

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

October 12, 2022

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

ORDER ISSUING STAY – JURISDICTIONALLY DEFICIENT COMPLAINT

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. Complainant alleges Respondent discriminated against him because of his national origin and citizenship status, and then retaliated against him for exercising his rights under § 1324b. Compl. 8, 11.¹

On September 1, 2021, the Court issued an Order to Show Cause – Jurisdiction. *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396, 4 (2021).² The Court ordered Complainant

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.

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 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 show cause demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent outlined in the Complaint.” *Id.*³

On April 19, 2022, the Court discharged the Order to Show Cause – Jurisdiction. *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396a, 3 (2022). The Court noted Complainant provided a submission indicating Respondent had the jurisdictional number of employees. *Id.*; see 8 U.S.C. § 1324b(a). The Court then stated that the operative complaint was deficient since it did not specify the number of employees Respondent had. *Id.* at 4; Compl. 2. Accordingly, the Court granted Complainant leave to amend his complaint to include jurisdictional facts. *Id.* Critically, the Court warned that “[i]f Complainant fails to amend his complaint within the allotted time [of May 23, 2022], his complaint may be dismissed for failure to plead jurisdiction as required by [28 C.F.R.] § 68.7(b)(1).” *Id.* The Complainant did not file an amended complaint.

Bearing in mind Complainant’s pro se status, the Court then issued an Order to Show Cause on July 7, 2022. *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 2021B00019 (Order to Show Cause To Complainant Regarding Amended Complaint) (hereinafter Order to Show Cause – Amended Complaint). The Court ordered Complainant to “show cause explaining why he failed to timely amend his complaint,” and to file his amended complaint. *Id.* at 2. Both filings were due by August 8, 2022. *Id.*

In the Order to Show Cause – Amended Complaint, Complainant was placed on clear notice that a failure to plead jurisdiction as required by 28 C.F.R. §68.7(b)(1) and/or for failure to respond to the Court’s orders pursuant to 28 C.F.R. § 68.37(b)(1)⁴ could lead to dismissal of the case.

³ “The Court lacks subject matter jurisdiction over a national origin discrimination claim if the employer employs less than four or more than fourteen employees.” *Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396, at 4 (citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7) (2021). Similarly, the Court lacks jurisdiction over citizenship discrimination claims if the employer employs less than four employees.

As discussed below, the Court has repeatedly identified to Complainant that the original complaint did not provide the number of employees Respondent employs, and that Complainant has the burden to establish jurisdiction. *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 2021B00019 (Order to Show Cause To Complainant Regarding Amended Complaint) (citing *Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396, at 4, and then citing *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396a, 3 (2022)).

⁴ See *Mbitaze v. City of Greenbelt*, 13 OCAHO no. 1345a, 5 (2020) (stating that the complaint should be dismissed if there is no subject matter jurisdiction); *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.* 15 OCAHO no. 1388g, 2–3 (2022) (deeming the complaint abandoned on account of the complainant’s failure to comply with court orders).

After being provided two opportunities to amend his jurisdictionally deficient complaint, this Complainant has declined to do so. The appropriate disposition of a jurisdictionally deficient complaint is dismissal of the case. *See Boyd v. Sherling*, 6 OCAHO no. 916, 1113, 1120 (1997).

Because the Court finds itself in a position wherein it is unable to execute this case disposition, it now issues a stay of these proceedings.⁵ *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021); *see, e.g., A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2–3 (2022); *Ravines de Schur*, 15 OCAHO no. 1388g, at 2; *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449, 2–3.

During the stay of proceedings for *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, the Court will not consider or adjudicate submissions filed by the parties. The parties are not precluded from contacting the Court and requesting a status update; however parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

When the stay is lifted, the case will be dismissed, and the Respondent’s pending Motion for Default Judgement (presently held in abeyance⁶) will be deemed moot.

SO ORDERED.

Dated and entered on October 12, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁵ A stay of proceedings is generally defined as “a ruling by a court to stop or suspend a proceeding . . . temporarily or indefinitely. A Court may later lift the stay and continue the proceeding.” *Heath v. I-Services, Inc.*, 15 OCAHO no. 1413a, 2 n.4 (2022) (citations omitted).

⁶ A general legal definition of abeyance is a “temporary inactivity or suppression: cessation or suspension for a period of time . . . [e.g.,] to hold the entry of summary judgment in *abeyance*.” *Abeyance*, Merriam-Webster Dictionary, (11th ed. 2020).