

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

June 2, 2022

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00009
	)	
HDH CO., LTD,	)	
Respondent.	)	
_____	)	

ORDER ON COMPLAINANT’S MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE AND MOTION FOR ADMINISTRATIVE SUBPOENA

I. 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 December 1, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, HDH Co., Ltd., discriminated against him on account of his citizenship status and national origin. On February 17, 2022, the Court issued an Order to Show Cause to Respondent for its failure to file an answer.¹

On March 28, 2022, Complainant filed a Motion for Entry of Default Judgment. On March 30, 2022, the Court issued an Order to Show Cause on Jurisdiction. On April 25, 2022, the Court issued an Order Disclosing Ex Parte Communication.² On May 18, 2022, Complainant filed a Motion for Extension to File Response to Court and Motion for Administrative Subpoena.³

¹ To date, Respondent has not filed an answer. Respondent’s failure to file an answer contravenes the OCAHO Rules of Practice and Procedure, 8 C.F.R. pt. 68 (2022). *See Zajradhara v. HDH Co.*, 16 OCAHO no. 1417, 1 n.1 (2022) (stating that the Court rejected a faxed letter from Respondent on March 17, 2022, as it did not contain a certificate of service).

² The Court did not construe Complainant’s ex parte voicemail as a response to the Order to Show Cause on Jurisdiction. *See Zajradhara v. HDH Co.*, 16 OCAHO no. 1417a, 2–3 (2022).

³ This Order will cite Complainant’s May 2022 filing as “C’s Mot. at #.”

II. LEGAL STANDARDS

A. Extensions of Time

“OCAHO rules do not provide specific standards for granting extensions, but the standard routinely applied is good cause.” *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021) (citations omitted);⁴ *see also* Fed. R. Civ. P. 6(b)(1)(A) (stating good cause as standard for when a party requests an extension before the original time expires). Good cause requires “a demonstration of good faith on the part of the party seeking an enlargement of time and some reasonable basis for noncompliance within the time specified[.]” *Tingling*, 13 OCAHO no. 1324c, at 2 (citations omitted). Good cause also requires “a showing of diligence in attempting to meet the Court’s deadline[.]” *Id.*

B. Subpoenas

“The OCAHO rules permit an [Administrative Law Judge (ALJ)] to issue subpoenas upon a party’s request, including subpoenas for production of documents or other tangible things in their possession or under their control.” *Zajradhara v. GIG Partners*, 14 OCAHO no. 1363, 3 (2020) (citing 28 C.F.R. § 68.25(a)). The OCAHO rules require that the “subpoena identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable.” § 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 should] make 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) (quoting *United States v. Creation and Innovation, Inc.*, 3 OCAHO no. 491, 941, 941 (1993)) (citation omitted); *see also* § 68.25(a). A subpoena request “must be relevant to the claim of discrimination, and cannot be a fishing expedition for any other potential wrongdoing.” *See*

⁴ 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>.

Ogunrinu v. Law Resources, 13 OCAHO no. 1332a, 2 (2019) (citations omitted). The subpoena requestor has the burden to establish relevancy. See *United States v. Volvo Trucks N. Am.*, 7 OCAHO no. 994, 1088, 1092 (1998).

III. DISCUSSION

The Court understands Complainant’s filing as a motion to extend the response timeframe for the Order to Show Cause on Jurisdiction by thirty days, and a motion to approve the enclosed subpoena request for Vicky Benavente, Secretary for the CNMI Department of Labor (DOL).

A. Motion for Extension of Time to File Response

The Court received Complainant’s extension motion before the Order to Show Cause on Jurisdiction response deadline. Since the extension request was timely, the standard applied is good cause. The motion represents that Complainant attempted to contact CNMI DOL multiple times in April 2022, for information he argues is necessary for his case. See C’s Mot. 1–3.⁵ Complainant maintains that the requested subpoena, included with the extension motion, would inform “both my response in the jurisdiction question, and the order to show how many employees are employed at the company.” See *id.* Based on these representations, the Court finds that Complainant demonstrated good faith and diligence in his request. Moreover, this litigation is in the early stages of proceedings, and Respondent has not appeared; an extension is unlikely to prejudice Respondent at this juncture. Thus, the Court finds that Complainant has met his burden for an extension for the Order to Show Cause on Jurisdiction response deadline.

Given the multiple steps required in the subpoena process and CNMI mail delays, *supra* Part III.B, the Court will GRANT Complainant a forty-five (45) day extension for the Order to Show Cause on Jurisdiction response.

B. Motion for Administrative Subpoena

As stated above, Complainant moved the Court to issue a subpoena for Vicky Benavente, Secretary of the CNMI DOL. The enclosed subpoena request form seeks access and production of documents at the CNMI DOL office the “week of 05/16 or 05/23/22.” The form states that Complainant requests “all [Job Vacancy Announcement] (JVA) Listings, Workforce Listings, all Self-Referrals, and or Employer Comments Submitted per JVA submitted, all Employer

⁵ Complainant’s filing does not utilize page numbers. The Court will assign the filing page numbers according to the order the pages appear when viewed on Adobe PDF. The Court strongly encourages all litigants, including those appearing pro se, to include page numbers in their filings.

Statements regarding Denial of U.S. Citizens for any JVA listed, CNMI DOL Violations," ostensibly for HDH Co., Ltd. Complainant typed his name on the form, but did not sign it.

Complainant also included an addendum to his subpoena request, only some of which is directed toward Respondent. Complainant narrows the scope of requested HDH Co., Ltd. JVAs to between January 2019 and December 2022. He specifically seeks "all responses" and self-referrals by Respondent or its agent for "JVA 21-07-92008."⁶ Complainant also requests Respondent's workforce listing data, from the time of CNMI DOL system registration until January 2022.

Additionally, Complainant's form addendum requests information pertaining to non-parties. Generally, Complainant seeks "all responses to/self referrals to all JVAs within/between the timeframe of 01/2017 and 01/2022." Complainant requests all JVAs listings for Cho Jin Joo Corporation or Jin Koo Cho Corporation,⁷ Rannis Corporation, and Algeric General Services,⁸ from January 2017 to January 2022. Complainant seeks CNMI DOL violations, findings, or settlements, along with CNMI DOL workforce listing data, for Cho Jin Joo Corporation/Jin Koo Cho, Rannis Corporation, and Algeric General Services, from the time of CNMI DOL system registration until January 2022.

Complainant believes that the information described in the subpoena will help show that a pattern or practice of visa fraud "was the normal operating practic[e]" for Respondent. C's Mot. 3.

Complainant's subpoena request has multiple deficiencies that preclude issuance. By not signing the subpoena form, Complainant has not attested to the contents contained within. *See* 28 C.F.R. 68.1. Moreover, the request raises concerns of relevance and overbreadth as to the non-parties. Complainant has not demonstrated how information CNMI DOL Secretary Benavente could provide about Cho Jin Joo/Jin Koo Corporation, Rannis Corporation, or Algeric General Services would be relevant to the alleged citizenship and national origin discrimination claims against Respondent. If Complainant wishes to subpoena either Rannis Corporation or Algeric General Services for the respective OCAHO cases, he should submit separate subpoena forms.

⁶ The Court notes that this JVA number does not match that provided in Complainant's IER charge submission form, but does match that listed in Complainant's default judgment motion. *See generally* Compl.; C's Mot. Default J.

⁷ Complainant alleges that Cho Jin Joo or Jin Koo Choo Corporation is Respondent's visa applying agent, or that it processes visa documents for Respondent. *See generally* C's Motion Default J.; Compl. However, the company is not a party to this OCAHO litigation, and Complainant has not sufficiently explained its relevance to justiciable matters in this forum.

⁸ Complainant has filed separate complaints against Rannis Corporation (OCAHO Case No. 2022B00020) and Algeric General Services (OCAHO Case No. 2021B00061).

Further, the Court observes that it can be challenging to send or receive mail between CNMI and the mainland United States in an expeditious manner. In the subpoena context, this raises concerns about a person's ability to timely challenge a subpoena, and the proponent's ability to respond to a petition to modify or revoke a subpoena. *See* § 68.25(c). The OCAHO rules state that a person who does not intend to comply with a subpoena has ten (10) days after service of the subpoena to petition the ALJ to modify or revoke the subpoena. *Id.* The person who requests a subpoena has eight (8) days after receipt of that petition to submit a response. *Id.* The ALJ shall then make a final determination on the subpoena. *Id.*

Here, Complainant's form allowed two to three weeks between the date on the certificate of service (May 4, 2022) and the proposed subpoena dates (week of May 18 or May 23, 2022). The Court did not receive Complainant's filing until May 18, 2022. When coupled with mail processing, Complainant's proposed subpoena dates would not allow sufficient time for a challenge (and response) to a subpoena. The Court brings this to Complainant's attention for setting proposed subpoena dates in any future requests.

IV. CONCLUSION

The Court GRANTS Complainant's motion to extend the response deadline set in the March 30, 2022, Order to Show Cause on Jurisdiction. Complainant's response is now due forty-five (45) days from the date of this Order. The Court DENIES Complainant's motion for administrative subpoena. Complainant is not precluded from filing a new subpoena request, so long as the request comports with the OCAHO rules and is relevant to this particular OCAHO case.

SO ORDERED.

Dated and entered on June 2, 2022.

Honorable Jean C. King
Chief Administrative Law Judge