

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

March 14, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00006
)	
GUAM ADVANCE ENTERPRISES, INC.,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Guam Advance Enterprises, Inc., pro se Respondent¹

ORDER DISCHARGING ORDER TO SHOW CAUSE AND
GENERAL LITIGATION ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on October 3, 2023. Complainant alleges that Respondent, Guam Advance Enterprises, Inc., discriminated and retaliated against him in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5).

After the Court did not receive a timely answer to the Complaint, the Court issued an Order to Show Cause on January 30, 2024. *See Zajradhara v. Guam Advance Enters., Inc.*, 18 OCAHO no. 1522 (2024).² The Court ordered Respondent to file an answer, as well as a submission

¹ Attorney Jeffrey A. Cook, Esq. signed Respondent’s Answer, but Attorney Cook has not filed a Notice of Appearance in this matter. The Court exercises discretion to accept the Answer, but if Attorney Cook seeks to represent Respondent in these proceedings, he must file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

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

demonstrating good cause for its failure to timely file an answer, by February 29, 2024. *Id.* at 2–3.

On March 5, 2024, Respondent filed an Answer of Guam Advance Enterprises, Inc. Respondent attached to the Answer a Declaration of Dean Patrick C. Servito, Respondent’s Administrative Officer, in which he states that he received the Court’s Notice of Case Assignment in December 2023, but did not read it correctly and “did not realize an Answer to the Complaint was to be filed within 30 days,” which was his “administrative error.” Decl. 1. Mr. Servito writes that Respondent “wishes to answer the complaint,” and requests that the answer be “received and filed” so that Respondent can “defend itself against these unfounded claims.” *Id.* at 1–2.

II. ORDER TO SHOW CAUSE

A party that does not answer a complaint within the time specified is in default, whether or not that fact is officially noted. *See United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). Therefore, before a late answer may be accepted, default must be excused. *Id.* Even so, OCAHO generally disfavors default judgment, “and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case.” *United States v. Steidle Lawn & Landscaping, LLC*, 17 OCAHO no. 1457a, 2 (2022) (citations omitted).

As a threshold matter, Respondent’s Answer and good cause submission were filed five days after the deadline set in the Order to Show Cause. However, the Court has discretion to accept late filings. *See Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.11(b)) (“[T]he [OCAHO] ALJ maintains discretion to accept pleadings within a time period he may fix.”); *see also United States v. Ricky Catalano*, 7 OCAHO no. 974, 860, 863–64 (1997) (explaining that “it was within the discretion of the [ALJ] to consider a late response.”). Here, the Court exercises its discretion and accepts Respondent’s untimely Answer and good cause showing. In doing so, the Court considers the short five-day delay, as well as the potential mail delays associated with mailing filings to and from Saipan.

The Court also finds that Respondent has shown good cause for its failure to timely file an answer in this matter. *See M.S. v. Dave S.V. Hoon-John Wayne Cancer Inst.*, 12 OCAHO no. 1305, 4–5 (2017) (discussing factors a judge should consider in determining whether “good cause” exists for vacating an entry of default). The delay does not appear to have been willful, Respondent has confirmed its intention to continue to defend this matter, and the Respondent promptly responded to the Court’s Order to Show Cause, filing an answer raising affirmative defenses. *See Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 2 (2022) (finding good cause where Respondent “admitted to its error on a procedural time requirement—that a motion to dismiss would toll the filing of an answer,” and filed an answer quickly after the Court’s order to show cause); *United States v.*

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 <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Sanchez, 13 OCAHO no. 1331, 2 (2019) (noting that OCAHO generally discourages default judgment solely on failure to meet procedural time requirements). Additionally, this case is in its early stages, and the Court does not find that Complainant will be prejudiced by the delay.

As such, the Order to Show Cause is DISCHARGED and the Court accepts Respondent's Answer. The Court will now issue a general litigation order and set a case schedule.

III. GENERAL LITIGATION ORDER

Proceedings in this case will be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, explained in OCAHO's Practice Manual, which is found within the Executive Office for Immigration Review (EOIR) Policy Manual on the United States Department of Justice Website.³ The parties must familiarize themselves with these rules, including the standards of conduct. The Court directs the parties' attention to the below:

A. Ex Parte Communications

1. Ex parte communications, which are communications between a party and the court when the opposing party is not present or has not been served a copy of the communication, are disfavored, except when made solely for scheduling purposes or requesting an extension of time and notice is provided to all parties. The Court may impose sanctions for prohibited ex parte communications. *See* 28 C.F.R. § 68.36.

B. Motions Practice

1. All filings in this matter should be accompanied by a certification indicating service to all parties of record, as well as the Immigrant and Employee Rights Section of the Department of Justice (see certificate of service below), and identifying the date and manner of service.
2. Any request for the Court to issue an order or any other request from the Court shall be made by motion which shall be made in writing. 28 C.F.R. § 68.11(a). All motions shall be paginated, including accompanying exhibits.
3. All motions, except for dispositive motions discussed in Part D, shall be limited to twenty-five pages. The page limit does not include the table of contents, table of authorities, and exhibits. Parties must file for leave of the Court and demonstrate good cause to deviate from this limitation.
4. Exclusive of dispositive motions, a movant shall make a good faith effort to confer with the opposing party in an effort to obtain an agreement before filing a motion with the Court.

³ <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

5. In filing a motion to request that an otherwise untimely filed motion should be treated as timely filed, the moving party shall submit, at the same time: 1) the motion seeking leave to untimely file, and 2) the substantive motion.

C. Motions for continuances disfavored

Any requests for extension of time related to a motion or hearing date must be in writing, and in general, are disfavored. The parties are referred to *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 4 (2021) and Federal Rules of Civil Procedure 6(b) and 16(b)(4) concerning the relevant good cause standard to amend deadlines.

D. Discovery⁴

1. The parties may begin discovery upon receipt of this order, and may obtain discovery through depositions upon oral examination or written questions; written interrogatories; requests for production of documents or things, and requests for admission. 28 C.F.R. § 68.18(a).
2. The parties must cooperate with each other in honoring discovery requests. Before bringing any discovery dispute to the Court's attention, the parties must meet and confer in good faith to attempt to resolve the matter without the Court's intervention. 28 C.F.R. § 68.23(b).
3. Pursuant to 28 C.F.R. § 68.6(b), except when the discovery is used as an exhibit for a motion or as evidence during the hearing, copies of Interrogatories, Requests for Production of Documents, Requests for Admissions, Deposition Notices and transcripts, and responses to such should not be sent to the Court.
4. The parties are expected to make a good faith effort to coordinate deposition dates with the opposing party before noting a deposition. Twenty-one days shall be deemed reasonable notice for noting a deposition.
5. All discovery requests must be issued at a sufficiently early time to assure that they are answered before the expiration of the discovery deadline set by the Court. Unless otherwise ordered by the Court, no discovery deadline will be extended because written discovery requests remain unanswered at its expiration.
6. Discovery motions, including motions to compel, must be filed within twenty-one calendar days after receipt of a deficient response or after the response to the discovery is due, whichever occurs first. Discovery motions must be accompanied by the discovery requests

⁴ Discovery is generally defined as prehearing "procedures for the exchange of information between the parties involved in the proceedings." *Discovery*, Encyc. Britannica, <https://www.britannica.com/topic/discovery-law> (last visited Dec. 6, 2022). OCAHO's rules permit the ALJ to limit the frequency and scope of discovery methods. 28 C.F.R. § 68.18(a).

and responses, along with a declaration stating that the movant has made a good faith effort to resolve the discovery dispute. 28 C.F.R. § 68.23(b).

E. Dispositive Motions

1. All dispositive motions, such as motions to dismiss and motions for summary decision, shall be limited to a maximum of fifty pages. This limit is exclusive of the cover page, index, table of cases relied upon, and exhibits. All responses to dispositive motions shall be limited to fifty pages.
2. A party may file a motion for summary decision if the party believes that some or all material facts are not in genuine dispute, there is no genuine issue of credibility, and the party is entitled to summary decision. 28 C.F.R. § 68.38(a).
3. Motions for summary decision must include a statement of the undisputed material facts and contain specific citations to referenced evidence (e.g., cite the specific pages of the exhibit in support of the argument).
4. The Court may also dismiss a complaint pursuant to 28 C.F.R. § 68.10. The Court may dismiss complaints on its own initiative, or upon a respondent's motion to dismiss a complaint.

F. OCAHO's Electronic Filing Pilot Program⁵

1. Chapter 3.7 of the Practice Manual describes OCAHO's Electronic Filing Pilot Program through which the parties can electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. The Court invites the parties to register for this program by completing the enclosed participant registration and certification forms, and returning them to OCAHO.⁶
2. Both parties must elect to become e-filers or the parties will continue to file case documents by the means set forth in 28 C.F.R. part 68 for the duration of the case.
3. Given the mail delays from Guam and Saipan to Falls Church, VA, the Court urges the parties to participate in the e-filing program and return the e-filing forms.

IV. CASE SCHEDULE

Given that the parties are in Saipan and Guam, a ten-hour time difference from this Court's location in Falls Church, VA, the Court finds that scheduling a prehearing conference is prohibitively

⁵ <https://www.justice.gov/eoir/ocaho-filing>.

⁶ The form is also available at: <https://www.justice.gov/sites/default/files/pages/attachments/2015/11/30/registration-form-and-certification.pdf>.

difficult. Accordingly, the Court will set a case schedule. If a party objects to the below schedule, it may file a motion to adjust the case schedule, along with its proposed dates, by May 11, 2024. The case schedule is as follows:

Discovery Closes: June 11, 2024

Dispositive Motion Deadline: July 11, 2024

Deadline for Responses to Dispositive Motions: August 10, 2024

Tentative Hearing: October 2024 in Saipan, CNMI

SO ORDERED.

Dated and entered on March 14, 2024.

Honorable Jean C. King
Chief Administrative Law Judge