

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

December 2, 2019

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 19C00064
)	
JOSE PEDRO GARCIA-GUANEROS,)	
Respondent.)	
)	

AMENDED ORDER GRANTING MOTION TO DISMISS

An Order Granting Motion to Dismiss was initially issued in the above-captioned case on November 26, 2019. Pursuant to 28 C.F.R. § 68.52(f), this Amended Order Granting Motion to Dismiss amends the order issued on November 26, 2019, and corrects solely for clerical and typographical errors.

I. INTRODUCTION

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324c(a)(2)(B) (2017). The United States of America, Department of Homeland Security, Immigration and Customs Enforcement, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 27, 2019. Respondent’s Motion to Dismiss is now pending. Respondent argues that Complainant fails to state a claim upon which relief can be granted. Complainant subsequently filed a Motion for Leave to File Supplemental and Amended Complaint. For reasons set forth herein, Respondent’s Motion is GRANTED.

II. STANDARDS

“OCAHO’s rules permit dismissal of a complaint for failure to state a claim upon which relief may be granted[.]” *United States v. Spectrum Tech. Staffing Servs., Inc.*, 12 OCAHO no. 1291, 8 (2016) (citations omitted); 28 C.F.R. § 68.10. Section 68.10 is modeled after Federal Rule of Civil Procedure 12(b)(6). *Id.*; see 28 C.F.R. § 68.1 (“The Federal Rules of Civil Procedure may be used as a general guideline” in OCAHO proceedings.). When considering a motion to dismiss, the Court must “liberally construe the complaint and view ‘it in the light most favorable

to the [complainant].” *Spectrum Tech. Staffing Servs.*, 12 OCAHO no. 1291 at 8 (quoting *Zarazinski v. Anglo Fabrics Co.*, 4 OCAHO no. 638, 428, 436 (1994)).¹

In order to prove a violation of § 1324c(a)(2), Complainant has the burden of showing: 1) the respondent used, attempted to use, possessed, obtained, accepted, or received or provided the forged, counterfeit, altered, or falsely made document(s); 2) knowing the document(s) to be forged, counterfeit, altered, or falsely made; 3) after November 29, 1990; 4) for the purpose of satisfying any requirement of the INA. *United States v. Nicolas Tinoco-Medino*, 6 OCAHO no. 890, 720, 728 (1996).

III. DISCUSSION

The Complaint at issue consists of a single count. The count cites to § 1324c(a)(2), but the parenthetical after the citation states, “which renders it unlawful, after November 6, 1986, for a person or entity to hire, for employment in the United States, an individual without complying with the requirements of section 274C(a)(2).” Compl. at 2. The prayer for relief seeks a cease and desist order, as well as an order requiring Respondent to comply with § 1324c(a)(2) “with respect to individuals hired (or recruited or referred for employment for a fee) during a period of three years”, as well a penalty. *Id.* at 3. The Complaint contains no factual allegations, but refers to the attached Notice of Intent to Fine. The Notice of Intent to Fine states, “[b]ased upon an investigation conducted by the United States Department of Homeland Security (DHS), it is alleged that you violated section 274C of the INA,” and then has a series of boxes that refer to specific INA sections. The box citing to § 1324c(a)(2), with the correct legal parenthetical, is checked. Compl. Ex. A. The Notice of Intent to Fine does not contain any factual allegations either, however.

The OCAHO Rules of Practice and Procedure require the complaint to contain “[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred.” 28 C.F.R. § 68.7(b)(3). Thus, “[t]he only question to be addressed in considering a motion to dismiss for failure to state a claim is whether the complaint is facially sufficient to permit the case to proceed further.” *U.S. v. Mar-Jac Poultry*, 10 OCAHO no. 1148, 10 (2012). The Complaint at issue here does not meet this minimal standard. Not only is the alleged violation of law unclear and inconsistent, and the prayer for relief inconsistent with the purported charge, but there is no statement of facts. Without any factual allegations, the complaint does not state a claim, and does not serve its function to provide notice to the Respondent.

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>.

Complainant seeks leave to amend the complaint. The OCAHO Rules of Practice and Procedure permit a complainant to amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties[.]” 28 C.F.R. § 68.9(e) (2018). The Respondent did not include the amended complaint, however, and it is therefore not possible to make any determination as to whether the motion and amended complaint meet the standard, and whether the amended complaint cures the deficiencies noted above.

Accordingly, Respondent’s motion to dismiss is GRANTED. Complainant’s Motion for Leave to File Supplemental and Amended Complaint is DENIED.

IV. CONCLUSION

Construing the Complaint liberally and viewing it in the light most favorable to Complainant, the Court finds Complainant has not alleged sufficient facts to state a claim. As such, Respondent’s Motion to Dismiss is GRANTED. The Complaint is dismissed.

SO ORDERED.

Dated and entered on December 2, 2019.

Jean C. King
Chief Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such 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.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324c(d)(5) and 28 C.F.R. § 68.56.