

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

February 20, 2024

ARTIT WANGPERAWONG,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00007
)	
META PLATFORMS, INC.,)	
Respondent.)	
_____)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for Respondent

ORDER DISMISSING NATIONAL ORIGIN ALLEGATION DUE TO LACK OF SUBJECT MATTER JURISDICTION

I. BACKGROUND

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b.

On October 3, 2023, Complainant, Artit Wangperawong, filed a complaint with the Officer of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc., alleging that Respondent discriminated against him on the basis of national origin and citizenship status in hiring and firing, and retaliated against him in violation of 8 U.S.C. § 1324b(a)(1) and (a)(5). Compl. 8. Complainant alleged Respondent employs 15 or more individuals. *Id.* at 6. Complainant also filed a complaint with the Equal Employment Opportunity Commission (EEOC) based on the same set of facts. *Id.* at 11; Immigrant and Employee Rights Section (IER) Charge 4.

On December 15, 2023, Respondent filed an Answer. Alongside its answer, Respondent filed a Motion to Compel Arbitration and to Dismiss or Stay Action (Motion to Dismiss). In its Motion to Dismiss, Respondent muses in a footnote Complainant’s national origin claim is “improper in this forum pursuant to 8 U.S.C. § 1324b(b)(2) and § 1324b(a)(1).” Mot. Dismiss 7 n.7.

On January 9, 2024, the Court held a telephonic prehearing conference. *See Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510b (2024).¹ The Court informed the parties it may not have subject matter jurisdiction over the national origin allegation. *Id.* at 2. The Court ordered Complainant to submit a filing explaining his position on subject matter jurisdiction and provided Respondent with an opportunity to file a response. *Id.*

On January 22, 2024, Complainant submitted a responsive filing. Complainant states he “completed the Unfair Immigration-Related Employment Practices Complaint Form to the best of [his] knowledge,” and “specified on page 6 that the Business/Employer has ‘15 or more employees.’” Complainant’s Position 1.

On February 1, 2024, Respondent filed a response. Respondent asserts that it employs more than fifteen employees, and Complainant filed an EEOC Charge arising out of the same facts. Response 1–6. Respondent attaches evidence² showing it has between 66,185 and 86,482 during the time period between January 2022 and September 2023, when the alleged discrimination took place. Response Exs. A, B; Response 5.

For the reasons that follow, Complainant’s national origin discrimination claim is dismissed for lack of subject matter jurisdiction.

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 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² Specifically, Respondent provide Meta Platforms Inc.’s Annual Report (Form 10-K) for FY 2022 (Ex. A); Quarterly Report (Form 10-Q) for the period ending September 30, 2023 (Ex. B); Complainant’s EEOC Charge of Discrimination (Ex. C); and an EEOC Determination and Notice of Rights dated January 29, 2024 (Ex. D).

This submission is consistent with precedent. *See Guzman v. Yakima Fruit & Cold Storage*, 9 OCAHO no. 1066, 8 (2001) (dismissing national origin discrimination claim where Respondent provided payroll information to the effect that Respondent “employed more than fourteen employees at all times material to [the] case”).

II. STANDARD OF LAW & ANALYSIS

The Court has both the authority and the duty to determine sua sponte if it has subject matter jurisdiction. *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411, 2 (2022) (citing *Windsor v. Landeen*, 12 OCAHO no. 1294, 4–5 (2016)). “In determining whether there is a factual basis to support a court’s exercise of subject-matter jurisdiction, a court is not limited to the allegations in the complaint and may consider other material in the record.” *Windsor*, 12 OCAHO no. 1294, at 5 (citations omitted). “The party invoking jurisdiction has the burden to establish that OCAHO has subject matter jurisdiction.” *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022) (citation omitted).

The INA’s prohibition of discrimination based on national origin does not apply to a person or entity that employs three or fewer employees, or “a person or entity’s discrimination because of an individual’s national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [Title VII].” 8 U.S.C. § 1324b(a)(2)(A), (B).

Title VII provides that it is an unlawful employment practice to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . national origin.” 42 U.S.C. § 2000e-2(a). Employers who employ 15 or more employees are covered by Title VII. 42 U.S.C. § 2000e(b).

For this reason, OCAHO only has jurisdiction over national origin allegations when there are fewer than fifteen (but more than three) employees. *Zajradhara*, 16 OCAHO no. 1417, at 2 (“For claims based upon national origin, OCAHO has subject matter jurisdiction if the employer employs between four and fourteen workers.”) (citing *Sinha v. Infosys*, 14 OCAHO no. 1373, 2–3 (2020), and then citing 8 U.S.C. §§ 1324b(a)(1)(A), 1324b(a)(2)(B)).

Given that the parties agree that Respondent employs well beyond fifteen employees, this Court does not have subject matter jurisdiction over Complainant’s national origin discrimination claim.³ “The appropriate disposition of a jurisdictionally deficient complaint is dismissal.” *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417c, 6 (2022) (citation omitted).

³ Because of this finding, the Court need consider Respondent’s arguments relating to Complainant’s EEOC charge. 8 U.S.C. § 1324b(b)(2) also states “[n]o charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) 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 [42 U.S.C. 2000e et seq.], unless the charge is dismissed as being outside the scope of such title.”

III. CONCLUSION

Complainant has not met his burden to establish the Court's subject matter jurisdiction over his national origin discrimination claim; consequently, Complainant's national origin discrimination claim is DISMISSED.

Unless Complainant seeks and obtains leave to amend his failure to hire claim based on citizenship status or his retaliation claim, and is granted such leave, *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c, 9 (2024), the case will proceed forward with only Complainant's termination discrimination claim based on citizenship status.

SO ORDERED.

Dated and entered on February 20, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge