

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 16 September 2015**

Case No.: 2014-LCA-00014

In the Matter of:

**ADMINISTRATOR,  
WAGE AND HOUR DIVISION,**  
Prosecuting Party

and

**WENDOLEN ALMONTE  
and ROSALINA QUILARIO**  
Complainants

v.

**RAINA MASSEY and  
CARE WORLDWIDE, INC.**  
Respondents

**DECISION AND ORDER GRANTING COMPLAINANTS'  
MOTION FOR SUMMARY DECISION**

The above-captioned matter was brought under § 212(n) of the Immigration and Nationality Act, 8 U.S.C. § 1182(n), as amended (“INA”), and the implementing regulations set forth at 20 C.F.R. Part 655, subparts H and I. The INA permits employers to hire non-immigrants in “specialty occupations” to work in the United States for prescribed periods of time. 20 C.F.R. § 655.700. Employers seeking to hire such workers, commonly referred to as H-1B nonimmigrants, must obtain certification from the Department of Labor by filing a Labor Condition Application (“LCA”). The LCA stipulates the wage levels and working conditions that the employer provides the H-1B nonimmigrant. After securing certification, and upon approval by the Department of Homeland Security, the nonimmigrant is issued a visa and may begin work. 20 C.F.R. § 655.705(a), (b).

In addition to the conditions set forth in the LCA, the INA requires employers to pay H-1B nonimmigrants as much as it pays other similarly experienced and qualified employees or to pay the prevailing local wage level for the H-1B nonimmigrant’s occupational classification, whichever is greater. 8 U.S.C. § 1182(n)(1)(A)(i)(I)&(II).

In this case, the Administrator, Wage and Hour Division (“Administrator”), issued findings that Raina Massey and Care Worldwide, Inc. (“Respondents”) violated the INA with respect to three non-immigrant H-1B employees as per the Administrator’s determination letter dated May 21, 2014. Specifically, the Administrator’s determination letter included findings that Respondents violated the INA when they (1) individually and willfully failed to pay wages as required for productive and non-productive work for three H-1B employees; (2) took illegal deductions; (3) failed to provide notice of filing of the Labor Condition Application (“LCA”); and (4) failed to maintain copies of records as required.

Respondents timely submitted objections to the Administrator’s findings and requested a hearing. Two of the H-1B employees, i.e., Wendolen Almonte and Rosalina Quilario (each referred to as “Complainant”), timely submitted objections to the Administrator’s findings and requested a hearing.

Subsequently, this case was referred to the United States Department of Labor (“DOL”) Office of Administrative Law Judges (“OALJ”) and assigned to me. By Notice of Hearing dated June 10, 2014, I scheduled a hearing in this matter for October 29, 2014. Upon motion of the Administrator, unopposed by Complainants and not responded to by Respondents, the hearing was rescheduled for December 16, 2014 in New York, New York.

On November 18, 2014, Respondents, through designated counsel, filed a motion to defer proceedings in this matter for four months due to Respondent Raina Massey’s medical condition. I directed Respondents to provide medical documentation to support the deferral motion as the Administrator requested. Upon receipt of some medical documentation from Respondents, I issued an Order on December 17, 2014, granting Respondents’ motion and deferring case processing in this matter until May 2015. In that December 17, 2014 Order, I advised Respondents that failure to proceed after the deferment period may be deemed withdrawal of their objections to the Administrator’s determination in this matter.

On May 6, 2015, an Order was issued directing Respondents to show cause as to why case processing should not resume in this matter. Respondents failed to respond to that Order. Respondents’ failure to respond was deemed withdrawal of Respondents’ objections and on June 10, 2015, a Decision and Order was issued which affirmed the Administrator’s determination as outlined in his letter dated May 7, 2014.

Complainants filed a Notice Of Complainants’ Motion For Summary Decision dated July 30, 2015 (“Motion For Summary Decision”), with supporting Affidavits and Memorandum, requesting that a judgment be entered in their favor.<sup>1</sup> Complainant’s Motion For Summary Decision was received by the OALJ on August 3, 2015.<sup>2</sup> Administrator’s unopposed motion to

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<sup>1</sup> In the Notice Of Complainants’ Motion For Summary Decision, Complainants indicate that their Motion for Summary Decision is made pursuant to 29 C.F.R. § 18.40 – a citation to the OALJ’s Rules of Practice and Procedure (“Rules”) prior to their revision effective June 18, 2015. The revision is available on the OALJ website (<http://www.oalj.dol.gov/>). This Decision and Order is consistent with the revised Rules with which the parties are expected to comply. Motions for summary decision are now governed by 29 C.F.R. § 18.72.

<sup>2</sup> The affirmation of service included with the motion indicates that Notice of Complainants’ Motion for Summary Decision with Affidavits and Affirmation and Exhibits and the Memorandum in support of the Motion for Summary

be dismissed as a party in this matter was granted by Order issued on August 17, 2015, leaving for resolution the disputed issues between Complainants and Respondents for adjudication in this matter.

To date, Respondents have not submitted any response to Complainants' Motion For Summary Decision.

### *Parties' Contentions*

In their Motion For Summary Decision, Complainants maintain that the undisputed facts support finding (1) they made themselves available for work after the H-1B petitions submitted by Respondents on their behalf were approved; (2) Respondents did not effectuate a bona fide termination of their employment; (3) Respondents failed to pay them the prevailing wage rate for all the non-productive status (bench time) up to the expiration date of their respective valid H-1B periods; (4) Respondents required them to pay immigration fees in violation of the INA; (5) Respondents are responsible for interest on the correct award of back pay, with compound interest to be paid prejudgment.

As noted, Respondents did not respond to Complainants' Motion for Summary Decision. However, in Respondents' objections to the Administrator's determination, Respondents generally dispute the occurrence of any INA violations as listed in that determination.

### *Statutory and regulatory framework*

The H-1B visa program permits employers to employ non-immigrants temporarily to fill specialized jobs in the United States. The INA requires that an employer pay an H-1B worker the higher of its actual wage or the locally prevailing wage. Under the INA, an employer seeking to hire an alien in a specialty occupation on an H-1B visa must receive permission from the DOL before the nonimmigrant may obtain an H-1B visa.

The INA defines a "specialty occupation" as an occupation requiring the application of highly specialized knowledge and the attainment of a bachelor's degree or higher. 8 U.S.C. §1184(i)(1). To receive permission from the DOL, the INA requires an employer seeking permission to employ an H-1B worker to submit a Labor Condition Application ("LCA") to the DOL. *See* 8 U.S.C. §1182(n)(1).

Only after the employer receives DOL's certification of its LCA may the Immigration Naturalization Service approve a nonimmigrant's H-1B visa petition. 8 U.S.C. § 1101(a)(15)(H)(1)(B); 20 C.F.R. § 655.700.

The INA provides that the LCA filed by the employer with the Department must include a statement to the effect that the employer is offering to an alien status as an H-1B non-immigrant, that wages for H1-B visa holders are at least equal to the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific

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Decision were served on July 30, 2015 by regular first class mail on the Administrator's counsel, Respondents at all of the addresses of record for them, as well as on Respondents' last counsel of record.

employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is higher, based on the best information available at the time of filing the application. 8 U.S.C. §1182(n)(1)(A).

The INA directs the DOL to review the LCA only for completeness or obvious inaccuracies. Unless the DOL finds that the application is incomplete or obviously inaccurate, the DOL shall provide the certification described by the INA within seven days of the date of the filing of the application. 8 U.S.C. § 1182 (n)(1) and 20 C.F.R. § 655.740.

The DOL has promulgated regulations which provide detailed guidance regarding the determination, payment, and documentation of the required wages. *See* 20 C.F.R. Part 655 Subpart H. The remedies for violations of the statute or regulations include payment of back wages to H-1B workers who were underpaid, debarment of the employer from future employment of aliens, civil money penalties, and other relief that the Department deems appropriate. 20 C.F.R. §655.810 and §655.855.

#### *Standards for Summary Decision*

Summary decision is appropriate when the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. 29 C.F.R. § 18.72. The standard for granting summary decision is essentially the same as that found in Fed. R. Civ. P. 56. *See Saporito v. Central Locating Services, Ltd.*, ARB No. 05-004, 2006 WL 535427 (ARB February 28, 2006), *citing Moldauer v. Canandaigua Wine Co.*, Arb. No. 04-022, ALJ No. 03-SIX-026, slip op. at 3 (ARB Dec. 30, 2005). In deciding a motion for summary judgment, the fact-finder must view the facts in the light most favorable to the non-moving party. *Howlett v. Birkdale Shipping Co.*, 512 U.S. 92 (1994). The moving party bears the burden of proof, though the opposing party “may not rest upon mere allegations or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby*, 447 U.S. 242 (1986).

#### *Issue Presented*

Is summary decision in favor of Complainants appropriate?

#### *Findings of Undisputed Material Facts*

The following facts are undisputed as set forth in Complainants’ affidavits and exhibits included with Complainants’ Motion For Summary Decision:

1. Complainant Almonte holds a bachelor’s degree in nursing. Almonte Affidavit (“Aff.”) ¶4; Complainants’ Exhibit (“CX”)-5 (Silvergate Evaluation of Academics dated 12/4/2009)
2. Complainant Quilaro holds a bachelor’s degree in pharmacy. Quilaro Aff ¶7; CX-10

3. In 2009 Respondents Raina Massey and Care Worldwide, Inc. had an office located at 38 West 32<sup>nd</sup> Street, Suite 405, New York, NY
4. Respondent Raina Massey is the President and owner of Respondent Care Worldwide, Inc. Almonte Aff ¶4; Quilaro Aff ¶6.
5. In late August 2009, Respondent Massey interviewed and offered Complainant Almonte an H-1B sponsorship for the position of clinical/medical researcher. Almonte Aff ¶5.
6. On September 12, 2009, Respondent Massey interviewed Complainant Quilaro and offered her an H-1B sponsorship for the position of drug research associate. Quilaro Aff ¶¶6, 8.
7. Respondent Massey required Complainant Almonte to pay an immigration application fee of \$3,500.00 before she would cause the preparation of the H-1B visa application. Almonte Aff ¶5.
8. Complainant Almonte paid a total of \$3,500.00 to Respondents so her H-1B visa application could be filed. Almonte Aff ¶6; CX-2.
9. Respondent Massey required Complainant Quilaro to pay an immigration application fee of \$6,500.00 payable in two installments. Quilaro Aff ¶9.
10. On September 21, 2009, Complainant Quilaro paid Respondents \$3,500.00 so her H-1B visa application could be filed. Quilaro Aff ¶13; CX-11.
11. Respondents Massey and Care Worldwide caused the filing of a petition H-1B visa application on behalf of Complainant Almonte for the position of Clinical Research Associate. Almonte Aff. ¶¶13, 16; CX-5.
12. Respondents promised to pay Complainant Almonte the prevailing wage rate of \$49,000 as appearing in the H-1B petition and labor condition application. Almonte Aff. ¶¶15-16; CX-4.
13. Respondents Massey and Care Worldwide cause the filing of an H-1B petition on behalf of Complainant Quilaro for the position of drug research associate at the offered wage rate of \$53,000 per year. Quilaro Aff. ¶¶14-16.
14. Respondents did not produce requested copies of the H-1B petition and the labor condition application pertaining to the H-1B sponsorship of Complainant Quilaro. Vinluan Aff. ¶9; CX-24; see also Quilaro Aff. ¶26.
15. Respondents' petition for H-1B visa classification on behalf of Complainant Almonte was approved by U.S. Citizenship and Immigration Services ("USCIS," formerly the Immigration Naturalization Service or "INS") on March 1, 2010. Almonte Aff ¶17; CX-6.

16. Complainant Almonte's H-1B period was valid from March 1, 2010 to December 14, 2012. CX-6.
17. Respondents' H-1B petition on behalf of Complainant Quilario was approved by USCIS on January 27, 2010. Quilario Aff ¶17; CX-12.
18. Complainant Quilario's H-1B petition was valid from January 27, 2010 to November 14, 2012. CX-12.
19. After approval of Complainant Quilario's H-1B petition, Respondent Massey required Complainant Quilario to pay an additional \$3,000.00 in fees. Quilario Aff ¶¶18-21.
20. Complainant Quilario paid an additional \$2,000.00 to Respondents. Quilario Aff 23; CX-13.
21. In mid-March 2010, Complainant Almonte went to Respondents' office and inquired when she could start working as she was ready to start work. Almonte Aff. ¶19.
22. Respondent Massey instructed Complainant Almonte to return after she obtained a social security number. Almonte Aff ¶19.
23. Complainant Almonte return to Respondents' office after she obtained a social security card, but Respondent Massey was not in the office. Almonte Aff ¶20.
24. In early April 2010, Complainant Almonte asked Respondent Massey when she could begin full-time employment and Massey replied "maybe in the next few months when the project is ready to start." Almonte Aff. ¶21.
25. Complainant Almonte was never advised by Respondents as to when she could commence working. Almonte Aff. ¶27.
26. On February 1, 2010, Complainant Quilario informed Respondent Massey that she was ready to work as a drug research associate immediately. Quilario Aff. ¶21.
27. Respondent Massey required Complainant Quilario to pay a "training fee" before she could start working. Quilario Aff ¶22.
28. On February 7, 2010, after paying \$2,000.00 to Respondents, Complainant Quilario advised Respondent Massey that she was ready to start working; Respondent Massey replied that Complainant Quilario had to wait for her start date. Quilario Aff. ¶25.
29. Complainant Quilario telephoned Respondents' office in late February 2010 to ask when she could begin working as a drug research associate but received no response. Quilario Aff. ¶¶31-32.

30. On April 1, 2010, Complainant Quilario emailed Respondent Massey and asked when she could begin working for Respondents.<sup>3</sup> Quilario Aff. ¶34; CX-15.
31. On April 1, 2010, Respondent Massey replied to Complainant Quilario that she should “report to office Monday-Friday, 10 am to 5 pm.” Quilario Aff. ¶35; CX-15.
32. Complainant Quilario reported to Respondents’ Manhattan office daily, from April 6, 2010 to April 9, 2010, but that office remained closed. Quilario Aff. ¶37.
33. On May 3, 2010, Respondent Massey telephoned Complainant Quilario and advised her that her drug research associate job would be available in August or September of that year. Quilario Aff. ¶¶39, 41.
34. Complainant Quilario waited for advice from Respondents as to when she could start working, but none came. Quilario Aff. ¶42.
35. Not wanting to become unlawfully present in the United States due to no fault of their own Complainants Almonte and Quilario sought the assistance of the Office of the Attorney General in New York. Almonte Aff. ¶¶28-29; Quilario Aff. ¶¶43-44; CX-17.
36. Respondents neither provided employment for Complainants Almonte and Quilario nor return trip tickets to the Philippines (their home country), or the equivalent costs of the same. Almonte Aff. ¶32; Quilario Aff. ¶47.

### *Conclusions of law*

#### *The WH-4 complaints were timely filed*

A complaint must be filed not later than 12 months after the latest date on which the alleged violations were committed, defined as the date(s) on which the employer allegedly failed to perform an act or fulfill a condition specified in the LCA, or the date on which the employer allegedly demonstrated a misrepresentation of material fact in the LCA. 20 C.F.R. §655.731 (c)(7)(ii).

Complainants filed their Form WH-4 complaints on March 11, 2013, first with the New York District Office, and then resubmitted their WH-4 complaints on March 15, 2013 with the New Jersey District Office. CX -18. These dates (March 11, 2013 and March 15, 2013) fell within 12 months from the latest violation complained of Complainants alleged that Respondents did not provide them employment and did not pay them wages until the end of their respective H-1B validity periods, i.e., December 14, 2012 for Complainant Almonte and November 14, 2012 for Complainant Quilario. Thus, Complainants’ complaints were timely filed.

#### *Respondents failed to pay Complainants’ wages for the entire H-1B employment periods*

Twenty C.F.R. §655.731 sets forth the wage requirement for nonimmigrant H-1B employees. The employer must attest that, for the entire period of authorized employment,

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<sup>3</sup> April 1, 2010 was a Thursday. See <http://www.dayoftheweek.org> (last visited Sep. 9, 2015).

Respondent will pay the required wage rate to the non-immigrant H-1B employees. The employer must pay the greater of the actual wage rate or the prevailing wage. “The required wage must be paid to the employee, cash in hand, free and clear, when due.” 20 C.F.R. § 655.731(c)(1).

The employer of an H-1B nonimmigrant worker must pay the worker “at least the local prevailing wage or the employer’s actual wage, whichever is higher, and pay for non-productive time.” 8 U.S.C. §1182(n)(1)(A); 20C.F.R. §655.731. An employer is required to pay an H-1B nonimmigrant the required wage throughout the period stated in the LCA.<sup>4</sup> The only two exceptions are: (1) when the H-1B employee is unavailable to work for reasons that are unrelated to his employment, such as leave taken at the request of the employee and not subject to payment under the employer’s benefit plan or a benefit statute; and (2) when the employer has effectuated a *bona fide* termination of the employment relationship. 20 C.F.R. §655.731(c)(7)(ii).

Under the regulations, an employer must pay the applicable required wage to an H-1B employee throughout the entire H-1B employment period (less authorized deductions). 20 C.F.R. §655.731(c)(1). However, an employer is not required to pay an employee for periods when the employee is in a “nonproductive status” for reasons unrelated to employment, such as travel for the employee’s personal convenience. In addition, an employer’s obligation to pay wages to an employee is extinguished when there has been a *bona fide* termination of the employment relationship. However, up to the time that there has been a *bona fide* termination, an employer’s wage obligation to an H-1B employee continues unabated, up to the end of the authorized period of employment. *See Mao v. Nasser Eng’g. & Computing Svcs.*, ARB No. 06-121.

Respondents submitted H-1B petitions for both Complainants Almonte and Quilario. Almonte’s H-1B period is from March 1, 2010 through December 14, 2012. Quilario’s H-1B period is from January 27, 2010 through November 14, 2012.

The applicable regulations require that employers pay their H-1B workers, effective on the date on which the worker “enters into employment” with the employer. 20 C.F.R. § 655.731(c)(6). Workers are considered to “enter into employment” when they first make themselves available for work or otherwise come under the control of the employer, such as by waiting for an assignment or reporting for orientation. 20 C.F.R. §655.731 (c)(6)(i).

Once the employment period begins, the employer is required to pay an H-1B employee the required wage at the full-time rate for any time that is non-productive, due to a decision by the employer. Employer-determined nonproductive time, or “benching” can result from factors such as lack of available work or lack of the individual’s license or permit. 8 U.S.C. §1182(n)(2)(C)(vii); 20 C.F.R. §655.731(c)(7)(i). An employer need not pay the wages for H-1B workers in nonproductive status due to conditions unrelated to employment which take them away from work at their own convenience or request (e.g., touring), or which renders them unable to work (e.g., maternity leave, temporary incapacitation due to accidental injury). 20 C.F.R. §655.731(c)(7)(ii).

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<sup>4</sup> 20 C.F.R. § 655.731(a).

The undisputed evidence shows that Complainant Almonte presented herself as available for work starting in mid-March 2010 (Almonte Aff. ¶19). As for Complainant Quilaro, she told Respondent Massey on February 1, 2010 that she was ready to start working immediately (Quilaro Aff. ¶18, 21.). She again told Massey she was ready to start working, on February 7, 2010 (Quilaro Aff ¶24-25). Therefore, Complainant Almonte entered into employment in mid-March 2010, while Quilaro entered into employment on February 1, 2010.

That there was no work available for either Almonte or Quilaro is undisputed. Therefore the record supports finding that Respondents “benched” both Complainants. Respondents should be ordered to pay them their back wages from the time each of them entered into employment, until the expiration date of their respective H-1B validity period.

It is clear from the documentary evidence submitted in conjunction with Complainants’ Motion For Summary Decision that Respondents offered Complainant Almonte the amount of \$49,000 per year as compensation for the position of Clinical Research Associate. Respondents are therefore responsible for two years and nine months of unpaid wages for the period from mid-March 2010 through December 14, 2012 for Complainant Almonte.

As for Complainant Quilaro, she testified, through her Affidavit (Quilaro Aff. ¶15-16), that Respondent Massey was offered her the annual salary of \$53,000 for the position as Drug Research Associate. Respondents did not produce any documents responsive to the document requests pertaining to Complainant Quilaro’s H-1B file, other than a one-page document with a handwritten note stating the Complainant Quilaro’s “file” was with an attorney and that Respondents did not have Complainant Quilaro’s LCA on file.<sup>5</sup> CX-24.

From the time Complainant Quilaro entered into employment on February 1, 2010 through the end date of her H-1B validity period, i.e., November 14, 2012, she should have received wages from Respondents for two years, nine months and two weeks of employment.

*No bona fide termination of employment occurred*

An employer’s obligation to pay the employee in accordance with the regulation’s requirements ends if there has been a *bona fide* termination of the employment relationship. Twenty C.F.R. §655.731(c)(7)(ii) provides:

Payment need not be made if there has been a *bona fide* termination of the employment relationship. DHS regulations require the employer to notify the DHS that the employment relationship has been terminated so that the petition is canceled (8 CFR 214.2(h)(1) 1), and require the employer to provide the employee with payment for transportation home under certain circumstances (8 CFR 21 4.2(h)(4)(iii)E)).

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<sup>5</sup> When this matter was referred to this office, included with the Administrator’s May 7, 2014 determination letter (finding Respondents’ willful failure to pay required wages, failure to provide notice of the LCA and failure to maintain documentation), was a copy of Complainant Quilaro’s Form WH-4 complaint. Therefore it is reasonable to infer that Complainant Quilaro’s LCA was included in the Administrator’s investigation.

Therefore, to effect a *bona fide* termination under the H-1B program, the employer must notify DHS that the employment relationship is terminated, and where appropriate, as in this case, provide the nonimmigrant employee with payment for transportation home. Under 8 C.F.R. §214.2(h)(4)(iii)(E), the employer is responsible for “reasonable costs of return transportation” to the employee’s last place of foreign residence, if the alien employee “is dismissed from employment by the employer” before the end of the LCA period.

In this case, both Complainants averred that they did not receive any communication from Respondents about their return tickets to their home country, or the equivalent costs of the same. Even assuming *arguendo* that Respondents notified the Immigration Service and even themselves (Complainants) about the termination of their H-1B employment, there was still no effective and *bona fide* termination of their H-1B employment because Respondents did not provide Complainants with payment for transportation home. Complainants did not voluntarily resign; rather their respective H-1B statuses expired. They could not even extend their H-1B status as they had no pay stubs to prove they were maintaining their H-1B status.

Under the regulation, where, as here, the employer dismisses the employee before the end of the approved LCA period, the employer must “provide the employee with payment for transportation home” 20 C.F.R. § 655.731(c)(7)(ii); 8 C.F.R. §214.2(h)(4)(iii)(E). So, as held in *Amtel Group of Florida v. Yonghamapakorn*. ARB No. 07-104, there is no *bona fide* termination of H-1B employment if the employer did not either notify the USCIS of the revocation of the H-1B employment, or did not pay for the employee’s return transportation home.

Here, it is undisputed that Respondents did not even offer to pay or even communicate to Complainants that they were willing to pay their return transportation costs to their home countries before Complainants’ H-1B statuses expired. Respondents did not meet this requirement for a *bona fide* termination of Complainants’ H-1B employment. Thus, Respondents’ wage obligation to the Complainants continued up to the expiration date of Complainants’ H-1B validity periods.

#### *Respondents improperly received fees from Complainants*

The H-1B regulations prohibit an employer from receiving, or the employee from paying, the filing fee for the visa. 20 C.F.R. §655.731(c)(10)(ii). The undisputed sworn statements submitted with the Complainants’ Motion For Summary Decision indicate that Complainant Almonte paid Respondent Massey an “immigration application fee” of \$3,500 before the H-1B petition would be prepared and filed. Almonte Aff. ¶ 5-6. Complainant Quilaro averred that Respondent required her to pay an “immigration application fee” in the amount of \$6,500, payable in two installments. Quilaro Aff. ¶ 9. Complainant Quilaro paid Respondent Care Worldwide \$3,500; she stated that sum was requested so that Respondents would prepare and file an H-1B petition on her behalf. Quilaro Aff. ¶ 13; CX-11. Complainant later paid Respondent an additional \$2,000. Quilaro Aff. ¶ 23; CX-13.

The undisputed statements of Complainants support finding Respondents violated H-1B regulations by receiving visa filing fees.

*Back wages and interest are due Complainants*

Using the required wage of \$49,000 which is listed on the LCA filed by Respondent, the back wages owed to Complainant Almonte for 2 years and 9 months (the period from mid-March 2010 until December 14, 2012) are calculated as follows: \$49,000 x 2 (years) or \$98,000 plus \$49,000 x .75 (9 months) or \$36,750 for a total amount due to Complainant Almonte of \$134,750.

Complainant Quilaro averred that Respondent Massey offered her an annual salary of \$53,000. For the period from Complainant Quilaro's employment availability from February 1, 2010 until the end date of her H-1B validity period of November 14, 2012, the back wages owed are calculated as follows: \$53,000 x 2 (years) or \$106,000 plus \$53,000 x (9.5 months) or \$41,958.33 for a total amount due to Complainant Quilaro of \$147,958.33.

Although the INA does not specifically authorize an award of interest on back pay, the Administrative Review Board ("ARB") has held that employees are entitled to prejudgment interest on the back pay award and post-judgment interest from the issuance date of the Decision and Order until satisfaction of the judgment because of the "make whole" goal of back pay and the remedial nature of employee protection laws.<sup>6</sup> Interest is due on the wages from the time each installment of wages became due.

Thus, Respondents will be directed to pay each of Complainants Almonte and Quilaro prejudgment compound interest on the back pay award, and post-judgment interest from the date of the this Decision And Order until the judgment herein is fully satisfied by the Respondents.

*Summary decision is appropriate*

Summary decision in favor of Complainants is appropriate in this matter. Respondents have failed to respond to Complainants' Motion For Summary Decision. Construing all material factual questions in a light more favorable to Respondents, there exist no factual issues which would affect the outcome of this case and preclude summary decision in favor of Complainants.

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<sup>6</sup> See e.g., *Mao v. Nasser Engr'g & Computing Serv.* ARB No. 06-121, ALJ No. 2005 LCA-36 , slip op. at 9-10 (Nov.26, 2008) *Inkwell v Am. Info. Tech Corp.* ARB No. 04-165, ALJ No. 2004-LCA-13, slip op. at 8 (Sept. 29, 2006); *Doyle v. Hydro Nuclear Servs.*, ARB Nos. 99-041, 99-042, 00-012, ALJ No. 1989-ERA-022, slip op. at 8 (May 17, 2000); *Limanseto v. Ganze & Co.*, 2011-LCA-00005 (ALJ Jun. 30, 2011).

**ORDER**

The following IS **ORDERED**:

1. Complainants' Motion For Summary Decision is **GRANTED**;
2. Respondents will pay Complainant Almonte \$134,750 in back wages, plus pre-judgment and post-judgment interest, in accordance with 26 U.S.C. § 6621, less proper withholding;
3. Respondents will pay Complainant Quilario \$147,958.33 in back wages, plus pre-judgment and post-judgment interest, in accordance with 26 U.S.C. § 6621, less proper withholding;
4. Respondents will reimburse Complainant Almonte the amount of \$3,500 in visa application fees;
5. Respondents will reimburse Complainant Quilario the amount of \$5,500 in visa application fees.

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF APPEAL RIGHTS:** Any interested party desiring review of this Decision and Order may file a petition for review with the Administrative Review Board (Board) pursuant to 20 C.F.R. § 655.845.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition only one copy need be uploaded.

If no petition for review is filed, this Decision and Order becomes the final order of the Secretary of Labor. *See* 20 C.F.R. § 655.840(a). If a petition for review is timely filed, this Decision and Order shall be inoperative unless and until the Board issues an order affirming it, or, unless and until 30 calendar days have passed after the Board's receipt of the petition and the Board has not issued notice to the parties that it will review this Decision and Order.