



Issue Date: 27 November 2007

CASE NO.: 2007-LCA-00016

In the Matter of

MAJID BORUMAND,
Prosecuting Party,

v.

MERRILL LYNCH & CO., INC.,
Respondent.

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This matter arises under the Labor Condition Application provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101 and § 1182 (“the INA”), and the implementing regulations set forth at 20 C.F.R. Part 655, et seq. Under the INA, an employer may hire nonimmigrant workers from “specialty occupations” to work in the United States for prescribed periods of time. 8 U.S.C. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700. Such workers are issued H-1B visas by the Department of State upon approval by the Immigration and Naturalization Service (or “INS”). 20 C.F.R. § 655.705(b). In order for the H-1B visa to be issued, the employer must file a Labor Condition Application (or “LCA”) with the Department of Labor, and detail, inter alia, the wage rate and working conditions for the H-1B employee. 8 U.S.C. § 1182(n)(1)(D); 20 C.F.R. §§ 655.731 and 732. Once the Department of Labor certifies the LCA, INS can then approve the nonimmigrant’s H-1B visa petition. 8 U.S.C. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700(a)(3).

Workers hired under H-1B visas must be paid prevailing wages pursuant to 20 C.F.R. § 655.805(a)(2). Employers are required to comply with reporting requirements set forth at 20 C.F.R. §§ 655.730 and 655.731; notice posting requirements set forth at 20 C.F.R. § 655.805(a)(5); and record retention requirements of 20 C.F.R. §§ 655.731(b), 655.738(e), 655.760(c).

In the instant matter, Majid Borumand (“Complainant”) was hired by Merrill Lynch (“Respondent”) pursuant to Respondent’s H-1B visa application. Complainant filed a complaint with the Administrator, Wage and Hour Division (“the Administrator”), alleging violations of provisions of the INA. The Administrator investigated Complainant’s allegations, and by Notice of Determination issued on April 19, 2007, advised that no violation was found. Complainant appealed that conclusion and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The matter was assigned to me for hearing.

Hearing in this matter is scheduled to commence on December 11, 2007 at 10:00 o'clock a.m. On November 19, 2007, the parties filed a joint motion for dismissal of the case upon Complainant's withdrawal of his appeal and request for a hearing.

I find it appropriate to accept the stipulations of the parties, and GRANT Complainant's motion to withdraw his appeal and request for a hearing. I further GRANT the parties' joint motion to dismiss the matter with prejudice. This Order of Dismissal constitutes the Final Order of the Secretary.

So ORDERED.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey