

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

July 9, 2024

TAREQ ZIAD FOUAD ZAKARNEH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00013
)	
INTEL CORPORATION,)	
Respondent.)	
_____)	

Appearances: Tareq Ziad Fouad Zakarneh, pro se, for Complainant
Patrick Shen, Esq., for Respondent

FINAL ORDER - ORDER DISMISSING COMPLAINT

I. PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b.

On December 28, 2021, Complainant, Tareq Ziad Fouad Zakarneh, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Intel Corporation, alleging citizenship status discrimination, retaliation, and unfair documentary practice related to the employment eligibility verification process in violation of § 1324b.

On February 28, 2022, Respondent filed its Answer to Complaint. *See Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414, 1, 3 (2022).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 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

On March 29, 2022, Respondent filed Respondent’s Motion to Dismiss. Respondent presents several arguments in support of dismissal, including: Complainant’s failure to timely file his complaint with OCAHO; Complainant’s failure to timely file a charge with the Immigrant and Employee Rights Section (IER) of the U.S. Department of Justice’s Civil Rights Division; Complainant’s lack of status as a protected individual; and Complainant’s failure to state a claim as denial of access to Respondent’s premises is not a hiring violation. Mot. Dismiss 2.

On April 13, 2022, Complainant filed Complainant’s Response to Motion to Dismiss. Complainant asserts that “OCAHO has jurisdiction on the case[.]” Opp’n Mot. Dismiss 2. Germane to the timeliness arguments made by Respondent, Complainant argues only “[e]nlarging the time for the complainants claim needs to be considered due to the pandemic (COVID-19) procedure which it delayed every procedure and process in the country.”² *Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414e, 5 n. 7 (2022).

On July 20, 2022, Complainant filed a motion seeking a preliminary injunction, which was opposed by Respondent.

On August 11, 2022, the Court issued an Order Denying the Preliminary Injunction an Issuing Stay of Proceedings. 16 OCAHO no. 1414e (2022). In that Order, the Court previewed a rationale by which dismissal of the Complaint appeared inevitable; however, for reasons outlined in that Order, the Court issued a stay of proceedings. *Id.* at 4-6.

Some time elapsed between the last filing and today’s decision; however, the Court is in a position to now lift the stay³ and grant the Respondent’s Motion to Dismiss. The Complaint will be DISMISSED without prejudice.

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>.

² As the Court previously explained, “The conclusory nature of simply referencing the pandemic generally is insufficient to toll the deadline (a burden which rests with Complainant here). *Cf. Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371, 2–3 (2020) (finding the respondent demonstrated good cause related to the pandemic based on specific representations on operational disruptions as supported by a declaration).” 16 OCAHO no. 1414e at 5 n. 7.

³ “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.” *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417d, 2 (2023) (citing 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 change in the regulation resolved the potential tension between the Supreme Court’s holding in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021) and OCAHO’s review provisions for final orders in § 1324b cases. *Sinha v.*

II. LAW & ANALYSIS

To adjudicate the propriety of the preliminary injunction, the Court considered the *Winter* factors, which include (among others) how likely the moving party (i.e. Complainant) is to “succeed on the merits.” *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); see *Banuelos v. Transportation Leasing Co.*, 1 OCAHO no. 148, 1043, 1049 (1990). The Court noted, at the time, the “likelihood of success on the merits ‘is the most important’ factor, the court does not need to consider the other factors if the ‘movant fails to meet this ‘threshold inquiry[.]’” 16 OCAHO no. 1414e at 3-4; citing *Disney Enters.*, 869 F.3d at 856 (citations omitted).

Respondent’s motion to dismiss advances several legal theories; however, it highlighted one in particular when it opposed the preliminary injunction (with an eye towards the *Winter* factor analysis). Specifically, “Complainant cannot succeed on the merits of his claim [because] his claims are time-barred.” 16 OCAHO no. 1414e at 2.

The Court then analyzed the *Winter* factor of likelihood of success using this proffered argument from the Motion to Dismiss, and determined the Complaint would not be “viable” in light of this claims processing defect. *Id.* at 5-6.

In coming to this conclusion, the Court first outlined the timely filing standards for complaints.

An OCAHO complainant must file its § 1324b complaint within ninety days of receiving a letter from IER wherein IER states that the complainant may file a complaint directly with OCAHO. 8 U.S.C. § 1324b(d)(2); see 28 C.F.R. § 68.4(c);⁴ see also 28 C.F.R. § 44.303(c). That letter “is also referred to as a ‘90 day letter’ and is the functional equivalent of a ‘right-to-sue’ letter, similar to what is issued in cases before the EEOC.” *Jablonski v. Kelly Legal Servs.*, 12 OCAHO no. 1282, 7 (2016).

Prior § 1324b OCAHO cases have been dismissed for failure to timely file the complaint with OCAHO. See, e.g., *Lopez v. James Jung, Hallmark Cleaners*, 10 OCAHO no. 1171, 1–3 (2013); *Hajiani v. Ali Props., LLC, Airport Shell*, 10 OCAHO no. 1188, 7 (2013). A respondent, upon filing an appropriate motion, is entitled to judgment as a matter of law when a complaint is untimely filed and no exceptions, such as equitable tolling, apply. See *Goel v. Indotronix Int’l Corp.*, 9 OCAHO no. 1102, 11–16 (2003).

Infosys Ltd., 14 OCAHO no. 1373d, 2 (2024) (citing *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381h, 2 n. 4 (2021)).

⁴ “The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint.” 28 C.F.R. § 68.4(c).

16 OCAHO no. 1414e at 4.

The Court then considered the argument on timeliness advanced by Respondent initially in its Motion to Dismiss, specifically noting in the Order:

Respondent has timely raised a claims processing deficiency related to the date this Complaint was filed. Respondent first raised this issue in its Motion to Dismiss, stating:

OCAHO should dismiss all three claims for failure to state a claim upon which relief can be granted because Complainant failed to timely file his Complaint with OCAHO . . . Here, Complainant acknowledges he received the letter from IER required by § 44.303(b) on September 14, 2021. To be filed within the required 90-day window, Complainant should have filed his Complaint by December 13, 2021. However, OCAHO states the Complaint was filed on December 28, 2021. (Notice at ¶ 1.) Consequently, Complainant was 15 days late . . . Complaint failed to timely exercise his right to sue after IER notified him that he could file a private right of action. Consequently, the Complaint must be dismissed. Mot. Dismiss 6–7.

Id. at 4-5.

With the legal standard and Respondent’s argument in mind, the Court next turned to the record to independently consider the viability of the Complaint. The Court determined that:

The record reflects that IER emailed Complainant the 90 day letter on September 14, 2021. Compl. 13.⁵ This letter informed Complainant of his right to file his own complaint with OCAHO and if he “choose[s] to do so, [he] must file [his] complaint within 90 days of receiving this letter.” *Id.* The deadline to timely file this complaint was December 13, 2021. Complainant did not file his complaint until December 28, 2021. Notice of Case Assignment 1.

Id. at 5.

⁵ For convenience, pinpoint citations to the Complaint are to the internal page numbers of the PDF, as opposed to the varied numbering on the actual pages of the Complaint.

Finally, the Court considered whether Complainant could (or did in its Opposition to the Motion to Dismiss) raise any “compelling facts or argument supporting the propriety of waiver, estoppel, or equitable tolling of the regulatory deadline.” 16 OCAHO no. 1414e at 5. The Court found that he did not. *Id.*

With the fate of the Complaint determined by one of the theories advanced by Respondent, the Court finds it need not consider the alternate theories by which Respondent argues the Complaint could also be dismissed.

III. CONCLUSION

An OCAHO complainant must file its § 1324b complaint within ninety days of receiving a letter from IER wherein IER states that the complainant may file a complaint directly with OCAHO. 8 U.S.C. § 1324b(d)(2); *see* 28 C.F.R. § 68.4(c);⁶ *see also* 28 C.F.R. § 44.303(c). This Complainant’s failure to do so now proves fatal to his Complaint.

The Complaint is DISMISSED⁷ without prejudice.

This is a Final Order.⁸ 28 C.F.R. § 68.2 (“Final order is an order by an Administrative Law Judge that disposes of a particular proceeding . . . thereby concluding the jurisdiction of the Administrative Law Judge.”).

SO ORDERED.

Dated and entered on July 9, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁶ “The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint.” 28 C.F.R. § 68.4(c).

⁷ 8 U.S.C. § 1324b(g)(3).

⁸ 8 U.S.C. § 1324b(g)(1).

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.