot. Subpoena 2.

Complainant explains he is seeking the following documents and/or testimony: (1) All emails sent to Mr. Ulloa regarding JVA 21-05-91117 for Operations Manager in order to "show the court that I have repeatedly applied for positions and that this company committed fraud" by "not following federal guidelines"; (2) All of Respondent's CNMI DOL Workforce Listings in May 2021, covering JVA 21-05-91117 in order to show that the Respondent is "in violation of the CNMI 30%min requirement of maintaining American citizen hires"; (3) All CNMI Department of Labor American citizen referrals to Respondent for JVA 21-05-91117 in order to show that Respondent had "no 'Good Faith' in hiring any qualified American citizen"; and (4) All enforcement and disciplinary actions taken against Respondent by the CNMI DOL. *Id.* Complainant states he is amenable to telephonic testimony. *Id.*

Complainant attaches an OCAHO subpoena form, requesting that Mr. Ulloa appear at the CNMI District Federal Courthouse⁴ on July 12, 2023 at 9:00a.m. for testimony and to produce and bring documents. *Id.* at 4. The subpoena request is unsigned. *Id.*

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>.

³ Respondent did not provide written matters for the Court's consideration, and has waived its opportunity to do so on this issue (Complainant's Motions for Subpoena and Fee Waiver). *See* 28 C.F.R. § 68.11(b).

b. Motion for Fee Waiver

Complainant asks the Court to waive witness fees. Mot. Fee Waiver 2. Complainant describes himself as impoverished, and attaches emails regarding emergency rental benefits and a bank account receipt. *Id.* at 2–6.

III. LAW & ANALYSIS

Pursuant to 28 C.F.R. § 68.25(a), an ALJ may issue subpoenas “upon her own initiative or upon request of an individual[.]” As explained in *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417b, 2 (2022):

OCAHO[’s] rules require that the “subpoena identify the person or things to subpoenaed, the person to who it is returnable and the place, date, and time at which it is returnable.” [28 C.F.R.] § 68.25(b). When a non-party is subpoenaed, “the requestor of the subpoena must give notice to all parties.” *Id.* (stating that receipt of the subpoena or a copy of the subpoena constitutes “notice”). The party serving a subpoena must ensure that the date to respond to the subpoena is at least ten days after the date the subpoenaed party receives the subpoena. § 68.25(c). “[S]ince granting the issuance of a requested subpoena is discretionary, the [ALJ] make[s] an appropriate decision after reviewing the requesting party’s showing of general relevance and reasonable scope of the evidence sought.” *Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385c, 2 (2021) [(internal citation omitted)]; *see also* § 68.25(a).

Here, Complainant gave notice to the opposing party, as he served his Motion and a copy of the subpoena. *See* 28 C.F.R. § 68.25(b). He also identified the person and things subpoenaed, to whom it is returnable and when/where. *See* 28 C.F.R. § 68.25(b). Moreover, by filing the request on May 29, 2023, Complainant provided adequate time to respond before the July 12, 2023 hearing date.

⁴ This is not the hearing location. The hearing will take place at the Saipan Immigration Court, located at Marina Heights II Building, Suite 301 in the Marina Heights Business Park, Saipan, MP 96950.

There are substantive and procedural issues with Complainant's request for a subpoena which preclude issuance in its current form.

First, Complainant did not sign the subpoena form. *See HDH Co., Ltd*, 16 OCAHO no. 1417b, at 4 ("By not signing the subpoena form, Complainant has not attested to the contents contained within." (citation omitted)). For this reason alone the subpoena for both documents and testimony could be denied.

Second, while Complainant's requests for documents and testimony from Mr. Ulloa may be relevant, his request (for documents in particular) is not sufficiently narrow. Complainant requests the DOL Workforce Listing for May 2021 to show that "respondent is in violation of the CNMI 30% min requirement of maintaining American citizen hires," and all enforcement or disciplinary actions taken by the CNMI DOL against Respondent; however, as Complainant is aware, this hearing will address his non-selection and retaliation claims, not Respondent's compliance with CNMI law. As Complainant has previously been informed, he may not prove his claims of discrimination or retaliation through testimony or evidence relating to alleged CW-1 Visa fraud or CNMI DOL labor practices alone. *See Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432f, at 6.

To the extent he seeks to elicit relevant testimony, Complainant notes he is unable to pay a witness fee. A witness "may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding." 28 C.F.R. § 68.25(a).

The statute, 28 U.S.C. § 1821, provides that a "witness in attendance at any court of the United States shall be paid an attendance fee of \$40 per day for each day's attendance." Even if the Court were to order Mr. Ulloa to testify (telephonically or in person), Complainant cannot pay the witness fee, and the Court cannot waive the fee based on Complainant's indigency. *See, e.g., Fahie v. Tyson*, No. 06-cv-1132, 2009 WL 361737, at *1, 2009 U.S. Dist. LEXIS 15029, at *1-2 (E.D. Cal. Feb. 11, 2009).⁵

For these reasons, Complainant's request for a subpoena is DENIED.

⁵ "In addition, the party seeking the witness's presence must tender an appropriate sum of money for the witness . . . Plaintiff has stated no willingness or ability to pay witness fees. The fact that Plaintiff is proceeding in pro per and in forma pauperis pursuant to 28 U.S.C. § 1915 neither excuses Plaintiff's requirement to pay the witness fees nor provides funds for the court to pay the witness fees...While the court will order service of subpoenas on Plaintiff's witnesses by the United States Marshals, the court cannot waive payment of the fees or expenses for those witnesses . . .".

While the Court has denied Complainant’s subpoena request, the Court is mindful of its obligation to ensure decisions are “supported by reliable and probative evidence.” 28 C.F.R. § 68.52(b); *see also* 5 U.S.C. § 556(d) (an ALJ’s decision that constitutes an “order” or imposes a “sanction” must consider “the whole record or those parts thereof cited by a party” and must be “supported by and in accordance with the reliable, probative, and substantial evidence”); *United States v. Fasakin*, 15 OCAHO no. 1375c, 3 (2021) (discussing record building in the hearing process); *see also* *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (referencing the administrative law judge’s “duty to develop the record fully” in other APA proceedings.).

The Court independently concludes the testimony of Mr. Ulloa would assist the Court in resolving this matter by providing reliable and probative evidence regarding the relevant JVA and the CNMI DOL website. As such, the Court will issue a subpoena for Mr. Ulloa’s testimony on its own initiative, *see* 28 C.F.R. § 68.25(a). A subpoena to that effect is forthcoming.

SO ORDERED.

Dated and entered on June 15, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge