

U.S. Department of Labor

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Issue Date: 26 April 2007

CASE NO: 2006-LCA-0026

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,**
Prosecuting Party,

v.

API ACCOUNTING & COMPUTER CONSULTING,
Respondent.

Appearances:

For the Prosecuting Party:

Lawrence Brewster and Mary K. Alejandro

For the Respondent:

Tina Chiang

Before: Anne Beytin Torkington
Administrative Law Judge

DECISION AND ORDER

This matter arises under the Immigration and Nationality Act (“INA”) H-1B visa program, 8 U.S.C. § 1101(a)(15)(H)(i)(b) and § 1182(n), and the implementing regulations promulgated at 20 C.F.R. § 655.700, *et seq.* The Act defines various classes of aliens who may enter the United States for prescribed periods of time and for prescribed purposes under various types of visas. 8 U.S.C. § 1101(a)(15). One such class, the “H-1B” worker, is permitted to enter the United States on a temporary basis to work in special occupations. 8 U.S.C. § 1101(a)(15)(H)(i)(B); 20 C.F.R. § 655.700. An employer seeking to hire a nonimmigrant worker under an H-1B visa must obtain certification from the United States Department of Labor by filing a Labor Condition Application (“LCA”). 20 C.F.R. § 655.700(b).

PROCEDURAL HISTORY

On June 24, 2005, the Administrator of the U.S. Department of Labor Wage and Hour Division (“Administrator”) received a complaint alleging that API Accounting & Computer Consulting (“API”) had not complied with the H-1B wage requirements of the INA. In July 2005, Mr. Joseph Liu, a federal investigator for the Wage and Hour Division, conducted an investigation at API. On June 21, 2006, the Administrator issued its determination charging API with willful failure to pay wages, as required under 20 C.F.R. § 655.731(a), to Ms. Xianqing (“Pamela”) Pang and Ms. Leqi Wang. (PX X). The Administrator sought back wages for these violations. The Administrator also assessed a civil money penalty of \$7,500 and recommended debarment of API from the H-1B program for at least two years, pursuant to 20 C.F.R. § 655.810, as a result of API’s willful failure to pay the required wages.

On June 27, 2006, API filed its request for a hearing with the Department of Labor’s Office of Administrative Law Judges, pursuant to 20 C.F.R. § 655.820. A hearing was held on September 29, 2006 in Long Beach, California. Ms. Tina Chiang, owner of API, appeared on behalf of the company. The Prosecuting Party’s exhibits (“PX”) A through Y were admitted into the record. API’s exhibits (“RX”) 1 through 8 were admitted into the record, with the following exceptions:

- (1) Page A-24 of RX 2 was excluded;
- (2) Page A-1 of RX 3 was held in abeyance pending the testimony of Ms. Chiang and Ms. Pang;¹
- (3) Page B-9 of RX 3 was held in abeyance pending the testimony of Ms. Chiang and Ms. Wang;²
- (4) Pages C-1 through C-22 of RX 3 were withdrawn; and
- (5) Page A-7 of RX 5 was excluded.

Ms. Chiang’s June 27, 2006 letter indicating the issues she wanted to bring on appeal was admitted as ALJX-1. (TR 35-36). The Administrator’s response to the pre-hearing order was admitted as ALJX-2. (TR 35-36). Ms. Chiang’s opening statement was admitted as ALJX-3. (TR 156-157).

At the conclusion of the hearing, the parties were ordered to file their post-hearing briefs by December 1, 2006.

On April 12, 2007, I issued an order to the Wage and Hour Administrator (ALJX-3) to clarify the record regarding the methods used to calculate Ms. Pang and Ms. Wang’s back wages. Both parties filed responses to this order, which are hereby admitted into the record as ALJX-4 (Administrator’s) and ALJX-5 (API’s).

¹ The Prosecuting Party objected to Page A-1 of RX 3 on the basis that Ms. Pang never received the job offer letter therein. I do not find any great prejudice in allowing this to come into the record. Thus, I admit this page as evidence.

² I admit Page B-9 of RX 3 for the same reason as noted in footnote 1.

ISSUES

The issues presented in this case are:

- (1) Whether API willfully failed to pay proper wages to Ms. Pang and Ms. Wang during the course of their employment, as required under 20 C.F.R. § 655.731(c);
- (2) Whether API accepted payment from Ms. Pang and Ms. Wang for filing fees and attorney's fees associated with their H-1B applications, as prohibited by 20 C.F.R. § 655.731(c)(10)(ii), thereby further depressing Ms. Pang and Ms. Wang's wages below LCA requirements;
- (3) Whether API should be able to deduct the cost of meals provided to Ms. Pang and Ms. Wang during tax season in partial satisfaction of its wage obligations;
- (4) Whether the Administrator properly assessed against API the \$7,500.00 civil money penalty and two-year debarment from the H-1B program for its willful violations of wage requirements; and
- (5) Whether API violated the LCA filing notice requirements of 20 C.F.R. § 655.734.

SUMMARY OF DECISION

In light of the testimony presented at the hearing and the evidence in the record, I find that API willfully failed to pay proper wages to Ms. Pang and Ms. Wang during the course of their employment, and thus owes back wages in the amounts of \$3,528.86 for Ms. Pang and \$3,094.66 for Ms. Wang. API also accepted payment and/or failed to reimburse Ms. Pang and Ms. Wang for fees associated with their H-1B applications, which further reduced their wages below LCA requirements. API thus owes \$2,235.00 to Ms. Pang and \$2,385.00 to Ms. Wang. API cannot deduct the cost of meals provided to Ms. Pang and Ms. Wang during tax season in partial satisfaction of its wage obligations. I further find that the Administrator properly assessed against API the \$7,500.00 civil money penalty and two-year debarment from the H-1B program for its willful violations of wage requirements. Finally, I find that API failed to provide notice of LCA filings.

SUMMARY OF THE EVIDENCE

API is a professional accounting and computer consulting firm in San Fernando, California. (PX O). It has a division in the City of Industry, California. API is organized into four departments – Audit and Accounting, Tax, Computer Consulting, and Litigation Support.

On August 3, 2004, Ms. Pang began working as a staff accountant trainee at API's City of Industry office. (TR 100-101). On August 10, 2004, Ms. Chiang filed an H-1B LCA for Ms. Pang with the U.S. Department of Labor, Employment and Training Administration (PX L, N). The application stated that Ms. Pang would work as a full-time staff accountant for API at the City of Industry office. It listed the actual wage as \$13.54 per hour and the prevailing wage as \$13.42 per hour. Thus, Ms. Pang was supposed to be paid \$13.54 per hour for regular time and \$20.31 per hour for overtime. It also specified an employment period from October 1, 2004 to

September 30, 2007. On October 12, 2004, the U.S. Citizenship and Immigration Services (“USCIS”) approved the H-1B petition filed on behalf of Ms. Pang. (PX R). Ms. Pang terminated her employment at API in May 2005. (TR 99).

On May 9, 2005, Ms. Wang began working as a staff accountant at the API’s City of Industry Office. (TR 133). On May 24, 2005, Ms. Chiang filed an H-1B LCA for Ms. Wang (PX M, O). The application stated that Ms. Pang would work as a full-time staff accountant for API at the City of Industry office. It listed the actual wage as \$12.50 per hour and the prevailing wage as \$11.99 per hour. Thus, Ms. Wang was supposed to be paid \$12.50 per hour for regular time and \$18.75 per hour for overtime. It also specified an employment period from May 20, 2005 to May 19, 2008. Ms. Wang terminated her employment at API on September 20, 2005. (TR 33).

Mr. Joseph Liu

Mr. Liu is a federal investigator for the Wage and Hour Division. In July 2005, he conducted an investigation at API in response to a complaint alleging violations of H-1B wage requirements. (TR 42-43). Mr. Liu spoke with Ms. Chiang and the employees, and also reviewed time sheets, payrolls, paycheck stubs, and other supporting documentation. (TR 44).

Mr. Liu testified that, as a result of the investigation, he found that API had not paid proper wages to Ms. Pang and Ms. Wang. He further found that API improperly accepted H-1B application fees from Ms. Pang and Ms. Wang, which further depressed their wages below the required amount specified on their LCAs. (Administrator’s Proposed Findings of Fact and Conclusions of Law, hereinafter “Administrator’s Findings”). Using the documents and statements from his investigation, Mr. Liu calculated back wages of \$6,213.86 due to Ms. Pang and \$4,704.66 due to Ms. Wang. (PX T; Administrator’s Findings). These amounts included underpaid wages, unauthorized deductions, and unreimbursed expenses.³

Mr. Liu also determined that API’s failure to pay the required wages was a willful violation of 20 C.F.R. § 655.731(c). At the hearing, he testified that Ms. Chiang never admitted to violating the wage requirements and provided falsified records in an attempt to prove API’s compliance with the regulations. (TR 71-72, 75-76). He also testified that the company always paid the employees for the correct number of overtime hours during tax season.⁴ (TR 72-73). Thus, pursuant to 20 C.F.R. § 655.810, he assessed a \$7,500 civil money penalty against API and also recommended that API be disqualified from the H-1B program for at least two years. (TR 74-78; Administrator’s Findings).

Mr. Liu also testified that during his investigation, he did not see any postings of LCA filings or find any other form of LCA notification at the City of Industry office. (TR 73-74). He

³ For Ms. Pang, the total amount of back wages was derived from \$3,528.86 in underpaid wages + \$2,385 in unauthorized deductions + \$300 in unreimbursed travel expenses. For Ms. Wang, the total was derived from \$3,094.66 in underpaid wages + \$1,450 in authorized deductions + \$160 in unreimbursed travel expenses.

⁴ However, Mr. Liu emphasized that he was not stating that the correct LCA wage rate was paid for these overtime hours.

stated that he did not see any bulletin board in the office for such posts. (TR 260). Mr. Liu further stated that when he emphasized the importance of the posting requirement, Ms. Chiang responded that the file of each H-1B applicant was accessible to anyone who wished to look at it. (TR 74). He testified that Ms. Chiang then also told her secretary that “from now on, we need to put this [LCA] documentation out on the board.” (TR 259-260). Mr. Liu testified that according to statements from the H-1B workers and other employees, none of them knew what the H-1B workers’ hourly rates were. (TR 259-260). From these observations, Mr. Liu determined that API violated 20 C.F.R. § 655.734 by failing to provide notice of LCA filings. (Administrator’s Findings). While no civil money penalty was assessed for this alleged violation, API was ordered to comply with the notice requirement in the future. (PX X).

Ms. Xianqing (Pamela) Pang

Ms. Pang was an accountant at API’s City of Industry office from August 2004 to May 2005. (TR 99). At the hearing, Ms. Pang testified that the employees were required to work from 8:30 AM to 6:00 PM, and would usually spend 20 to 30 minutes eating lunch in the office, as opposed to one hour. (TR 101-102). She asserted that although the employees would often work overtime, Ms. Chiang instructed them to only record eight hours per day on their time sheets. (TR 101, 111). Ms. Pang stated that she followed Ms. Chiang’s instructions and would only record eight hours on her timesheet, even if she worked more hours. (TR 265). However, Ms. Pang testified that during tax season in 2005, she was paid for the correct number of overtime hours because the employees used a time card to clock in and out of the office. (TR 112).

Ms. Pang also testified that she was being paid at approximately \$10 per hour for regular time and \$15.58 per hour for overtime. (TR 108-109). She stated that her regular hourly pay rate when she left API was \$11.53. (TR 110). Although API filed a 1099 form for miscellaneous income for Ms. Pang in 2005, Ms. Pang asserted that she never received the form or the amount indicated on the form. (TR 111; RX 1, A-25). Ms. Pang further testified that she paid Shiang Law Firm directly for fees associated with her H-1B petition and was never reimbursed for these payments. (TR 113-116).

Ms. Pang also testified that during tax season, API would provide meals three days a week to its employees. (TR 116). Ms. Pang stated that she believed API provided meals during tax season to keep employees in the office, and that the employees would sometimes work while eating their meals. (TR 116-117). Ms. Pang also testified that while working for API, she drove a total of approximately 800 or 900 miles to client offices using her own vehicle and spent an estimated \$300 on gasoline. (TR 118). She stated that she was never reimbursed for the amount she spent on gasoline. (TR 118).

Ms. Leqi Wang

Ms. Wang was an accountant at API’s City of Industry office from May 9, 2005 to September 20, 2005. (TR 133). At the hearing, Ms. Wang testified she would typically work from 8:30 AM to 6:00 PM and would normally eat lunch in the office in less than one hour. (TR 135-136). According to Ms. Wang, another co-worker told her to record an eight-hour workday

plus an hour and a half for lunch on her timesheet, or else her boss would become angry. (TR 273). Ms. Wang stated that she followed these instructions even if the hours recorded did not accurately reflect the hours she worked. (TR 273). Ms. Wang also testified that Ms. Chiang told her she would be paid \$1,800 per month, and that she did not know what she was supposed to be paid per hour. (TR 137). Although API filed a 1099 form for Ms. Wang in 2005, she asserted that she never received the amount of money indicated on the form. (TR 138; PX K).

Ms. Wang further testified that Ms. Chiang had her sign a promissory note for a loan in the amount of \$1,435 on June 6, 2005 for attorney's fees associated with her H-1B application. (TR 140; PX H). Ms. Wang stated that the loan amount was deducted from her paychecks. (TR 140). She also testified that she never received meals from the company, and that she did not work at API during tax season. (TR 142). Ms. Wang stated that while working for API, she spent approximately \$160 on gasoline for business-related trips using her own vehicle, and was never reimbursed for this amount. (TR 142-144).

Ms. Tina Chiang

Ms. Chiang is the owner of API and represented the company in this case. (TR 153). At the hearing, Ms. Chiang testified that she calculated Ms. Pang and Ms. Wang's wages from the hours they recorded in their timesheets and paid those wages accordingly. (TR 160). According to her testimony, API actually paid Ms. Pang and Ms. Wang more than the amount required by H-1B regulations. (TR 163, 167; RX 1, A-3, B-5). Ms. Chiang testified that any discrepancies between the amounts indicated on the timesheets and the paychecks were due to Ms. Pang and Ms. Wang turning in their timesheets late. (TR 208-209, 239). Ms. Chiang also asserted that sometimes API would pay employees in advance for their work. (TR 239-240).

Ms. Chiang also presented the company's employee manual, which states that the office hours should be 8:30 AM to 6:00 PM including a one-hour lunch break. (RX 4, A-2). The manual also states that employees should keep to an eight-hour work schedule per day. (RX 4, A-2). This employee manual was signed by both Ms. Pang and Ms. Wang. (RX 4, A-1, B-1). Ms. Chiang also stated that even though the company manual specifies a one-hour lunch break, employees usually take one and a half hours for lunch, and she has no control over where her employees go during this period of time. (TR 219-221).

According to Ms. Chiang, API has a practice of paying employees in advance before they start working, as long as they sign the employee manual and promise to work for the company. (TR 223). Ms. Chiang testified that before Ms. Pang began working at API, she loaned Ms. Pang \$2,221.50 in cash because she "needed money." (TR 164, 216). This is the amount reported on Ms. Pang's 1099 form, and Ms. Chiang asserted that Ms. Pang should have received this form. (TR 164; RX 1, A-25).

Ms. Chiang testified that she also loaned \$1,435 to Ms. Wang, but due to unpleasant experiences with loaning money to Ms. Pang, she had Ms. Wang sign a promissory note. (TR 167; PX H). However, Ms. Chiang did not keep any other record of this loan. (TR 218). Although this amount was exactly the same as the total amount paid to Shiang Law Firm for filing fees associated with Ms. Wang's H-1B application, Ms. Chiang asserted that there was no

relationship between the two amounts, and that she paid the law firm directly for the filing fees. (TR 228-229; PX Q).

Ms. Chiang also testified that API's provision of meals to its employees during tax season was not related to a desire to keep the employees in the office. (TR 236). She further asserted that API staff accountants rarely went by themselves to client offices, and if they did, they were reimbursed for their driving expenses. (TR 187).

Ms. Chiang further testified that API would always post notices of LCA filings on a bulletin board in the office for at least thirty days and would also place copies on the desks of all the employees. (TR 193-194). She contended that every employee in the City of Industry office knew that Ms. Pang and Ms. Wang were H-1B workers, along with their job titles, responsibilities, and pay rates. (TR 193).

Mr. Yawu Chiang

Mr. Chiang is Ms. Chiang's husband. (TR 6). He has approximately 20 years of experience in the computer industry, and handles the networking and software installation at API. (TR 251). He is not an actual employee at API, but would assist the company a few days a week during tax season. (TR 253-254, 256). At the hearing, Mr. Chiang testified that he set up the company's timesheet software. (TR 251). He stated that the default pay rate for every employee is \$8, and the default overtime pay rate is \$12. (TR 251-252). He never made any changes to the system because he did not know each employee's pay rate. (TR 251). He also stated that he would sometimes have to manually modify an employee's hours if he or she forgot to sign out, although he could not recall if Ms. Pang or Ms. Wang ever asked for such modification. (TR 252).

Mr. Chiang testified that most employees would come into the office between 8:30 and 9:00 AM and would still be working when he left at approximately 4:30 PM. (TR 255-256). He stated that employees would spend between 30 minutes to an hour for lunch. (TR 257). He further testified that API would purchase meals for him during tax season, but that he never received a 1099 form for meal credit. (TR 253, 257).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Willful Failure to Pay Wages as Required by 8 U.S.C. § 1182(n)(1)(A) and C.F.R. § 655.731

A. Failure to Pay Required Wages

An employer of an H-1B worker must pay the worker either the actual wage or the prevailing wage, whichever is higher, for the entire period of authorized employment. 20 C.F.R. § 655.731(a). The actual wage is "the wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question." 20 C.F.R. § 655.731(a)(1). The prevailing wage is the wage rate "for the occupational classification in the area of intended employment" and must be determined as of the time the LCA is filed. 20 C.F.R.

§ 655.731(a)(2). Back wages due to H-1B workers are equal to the difference between the amount that they should have been paid and the amount that they were actually paid. 20 C.F.R. § 655.810(a).

According to their LCAs, Ms. Pang and Ms. Wang should have been paid \$13.54 and \$12.50 per hour for regular time, respectively, during their employment with API. (PX L, N). The API employee manual specified work hours of 8:30 AM to 6:00 PM, plus one hour for lunch, which equals eight and a half hours of paid work and one hour of unpaid lunch. (RX 4, A-2). Mr. Liu testified that API employees stated that they regularly worked over the required eight hours and thirty minutes. (TR 52). However, he gave API “the benefit of the doubt” and calculated Ms. Pang and Ms. Wang’s wages based on a daily work schedule of eight hours and thirty minutes. (TR 51-52).

Based on these calculations, Mr. Liu determined that Ms. Pang should have been paid at least \$23,695.18 during her employment with API. (TR 61; PX T; Administrator’s Findings). Ms. Pang’s W-2 form indicates that she received \$7,165.38 in gross income from API in 2004 and \$13,000.94 in 2005, for a total of \$20,166.32. (PX E; Administrator’s Findings). These wage amounts are corroborated by Ms. Pang’s paycheck stubs. (PX A, U, V). Thus, according to Mr. Liu’s calculations, Ms. Pang was paid \$3,528.86 less than what she was entitled to receive under the provisions of her LCA. (Administrator’s Findings).

Mr. Liu also determined that Ms. Wang should have been paid at least \$10,496.97 during her employment with API. (TR 69; PX W; Administrator’s Findings). Ms. Wang’s W-2 form indicates that she received \$7,402.31 in gross income from API in 2005. (TR 69-70; PX J). These wage amounts are corroborated by Ms. Wang’s paycheck stubs. (PX G). Thus, according to Mr. Liu’s calculations, Ms. Wang was paid \$3,094.66 less than what she was entitled to receive under the provisions of her LCA. (Administrator’s Findings).

In response to these findings, Ms. Chiang testified that she calculated Ms. Pang and Ms. Wang’s wages from the hours they recorded in their timesheets, and that API actually paid more than what was required under the LCA provisions. (TR 160, 163, 166-67; RX 1, A-3, B-5). Specifically, Ms. Chiang asserted that Ms. Pang should have been paid \$14,559.56 for regular time and \$2,781.45 for overtime as an H-1B worker. (TR 163; RX A-3). However, she stated that Ms. Pang had actually been paid \$16,779.76 for regular time and \$3,105.54 for overtime. (TR 163; RX A-3). Similarly, Ms. Chiang asserted that Ms. Wang should have been paid \$6,950 in wages, but she was actually paid \$7,402.31. (TR 166-167; RX B-5).

The first issue is whether Ms. Pang and Ms. Wang were paid for the correct number of hours that they worked. The second issue is whether Ms. Pang and Ms. Wang were paid at the correct hourly rate. Based on the hearing testimony and the evidence in the record, I find that Ms. Pang and Ms. Wang were not paid for the correct number of hours of work and were not paid at the correct hourly rate.

1. Number of Hours Worked

The first issue is whether Ms. Pang and Ms. Wang were paid for the correct number of hours that they worked. In *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the Supreme Court set out a burden-shifting framework for wage-and-hour claims brought under the Fair Labor Standards Act. While this case does not arise under that Act, the principles in *Mt. Clemens* have been adopted by the Administrative Review Board in LCA cases. See *Administrator, Wage and Hour Division v. Ken Technologies, Inc.*, 2004 WL 2205233 (Adm. Rev. Bd. 2004); *Administrator, Wage and Hour Division v. Wings Digital Corp.*, 2004-LCA-000030 (ALJ) (Mar. 21, 2005). In *Mt. Clemens*, the Court held that “where the employer’s records are inaccurate or inadequate and the employee cannot offer convincing substitutes,” an employee simply needs to (1) prove that she has performed work for which she was improperly compensated and (2) produce “sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.” 328 U.S. at 687. The burden then shifts to the employer to produce “evidence of the precise amount of work performed” or evidence that negates “the reasonableness of the inference to be drawn from the employee’s evidence.” *Id.* at 687-88.

Under the *Mt. Clemens* framework, the Prosecuting Party has the burden of proving that Ms. Pang and Ms. Wang performed work for which they were improperly compensated. The Prosecuting Party also has the burden of producing sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. I find that the Prosecuting Party carried its burden.

The Prosecuting Party does not dispute that Ms. Pang and Ms. Wang worked during the hours indicated on their timesheets. (TR 160-161). However, the Prosecuting Party contends that Ms. Pang and Ms. Wang worked *more* hours than what they filled out on their timesheets. (TR 161). There is substantial evidence that the employees at API did not record the correct number of hours on their timesheets due to Ms. Chiang’s instructions. Both Ms. Pang and Ms. Wang testified that Ms. Chiang had instructed employees to record only eight work hours, plus one and a half hours for lunch, regardless of how many hours they actually worked or how long their lunch break was. (TR 111, 265, 273). Ms. Pang and Ms. Wang both stated that they would take less than one hour for their lunch break, and that they followed Ms. Chiang’s instructions to only record an eight-hour workday. (TR 102, 136, 265, 273). Their testimony is corroborated by their timesheets, in which most days reflect eight working hours. (RX 1). Mr. Liu testified that API’s employees told him that they usually work more than nine hours and thirty minutes with less than an hour for lunch. (TR 52). His testimony supports and adds credence to Ms. Pang and Ms. Wang’s testimony.

I conclude, based on the preponderant evidence, that API’s timesheets are inaccurate or inadequate records of the hours that Ms. Pang and Ms. Wang actually worked. In light of all the testimony, I find that Ms. Pang and Ms. Wang established a reasonable inference that they usually took less than one hour for their lunch break and worked at least eight and a half hours per day.

The burden now shifts to API to produce evidence to negate the reasonable inference that Ms. Pang and Ms. Wang usually took less than one hour for their lunch break and worked at least eight and a half hours per day. Ms. Chiang did not come forward with sufficient evidence to counter this reasonable inference. Mr. Liu testified that he gave API “the benefit of the doubt” in calculating work hours. (TR 51-52). Using the hours noted in the API employee manual, Mr. Liu calculated Ms. Pang and Ms. Wang’s back wages using a workday of eight and a half hours of work plus one hour for lunch. (TR 51). Given these findings, I defer to Mr. Liu’s use of these hours for his calculations. Thus, I conclude that API’s timesheets are inaccurate records of the hours that Ms. Pang and Ms. Wang actually worked.

2. Hourly Rate

The second issue is whether Ms. Pang and Ms. Wang were paid at the correct hourly rate. Based on the preponderant evidence, I conclude that they were not. The Prosecuting Party contends that Ms. Pang and Ms. Wang were not paid the correct hourly regular and overtime rates, even for the hours indicated on their timesheets. (TR 160-162). The evidence supports this assertion. First, Ms. Chiang did not explain how API came to pay Ms. Pang and Ms. Wang more than their LCA wage requirements, as she asserted, if the company was simply multiplying the hours indicated on their timesheets with their appropriate LCA pay rates. Second, Ms. Chiang failed to provide a convincing explanation for the many discrepancies between the amounts indicated on Ms. Pang and Ms. Wang’s timesheets and their paycheck stubs and W-2 forms. In many instances, there is significant under-payment for each pay period. Thus, the wages indicated on API’s timesheets do not correspond to the amounts indicated on Ms. Pang and Ms. Wang’s paycheck stubs. Also, even though Ms. Pang’s timesheets indicate an overtime pay rate of \$20.31 per hour, several of her paycheck stubs indicate an overtime pay rate of \$15.57, \$15.58, or \$17.30. (RX 1; PX A). This documentation is corroborated by Ms. Pang’s testimony that she was being paid approximately \$15.58 per hour for overtime, as opposed to the required rate of \$20.31 per hour. (TR 108-109).

This evidence supports the “reasonable inference” standard required under *Mt. Clemens*. The burden now shifts from the Prosecuting Party to API to produce evidence of the precise amount of work that Ms. Pang and Ms. Wang performed or evidence that negates the reasonableness of the inference that they were underpaid. API is unable to carry its burden.

First, Ms. Chiang produced no evidence or explanation for the incorrect overtime pay rates for Ms. Pang. Then, Ms. Chiang asserted that any discrepancies between the amounts indicated on the timesheets and the paychecks were due to Ms. Pang and Ms. Wang turning in their timesheets late, and that API would pay the amounts owed during subsequent pay cycles. (TR 205). However, she produced no evidence at all, let alone “precise” evidence, that these additional amounts were actually paid to Ms. Pang and Ms. Wang. (TR 213). Furthermore, the total amounts from Ms. Pang and Ms. Wang’s paycheck stubs are the same as the amounts indicated on their W-2 forms, inevitably leading to the conclusion that they did not receive any additional wages. (PX A, U, V).

In addition, Ms. Chiang justified the discrepancies by testifying that API would sometimes pay employees in advance before they began working for API or before they actually performed work for a certain pay period because the employees “needed money,” testimony which strains credibility. (TR 216, 223, 238-240). In any case, this would still not explain the overall under-payment of wages to Ms. Pang and Ms. Wang.

Finally, Ms. Chiang testified in several instances that she reported some of Ms. Pang and Ms. Wang’s employee income on 1099 forms as opposed to W-2 forms. (TR 215-217, 243). Her testimony seems to imply that she believed it was acceptable to report certain income amounts on the 1099 form rather than on the W-2 form. (TR 243). While it is not within my jurisdiction to rule on tax violations, it is my responsibility to assess credibility; and I find that Ms. Chiang’s actions lower her credibility. I note that it was improper for API to report any of Ms. Pang and Ms. Wang’s wages as miscellaneous income, and Ms. Chiang does not offer a convincing explanation for why certain amounts were indicated as miscellaneous income instead of as employee compensation. Moreover, even when the amounts indicated on the 1099 forms are added to the amounts indicated on the W-2 forms, the totals still do not equal what Ms. Pang and Ms. Wang should have been paid over the duration of their employment (according to Mr. Liu’s calculations).

I conclude that the Prosecuting Party carried its burden, but API did not. Accordingly, I find that API did not pay Ms. Pang and Ms. Wang their proper wages as required under 20 C.F.R. § 655.731(c), and thus owe back wages according to Mr. Liu’s calculations in the amounts of \$3,528.86 for Ms. Pang and \$3,094.66 for Ms. Wang.

B. Acceptance of LCA Filing Fees

The employer may not receive, and the H-1B worker may not pay, any part of the USCIS filing fee for the H-1B petition, whether directly or indirectly, voluntarily or involuntarily. 20 C.F.R. § 655.731(c)(10)(ii). No deduction from or reduction in wages for the purpose of a rebate of any part of this fee is permitted. *Id.* Furthermore, an employer may not require an H-1B worker to pay the costs associated with preparing and filing the LCA or H-1B applications. *See* 20 C.F.R. § 655.731(c)(9)(iii)(C) (stating that an authorized deduction cannot be a recoupment of the employer’s business expenses, which include “attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer,” such as preparing and filing LCA and H-1B petitions).

The evidence shows that Ms. Pang paid a total of \$2,235 in fees associated with her H-1B application. Ms. Pang testified that she paid \$1,185 in cash and \$1,050 in checks directly to Shiang Law Firm for fees associated with her H-1B petition and was never reimbursed for these payments. (TR 113-116). These amounts are corroborated by copies of checks made out by Ms. Pang to Shiang Law Firm and receipts from the law firm. (PX B, C, D). While Ms. Chiang has produced many copies of checks from API to Shiang Law Firm (RX 8), there is no documentation to show that API ever reimbursed Ms. Pang for the payments that she made to the law firm, or that API ever paid the law firm directly for Ms. Pang’s H-1B fees.

The evidence shows that Ms. Wang paid a total of \$2,385 in fees associated with her H-1B application. First, Ms. Wang testified that she paid \$950 in H-1B attorney's fees to Shiang Law Firm by a check dated May 9, 2005, and was never reimbursed by API for this amount. (TR 139; PX I). Then, on May 19, 2005, API received a letter from Shiang Law Firm requesting payment of \$1,435 in fees associated with Ms. Wang's H-1B petition. (PX Q). Ms. Wang further testified that Ms. Chiang had her sign a promissory note for a loan in the amount of \$1,435 on June 6, 2005 for attorney's fees associated with her H-1B application. (TR 140; PX H). Ms. Wang also stated that she did not repay this loan because the amount was simply deducted from her paychecks. (TR 140). Her testimony is corroborated by several of her paycheck stubs (dated June 6, June 18, and July 5, 2005) that reflect deductions for a "loan," which Ms. Wang asserted was for repayment of the promissory note. (PX G; TR 141). Ms. Wang also stated that she never received reimbursement for these "loan" deductions from her wages. (TR 142).

In rebuttal at the hearing, Ms. Chiang acknowledged that she loaned \$1,435 to Ms. Wang. (TR 224-225). However, she maintained that API had paid Shiang Law Firm directly for fees associated with Ms. Wang's H-1B application, while Ms. Wang used the \$1,435 loan for additional H-1B consultation with the law firm. (TR 228-229). This explanation is unconvincing in light of the relative proximity of the dates of the Shiang Law Firm letter and the promissory note, and the fact that the amount of the loan was exactly the same as the amount the Shiang Law Firm charged for Ms. Wang's H-1B fees. Ms. Chiang did not provide proof that Ms. Wang was reimbursed for her payments to the law firm. She also did not offer an explanation for the "loan" deductions from Ms. Wang's paychecks or provide evidence that Ms. Wang was reimbursed for these deductions. Under 20 C.F.R. § 655.731(c)(13), the employer has the burden of establishing the legitimacy and purpose of a loan to an employee when the employer makes deductions to the employee's wages for repayment of the loan, with reference to the standards set out in 20 C.F.R. § 655.731(c)(9)(iii). Ms. Chiang has not carried this burden. I conclude that Ms. Chiang failed to establish the legitimacy and purpose of the "loan" deductions from Ms. Wang's paychecks.

Accordingly, I find that API failed to reimburse and/or improperly accepted \$2,235 from Ms. Pang and \$2,385 from Ms. Wang for fees associated with preparing and filing their H-1B petitions, which further reduced their wages below LCA requirements.

C. Other Unauthorized Deductions

The Act specifies the types of wage deductions that employers are permitted to make with respect to H-1B workers. 20 C.F.R. § 655.731(c)(9). Any unauthorized deductions taken from an H-1B worker's wages will be considered as a non-payment of that amount of wages, and will result in back wage assessment. 20 C.F.R. § 655.731(c)(11). If the employer willfully makes unauthorized wage deductions, he or she may face civil money penalties and/or disqualification from the H-1B program. *Id.* Furthermore, if the employer depresses the H-1B worker's wages below the required wage by imposing on the employee any of the employer's business expenses, that amount will be considered an unauthorized deduction even if the matter is not shown in the employer's payroll records as a deduction. 20 C.F.R. § 655.731(c)(12).

1. Cost of Meals

Although API did not make deductions to Ms. Pang and Ms. Wang's wages for the cost of meals provided to them during tax season, API contends that it should be able to deduct these meal costs in partial satisfaction of its wage obligations. However, this contention fails because the meal costs would not constitute an "authorized deduction" under 20 C.F.R. § 655.731(c)(9). First, since API has not provided any documentation to show that Ms. Pang or Ms. Wang gave written authorization for meal deductions from their wages, the deductions were not "made in accordance with a voluntary, written authorization." *See* 20 C.F.R. § 655.731(c)(9)(iii)(A).

API has only presented multiple pages of receipts for food allegedly purchased by the company for its employees. (RX 7). These receipts do not show which food items were purchased specifically for Ms. Pang or Ms. Wang, and thus cannot establish the actual cost of meals provided to either of them. This does not constitute the necessary documentation.

Second, the evidence establishes that the meals were provided primarily for the benefit of API, rather than for the benefit of the employees. 20 C.F.R. § 655.731(c)(9)(iii)(B) states that food allowances are considered to be benefits for the employee, "unless the circumstances indicate that the arrangements for the employee's ... food are principally for the convenience or benefit of the employer." Here, there is ample testimony that API provided meals exclusively during tax season, the busiest time for the company. (TR 116-117, 229-232). Although Ms. Chiang asserted that API's provision of meals to its employees during tax season did not have anything to do with a desire to keep employees in the office, I do not find her testimony credible in light of her inability to explain why API only provides meals during tax season and not at any other time of the year. (TR 232-236).

Finally, Ms. Wang testified that she never received meals from API, and Ms. Chiang agreed. (TR 142, 224). I find this testimony credible in light of the fact that Ms. Wang did not work at API during tax season, which was the only time that the company provided meals to its employees. Since Ms. Wang never received meals from API, those deductions cannot be taken from her wages.⁵

Thus, I find that API cannot credit the cost of meals provided to Ms. Pang and Ms. Wang during tax season in partial satisfaction of API's wage obligations.

2. Travel Expenses

The Administrator found that API owed unreimbursed travel expenses to Ms. Pang and Ms. Wang. (PX X). Both Ms. Pang and Ms. Wang testified that while working for API, they would use their own vehicles to drive to client offices, and were never reimbursed for the amounts spent on gasoline. (TR 118, 143-144). Ms. Pang testified that she drove approximately 800 or 900 miles to client offices, spending an estimated \$300 on gasoline. (TR 118). Ms.

⁵ Ms. Chiang also testified that she did not include meal payments in Ms. Wang's 1099 form. (TR 224). Ms. Wang's 1099 form indicates non-employee compensation in the amount of \$1,643 for 2005. (PX K). There is not enough evidence in the record to determine how API arrived at this figure, which further reduces Ms. Chiang's credibility.

Wang testified that she spent approximately \$160 on gasoline for business-related travel. (TR 144). However, no documentation or other evidence was presented to corroborate these expenses or to show that Ms. Pang and Ms. Wang ever made deliveries to the client offices they mentioned during their testimony.

In response, Ms. Chiang testified that API staff accountants rarely drove by themselves to make deliveries to client offices, and that she would accompany them on any such trips. (TR 187).⁶ However, she also stated that employees might go to client offices during their lunch hour. (TR 221). She further testified that API would reimburse the employees for their business expenses. (TR 187).

In light of the fact that I generally find Ms. Pang and Ms. Wang's credibility greater than that of Ms. Chiang's, I believe that Ms. Pang and Ms. Wang did make some business-related trips with their own vehicles and were not reimbursed for the amounts spent on gasoline. However, there is a lack of documentation or other evidence, such as receipts, on the exact amounts Ms. Pang and Ms. Wang spent on gasoline for business-related travel. According to the principles established in *Mt. Clemens*, the employee has the burden of proving that she has in fact performed work for which she was not properly compensated and of producing "*sufficient evidence to show the amount and extent of that work* as a matter of just and reasonable inference." 328 U.S. at 687 (emphasis added). Ms. Pang and Ms. Wang did not provide sufficient evidence to show the exact unreimbursed amounts they spent on gasoline for business-related trips. They also did not provide evidence to show when such trips were made and for what purpose. I also cannot reasonably infer that the amounts they indicated during their testimony are accurate, given the lack of other corroborating documentation. Thus, I find that their back wage calculations should not reflect these additional amounts – \$300 for Ms. Pang and \$160 for Ms. Wang – as unreimbursed travel expenses.

D. Willful Violation of Regulations

In sum, I find that API failed to pay proper wages to Ms. Pang and Ms. Wang. API did not pay Ms. Pang and Ms. Wang at the proper regular or overtime rates for the hours they worked. Furthermore, API improperly accepted H-1B fees from both employees, which further depressed their wages below LCA requirements. These figures should be reflected in Ms. Pang and Ms. Wang's back wage calculations.

I have determined that the employer failed to pay required wages. The next issue is whether the violations were willful. A "willful failure" to follow the wage requirement is defined as "a knowing failure or a reckless disregard with respect to whether the conduct was contrary to section ... 655.731." 20 C.F.R. § 655.805(c). *See also McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988) (standard for willfulness is "that the employer knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute"). Only violations, as set forth under 20 C.F.R. § 655.805(a)(2) that are willful allow for the assessment of civil money penalties and disqualification of the employer from the H-1B program. 20 C.F.R. § 655.805(b).

⁶ For purposes of discussion only, I note that Ms. Chiang also asserted in her post-trial brief that Ms. Pang and Ms. Wang had never visited the client offices that they specifically mentioned in their testimony.

In light of all the testimony presented at the hearing and the evidence in the record, I find that API willfully failed to pay wages as required under the applicable LCAs. First, there is evidence indicating that API knew what its obligations were under the LCAs. On behalf of API, Ms. Chiang signed Ms. Pang and Ms. Wang's LCAs. (PX L, M). On each LCA application, there is the following statement immediately above the signature line:

H. Declaration of Employer

By signing this form, I, on behalf of the employer, attest that the information and labor condition statements provided are true and accurate; that I have read sections E and F of the cover pages (Form ETA 9035CP), and that I agree to comply with the Labor Condition Statements as set forth in the cover pages and with the Department of Labor regulations (20 C.F.R. part 655, Subparts H and I).

(PX L, page D-8-c; PX M, page D-19-c).

Additionally, the following warning is directly next to the signature line: "Making fraudulent representations on this Form can lead to civil or criminal action under 18 U.S.C. 1001, 18 U.S.C. 1546, or other provisions of law." Thus, Ms. Chiang should have known what wages were due to Ms. Pang and Ms. Wang, and apparently she did, as evidenced by her testimony at the hearing. She correctly stated Ms. Pang and Ms. Wang's required hourly rates, used the correct rates in her submitted timesheets, and continually maintained that API had paid them more than their required wages over the course of their employment. (TR 163, 167; RX 1, A-3, B-5). Based on this evidence, I conclude that Ms. Chiang knew the wage requirements for Ms. Pang and Ms. Wang.

Second, there is evidence indicating a "knowing failure" to follow the H-1B wage requirements. Throughout the investigation and the hearing, Ms. Chiang continued to assert that API had paid Ms. Pang and Ms. Wang more than the wage requirements indicated in their LCAs, and had never accepted fees associated with their H-1B petitions, despite evidence contradicting these claims. (TR 163, 167, 228-229). Moreover, while making these assertions, Ms. Chiang could not provide any documentation to prove that Ms. Pang or Ms. Wang received the correct amount of wages for the hours they worked or that they were ever reimbursed for their payment of H-1B fees. When asked to explain wage discrepancies or H-1B fees payments, Ms. Chiang's answers were often incoherent or irrelevant, reducing her credibility as a witness. In addition, the record reflects wage violations at all times with the exception of tax season, further reducing API's credibility.

Furthermore, there is reason to believe that the employees at API did not record the correct number of hours on their timesheets due to Ms. Chiang's instructions. Both Ms. Pang and Ms. Wang testified that Ms. Chiang had instructed employees to record only eight hours, plus one and a half hours for lunch, regardless of how many hours they actually worked or how long their lunch break was. (TR 111, 265, 273). Ms. Pang and Ms. Wang both stated they followed Ms. Chiang's instructions. (TR 265, 273). Their testimony is corroborated by their timesheets, in which most days reflect eight working hours. (RX 1). Their testimony is also corroborated by Mr. Liu's testimony that other employees at API told him they usually worked nine hours and thirty minutes everyday, with less than an hour for lunch. (TR 51-52).

Taken together, this testimony contradicts Ms. Chiang's assertion that employees only worked for eight hours a day and took at least one hour for lunch. (TR 220, 232). This evidence also indicates that API willfully falsified timesheets and payroll records. Further, instructing employees to only record a certain number of work hours constitutes a deliberate violation of the law. *See Cunningham v. Gibson Electric Co., Inc.*, 34 F.Supp.2d 965, 977 (N.D. Ill. 1999) (holding that an employer's instructions to an employee that the employee would not be compensated for more than 40 hours established an intentional violation of the Fair Labor Standards Act).

For all of the above reasons, I find that API's failure to pay required wages was willful. Thus, assessment of a civil monetary penalty and debarment from the H-1B program are appropriate.

1. Civil Monetary Penalty

In determining the amount of civil money penalties to be assessed, the Administrator must consider the following non-exhaustive list of factors: (1) the employer's previous history of violations; (2) the number of workers affected by the violations; (3) the gravity of the violations; (4) good faith compliance efforts by the employer; (5) the employer's explanation of the violations; (6) the employer's commitment to future compliance; and (7) the extent to which the employer achieved a financial gain from the violations, or the potential financial loss, injury, or adverse effect with respect to other parties. 20 C.F.R. § 655.810(c).

I find that Mr. Liu's assessment of a \$7,500 civil money penalty is proper. At the hearing, Mr. Liu testified as to how he and his district director calculated a civil money penalty of \$7,500 as a result of API's willful failure to pay proper wages to Ms. Pang and Ms. Wang. (TR 74-78). A willful failure to pay proper wages may be penalized for up to \$5,000 per violation. 20 C.F.R. § 655.810(b)(2)(i). According to the non-exhaustive list of factors stated above, Mr. Liu testified that (1) API had no history of previous violations; (2) only two workers were affected by the violations; (3) API provided falsified records while asserting compliance with wage requirements, which contributed to the gravity of the violations; (4) API did not provide enough evidence showing a good faith effort of compliance; (5) API did not offer convincing explanations for evidence that allegedly established violations; (6) API never admitted violating any regulations, and thus did not agree to future compliance; and (7) API achieved a financial gain as a result of these violations by "taking advantage" of Ms. Pang and Ms. Wang as H-1B workers. (TR 75-78). Considering that API had no previous record of violations, Mr. Liu and his district director decided to reduce the civil money penalty from a maximum possible \$10,000 (\$5,000 per employee) to \$7,500. (TR 74-75).

I find that Mr. Liu correctly analyzed the factors outlined in the regulations for assessment of a civil money penalty. His deduction of \$2,500 from the maximum possible penalty of \$10,000 indicates that he considered both the factors that weighed in favor as well as against API: the fact that API has no record of prior violations and that only two H-1B workers were affected in this case, balanced against API's lack of good faith compliance, attempts to conceal violations, and financial gain at the expense of the H-1B workers. Thus, I conclude that \$7,500 is a reasonable penalty.

2. Debarment from H-1B Program

Mr. Liu also found that API should be disqualified from the H-1B program for at least two years due to its willful violations of wage requirements. (Administrator's Findings). The regulations require an employer's H-1B disqualification for at least two years if the employer willfully violates wage requirements. 20 C.F.R. § 655.810(d)(2). Since I have found that API willfully failed to pay proper wages to Ms. Pang and Ms. Wang, I also find that API will be debarred from participation in the H-1B program for two years.

II. Failure to Provide Notice of LCA Filing as Required by 20 C.F.R. § 655.734

An H-1B employer must provide notice of the filing of an LCA. 20 C.F.R. § 655.734(a). The employer must either (1) post a hard copy notice of filings in at least two conspicuous locations at each place of employment where any H-1B worker will be employed, or (2) provide electronic notification to employees in the occupational classification for which H-1B workers are sought, at each place of employment where any H-1B workers will be employed. 20 C.F.R. § 655.734(a)(1)(ii)(A) and (B). The notice shall indicate "that H-1B nonimmigrants are sought; the number of such nonimmigrants the employer is seeking; the occupational classification; the wages offered; the period of employment; the location(s) at which the H-1B nonimmigrants will be employed; and that the LCA is available for public inspection at the H-1B employer's principal place of business in the U.S. or at the worksite." 20 C.F.R. § 655.734(a)(1)(ii). Notification must be given on or within 30 days before the date the LCA is filed and should remain posted or available for a total of 10 days. 20 C.F.R. § 655.734(a)(1)(ii)(A)(3) and (a)(1)(ii)(B).

Ms. Chiang testified that API always posted notices of LCA filings on a bulletin board in the office for at least thirty days and would also place copies on the desks of all the employees. (TR 193-94). However, Mr. Liu testified that during his investigation, he did not see any bulletin boards, postings of LCA filings, or any other form of LCA notification at the API City of Industry office. (TR 74, 259-260). He further stated that when he emphasized the importance of the posting requirement, Ms. Chiang responded that the file of each H-1B applicant was accessible to anyone who wished to look at it, and then also told her secretary that they would have to post LCA documentation in the future. (TR 259-260). Based on this testimony, I conclude that Ms. Chiang believed that API's compliance with the H-1B public access file requirement in 20 C.F.R. § 655.760(a) also satisfied the company's obligation to provide notice of LCA filings. While employers are required to make a filed LCA and supporting documentation available for public examination at their place of business under 20 C.F.R. § 655.760(a), that is a separate requirement that does not satisfy the LCA notice requirements of 20 C.F.R. § 655.734(a).

As evidence that API had provided notice to all its employees about Ms. Pang and Ms. Wang's H-1B status, Ms. Chiang also contended that every employee in the City of Industry office knew that Ms. Pang and Ms. Wang were H-1B workers, along with their job titles, responsibilities, and hourly pay rates. (TR 193). The evidence shows otherwise. Mr. Liu testified that neither the H-1B workers nor the other employees knew what the H-1B workers'

hourly rates were. (TR 259). In addition, Ms. Wang testified that she did not know what her hourly rate was supposed to be (TR 137).

Under 20 C.F.R. § 655.734(b), the employer has the burden of developing and maintaining sufficient documentation to prove its compliance with the notice requirements. API has failed to produce any documentation or other evidence to prove when and where any LCA notices were posted. Furthermore, Ms. Chiang's testimony is directly contradicted by Mr. Liu and Ms. Wang's testimony. I find Mr. Liu and Ms. Wang's testimony more credible than that of Ms. Chiang. Thus, in light of Mr. Liu's investigation, observations, and conversations with Ms. Chiang and the other API employees, I find that API failed to provide notice of LCA filings to its employees as required by 20 C.F.R. § 655.734(a).

CONCLUSION

In conclusion, I find that API willfully failed to pay proper wages to Ms. Pang and Ms. Wang during the course of their employment, and thus, owes back wages in the amounts of \$3,528.86 for Ms. Pang and \$3,094.66 for Ms. Wang. API also accepted payment and/or failed to reimburse Ms. Pang and Ms. Wang for fees associated with their H-1B applications, which further reduced their wages below LCA requirements. API thus, owes \$2,235.00 to Ms. Pang and \$2,385.00 to Ms. Wang. API cannot deduct the cost of meals provided to Ms. Pang and Ms. Wang during tax season in partial satisfaction of its wage obligations. I further find that the Administrator properly assessed against API the \$7,500.00 civil money penalty and two-year debarment from the H-1B program for its willful violations of wage requirements. Finally, I find that API failed to provide notice of LCA filings.

ORDER

IT IS HEREBY ORDERED THAT:

1. API shall pay back wages to Ms. Pang in the amount of \$5,763.86. This amount includes \$3,528.86 in back wages and \$2,235.00 in unauthorized deductions.
2. API shall pay back wages to Ms. Wang in the amount of \$5,479.66. This amount includes \$3,094.66 in back wages and \$2,385.00 in unauthorized deductions.
3. API shall pay to the Department of Labor a civil penalty in the amount of \$7,500.00, in accordance with 20 C.F.R. § 655.810(b)(2)(i), for its willful failure to pay proper wages to Ms. Pang and Ms. Wang.
4. API shall be disqualified from approval of any H-1B petitions for the duration of two years, pursuant to 20 C.F.R. § 655.810(d)(2), as a result of its willful violation of wage requirements.

5. API shall comply with the LCA notice requirements under 20 C.F.R. § 655.734 in the future.

A

ANNE BEYTIN TORKINGTON
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 655.845(a), any party dissatisfied with this Decision and Order, may file a Petition to Review to the Administrative Review Board, U.S. Department of Labor, Room S-4309, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210. The petition for review must be received by the Administrative Review Board within thirty (30) calendar days of the date of issuance of the administrative law judge's Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).