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

March 12, 2024

PRAKASH SINHA, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2020B00064
INFOSYS LIMITED, Respondent.	)	

Appearances: Prakash Sinha, pro se Complainant
K. Edward Raleigh, Esq., for Respondent

ORDER DENYING MOTION FOR RECONSIDERATION

I. BACKGROUND

On April 15, 2020, Complainant Prakash Sinha filed a complaint pro se with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleged that Respondent Infosys Limited discriminated against him based on his citizenship status and national origin in violation of the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), Title 8, United States Code, Section 1324b. On December 9, 2020, Respondent filed an Answer.

On February 23, 2021, Respondent moved to dismiss the complaint, asserting that OCAHO lacks jurisdiction, that the complaint is untimely, and that Complainant failed to state a claim upon which OCAHO may grant relief. Mot. to Dismiss 1–2. Complainant timely filed a response. On November 29, 2022, this Court issued an order converting the motion to a motion for summary decision as to jurisdiction and timeliness. *Sinha v. Infosys Limited*, 14 OCAHO no. 1373b (2022).[1] Both parties filed responses.

[1] 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 on the Westlaw database "FIM-OCAHO," the LexisNexis

On March 1, 2023, this Court issued an Order Issuing Stay of Proceedings. On January 18, 2024, the Court lifted the stay and dismissed in part and granted in part Respondent's Motion to Dismiss. *Sinha v. Infosys Limited*, 14 OCAHO no. 1373d (2024). The Court held a prehearing conference on February 6, 2024 and set a case schedule.

On February 8, 2024, Complainant filed a motion to reconsider the Court's January 18, 2024 motion to dismiss, and on February 14, 2024, Respondent filed its opposition.

II. DISCUSSION

"While the OCAHO rules do not specifically address a motion for reconsideration, OCAHO caselaw has permitted reconsideration requests." *Zajradhara v. Gig Partners,* 14 OCAHO no. 1363d, 2-3 (2021), citing *Heath v. Optnation*, 14 OCAHO no. 1374a, 3 (2020) (citations omitted); *Sharma v. Nvidia*, 17 OCAHO no. 1450g, 3 (2023). 28 C.F.R. § 68.1 permits using the Federal Rules of Civil procedure as a general guideline for OCAHO cases. The "power to modify an interlocutory order is authorized by . . . Federal Rule 54(b)." *Nvidia*, 17 OCAHO no. 1450g, 3 (citations omitted).

The Fifth Circuit Court of Appeals[2] provides that for a motion to reconsider pursuant to Rule 54(b): "the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (citing to *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990), *abrogated*

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database "OCAHO," or on OCAHO's homepage on the United States Department of Justice's website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

[2] Complainant is located in Texas and alleges that the discrimination occurred in Texas; therefore the Court is considering the law of the United States Court of Appeals for the Fifth Circuit. Complainant also alleged, however, that Respondent is in New York, within the jurisdiction of the Second Circuit Court of Appeals. The standard for a Rule 54(b) motion for reconsideration is more stringent in the Second Circuit: "[interlocutory] decisions may not usually be changed unless there is 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice.'" *Off. Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir. 2003), (citing *Virgin Atl. Airways, Ltd. V. Nat'l Mediation Bd.,* 956 F.2d 1245, 1255 (2d Cir.1992)) (internal quotation marks omitted). As the motion fails under the more lenient standards of the Fifth Circuit, it stands to reason that it fails under the more exacting standards of the Second Circuit.

on other grounds by Little v. Niagara Mach. & Tool Works, Inc., 37 F.3d 1069, 1075 n.14); *see also McClung v. Gautreaux*, No. 11-263, 2011 WL 4062387, at *1 (M.D. La. Sept. 13, 2011) ("Yet, because the district court is faced on with an interlocutory order, it is free to reconsider its ruling 'for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law.'" (citations omitted)).

In the January 18, 2024, Order Dismissing in Part and Granting in Part Respondent's Motion to Dismiss, the Court, in relevant part, determined that Respondent's claims of citizenship status discrimination as to any position for which he applied before June 2019, was barred because he had not filed the charge with United States Department of Justice, Civil Rights Division's Immigrant and Employee Rights Section (IER) within 180 days of the alleged discrimination as required by 8 U.S.C. § 1324b(d)(3). *Infosys Limited*, 14 OCAHO no. 1373d at 7-9. However, as to the positions for which Complainant applied in June 2019, the Court found that he knew or reasonably should have known he was not hired by August 10, 2019, when he wrote a letter accusing the company of discrimination. *Id*. at 9. While this was still outside of the 180 days, the time limitation was subject to equitable tolling because he timely filed with the Equal Employment Opportunity Commission. *Id.* at 9-10.

Complainant argues that the court erred as to the positions before June, that he was in waiting mode during June 2019 "and after" for decisions for positions for which he was interviewed in April, May 2019 and before. Mot. Reconsider 1. He explains that the job offers are held until the contracts with the clients are finalized, at which point Respondent notifies candidates as to the status of their offer. *Id*. at 1. Other clients need replacement consultants immediately, and Respondent would search the database, set up a phone interview, and for jobs such as these, Complainant was told that he would be hearing from the recruiter quickly, but he never did, "probably" because Respondent preferred H-1B candidates. *Id.* at 2.

Respondent argues that Complainant cannot meet the standard for reconsideration, noting that he has not introduced any new facts or law, or facts or law that he could not have determined at the time, nor has he shown that the Administrative Law Judge failed to consider material facts. Opp. Mot. Reconsider at 2-3. Respondent argues that the Court ruled for Complainant as to the June positions. *Id*. at 4.

The Court finds no basis to reconsider its ruling. The Court considered Complainant's explanations about the hiring timelines and agreed that he may have held out hope for the June applications into August, but not the earlier applications, particularly after he received a rejection in late May for a position for which he had applied in April, and he continued to apply for others. Complainant's statement does not compel a different result as he states some decisions are made quickly, but for the others that may take longer, he does not provide timeframes. He only states specifically that he held out hope into June, with a vague reference to "and after", well outside of the 180-day timeframe (August 16, 2019).

Complainant's motion for reconsideration is denied.

SO ORDERED.

Dated and entered on March 12, 2024.

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Honorable Jean C. King
Chief Administrative Law Judge