

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

December 12, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00036
)	
E-SUPPLY ENTERPRISES,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Tiberius D. Mocanu, Esq., for Respondent

AMENDED ORDER GRANTING MOTION TO DISMISS

The Court issued an Order in the above-captioned case on November 8, 2023. This Amended Order amends the November 8, 2023, Order, and corrects solely for clerical errors.

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of 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 March 25, 2022. Complainant alleges that Respondent, E-Supply Enterprises, refused to hire him in July 2021, on account of his national origin and citizenship status. Compl. 6–7, *see also id.* at 19–20.

This case has a lengthy procedural history, summarized as of March 14, 2023 in *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438f, 1 (2023).¹

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

The relevant history to this Order is summarized as follows:

On March 14, 2023, the Court issued an Order on Complainant's Motions for Discovery and E-Filing as well as Complainant's Motion to Dismiss. *Id.* As noted in the Order, the Motion to Dismiss was "ripe for resolution" at the time, *id.* at 4, however, a final order was not issued due to the Court's inability "to execute a final case disposition," citing to *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381h, 2 n.4 (2021). *Id.* at 8. As a result, a stay of proceedings was issued, and the parties were notified that a final decision with respect to the court's jurisdiction would not be made until the stay was lifted. *Id.*

On April 12, 2023, the Court received Respondent's "Notice of Parties' Settlement and Request for Dismissal of Action." The Notice of Settlement requested "that this matter be dismissed without prejudice." NOS 1. However, Complainant did not sign the Notice of Settlement and no copy of the settlement agreement was attached to the pleading.

On April 19, 2023, the Court issued an order denying the Notice of Parties' Settlement and Request for Dismissal of Action. The denial was based on OCAHO regulations that require both parties in an action to notify the Administrative Law Judge of a settlement agreement and to both agree to the action's dismissal. Order on NOS 2; *see also* 28 C.F.R. § 68.14(a)(2). The Court directed the parties that if they were to "seek dismissal based on notice of settlement, they shall file a joint submission that comports with 28 C.F.R. § 68.14(a)(2), or attach a copy of the settlement agreement with Complainant's signature." Order on NOS 2. No such joint submission or signed settlement agreement has been submitted to the Court to date.

On October 12, 2023, the Department of Justice published an interim final rule providing for review by the Attorney General of OCAHO Administrative Law Judge (ALJ) final orders in cases arising under 8 U.S.C. § 1324b. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (codified at 28 C.F.R. pt. 68). The regulation resolved the issue identified in *A.S. v. Amazon Web Servs., Inc.* that led to the stay. As a result of this change to the regulation, this Court may proceed to a final case disposition in this matter. Accordingly, the stay is lifted.

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

II. DISCUSSION

In *E-Supply Enters.*, 16 OCAHO no. 1438f, in discussing Respondent's Motion to Dismiss, the Order set forth the relevant caselaw, discussed the arguments made by the parties, discussed the evidence presented by the parties, and concluded that this Court likely does not have jurisdiction over the Complaint's claims. That Order is incorporated into this decision by reference. Based on the discussion in that Order, the Court finds the following:

1. E-Supply Enterprises is a company whose operations began in March 2021.
2. Mr. Zajradhara applied for an administrative support position with E-Supply Enterprises on July 8, 2021, with an expected start date of October 1, 2021.
3. E-Supply Enterprises employed a maximum of three employees during the period from March 2021 to October 1, 2021.
4. OCAHO has subject matter jurisdiction over § 1324b citizenship status claims if the employer employs more than three employees, and OCAHO has subject matter jurisdiction over § 1324b national origin allegations if an employer employs between four and fourteen employees. *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022) (citations omitted).
5. Complainant has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the Complaint. *See Zafradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 2 (2022).
6. The date jurisdiction attaches for a § 1324b(a) nationality claim is on each working day in each of twenty or more calendar weeks preceding the year the alleged discriminatory act occurred, or in this case from March 2021 to July 2021. *E-Supply Enters.*, 16 OCAHO no. 1438b, at 5 n.8 (citations omitted).
7. The date jurisdiction attaches for a § 1324b(a) citizenship status discrimination claim "is to be made as of the date the alleged discrimination occurred." *See Sanchez v. Ocanas*, 9 OCAHO no. 1115, 2-3, 7-11 (2005) (citations omitted) (affording deference to legacy Office of the Special Counsel's date-of-discrimination counting rule). In this case, the selection was made between July 2021 and October 2021.
8. OCAHO does not have jurisdiction over Complainant's complaint because Complainant did not establish that the employer employed more than three individuals on the date jurisdiction attached.

III. ORDERS

The stay is LIFTED.

The Respondent's motion to dismiss is GRANTED and the case is DISMISSED.

SO ORDERED.

Dated and entered on December 12, 2023.

Honorable Jean C. King
Chief Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.