

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

US TECH WORKERS, ET AL.,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2024B00040
)	
BOSTON CONSULTING GROUP (BCG), INC.,)	
Respondent.)	
)	

Appearances: John D. Miano, Esq., Representative for Complainant
Dawn M. Lurie, Esq. and Leon Rodriguez, Esq., for Respondent¹

ORDER ON MOTION FOR LEAVE TO REPLY

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

On May 24, 2024, Respondent filed a Motion to Dismiss the Complaint. Complainant filed its opposition to this motion on May 29, 2024, styled “Response to Respondent’s Motion to Dismiss as Motion for Partial Summary Judgment.” Thereafter, Respondent filed a motion requesting leave to file a reply brief in support of its Motion to Dismiss on June 10, 2024. Complainant responded to this motion on June 12, 2024.

Respondent requests the Court’s leave to file a reply brief to address several issues raised in Complainant’s opposition to its motion to dismiss: 1) Respondent clarifies that Complainant seeks a declaratory judgment, not summary judgment, which Respondent argues is improper in this venue; and 2) Respondent argues that Complainant has not satisfied the burden for summary decision. Mot. Leave Reply 2–5.

Complainant submitted a filing styled as a response to Respondent’s motion for leave to reply; however, rather than addressing whether the Court should provide Respondent the

¹ On July 26, 2024, Respondent’s filed a motion to withdraw Attorney Edward North as counsel as this matter, as he has left the employ of Seyfarth Shaw LLP. The Court grants this request pursuant to 28 C.F.R. § 68.33(g). The appearances line and service list have been updated accordingly.

requested leave, the filing instead responds to arguments raised by Respondent in its reply. Effectively, Complainant’s submission constitutes a sur-reply.

In its April 17, 2024 Order Setting Prehearing Conference and General Litigation Order, the undersigned provided that the parties may file replies seven days after a memorandum in opposition to a motion, and that reply briefs were limited to 15 pages. Order Setting Prehr’g Conf. & Gen. Lit. Order 5. Accordingly, Respondent’s reply brief has been accepted, and will be given due consideration in resolving the pending Motion to Dismiss.

As to Complainant’s sur-reply, the Court did not provide for such filings in its General Litigation Order, and Complainant did not seek the Court’s leave to submit such a filing. Notwithstanding these procedural defects, the Court will exercise discretion to accept the filing. See United States v. Space Expl. Techs. Corp., 18 OCAHO no. 1499a, 4 (2023)² (“[T]he decision whether to allow a reply or sur-reply ‘is solely within the judge’s discretion.’” (quoting Diaz v. Pac. Mar. Assoc., 9 OCAHO no. 1108, 3 (2004))). Complainant’s submission addresses new arguments raised in Respondent’s reply filing, and provides additional briefing on unique questions of law, building a record to assist the Court in reaching a determination. See, e.g., Sharma v. NVIDIA Corp., 17 OCAHO no. 1450j, 4 (2023) (granting request for leave to file a sur-reply “[i]n the interest of developing the record”); United States v. Walmart Inc. (Bethlehem), 17 OCAHO no. 1475d, 2 (2023) (granting leave to file a reply to “respond to new arguments” raised in a response brief).

Respondent’s motion for leave to file a reply is GRANTED, and Complainant’s sur-reply filing is ACCEPTED. The June 10, 2024 stay of proceedings otherwise remains in place.

SO ORDERED.

Dated and entered on August 1, 2024.

John A. Henderson
Administrative Law Judge

² Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.