



Issue Date: 20 November 2007

In the Matter of:

Santosh Abhyankar,

Complainant,

Case No. 2007-LCA-00022

v.

Patni Computer Systems, Inc.,

Respondent.

DECISION AND ORDER DISMISSING COMPLAINT AS UNTIMELY

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).

On October 12, 2007, this tribunal issued an Order to Show Cause, directing the parties to show cause regarding the timeliness of the complaint as well as the merits of the complaint. In addition, although not a party to the instant claim, the Wage and Hour Division was invited to submit a response. Employer submitted its response on November 9, 2007. Neither Complainant nor the Wage and Hour Division submitted a response.

In its response, Employer argued that the complaint should be dismissed as untimely. Employer pointed out that the federal regulations require that a request for a hearing must be received by the Chief Administrative Law Judge within fifteen (15) calendar days of the date of the Administrator’s Determination. The applicable regulations so provide, and no cause has been shown why they should not be given such effect. In this case, the Administrator’s Determination was issued on March 21, 2007. The Complainant’s letter requesting a hearing is

dated June 10, 50 days after the date that the Administrator's Determination was issued. Therefore, Complainant's request for a hearing was untimely, and the complaint must be dismissed.

SO ORDERED.

A

Edward Terhune Miller
Administrative Law Judge