

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

August 10, 2022

ROBERT PAUL HEATH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00018
)	
TECH GLOBAL SYSTEMS, INC.,)	
Respondent.)	
_____)	

ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On January 10, 2022, Complainant, Robert Paul Heath, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Tech Global Systems, Inc., discriminated against him on account of citizenship status and national origin, and engaged in unfair immigration-related documentary practices, in violation of § 1324b.

On March 30, 2022, the Court issued an Order to Show Cause given Respondent’s failure to file a timely answer. *See Heath v. Tech Global Sys., Inc.*, 16 OCAHO no. 1419, 1–2 (2022).¹ On May 4, 2022, the Court notified the parties of communications between Complainant and an OCAHO staff member on April 8 and April 18, 2022. *See* May 4, 2022 Notice ¶ 1. The Notice disclosed the nature and substances of Complainant’s communications. *Id.* The Court invited Respondent to file “any response it deem[ed] appropriate.” *Id.* at 2 (citation omitted).

¹ 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>.

To date, Respondent has not filed an answer or otherwise appeared in this OCAHO case. The Court also has not received any further filings from Complainant.

II. LEGAL STANDARDS & DISCUSSION

This case raises concerns about a recent disclosure of apparent death, jurisdiction over Complainant's § 1324b claims, as well as Respondent's continuing failure to file an answer.

A. Disclosure of Apparent Death

On June 27, 2022, this tribunal received a copy of a "Certification of Death," which names the decedent as Robert Heath. *See Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1 (2022). The certificate lists the date of death as May 18, 2022, and the date of registration of death as June 1, 2022. *Id.* The Bureau of Vital Statistics for the State of Florida issued this certification on June 24, 2022. *Id.*

OCAHO's Rules of Practice and Procedure for Administrative Hearing allow ALJs in the forum to take "official notice" of "any material fact, not appearing in the evidence in the record, which is among the traditional matters of judicial notice." 28 C.F.R. § 68.41. When providing such notice, the ALJ shall give both parties adequate time to respond and "opportunity to show the contrary." *Id.*

This Order provides the parties in this matter with notice of the "Certification of Death" for the decedent named Robert Heath. The Court affords the parties the opportunity to dispute the death announced in this certification. The parties shall be heard on this matter through their responses to this Order. The parties may address the propriety of judicial notice, applicable law on the substitution of parties, or any other matter related to the apparent death the parties deem appropriate.

B. Jurisdiction Over Complainant's § 1324b Claims

If Complainant, or a substitute party, intends to pursue the litigation, jurisdiction must be established. As a forum of limited jurisdiction, OCAHO only hears cases within the jurisdiction prescribed by Congress. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5–8 (2021) (citations omitted) ("The exceptions at § 1324b(a)(2) are jurisdictional as they limit the scope of cases properly before an OCAHO ALJ."). OCAHO has subject matter jurisdiction over § 1324b citizenship status claims if the employer employs more than three employees. *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022) (citations omitted). OCAHO's subject matter jurisdiction for hearing § 1324b national origin allegations is narrower, limited to cases in which an employer employs between four and fourteen employees. *Id.* (citations omitted). Complainant

has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the complaint. *See Zajradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 2 (2022).

Upon review of the Complaint, it is unclear to the Court whether it has subject matter jurisdiction over Complainant's claims. *See Sinha v. Infosys*, 14 OCAHO no. 1373, 2 (2020) (citations omitted) (noting that the Court has an independent obligation to determine subject matter jurisdiction). Neither the Complaint nor IER charge form identify how many employees Respondent employs. *See* Compl. ¶¶ 4, 19. Without this information, the Court cannot determine whether it can hear Complainant's § 1324b citizenship status or national origin claims.

Therefore, Complainant is ORDERED to show cause and establish the Court's jurisdiction over his § 1324b claims within thirty (30) days of this Order, *supra* Part III. The Court permits Respondent to reply within thirty (30) days of this Order. Failure to indicate Respondent's number of employees could lead to the dismissal of Complainant's claim. *See Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, at 4.

C. Respondent's Failure to File an Answer

A party that fails to answer a complaint within the time specified is in default regardless of whether a judge enters a decision noting that. *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citing *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 90 (1998)). Respondent has not filed an answer. Accordingly, Respondent is in default. Respondent is also in violation of the March 30, 2022, Order to Show Cause that expressly required Respondent to file an answer.

As Respondent is in default, the next issue is whether the Court should now enter a default judgment. OCAHO precedent instructs that the Court may not issue a default judgment if the Court lacks subject matter jurisdiction, even if the respondent has not filed a responsive pleading. *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1170 (1997) (citations omitted); *see, e.g., Heath v. F18 Consulting*, 14 OCAHO no. 1365, 1–3 (2020); *Heath v. VBeyond Corp.*, 14 OCAHO no. 1368, 1–3 (2020). Here, default judgment is premature because the Court has not yet determined whether it has subject matter jurisdiction over Complainant's allegations. However, should Complainant establish jurisdiction, the Court puts Respondent on notice that a continued failure to defend may result in entry of default judgment. *Cf.* 28 C.F.R. § 68.37.

III. CONCLUSION

If Complainant no longer intends to pursue this litigation, Complainant shall submit a filing that states as such. In the alternative, the parties shall address the notice of apparent death. Failure to respond to this Order may result in the Court dismissing the Complaint.

Should Complainant intend to pursue the litigation, the Court hereby **ORDERS** Complainant to show cause, within thirty (30) days of this Order, demonstrating that the Court has subject matter jurisdiction over the allegations in the Complaint. Complainant may show cause through a filing that establishes how many employees Tech Global Systems, Inc., employs. Respondent may file a reply within thirty (30) days of this Order.

SO ORDERED.

Dated and entered on August 10, 2022.

Honorable Jean C. King
Chief Administrative Law Judge