

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

ROBERT HEATH,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2021B00045
ANCILE, INC.,	)	
Respondent.	)	
	)	

ORDER OF INQUIRY

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant Robert Heath filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on July 12, 2021, against Respondent Ancile, Inc. Complainant alleges that Respondent engages in employment-based discrimination against American workers by preferring to hire individuals who possess foreign work visas. On August 11, 2021, Respondent timely filed an Answer to the Complaint denying all liability.

On November 28, 2021, Complainant filed two documents with this Court. Complainant filed a “Notification of EEOC Charges Related to this Matter, Filed by the Complainant Against Respondent that Fall Outside the Jurisdiction of this Court.” Complainant informs the Court with his filing that he “has become aware that a portion of Respondent’s likely illegal behavior related to this matter falls outside the jurisdiction of this Court” and the Equal Employment Opportunity Commission (EEOC) “has jurisdiction in the referenced matters.” Complainant attached the following exhibit to this filing: “EEOC Pre-Charge Inquiry Documents against Ancile, Inc. and Dice.com.”

Complainant also filed a “Notification of USDOL-WHD Charges Related to this Matter, Filed by the Complainant Against Respondent that Fall Outside the Jurisdiction of this Court.” Likewise, Complainant informs the Court in this filing that “a portion of Respondent’s likely illegal behavior related to this matter falls outside the jurisdiction of this Court” and the United States Department of Labor, Wage and Hour Division (USDOL-WHD) “has jurisdiction in the referenced matters.” Complainant attached a copy of the Complaint he filed with the Wage and Hour Division. He also submitted what appears to be an image of a screen capture of his job application to Ancile, Inc.

II. SUBJECT MATTER JURISDICTION OVER NATIONAL ORIGIN CLAIM

Complainant's recent filings raise a question as to whether this forum continues to have subject matter jurisdiction over the national origin claims in this matter. The Court has both the authority, and the duty, to determine *sua sponte* if it has subject matter jurisdiction. *See, e.g., Windsor v. Landeen*, 12 OCAHO no. 1294, 4-5 (2016) (citing *Horne v. Town of Hampstead*, 6 OCAHO no. 906, 946 (1997)); *Kim v. Getz*, 12 OCAHO no. 1279, 2-4 (2016).

Complainant's Complaint appears to plead a claim of employment-related discrimination based on national origin. 8 U.S.C. § 1324b(b)(2) provides that "[n]o charge may be filed respecting an unfair immigration-related employment practice [related to a complainant's national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title." In other words, when a complainant files a national origin discrimination claim under both Title VII and the INA, only one agency has subject matter jurisdiction over the claim. It appears from Complainant's recent filing that he has filed a complaint with the EEOC which may originate from the same set of facts as his national origin claim in this forum. The Court has no other information regarding Complainant's EEOC claim.

In order to determine whether OCAHO or the EEOC properly has subject matter jurisdiction over Complainant's national origin claim, Complainant shall provide the Court with the current status of the charge he filed with the EEOC.

The Court therefore ORDERS Complainant to submit a status report, no later than 21 days from the issuance of this Order, addressing the Court's subject matter jurisdiction over his claims in this forum. Specifically, but not exclusively, Complainant shall: (a) advise the Court as to whether he will maintain his Complaint in this forum, (b) inform the Court as to whether his EEOC complaint is based on the same set of facts underlying his claim in this forum, (c) advise the Court as to whether Complainant is pleading a discrimination claim based upon citizenship-status, and (d) inform the Court as to the current status of Complainant's EEOC charge (e.g., whether the EEOC charge is dismissed, presently under investigation, probable cause finding issued, in conciliation, etc.).

The Court reminds Complainant that his failure to respond to this Order may result in dismissal of the Complaint. *See* 28 C.F.R. § 68.37(b). A party shall be deemed to have abandoned a complaint if it fails to respond to orders issued by the Administrative Law Judge. *See, e.g., United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994).

Furthermore, Respondent filed a motion to dismiss on September 13, 2021, which is still under consideration. In light of Complainant's recent filings, the Court will allow Respondent to supplement its motion to dismiss to address the issue of subject matter jurisdiction. Respondent

may supplement its motion to dismiss no later than seven days after the submission of Complainant's status report.

SO ORDERED.

ENTERED:

Honorable John A. Henderson
Administrative Law Judge

DATE: February 15, 2022