

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

September 1, 2021

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2021B00019
	)	
MISAMIS CONSTRUCTION (SAIPAN) LTD.,	)	
Respondent.	)	
_____	)	

ORDER TO SHOW CAUSE - JURISDICTION

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On February 8, 2021, Complainant Zaji Obatala Zajradhara filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent Misamis Construction (Saipan) Ltd., alleging that Respondent discriminated against him because of his national origin and citizenship status, and that Respondent retaliated against him for exercising his rights under § 1324b. Compl. 8, 11.¹

On February 22, 2021, the Notice of Case Assignment (NOCA) and the Complaint were mailed to the parties. The NOCA explained filing requirements and directed Respondent to file an answer within thirty (30) days of receipt of the Complaint, noting that failure to answer could lead to default. The U.S. Postal Service website indicates service was completed on Respondent on March 5, 2021. 28 C.F.R. § 68.3(a). Thus, Respondent's answer was due no later than April 9, 2021. See 28 C.F.R. §§ 68.9(a), 68.8(c)(2).

On April 23, 2021, the Court received a letter from Respondent's Operations Manager (dated April 5, 2021). However, the Court rejected the filing. The letter did not contain a certificate of service as required by 28 C.F.R. § 68.6(a), and was ultimately considered to be an ex parte communication in violation of 28 C.F.R. § 68.36(a). Order Requiring Formal Answer 1. The

¹ Pinpoint citations to the complaint are to the internal pagination of the PDF file rather than to the page numbers printed at the bottom of the pages.

Court issued an order requiring Respondent to file a formal answer with a proper certificate of service by June 15, 2021. *Id.* at 2. To date, Respondent has not filed its formal answer.

On June 16, 2021, Complainant filed a “Layman’s Motion for Summary Judgment,” requesting that Respondent “be found in DEFAULT AND THAT [Complainant] BE GRANTED SUMMARY JUDGMENT,” and requesting back pay. Motion for Default Judgment, 1–2.

The Court construes Complainant’s filing to be a motion for default judgment given the nature of the request and the procedural posture of the case (answer not yet filed). *See generally Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 2 (2003) (construing a pro se complainant’s “Amended Charge” as a “motion for Leave to Amend his complaint,” and considering subsequent responsive filings by both parties “regardless of their nomenclature.”); *Mbitaze v. Greenbelt Police Dep’t*, 13 OCAHO no. 1345, 3 (2020) (citation omitted) (“Since Complainant is pro se, the [Administrative Law Judge] construes her complaint more liberally than a pleading filed by an attorney.”); *Halim v. Accu-Labs Rsch., Inc.*, 3 OCAHO no. 474, 765, 777 (1992) (citations omitted) (noting that for filings of pro se complainants, “less stringent standards must be applied than when a plaintiff is represented by counsel.”).²

For the reasons outlined below, the Court DEFERS entering a judgment of default in favor of Complainant and now ORDERS Complainant to show cause demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent outlined in the Complaint.

II. LEGAL STANDARDS

OCAHO rules permit the Administrative Law Judge (ALJ) to enter a judgment by default when the respondent fails to timely file an answer. 28 C.F.R. § 68.9(b). However, default judgments are generally disfavored. *See United States v. Zoeb Enters., Inc.*, 2 OCAHO no. 356, 419, 420–21 (1991) (citing federal and OCAHO precedent). Nevertheless, when a respondent fails to answer the complaint, the Court accepts the uncontested facts alleged in the complaint as true, and a grant of default judgment may thus be appropriate if the complainant pleaded sufficient facts indicating jurisdiction and a prima facie violation. *See United States v. Cont’l Forestry*

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 been 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 OCAHO website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Serv., Inc., 6 OCAHO no. 836, 140, 142 (1996) (entering default judgment in favor of the complainant because “[i]nasmuch as Respondent did not avail itself of the opportunity provided [to answer the complaint, the ALJ] accept[ed] as true all of the factual allegations of the complaint”); *Monjaras v. Blue Ribbon Cleaners*, 3 OCAHO no. 526, 1285, 1293 (1993) (citation omitted) (noting that “if the plaintiff succeeds in proving the prima facie case [by a preponderance of the evidence], the burden shifts to the defendant”).

To determine whether a complainant pled a prima facie claim of a violation under 8 U.S.C. § 1324b, the Court must first consider the threshold issue of jurisdiction before preceding to consider the substantive elements of the offense. *See Heath v. F18 Consulting*, 14 OCAHO no. 1365, 2 (2020) (citations omitted) (noting that even when the respondent fails to file a responsive pleading, “the Court may not issue a default judgment if the Court lacks subject matter jurisdiction over a complainant’s claims.”). Not only does the Court have the authority to raise the issue of whether it has jurisdiction, it also has an obligation. *Sinha v. Infosys*, 14 OCAHO no. 1373, 2 (2020) (citing *Windsor v. Landeen*, 12 OCAHO no. 1294, 4–5 (2016)).”

“‘OCAHO is a forum of limited jurisdiction[,]’ and thus can only hear cases within the jurisdiction that Congress had prescribed.” *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5 (2021) (quoting *Patel v. USCIS Bos.*, 14 OCAHO no. 1353, 3 (2020)). OCAHO has subject matter jurisdiction over unfair immigration-related employment practice only if the employer employs more than three employees. *See Facebook, Inc.*, 14 OCAHO no. 1386b, at 6–7; *see also* 8 U.S.C. §§ 1324b(a)(1)(A), 1324b(a)(2)(A). Moreover, for claims based specifically upon national origin discrimination, the statute further limits OCAHO’s jurisdiction to claims against employers employing between four and fourteen individuals. *See* 8 U.S.C. § 1324b(a)(2)(B) (noting that OCAHO lacks jurisdiction over national origin discrimination claims if the discrimination is covered under the Civil Rights Act, 42 U.S.C. 2000e-2, which covers such claims where the employer employs more than fourteen individuals). Consequently, the Court lacks subject matter jurisdiction over a national origin discrimination claim if the employer employs less than four or more than fourteen employees. *See Facebook, Inc.*, 14 OCAHO no. 1386b, at 6–7. The burden to establish jurisdiction lies with the party invoking jurisdiction. *Sinha*, 14 OCAHO no. 1373, at 2 (citing *Windsor*, 12 OCAHO no. 1294, at 2).

III. DISCUSSION AND ANALYSIS

Complainant has not met his burden to show that he is entitled to default judgment in his favor because the Complaint is devoid of information pertaining to the size of Respondent employer and thus the Court lacks sufficient information to determine whether it can exercise jurisdiction over Complainant’s claims. In both his charge to the Immigrant and Employee Rights Section and his complaint to OCAHO, Complainant indicates that he either does not know or is unable to estimate the number of employees Respondent employs. Compl. 6, 16. Complainant likewise fails to provide this information in any subsequent filing. *See generally* Mot. for Summ.

Judgment. Consequently, the Court cannot determine whether it has jurisdiction to adjudicate Complainant's § 1324b claims.

As explained above, the Court does not have jurisdiction over any of Complainant's claims if Respondent employs three or fewer employers pursuant to 8 U.S.C. § 1324b(a)(2)(A). Likewise, the Court lacks jurisdiction over Complainant's national origin discrimination claim if Respondent employs fifteen or more individuals pursuant to 8 U.S.C. § 1324b(a)(2)(B). Notably, it is Complainant's burden to provide this information. Since the complaint and subsequent filings do not assert whether OCAHO has jurisdiction to hear claims against Respondent, Complainant is ORDERED to show cause demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent.

IV. CONCLUSION

Because the Court lacks sufficient information to determine whether it can exercise jurisdiction over Complainant's claims under 8 U.S.C. § 1324b, a decision on Complainant's Motion for Default Judgment must necessarily be DEFERRED.

Complainant is ORDERED to show cause demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent outlined in the Complaint. Complainant must file his response to this Order within 30 days from the date provided in the certificate of service for this Order.

Respondent is likewise invited to submit a filing pertaining to the jurisdictional issue outlined above. Such a filing must also be submitted within 30 days from the date provided in the certificate of service for this Order.

SO ORDERED.

Dated and entered on September 1, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge