

U.S. Department of Labor

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Issue Date: 27 March 2009

CASE NO.: 2006-LCA-00024

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
Prosecuting Party,

vs.

WINVISION, INC.,
Respondent.

Appearances: David Kahn, Esquire,
For the Prosecuting Party

Robert D. Baker, Esquire,
For the Respondent

Before: Jennifer Gee
Administrative Law Judge

**DECISION AND ORDER AFFIRMING ADMINISTRATOR'S DETERMINATION AS
MODIFIED**

INTRODUCTION

This matter arises from a determination issued on May 25, 2006, by the Administrator of the Department of Labor's Wage and Hour Division ("the Administrator" or "Prosecuting Party") under the provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(n), concerning labor condition applications for "H-1B" visas. The Administrator concluded that the Respondent, WinVision Inc., had violated various H-1B regulations and owed back wages totaling \$270,293.30 to 17 employees. The Administrator assessed monetary penalties against WinVision and recommended debarment of WinVision for failing to pay full wages specified in the Labor Condition Application ("LCA") and failing to comply with a number of H-1B regulations. The Respondent disagreed with the Administrator's determination and filed a timely request for a hearing on this matter contesting their liability for the back wages and civil money penalties and their debarment.

For the reasons set forth below, the Administrator's determination is **AFFIRMED as MODIFIED**.

ANALYSIS AND FINDINGS

Procedural Background

Hearings were held in this case on December 5, 2006, and January 11 and 12, 2007, in San Francisco, California. WinVision and counsel for both the Administrator and WinVision participated in all the hearings. At the hearing on January 12, 2007, the Administrator's Exhibits ("EX") 1 through 86 were admitted, Respondent's Exhibits ("RX") A through GG were admitted, and Exhibits HH and II were excluded.

After the hearing was concluded, I discovered that two exhibits had been marked as Exhibit GG. I informed the parties in a January 12, 2007, order that I was re-marking one of the exhibits as Exhibit JJ and offered them an opportunity to object to its admission. I admitted RX JJ on January 25, 2007, after both parties informed me that they had no objections to its admission. Post-hearing briefs were filed on April 30, 2007, and May 16, 2007, by the Administrator and Respondent, respectively.

Labor Condition Application Process and Procedures

The Immigration and Nationality 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 class of aliens, known as "H-1B" workers, are allowed entry to the United States on a temporary basis to work in "specialty occupations." 8 U.S.C. § 1101(a)(15)(H)(i)(B); 20 C.F.R. § 655.700. An employer who wants to hire an alien in a specialty occupation on an H-1B visa must follow a procedure laid out in the Code of Federal Regulations which involves the Department of Labor and the Department of Homeland Security, as well as the Department of State. 20 C.F.R. § 655.700 *et seq.*

To hire an H-1B worker, the employer must first complete a Labor Condition Application and file it with the Employment and Training Administration of the U.S. Department of Labor. In the LCA, the employer must make certain representations and attestations regarding his responsibilities, including a representation that the alien will be paid at the actual wage level paid to all other individuals with similar experience and qualifications for the employment in question or the prevailing wage for the occupational classification in the area of employment. 8 U.S.C. § 1182(n). The LCA includes information about the job title, the employer's name, the number of non-immigrants sought, the gross wages to be paid the non-immigrant, the starting and ending dates of intended employment, the place of intended employment, the prevailing wage for the occupation in the area of intended employment, and the source relied on to determine that prevailing wage. 20 C.F.R. § 655.730(c)(4).

After the LCA has been certified by the Department of Labor, the employer submits a copy of the certified LCA to the Department of Homeland Security¹ ("DHS") along with the non-immigrant visa petition to ask for an H-1B classification for the worker. 20 C.F.R. § 655.700(b)(2). If the H-1B classification is approved by the DHS, the non-immigrant can apply for an H-1B visa at a U.S. consular office in his or her country for entry into the United

¹ The applications used to be submitted to the Immigration and Naturalization Service ("INS") which is now part of the Department of Homeland Security.

States or for a change in his or her visa status, if the non-immigrant is already in the United States. 20 C.F.R. § 655.700(b)(3). The employer can hire the H-1B worker after the visa is granted for access to the United States.

In the LCA, the employer must attest to the fact that the non-immigrant worker will be paid the higher of the actual wage or the prevailing wage. 8 U.S.C. § 1182(n)(1)(A); 20 C.F.R. § 655.731(a). If the non-immigrant worker is identified on the LCA as a full-time worker, then the employer is obligated to pay the worker his or her full pro rata salary, if salaried, or full-time wages, if hourly, for any time during which the worker is not performing work or is in a non-productive status due to a decision by the employer, such as lack of assigned work. 20 C.F.R. § 655.731(c)(7)(i). The employer is only relieved of the obligation to pay the non-immigrant worker the full-time wages specified if the non-immigrant worker has a non-productive period due to conditions unrelated to employment which take the non-immigrant worker away from his or her duties at the worker's voluntary request and convenience and the period is not subject to payment under the employer's benefit plan or various statutes such as the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*

Issues in this Case

The issues for the hearing were discussed during a telephonic prehearing conference conducted on November 27, 2006, with counsel for both parties and memorialized in an order issued the same day. They were re-stated again at the hearing. (HT,² pp. 134-135.) The issues are:

- 1 Did Respondent willfully fail to pay the required wage rate for productive and non-productive work to the H-1B non-immigrant workers it petitioned to bring into the United States in violation of 8 U.S.C. § 1182(n)(2)(C) and 20 C.F.R. §§ 655.731 and 655.805(a)(6)?
- 2 Did Respondent fail to make the required displacement inquiry of another employer at the worksite where an H-1B non-immigrant was placed in violation of 20 C.F.R. §§ 655.738 and 655.805(a)(8)?
- 3 Did Respondent require or accept from an H-1B worker, payment or remittance of the additional petition fee incurred in filing an H-1B petition in violation of 20 C.F.R. §§ 655.731(c)(10)(ii) and 655.805(a)(11)?
- 4 Did Respondent fail to maintain documentation as required by 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i), 655.760(c), and 655.805(a)(15)?

More specifically, the Administrator alleges that WinVision owes \$270,293.30 in back wages to former and current H-1B employees and seeks the imposition of civil money penalties of \$66,750.00 against WinVision. The Administrator also asks that any LCA petitions filed by WinVision, Inc. under 8 U.S.C. §§ 1154 and 1184(c) and 20 CFR § 655.855(c) be denied by the Department of Homeland Security for a prescribed period of two years.

² References to "HT" are to the hearing transcript.

Parties' Positions

This case stems from an investigation into WinVision's H-1B employment and payroll practices from May 19, 2003, through May 18, 2004. The Administrator alleges that WinVision's business was based on hiring mostly H-1B workers. When times became difficult, WinVision did not pay the H-1B workers the prevailing wage required by the H-1B regulations or did not pay them at all. The Administrator asserts that WinVision falsely denied any failure to pay and claimed that the H-1B workers took extended vacations, worked only part time, or did not work for WinVision during the time period alleged by the Administrator. The Administrator also alleges that WinVision required one of its H-1B workers to pay the fee to process his LCA application, failed to make inquiries of secondary employers to make sure U.S. workers were not being displaced, and failed to maintain the documentation required by the H-1B regulations.

WinVision denies all the allegations.

The bulk of this case is a factual dispute between the Administrator and WinVision as to whether or not WinVision failed to pay 17 H-1B workers the wages required under the H-1B regulations. A number of the affected H-1B workers testified at the hearing in this case, either in person or by phone. The findings of fact in this case are based on the testimony of the witnesses, the exhibits that were admitted into evidence, and the hundreds of factual stipulations entered into by the parties.

Stipulations

During the discovery process, WinVision admitted to numerous requests for admissions served on WinVision by Counsel for the Administrator. Counsel for the Administrator listed the 293 factual stipulations that were admitted in his pre-trial statement filed November 20, 2006.³ (Administrator's Pre-Trial Statement.) WinVision's counsel confirmed his client's agreement to those admissions at the hearing. (HT, p. 173.) Those factual stipulations are as follows:

1. WinVision is 50% owned by Prakash Ramchandran.
2. At all relevant times, Prakash Ramchandran served as WinVision's president.
3. WinVision is 50% owned by Gary Iyer.
4. At all relevant times, Gary Iyer served as WinVision's chief executive officer.
5. At all relevant times, WinVision provided IT services to clients with onsite-, offsite-, and offshore-based outsourcing.
6. At all relevant times, WinVision was based in Santa Clara, California.
7. During the period from May 19, 2003, through May 18, 2004, WinVision had 32 employees.
8. Of the 32 individuals employed by WinVision from May 19, 2003, through May 18, 2004, 26 worked under an H-1B visa (also referred to as "H-1B workers" or "H-1B employees").
9. Wage and Hour initiated an investigation and held its initial conference with

³ At my request, Counsel for the Administrator provided me with a Microsoft Word version of his pretrial statement so that the 293 factual stipulations could be more easily incorporated into this Decision. They have been reformatted to conform to the formatting in this decision, and Mr. Ramchandran's name, which was misspelled in stipulations 1 and 2, was corrected.

- Prakash Ramchandran representing WinVision on May 27, 2004.
10. WinVision is considered an H-1B dependent employer as it had 26 H-1B employees out of 32 full-time employees.
 11. WinVision placed H-1B workers at secondary employers.
 12. WinVision placed Bosky Atlani with an employer in or around Atlanta, Georgia.
 13. WinVision placed Bheemeswer Bonagiri with an employer in or around St. Louis, Missouri. WinVision placed Abhjeet [sic] Nikte with an employer in or around Connecticut.
 14. WinVision placed Parthiban Veeramakali with an employer in or around Seattle, Washington.
 15. WinVision placed Mayank Vyas with an employer in or around Portland, Oregon.
 16. WinVision filed a Labor Condition Application (“LCA”) on behalf of ten H-1B non-immigrants that was dated September 29, 2000, which was assigned ETA Case No. 30193150.
 17. WinVision filed an LCA on behalf of 15 H-1B non-immigrants that was dated October 23, 2000, which was assigned ETA Case No. 90260089.
 18. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated October 23, 2000, which was assigned ETA Case No. 90265579.
 19. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated August 26, 2002, which was assigned ETA Case No. T-02240-00097.
 20. WinVision filed an LCA on behalf of 15 H-1B non-immigrants that was dated February 4, 2003, which was assigned ETA Case No. T-03036-00147.
 21. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated February 10, 2003, which was assigned ETA Case No. T-03043-00172.
 22. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated February 20, 2003, which was assigned ETA Case No. T-03052-00122.
 23. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated October 1, 2003, which was assigned ETA Case No. T-03275-00067.
 24. WinVision filed an LCA on behalf of five H-1B non-immigrants that was dated November 7, 2003, which was assigned ETA Case No. T-03316-00153.
 25. WinVision filed an LCA on behalf of three H-1B non-immigrants that was dated November 17, 2003, which was assigned ETA Case No. T-03324-00126.
 26. WinVision filed an LCA on behalf of two H-1B non-immigrants that was dated December 2, 2003, which was assigned ETA Case No. T-03338-00013.
 27. WinVision filed an LCA on behalf of ten H-1B non-immigrants that was dated January 14, 2004, which was assigned ETA Case No. T-04016-00079.
 28. WinVision filed an LCA on behalf of three H-1B non-immigrants that was dated January 16, 2004, which was assigned ETA Case No. T-04022-00195.
 29. WinVision filed an LCA on behalf of three H-1B non-immigrants that was dated May 13, 2004, which was assigned ETA Case No. T-04138-00047.
 30. WinVision filed an LCA on behalf of two H-1B non-immigrants that was dated June 24, 2004, which was assigned ETA Case No. T-04177-00026.

Verma Ajay-Kumar

31. Verma Ajay-Kumar was employed by WinVision as an H-1B worker.
32. WinVision filed a Labor Condition Application (“LCA”) for Mr. Ajay-Kumar, among others, which was entered as ETA Case No. T-03324-00126.

33. The LCA referred to in Request for Admission No. 41 listed Mr. Ajay-Kumar's wage rate as \$50,000.00 per annum, his job title as "Systems & Technical Support Engineer", his position as full-time, his period of employment as 11/17/2003-11/16/2006, his place of employment as Portland, Oregon, and the prevailing wage as \$32,947.00 per annum.
34. Mr. Ajay-Kumar worked as a Systems & Technical Support Engineer.
35. Mr. Ajay-Kumar worked for WinVision from May 19, 2003, through February 15, 2004.
36. The prevailing wage, and the required wage rate, for Systems & Technical Support Engineer in Santa Clara, California, for the period of time that WinVision employed Mr. Ajay-Kumar in Santa Clara, was \$50,939.00 per annum.
37. The prevailing wage rate for Systems & Technical Support Engineer in Portland, Oregon, for the period of time covered by the LCA for Mr. Ajay-Kumar was \$32,947.00 per annum. The required wage is \$50,000.00 which is in excess of the prevailing wage.

Bosky Atlani

38. Bosky Atlani was employed by WinVision as an H-1B worker.
39. WinVision filed an LCA for Ms. Atlani, among others, which was entered as ETA Case No. T-04022-00195.
40. The LCA referred to in Request for Admission No. 53 listed Ms. Atlani's wage rate as \$50,000.00 per annum, her job title as "Programmer Analyst", her position as full-time, her period of employment as 01/19/2004-01/18/2007, her place of employment as Atlanta, Georgia, and the prevailing wage as \$37,981.00 per annum.
41. Ms. Atlani worked as a Programmer Analyst.
42. Ms. Atlani worked for WinVision and was placed with a secondary employer in Atlanta, Georgia.

Yunduan Bao

43. WinVision filed an LCA for Mr. Bao, among others, which was entered as ETA Case No. T-03316-00153.
44. The LCA listed Mr. Bao's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/07/2003-11/06/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$40,830.00 per annum.
45. The prevailing wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Bao in Santa Clara, was \$40,830.00 per annum.
46. The required wage is \$50,000.00, which is in excess of the prevailing wage.

Bheemeswer Bonagiri

47. Bheemeswer Bonagiri was employed by WinVision as an H-1B worker.
48. WinVision filed an LCA for Mr. Bonagiri, among others, which was entered as ETA Case No. T-02240-00097.
49. The LCA listed Mr. Bonagiri's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as

02/04/2003-02/04/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.

50. Mr. Bonagiri worked as a Programmer Analyst.

Pushpa Chandrashekaraiiah

51. Pushpa Chandrashekaraiiah was employed by WinVision as an H-1B worker.
52. WinVision filed an LCA for Ms. Chandrashekaraiiah, among others, which was entered as ETA Case No. T-03043-00172.
53. The LCA listed Ms. Chandrashekaraiiah's wage rate as \$45,000.00 per annum, her job title as "Programmer Analyst", her position as full-time, her period of employment as 02/10/2003-02/09/2006, her place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
54. Ms. Chandrashekaraiiah worked as a Programmer Analyst.
55. Ms. Chandrashekaraiiah worked for WinVision in Santa Clara, California.
56. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Ms. Chandrashekaraiiah, was \$45,000.00 per annum.

Shatadru Chowdhury

57. Shatadru Chowdhury was employed by WinVision as an H-1B worker.
58. WinVision filed an LCA for Mr. Chowdhury, among others, which was entered as ETA Case No. 90260089.
59. The LCA listed Mr. Chowdhury's wage rate as \$40,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/30/2000-11/30/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$40,000.00 per annum.
60. Mr. Chowdhury worked as a Programmer Analyst.
61. Mr. Chowdhury worked for WinVision in Santa Clara, California.
62. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Chowdhury, was \$40,000.00 per annum.

Mathew George

63. Mathew George was employed by WinVision as an H-1B worker.
64. WinVision filed an LCA for Mr. George, among others, which was entered as ETA Case No. T-04016-00079.
65. The LCA listed Mr. George's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 01/15/2004-01/14/2007, his place of employment as Santa Clara, California, and the prevailing wage as \$49,587.00 per annum.
66. Mr. George worked as a Programmer Analyst.
67. Mr. George worked for WinVision in Santa Clara, California.
68. Payroll ledgers indicate that WinVision intended to pay Mr. George at the rate of \$52,000.00 per annum.
69. The actual wage rate for programmer analysts with Mr. George's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. George, was \$52,800.00 per annum.

70. The required wage rate for Mr. George was \$52,800.00 per annum.

Ashish Gupta

71. Ashish Gupta was employed by WinVision as an H-1B worker.

72. WinVision filed an LCA for Mr. Gupta, among others, which was entered as ETA Case No. T-0403-00172.

73. The LCA listed Mr. Gupta's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 02/10/2003-02/09/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.

74. Mr. Gupta worked as a Programmer Analyst.

75. Mr. Gupta worked for WinVision in Santa Clara, California.

76. Mr. Gupta worked for WinVision for 26 weeks from June 8, 2003, through November 20, 2003.

77. Payroll ledgers indicate that WinVision intended to pay Mr. Gupta at the rate of \$81,000.00 per annum.

78. The actual wage rate for programmer analysts with Mr. Gupta's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Gupta, was \$81,000.00 per annum.

79. The required wage rate for Mr. Gupta was \$81,000.00 per annum.

Mathew Jacob

80. Mathew Jacob was employed by WinVision as an H-1B worker.

81. WinVision filed an LCA for Mr. Jacob, among others, which was entered as ETA Case No. 30193150.

82. The LCA listed Mr. Jacob's wage rate as \$40,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/01/2000-10/01/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$39,520.00 per annum.

83. Mr. Jacob worked as a Programmer Analyst.

84. Mr. Jacob worked for WinVision in Santa Clara, California. Payroll ledgers indicate that WinVision intended to pay Mr. Jacob at the rate of \$60,000.00 per annum.

85. The actual wage rate for programmer analysts with Mr. Jacob's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Jacob was \$60,000.00 per annum.

86. The required wage rate for Mr. Jacob was \$60,000.00 per annum.

Chetan Joshi

87. Chetan Joshi was employed by WinVision as an H-1B worker.

88. WinVision filed an LCA for Mr. Joshi, among others, which was entered as ETA Case No. 90260089.

89. The LCA listed Mr. Joshi's wage rate as \$40,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/30/2000-11/30/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$40,000.00 per annum.

90. Mr. Joshi worked as a Programmer Analyst.

91. Mr. Joshi worked for WinVision in Santa Clara, California.
92. The prevailing wage and the required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Joshi, was \$40,000.00 per annum.

Sreenivas Konduru

93. Sreenivas Konduru was employed by WinVision as an H-1B worker.
94. WinVision filed an LCA for Mr. Konduru, among others, which was entered as ETA Case No. T-03275-00067.
95. The LCA listed Mr. Konduru's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 10/01/2003-09-30-2006, his place of employment as Newark, New Jersey, and the prevailing wage as \$50,128.00 per annum.
96. Mr. Konduru worked as a Programmer Analyst.
97. Mr. Konduru worked for WinVision in Santa Clara, California.
98. Payroll ledgers indicate that WinVision intended to pay Mr. Konduru at the rate of \$60,000.00 per annum.
99. The actual wage rate for programmer analysts with Mr. Konduru's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Konduru was \$60,000.00 per annum.
100. The required wage rate for Mr. Konduru was \$60,000.00 per annum.

Jimit Ladha

101. Jimit Ladha was employed by WinVision as an H-1B worker.
102. WinVision filed an LCA for Mr. Ladha, among others, which was entered as ETA Case No. T-03036-00147.
103. The LCA listed Mr. Ladha's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 02/04/2003-02/04/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
104. Mr. Ladha worked as a Programmer Analyst.
105. Mr. Ladha worked for WinVision in Santa Clara, California.
106. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Ladha, was \$45,000.00 per annum.

Shilpa Vivesh Majmudar

107. Shilpa Vivesh Majmudar was employed by WinVision as an H-1B worker.
108. WinVision filed an LCA for Ms. Majmudar, among others, which was entered as ETA Case No. T-03043-00172.
109. The LCA listed Ms. Majmudar's wage rate as \$45,000.00 per annum, her job title as "Programmer Analyst", her position as full-time, her period of employment as 02/10/2003-02/09/2006, her place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
110. Ms. Majmudar worked as a Programmer Analyst.
111. Ms. Majmudar worked for WinVision in Santa Clara, California.

112. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Ms. Majmudar, was \$45,000.00 per annum.

Abhijeet Nikte⁴

113. Abhijeet Nikte was employed by WinVision as an H-1B worker.
114. WinVision filed an LCA for Mr. Nikte, among others, which was entered as ETA Case No. T-03043-00172.
115. The LCA listed Mr. Nikte's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 02/10/2003-02/09/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
116. Mr. Nikte worked as a Programmer Analyst.
117. Mr. Nikte worked for WinVision in Connecticut.
118. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Nikte, was \$45,000.00 per annum.

Mandar Nimkar

119. Mandar Nimkar was employed by WinVision as an H-1B worker.
120. WinVision filed an LCA for Mr. Nimkar, among others, which was entered as ETA Case No. 90260089.
121. The LCA listed Mr. Nimkar's wage rate as \$40,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/30/2000-11/30/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$40,000.00 per annum.
122. Mr. Nimkar worked as a Programmer Analyst.
123. Mr. Nimkar worked for WinVision in Santa Clara, California.
124. Payroll ledgers indicate that WinVision intended to pay Mr. Nimkar at the rate of \$45,000.00 per annum.
125. The actual wage rate for programmer analysts with Mr. Nimkar's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Nimkar was \$45,000.00 per annum.
126. The required wage rate for Mr. Nimkar was \$45,000.00 per annum.

Srinivas Pai

127. Srinivas Pai was employed by WinVision as an H-1B worker.
128. WinVision filed an LCA for Mr. Pai, among others, which was entered as ETA Case No. T-03052-00122.
129. The LCA listed Mr. Pai's wage rate as \$50,000.00 per annum, his job title as "System Tech Support", his position as full-time, his period of employment as 02/20/2003-02/19/2006, his place of employment as Los Angeles, California, and the prevailing wage as \$40,518.00 per annum.
130. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Pai, was

⁴ The Administrator's stipulations misspelled Mr. Nikte's first name as "Abhkeet" instead of "Abhijeet."

\$50,939.00 per annum.

Hermant Patel

131. Hermant Patel was employed by WinVision as an H-1B worker.
132. WinVision filed an LCA for Mr. Patel, among others, which was entered as ETA Case No. T-03036-00147.
133. The LCA listed Mr. Patel's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 02/04/2003-02/04/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
134. Mr. Patel worked as a Programmer Analyst.
135. Mr. Patel worked for WinVision in Santa Clara, California.
136. The prevailing wage and required wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Mr. Patel, was \$45,000.00 per annum.

Suresh Ramakrishnan

137. Suresh Ramakrishnan was employed by WinVision as an H-1B worker.
138. WinVision filed an LCA for Mr. Ramakrishnan, among others, which was entered as ETA Case No. 30193150.
139. The LCA listed Mr. Ramakrishnan's wage rate as \$40,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/01/2000-10/01/2003, his place of employment as Santa Clara, California, and the prevailing wage as \$39,520.00 per annum.
140. Mr. Ramakrishnan worked as a Programmer Analyst.
141. Mr. Ramakrishnan worked for WinVision in Santa Clara, California.
142. Payroll ledgers indicate that WinVision intended to pay Mr. Ramakrishnan at the rate of \$2,250 bi-weekly.
143. The actual wage rate for programmer analysts with Mr. Ramakrishnan's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Ramakrishnan was \$2,250.00 bi-weekly.
144. The required wage rate for Mr. Ramakrishnan was \$2,250.00 bi-weekly.

Padmini Renduchintala

145. Padmini Renduchintala was employed by WinVision as an H-1B worker.
146. WinVision filed an LCA for Ms. Renduchintala, among others, which was entered as ETA Case No. T-03316-00153.
147. The LCA listed Ms. Renduchintala's wage rate as \$50,000.00 per annum, her job title as "Programmer Analyst", her position as full-time, her period of employment as 11/07/2003-11/06/2006, her place of employment as Santa Clara, California, and the prevailing wage as \$40,830.00 per annum.
148. Ms. Renduchintala worked as a Programmer Analyst.
149. Ms. Renduchintala worked for WinVision in Santa Clara, California.
150. Ms. Renduchintala worked for WinVision for 2 weeks from May 1, 2004, through May 18, 2004.
151. The prevailing wage rate for programmer analysts in Santa Clara, California, for

the period of time covered by the LCA for Ms. Renduchintala in Santa Clara, was \$40,830.00 per annum. The required wage is \$50,000.00, which is in excess of the prevailing wage.

Ajith Chandran Rohini

152. Ajith Chandran Rohini was employed by WinVision as an H-1B worker.
153. WinVision filed an LCA for Mr. Rohini, among others, which was entered as ETA Case No. T-03275-00067.
154. The LCA listed Mr. Rohini's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 10/01/2003-09/30/2006, his place of employment as Newark, New Jersey, and the prevailing wage as \$50,128.00 per annum.
155. Mr. Rohini worked as a Programmer Analyst.
156. Mr. Rohini worked for WinVision in Santa Clara, California.
157. The prevailing wage and required wage rate for programmer analysts in WinVision's office in Santa Clara, California, for the period of time covered by the LCA for Mr. Rohini was \$48,173.00 per annum.

Narayanan Seshadri

158. Narayanan Seshadri was employed by WinVision as an H-1B worker.
159. WinVision filed an LCA for Mr. Seshadri, among others, which was entered as ETA Case No. T-04138-00047.
160. The LCA listed Mr. Seshadri's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 05/14/2004-05/13/2007, his place of employment as Santa Clara, California, and the prevailing wage as \$49,587.00 per annum.
161. Mr. Seshadri worked as a Programmer Analyst.
162. Mr. Seshadri worked for WinVision for 12 weeks from March 1, 2004, through May 18, 2004.
163. Payroll ledgers indicate that WinVision intended to pay Mr. Seshadri at the rate of \$56,400.00 per annum.
164. The actual wage rate for programmer analysts with Mr. Seshadri's experience, qualifications and duties, in WinVision's office in Santa Clara, California, for the period of time that WinVision employed Mr. Seshadri was \$56,400.00 per annum.
165. The required wage rate for Mr. Seshadri was \$56,400.00 per annum.

Susruth Sudhakaran

166. Susruth Sudhakaran was employed by WinVision as an H-1B worker.
167. WinVision filed an LCA for Mr. Sudhakaran, among others, which was entered as ETA Case No. T-03036-00147.
168. The LCA listed Mr. Sudhakaran's wage rate as \$45,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 02/04/2003-02/04/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$45,000.00 per annum.
169. Mr. Sudhakaran worked as a Programmer Analyst.
170. Mr. Sudhakaran worked for WinVision in Santa Clara, California.
171. The prevailing wage and required wage rate for programmer analysts in Santa

Clara, California, for the period of time covered by the LCA for Mr. Sudhakaran, was \$45,000.00 per annum.

Priya Suri

172. Priya Suri was employed by WinVision as an H-1B worker.
173. WinVision filed an LCA for Ms. Suri, among others, which was entered as ETA Case No. T-03316-00153.
174. The LCA listed Ms. Suri's wage rate as \$50,000.00 per annum, her job title as "Programmer Analyst", her position as full-time, her period of employment as 11/07/2003-11/06/2006, her place of employment as Santa Clara, California, and the prevailing wage as \$40,830.00 per annum.
175. Ms. Suri worked as a Programmer Analyst.
176. Ms. Suri worked for WinVision in Santa Clara, California.
177. The prevailing wage rate for programmer analysts in Santa Clara, California, for the period of time covered by the LCA for Ms. Suri in Santa Clara, was \$40,830.00 per annum. The required wage is \$50,000.00, which is in excess of the prevailing wage.

Parthiban Veeramakali

178. Parthiban Veeramakali was employed by WinVision as an H-1B worker.
179. WinVision filed an LCA for Mr. Veeramakali, among others, which was entered as ETA Case No. T-03316-00153.
180. The LCA listed Mr. Veeramakali's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/07/2003-11/06/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$40,830.00 per annum.
181. Mr. Veeramakali worked as a Programmer Analyst.
182. Mr. Veeramakali worked for WinVision and was placed with a secondary employer in Seattle, Washington.
183. Mr. Veeramakali worked for WinVision for 52 weeks from May 2003 to May 2004. The prevailing wage and required wage rate for programmer analysts in Seattle, Washington, for the period of time covered by the LCA for Mr. Veeramakali, was \$51,314.00.00 per annum.

Bharghava Ram Redd Vundyala

184. Bharghava Ram Redd Vundyala was employed by WinVision as an H-1B worker.
185. WinVision filed an LCA for Mr. Vundyala, among others, which was entered as ETA Case No. T-03316-00153.
186. The LCA listed Mr. Vundyala's wage rate as \$50,000.00 per annum, his job title as "Programmer Analyst", his position as full-time, his period of employment as 11/07/2003-11/06/2006, his place of employment as Santa Clara, California, and the prevailing wage as \$40,830.00 per annum.
187. Mr. Vundyala worked as a Programmer Analyst.
188. Mr. Vundyala worked for WinVision in Santa Clara, California.
189. Mr. Vundyala worked for WinVision approximately 7 weeks from April 5, 2004, through May 18, 2004.
190. The prevailing wage rate for programmer analysts in Santa Clara, California, for

the period of time covered by the LCA for Mr. Vundyala in Santa Clara, was \$40,830.00 per annum. The required wage is \$50,000.00, which is in excess of the prevailing wage.

Mayank Vyas

191. Mayank Vyas was employed by WinVision as an H-1B worker.
192. The LCA listed Mr. Vyas's wage rate as \$50,000.00 per annum, his job title as "Systems & Technical Support Engineer", his position as full-time, his period of employment as 11/17/2003-11/16/2006, his place of employment as Portland, Oregon, and the prevailing wage as \$32,947.00 per annum.
193. Mr. Vyas worked for WinVision and was placed with a secondary employer in Portland, Oregon.
194. The prevailing wage rate for Systems & Technical Support Engineer in Portland, Oregon, for the period of time covered by the LCA for Mr. Vyas in Portland, Oregon, is \$34,200.00 per annum, and in Santa Clara, California, it is \$50,000.00 per annum.
195. WinVision is and at all times hereinafter mentioned was engaged in related activities performed through unified operation or common control for a common business purpose, and is and at all times hereinafter mentioned was an enterprise within the meaning of section 3(r) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 203(r)).
196. At all times during the relevant period, WinVision had at least two employees who regularly handled or otherwise worked on goods or materials that have been moved in or produced for commerce by any person, or used the mails, telephone or other channels for interstate communication.
197. At all times during the relevant period, WinVision had an annual gross volume of sales made or business done of not less than \$500,000.

Documents

198. Exhibit 1 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated September 29, 2000, which was assigned ETA Case No. 30193150.
199. Exhibit 2 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 15 H-1B non-immigrants that was dated October 23, 2000, which was assigned ETA Case No. 90260089.
200. Exhibit 3 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated October 23, 2000, which was assigned ETA Case No. 90265579.
201. Exhibit 4 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated August 26, 2002, which was assigned ETA Case No. T-02240-00097.
202. Exhibit 5 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 15 H-1B non-immigrants that was dated February 4, 2003, which was assigned ETA Case No. T-03036-00147.
203. Exhibit 6 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated February 10, 2003, which was assigned ETA Case No. T-03043-00172.

204. Exhibit 7 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated February 20, 2003, which was assigned ETA Case No. T-03052-00122.
205. Exhibit 8 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated October 1, 2003, which was assigned ETA Case No. T-03275-00067.
206. Exhibit 9 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of five H-1B non-immigrants that was dated November 7, 2003, which was assigned ETA Case No. T-03316-00153.
207. Exhibit 10 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of three H-1B non-immigrants that was dated November 17, 2003, which was assigned ETA Case No. T-03324-00126.
208. Exhibit 11 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of two H-1B non-immigrants that was dated December 2, 2003, which was assigned ETA Case No. T-03338-00013.
209. Exhibit 12 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of 10 H-1B non-immigrants that was dated January 14, 2004, which was assigned ETA Case No. T-04016-00079.
210. Exhibit 13 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of three H-1B non-immigrants that was dated January 16, 2004, which was assigned ETA Case No. T-04022-00195.
211. Exhibit 14 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of three H-1B non-immigrants that was dated May 13, 2004, which was assigned ETA Case No. T-04138-00047.
212. Exhibit 15 is a genuine, authentic and accurate copy of an LCA filed by WinVision on behalf of two H-1B non-immigrants that was dated June 24, 2004, which was assigned ETA Case No. T-04177-00026.
213. The LCA's contained in Exhibits 1-15 were all signed by Boben Punnose as Human Resource Manager on behalf of WinVision.
214. Exhibit 16a is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Verma Ajay Kumar.
215. In Exhibit 16a, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
216. Exhibit 16b is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Verma Ajay Kumar.
217. In Exhibit 16b, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
218. Exhibit 17 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Bosky Atlani.
219. In Exhibit 17, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is

- signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
220. Exhibit 18 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Yunduan Bao.
221. In Exhibit 18, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
222. Exhibit 19 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Bheemeswer Bonagiri.
223. In Exhibit 19, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
224. Exhibit 20 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Pushpa Chandrashekaraiah.
225. In Exhibit 20, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
226. Exhibit 21 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Shatadru Chowdhury.
227. In Exhibit 21, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Boben Punnose, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
228. Exhibit 22 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Mathew George.
229. In Exhibit 22, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Boben Punnose, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
230. Exhibit 23 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Ashish Gupta.
231. In Exhibit 23, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
232. Exhibit 24 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Mathew Jacob.
233. In Exhibit 24, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.

234. Exhibit 25 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Chetan Joshi.
235. In Exhibit 25, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Boben Punnose, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
236. Exhibit 26 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Sreenivas Konduru.
237. In Exhibit 26, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
238. Exhibit 27 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Jimit Ladha.
239. In Exhibit 27, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
240. Exhibit 28 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Shilpa Viveash Majmudar.
241. In Exhibit 28, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
242. Exhibit 29 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Abhijeet Nikte.
243. In Exhibit 29, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
244. Exhibit 30 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Mandar Nimkar.
245. In Exhibit 30, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Boben Punnose, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
246. Exhibit 31 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Srinivas Pai.
247. In Exhibit 31, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose and Form I-129W is signed by Prakash Ramchandran.
248. Exhibit 32 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Hermant Patel.
249. In Exhibit 32, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.

250. Exhibit 33 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Suresh Ramakrishnan.
251. In Exhibit 33, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Boben Punnose, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
252. Exhibit 34 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Padmini Renuchintala.
253. In Exhibit 34, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
254. Exhibit 35 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Ajith Chandran Rohini.
255. In Exhibit 35, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
256. Exhibit 36 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Narayanan Seshadri.
257. In Exhibit 36, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
258. Exhibit 37 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Susruth Sudhakran.
259. In Exhibit 37, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
260. Exhibit 38 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Priya Suri.
261. In Exhibit 38, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
262. Exhibit 39 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Parthiban Veeramakali.⁵
263. In Exhibit 39, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and

⁵ The employee's name was misspelled "Veermamkali" in the actual stipulations submitted by the Administrator.

- Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
264. Exhibit 40 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Bahghava Ram Redd Vundyala.
 265. In Exhibit 40, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
 266. Exhibit 41 is a genuine, authentic and accurate copy of Form I-129 filed with the Federal Government by WinVision on behalf of H-1B employee Mayank Vyas.
 267. In Exhibit 41, Form I-129 Part 6 is signed by Prakash Ramchandran, Part 7 is signed by Boben Punnose, Form I-129W is signed by Prakash Ramchandran, and Form I-129 Supplement H is signed by both Prakash Ramchandran and Boben Punnose.
 268. Exhibit 43 is a genuine, authentic and accurate copy of a transcript of an interview with Prakash Ramchandran as president and part owner of WinVision dated May 27, 2004.
 269. In Exhibit 43, Prakash Ramchandran, signed his name at the bottom of the document.
 270. Exhibit 44 is a genuine, authentic and accurate copy of a transcript of an interview with Prakash Ramchandran as president and part owner of WinVision dated June 3, 2004.
 271. In Exhibit 44, Prakash Ramchandran, signed his name at the bottom of the document.
 272. Exhibit 45 is a genuine, authentic and accurate copy of a letter from WinVision to the Wage and Hour Division dated June 12, 2005.
 273. In Exhibit 45, Prakash Ramchandran, signed his name at the bottom of the document as president of WinVision.
 274. Exhibit 46 is a genuine, authentic and accurate copy of Forms WH-55 generated by the Wage and Hour Division with notations written by Prakash Ramchandran contained within brackets.
 275. Exhibit 48 is a genuine, authentic and accurate copy of the Determination Letter from the Wage and Hour Division to WinVision dated May 25, 2006.
 276. Exhibit 49 is a genuine, authentic and accurate copy of a letter from WinVision to the U.S. Department of Justice Immigration and Naturalization Service (“INS”) on behalf of Yunduan Bao dated January 21, 2004.
 277. Exhibit 50 is a genuine, authentic and accurate copy of a check from Yunduan Bao to WinVision dated January 21, 2004, in the amount of \$1,000.00.
 278. Exhibit 51 is a genuine, authentic and accurate copy of Form I-907 filed by WinVision and signed by Prakash Ramchandran as president of WinVision on January 21, 2004, and by Boben Punnose as the preparer on January 21, 2004.
 279. Exhibit 52 is a genuine, authentic and accurate copy of Form I-797 providing notice to WinVision.
 280. Exhibit 53 is a genuine, authentic and accurate copy of a check from WinVision to the INS in the amount of \$1,000.00 and dated January 22, 2004.

281. The check contained in Exhibit 53 was used by WinVision to pay the H-1B petition filing fees of Yunduan Bao.
282. Exhibit 54 is a genuine, authentic and accurate copy of a letter from WinVision to the INS dated November 24, 2003.
283. Exhibit 55 is a genuine, authentic and accurate copy of a letter from WinVision to the INS dated November 24, 2003.
284. Exhibit 56 is a genuine, authentic and accurate copy of a letter from WinVision to Yunduan Bao dated November 3, 2003.
285. Exhibit 57 is a genuine, authentic and accurate copy of a consulting agreement between WinVision and Yunduan Bao.
286. Exhibit 57 is signed by Boben Punnose on behalf of WinVision and by Yunduan Bao.
287. Exhibit 58 is a genuine, authentic and accurate copy of a letter from WinVision to Yunduan Bao dated October 15, 2003.
288. Exhibit 59 is a genuine, authentic and accurate copy of an email message from Jimit Ladha on behalf of WinVision to Yunduan Bao dated January 5, 2004.
289. Exhibit 60 is a genuine, authentic and accurate copy of an email message from Gary Iyer on behalf of WinVision to Yunduan Bao dated March 12, 2004.
290. Exhibit 61 is a genuine, authentic and accurate copy of an email message from Prakash Ramchandran on behalf of WinVision to Yunduan Bao dated December 30, 2003. Exhibit 62 is a genuine, authentic and accurate copy of an email message from Jimit Ladha on behalf of WinVision to Yunduan Bao dated January 5, 2004.
291. Exhibit 63 is a genuine, authentic and accurate copy of a letter from WinVision to the INS dated May 24, 2004.

FINDINGS OF FACT

Background

WinVision was founded in Santa Clara, California, by Gary Iyer and Prakash Ramchandran in 1994 to offer technology products and as an IT solution provider company, providing IT services to clients with on site, off site, and offshore based outsourcing. (HT, pp. 329, 376, Stipulation Nos. 1-6.) Mr. Iyer and Mr. Ramchandran each owned 50% of WinVision during the investigation period. Mr. Iyer was its chief executive officer, and Mr. Ramchandran was its president. Mr. Iyer handled the business and management aspects of the business, and Mr. Ramchandran handled the technical side of the business. WinVision started hiring H-1B workers after deciding that they were being undercut by other similarly sized companies that used H-1B workers instead of local U.S. workers. (HT, p. 330.) When WinVision started hiring H-1B workers, it hired an attorney, Dale Warner, to handle the H-1B processing. He handled the H-1B processing from 1997 through 2002, when he left the company. (HT, p. 332.) When Mr. Warner left the company, WinVision hired Boben Punnose to take over the H-1B responsibility. He remained with WinVision until 2005. (HT, p. 379.) At the time Mr. Punnose was hired, Mr. Iyer was transitioning out of the management responsibilities of WinVision and moving to Texas. With Mr. Iyer's departure, Mr. Punnose took over the management responsibilities of

WinVision, as well as the H-1B visa processing and human resources. (HT, p. 335.) Mr. Ramchandran continued to be responsible for the technical side of the business. (HT, p. 335.)

In 2003, when WinVision's business failed to improve, Mr. Iyer hired a management consultant, Dave Banker, to evaluate the company and provide him and Mr. Ramchandran with recommendations on how to turn the company around. (HT, p. 338.) In Mr. Iyer's absence, Mr. Boben had started placing WinVision H-1B workers with clients as consultants. (HT, pp. 331, 339.) WinVision evolved into a consulting company that placed workers with clients. (HT, p. 340.)

WinVision assigned its H-1B workers to clients, or secondary employers, throughout the country. The H-1B workers assigned to secondary employers were employed and paid by WinVision, but worked at the client location. WinVision billed the secondary employer for the H-1B worker's services and then paid the H-1B worker. Some H-1B workers were assigned to an intermediate company which, in turn, sent the H-1B worker to the actual client. In these instances, the intermediate company billed and was paid by the client, and the intermediate company would pay WinVision, which in turn paid the H-1B worker. The H-1B workers sometimes submitted time cards to WinVision which were used to bill the client for the services provided by the WinVision H-1B workers. (HT, p. 22.) Some H-1B workers were paid without having to submit time cards. (HT, pp. 91, 124.)

WinVision used a company called ADP to handle and issue its payroll checks. When it ran into cash flow problems, the H-1B workers were sometimes not paid, their paychecks were delayed, or they were paid reduced amounts. On occasion WinVision paid H-1B workers with WinVision company checks instead of ADP checks. (HT, pp. 40, 95, 470.) These checks, referred to as "net checks" were for the H-1B workers' net earnings after taxes and deductions were taken out. The earnings information for the net checks were run through ADP after the fact. (HT, p. 471.)

WinVision's leave procedure did not require leave requests to be submitted in writing. They were made verbally. (HT, p. 473.)

In 2004, the Wage and Hour Division of the U.S. Department of Labor initiated an investigation into WinVision's practices, and Celeste Hale, the assigned investigator, held an initial conference with Mr. Ramchandran on May 27, 2004. The investigation focused on WinVision's H-1B payroll practices and procedures during the period from May 19, 2003, through May 18, 2004.⁶ During the investigative period, WinVision had 32 full-time employees, but 26 of them worked under an H-1B visa, making WinVision an H-1B dependent employer under 20 C.F.R. § 655.736(a)(1)(ii). (Stipulation Nos. 8, 10.)

At the conclusion of the investigation, the Administrator issued a determination on May 26, 2004, finding that WinVision had failed to pay the required wages to 26 H-1B employees, had failed to make the required displacement inquiry of secondary employers, had required an H-1B employee to pay the H-1B petition processing fee, and had failed to maintain the records required by the H-1B regulations. (Ex 48.) The Administrator ordered WinVision to pay

⁶ References to the "investigative period" will be to the period between May 19, 2003, and May 18, 2004.

\$431,351 in back wages based on calculations performed by Ms. Hale on the 26 H-1B workers. (EX 46.) The Administrator also ordered WinVision to pay a total of \$100,500 in civil money penalties for its violations. (EX 48.)

WinVision denies that the H-1B workers were underpaid, and Mr. Ramchandran prepared a number of charts showing the wages paid to its H-1B employees during the investigation period. (HT, p. 476; EX 68, 69, 70.) WinVision disputes the accuracy of the back pay calculations made by Ms. Hale, arguing that she included periods when the H-1B workers were on vacation and not available to work, that she included periods before they joined the WinVision payroll or after they left WinVision, and that she failed to include the “net checks” paid to the H-1B workers. During the course of this litigation, WinVision provided additional payroll information to Ms. Hale which caused her to revise her back pay calculations and conclude that only 17 H-1B workers were owed back wages totaling \$270,293.30. (HT, pp. 244-45; EX 82; EX 83.)

Five current and former WinVision H-1B employees testified at the hearings held in this case about their experiences at WinVision, specifically about their payroll experience. Their testimony, coupled with other evidence in the record, shows that WinVision falsified records to justify their failure to pay wages to the affected workers and made false claims as to when some of the workers started or ended their employment with WinVision to justify the lower wages.

Mr. Ramchandran claimed that the ADP payroll records would not provide the complete payroll picture for WinVision. (HT, p. 493.) He compiled payroll information using the ADP payroll records, entry books, which had been used to enter payroll checks that were not processed through ADP, and information from employees to generate EX 69, which he asserted more accurately showed the wages paid to WinVision’s H-1B workers. (HT, pp. 490-94.) He asserted that generally, except for a few errors, no money was owed to any of WinVision’s H-1B workers.

Administrator’s Position On Back Wages Owed

To calculate the back wages, if any, that were owed to WinVision’s H-1B workers, Ms. Hale first identified WinVision’s H-1B employees during the investigation period by using WinVision’s ADP payroll records, EX 64, its LCA applications, and the U.S. Department of Justice Petition for a Non-immigrant Worker forms, I-129 forms, EX 16 – EX 41, that WinVision submitted for its H-1B workers. After identifying the employees, Ms. Hale determined their hire date from the ADP payroll records, information provided by Mr. Ramchandran, and from the personnel records. (HT, p. 210.) She identified their termination dates from the ADP payroll records, information provided by Mr. Ramchandran and information provided by individual workers. (HT, pp. 211-12.)

To make the back pay calculation, she identified the rate of pay for each worker from the LCA application that was in his or her personnel file. She used the wage rate identified in each LCA as the prevailing wage rate for the particular position the H-1B worker occupied. (HT, p. 214.) She identified how much each H-1B worker was actually paid by going through the ADP records and crediting WinVision with the payments reflected in the ADP payroll records that were provided to her. (HT, p. 215.) Because WinVision did not always promptly pay its

employees and sometimes paid them several months after the pay period ended, she reviewed the payroll records and used the pay period associated with the payroll checks, not the check date, to determine the payments made for the investigation period. (HT, p. 216.) After completing all her calculations, she determined the amount of back wages owed to the H-1B workers who were not fully paid the wages specified in the LCA applications.

The Administrator asserts that back wages totaling \$270,293.30 are owed to the following H-1B workers as follows:

H-1B Worker Name	Period covered ⁷	Wages owed	Wages paid	Back wages owed ⁸
Atlani, Bosky	2/1/04 – 5/22/04	\$11,686.40	\$4,844.00	\$6,842.40
Bao, Yunduan	10/21/03 to 5/1/04	\$13,267.47	0	\$13,267.47 ⁹
Chowdhury, Shatadru	5/19/03 to 10/31/03	\$12,544.86	\$5,916.66	\$12,544.86
Jacob, Mathew	11/19/03 to 2/27/04	\$17,307.75	\$4,000.00	\$13,307.75
Konduru., Sreenivas	5/19/03 to 5/18/04	\$60,000.00	\$28,901.50	\$31,098.50
Ladha, Jimit	5/19/03 to 5/22/04	\$45,000.00	\$14,375.00	\$30, 625.00
Majmudar, Shilpa Vivesh	5/19/03 to 7/11/03	\$6,923.04	0	\$6,923.04
Nikte, Abhijeet	5/19/03 to 10/30/03	\$19,903.05	\$13,125.00	\$6,778.05
Nimkar, Mandar	5/19/03 to 7/11/03	\$6,923.04	\$2,750.00	\$4,173.04
Pai, Srinivas	5/19/03 to 1/31/04	\$36,244.83	\$17,708.31	\$18,536.52
Renduchintala, Padmini	5/1/04 to 5/18/04	\$1,570.38	0	\$1,570.38
Rohini, Ajith Chandran	5/19/03 to 2/28/04	\$37,982.40	\$10,012.00	\$27,970.40
Seshadri, Narayanan	3/1/04 to 5/18/04	\$13,015.32	\$4,700.00	\$8,315.32
Sudhakaran, Susruth	6/9/03 to 5/18/04	\$39,807.48	\$10,262.00	\$29,545.46
Suri, Priya	5/19/03 to 4/30/04	\$39,259.50	\$21,499.98	\$17,759.52
Veeramakali, Parthiban ¹⁰	5/19/03 to 5/18/04	\$51,314.00	\$15,997.90	\$35,316.10
Vyas, Mayank	3/8/04 to 5/18/04	\$6,969.49	\$1,250.00	\$5,719.49

(EX 82, EX 83.)

WinVision's Position On Back Pay Owed

WinVision denies owing back wages to any H-1B workers and offers a number of explanations for why the workers appeared to be underpaid. Mr. Ramchandran testified at his deposition that each H-1B worker was paid based on the hours actually worked instead of a flat salary. (EX 74, pp. 28-29.) WinVision employees were paid bimonthly on the 22nd and 7th of each month for pay periods ending the 15th and 30th or 31st of each month, respectively, and each

⁷ These dates are taken from EX 82. For some, Ms. Hale used different dates in the Summary of Unpaid Wages form, EX 83, that she completed after she finished her worksheets that are EX 82.

⁸ The Wage Transcription and Computation Sheet Ms. Hale used to compute the back wages owed to each affected H-1B is EX 82.

⁹ Mr. Bao's figure includes \$1,000 that he was required to pay for his LCA application fee.

¹⁰ Mr. Veeramakali's name is misspelled in EX 83 as "Veeramkali."

H-1B worker was required to submit a time sheet for approval by his or her manager. (EX 74, pp. 22-25.)

WinVision alleges that some workers did not start on the date Ms. Hale used in her calculations; Ms. Hale used the wrong termination date for at least one worker; the back pay calculations did not include WinVision “net” checks issued to workers after they left WinVision for work they performed before they left; some workers did not work all the hours indicated by Ms. Hale; some workers took leaves of absences; one worker was paid by the intermediate company he worked for; and one person was not an employee of WinVision.

In support of these claims WinVision submitted copies of bi-monthly time sheets for the H-1B workers showing the hours allegedly actually worked by the affected workers. (RX C through RX ZZ.) These time sheets were prepared for half-month periods on forms with the WinVision letterhead and signed by a WinVision manager. None of the H-1B workers who testified had ever seen these time sheets. Some employee records offered by WinVision, those for Shatadru Chowdhury, RX H, Narayanan Seshadri, RX Y, and Ajay Verma, RX AA, included time sheets actually signed by the employee.

WinVision also offered into evidence computer printouts entitled “Time Sheet/Pay Period Summary” which were time sheet summaries for the period from May 1, 2003, to some date in 2004.¹¹ (RX FF.) The printouts were offered to document the hours that WinVision claims the affected H-1B workers actually worked and to show that periods of personal leave taken by the workers.

These exhibits, when considered with the testimony of the Administrator’s witnesses and other evidence in the record, fail to corroborate WinVision’s claims as to incorrect termination dates, inaccurate number of hours worked, and leaves of absences taken.

Alleged Incorrect Termination Dates

WinVision alleges that Ms. Hale’s calculations used the wrong termination date for some of the workers. For instance, Mr. Ramchandran testified that Ms. Hale incorrectly determined that Mr. Nikte was terminated in February 2004 when in fact he was terminated on August 30, 2003. (HT, pp. 411-413.) Mr. Ramchandran’s claim that Ms. Hale incorrectly used a February 2004 termination date for Mr. Nikte is itself incorrect. Ms. Hale’s calculations were based on Mr. Nikte leaving October 30, 2003, not February 2004. However, that mistake is insignificant. The important point to be made is that Mr. Ramchandran repeatedly stated that Mr. Nikte left August 30, 2003, and then finally admitted while being questioned by his own counsel that Mr. Nikte might have left September 30 or October 30, 2003. (HT, pp. 414-15.) In fact, Mr. Nikte left on October 31, 2003, and he sent both Mr. Boben and Mr. Ramchandran an e-mail message on October 31, 2003, stating that that was his last day of work. (EX 81.)

Despite the somewhat reluctant acknowledgement by Mr. Ramchandran at the hearing that Mr. Nikte might have left September 30 or October 30, 2003, WinVision offered Mr. Nikte’s WinVision time sheets, RX Q, to show that Mr. Nikte did not work after August 22,

¹¹ Unfortunately, the holes for the exhibit cut out the ending date for the printout, though it is clear that the printout extended into 2004..

2003. RX Q is supposed to be all the time sheets for Mr. Nikte during the investigative period. Mr. Nikte's time sheet for the second half of August 2003 showed no hours worked after August 22, and there were no time sheets in RX Q for Mr. Nikte after August 31, 2003. The time sheet summary for Mr. Nikte was consistent with Mr. Ramchandran's claim that Mr. Nikte left after August 22, 2003, and showed no time worked after August 22, 2003. (RX FF, p. 15.) Taken at face value, this would corroborate Mr. Ramchandran's claim that Mr. Nikte did not work for WinVision after August 22, 2003.

Mr. Nikte had no knowledge of the WinVision time sheets that were offered as Exhibit RX Q, and he never saw them until just a couple of weeks before he testified at the hearing. (HT, p. 27.) After seeing the time sheets WinVision submitted for him, Mr. Nikte contacted the employer he worked for between May 2003 and October 2003 and obtained copies of the actual time sheets signed by him, as well as his supervisor and manager at the job site. (HT, p. 24; EX 84.) These actual time sheets show not only that he worked 40 hours between August 25 and 31, 2003, they also show that he worked every week after August 31, 2003, up through October 31, 2003. (EX 84.)

This is very disturbing. The WinVision time sheets and time sheet summaries offered by WinVision corroborated Mr. Ramchandran's testimony that Mr. Nikte left WinVision's employment August 23, 2003. If Mr. Nikte had not been able to obtain his actual time sheets from his direct employer, there would have been no documentary evidence to establish that he worked for WinVision after August 22, 2003.

There were similar problems with the time records for other employees who allegedly had "incorrect" termination dates. WinVision time sheets for Shilpa Majmudar have no time entries after June 6, 2003, and there is a note "left 8th" on her June time sheet implying that she left WinVision June 8, 2003. (RX N.) Her time sheet summary also has no time entries after June 6, 2003, and the word "TERM" appears on the sheet, again, implying she was terminated after June 6, 2003.

Ms. Majmudar denies that she left June 6, 2003, and asserts that she worked until July 11, 2003. (HT, p. 120.) To support her claim, she forwarded to the Administrator's counsel a copy of an e-mail message that she received from Mr. Ramchandran. On July 11, 2003, Mr. Ramchandran sent WinVision's Human Resources Department an e-mail message, with a copy to Ms. Majmudar, stating that Ms. Majmudar had an alternative job offer that better served her needs both financially and geographically so he had accepted her resignation. (EX 80.) The e-mail message does not explicitly state her last day of employment, but it suggests that HR give her a "final exit interview today," which clearly demonstrates that Ms. Majmudar was working for WinVision on July 11, 2003.

The evidence relating to Mr. Nikte's time cards and Ms. Majmudar's alleged early termination demonstrates that the absence of time entries on the WinVision's time sheets and the computer generated time sheet summaries for Mr. Nikte and Ms. Majmudar cannot be relied on to prove that they left WinVision's employment earlier than indicated in Ms. Hale's calculations as claimed by WinVision.

Alleged Incorrect Hours Used to Compute Wages Owed

WinVision also claims that some of the H-1B workers took leaves of absence or did not work full time. This claim was rebutted not just by the testimony of those workers who testified, but even more persuasively by the documentary evidence, namely the actual time cards, that some of these workers were able to obtain from the employers they actually worked for.

This was especially true for Mr. Nikte. A comparison of Mr. Nikte's alleged WinVision time sheets with his real time sheets reveals numerous inconsistencies between the two sets of time sheets, indicating that either the WinVision time sheets were inaccurate or were fabricated.

WinVision's time sheets and time sheet summary for Mr. Nikte, show that Mr. Nikte only worked 36 hours per week, for the period from June 23, 2003, through July 18, 2003, and, as discussed earlier, they show no time worked after August 22, 2003. (RX Q; RX FF, page Q14.)

The entries on Mr. Nikte's real time sheets differ greatly from those on the WinVision time sheets. The following table shows the differences between entries on WinVision's time sheets and the actual time sheets for the hours Mr. Nikte worked between June 23, 2003, and July 18, 2003:

Date	Time shown on WinVision time sheet (RX Q)	Time shown on actual time sheet (EX 84)
6/23/03	8	8
6/24/03	8	8
6/25/03	8	8
6/26/03	8	8
6/27/03	4	8
6/30/03	4	8
7/1/03	8	8
7/2/03	8	6.5
7/3/03	8	0 (on leave)
7/4/03	8	0 (holiday)
7/7/03	8	8.5
7/8/03	8	9
7/9/03	8	8
7/10/03	8	7.5
7/11/03	4	7.5
7/14/03	4	7
7/15/03	8	8.5
7/16/03	8	9.5
7/17/03	8	9
7/18/03	8	6

Only 6 of the 20 time entries during this four week period are the same. Clearly, the WinVision time sheets cannot be relied on to show the actual hours Mr. Nikte, or any other H-1B worker worked.

A similar situation was evidenced by the WinVision time sheets for Sreenivas Konduru. Mr. Konduru's WinVision time sheets show that Mr. Konduru went on a leave of absence after April 15, 2004, and there were no WinVision time sheets for him for May 2004. (RX L.) WinVision's time sheet summary shows that Mr. Konduru was on a leave of absence from April 16, 2004 through May 18, 2004, the end of the investigative period. (RX FF.)

Like Mr. Nikte, Mr. Konduru contacted his actual employer and obtained the time records that his employer maintained. (HT, p. 73.) These time sheets, EX 86, show that Mr. Konduru not only worked after April 16, 2004, he worked 40 hours a week every week between April 19, 2004, through May 21, 2004.

WinVision's time sheets show that Mr. Konduru took approximately three weeks of personal time off during the back pay period and that there were weeks when he did not work a full 40-hour week. Mr. Konduru denied taking more than a couple of days off for personal time and testified that he usually worked 40 hours a week and never worked part time. (HT, pp. 70-71.)

Parthiban Veeramakali's WinVision time sheets, RX T, and his time sheet summary, RX FF, both show that he rarely worked an 8-hour day and that he took a leave of absence from April 19 to April 23, 2004. It also shows a three month leave of absence from October 6, 2003, to January 4, 2004. Mr. Veeramakali¹² testified that he worked 8 hours a day and 40 hours a week. (HT, p. 144.) While he seemed unsure about how many days he might have taken off for sick leave or vacation, he was sure it was not more than a total of five days. (HT, p. 145.) With regard to the three-month leave of absence from October 6, 2003, to January 4, 2004, he testified that he was positive he did not take any vacations during the back pay period because he went to India in March 2005 and didn't take any vacations before that trip. (HT, pp. 145-46.)

Similarly, Shatadru Chowdhury, whose WinVision time sheets and time sheet summaries, RX H and RX FF, show that he took several extensive personal leaves of absence from May 19, 2003, to October 31, 2003, testified that while he may have taken a few days of leave, he did not take this much leave. (HT, p. 184.)

Mr. Nikte's and Mr. Konduru's actual time records show that Mr. Ramchandran's testimony that employees were paid based on the actual hours worked is patently false. More importantly, they show that the alleged time sheets offered by WinVision to support their claim that employees were properly paid were in all probability falsified and cannot be used to determine the hours a worker actually worked.

In summary, I find WinVision's time sheets for the affected H-1B workers and the time sheet summaries for those same workers to be unreliable and of no probative value.

¹² This hearing was audio-taped, and the tapes were transcribed for the hearing transcript. Because of Mr. Veeramakali's heavy accent, the transcript incorrectly identifies him as "Berdhiben Veeremeteli."

Alleged Failure to Include “Net” Checks in Back Wages Calculation

WinVision repeatedly argues that Ms. Hale failed to include wages that were paid directly to affected workers with WinVision “net” checks for the amount of wages owed after deductions were taken out of the gross wages. (Respondent’s Post-Hearing Brief, pp. 5, 6, 8.) Ms. Hale testified that she included all checks paid to the affected workers that were reflected in the ADP payroll registers, including checks issued after the investigative period. (HT, pp. 304-07.) WinVision’s argument that its back pay liability should be reduced because Ms. Hale did not include the payments made through WinVision “net” checks is incorrect. It completely ignores the fact that Mr. Ramchandran testified that any amounts paid through “net” checks were reported to ADP and incorporated into the ADP payroll, HT, pp. 470-71,¹³ I find amounts paid to H-1B workers through “net” checks were fully credited to WinVision.

Alleged Statements by Former Workers that No Back Wages Were Owed to Them

Mr. Ramchandran testified that he spoke with almost every one of the 26 underpaid H-1B workers that Ms. Hale originally identified and that almost every person he spoke to stated that no back wages were owed to them. (HT, pp. 440-53.) I do not find this to be persuasive evidence that no back wages are owed to the workers. First, Mr. Ramchandran’s testimony on this issue is self-serving and uncorroborated. Though WinVision could have called any of these other H-1B workers to testify at the hearing, either in person or by phone, none were called. More importantly, these workers may not have been aware of their entitlement to the prevailing wage specified in the LCA application.

Use of Representative Testimony

WinVision challenges the Administrator’s use of “representative” testimony because not all the allegedly underpaid H-1B workers testified. The Administrator called only some of the workers to testify at the hearing and argues that their testimony is representative of WinVision’s practice of underpaying its workers.

WinVision argues that inconsistencies in the testimony of those affected workers who testified and in Ms. Hale’s methodology cast the wages of the employees who testified into serious doubt. It also argues that Mr. Ramchandran testified that he spoke to 20 of the 26 “so-called unpaid H-1B employees” and none of them stated that they were owed monies. (Respondent’s Post Hearing Brief, p. 9.)

The Administrator argues that the Administrative Review Board (“ARB”) has found use of representative testimony is appropriate in H-1B hearings, citing *Administrator Wage and Hour Division, Employment Standards Administration v. Pegasus Consulting Group*, ARB Nos. 03-032 and 03-033 (June 30, 2005) (“*Pegasus*”).

As the ARB pointed out in *Pegasus*, under labor statutes requiring payment of minimum wages, overtime pay, and prevailing wage rates, it is not necessary for every underpaid employee

¹³ The Administrator’s Post-Hearing Brief incorrectly states that Mr. Iyer also testified that payments made to employees with non-ADP payroll checks were later run through the ADP payroll, citing pages 304-305 of the Hearing Transcript. This was Ms. Hale’s testimony, not Mr. Iyer’s.

to testify in order to prove violations that require the award of back wages. *Pegasus*, at 7-8. Testimony and evidence from representative employees is enough to establish a pattern and practice applicable to all similarly situated employees. *Pegasus*, at 7-8, citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1940) (pattern or practice established with “sufficient evidence to show the amount and extent of that work [performed] as a matter of just and reasonable inference;” burden then shifts to employer to rebut existence of violations “with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence.”). See also *Reich v. Southern New England Telecomm. Corp.*, 121 F.3d 58, 67 (2d Cir. 1977); *Martin v. Selker Bros., Inc.*, 949 F.2d 1286, 1298 (3d Cir. 1991); *Cody-Zeigler, Inc. v. Administrator, Wage & Hour Div.*, ARB No. 01-014, 015, ALJ No. 97-DBA-17, slip op. at 8 (ARB Dec. 19, 2003).

In the *Pegasus* case, which also involved underpaid H-1B workers and the use of representative testimony, the ARB specifically held that the H-1B workers who testified at that hearing “were sufficient to establish a pattern or practice regarding those who did not.” *Pegasus*, slip op. at 8. In that case, the respondent engaged in similar conduct for the workers who did not testify as it had for those who did, and it offered the same defenses for the non-testifying workers as it had offered for those who testified. In this case, other than claiming that the other workers had told Mr. Ramchandran that no back wages were owed to them, HT, pp. 443-52, WinVision offered no specific defenses that were different from those offered for those who did testify.

I find that in this case, the fact that two affected workers were able to contact their former clients and obtain their actual time cards, which showed that the WinVision time cards were inaccurate is sufficient to show that the time entries reflected in the WinVision time cards and time summaries cannot be relied on. Moreover, those same time cards, as well as the evidence discussed earlier which rebuts WinVision’s claims as to incorrect termination dates also establish that the absence of WinVision time cards or time entries cannot be considered corroborating evidence for the alleged earlier termination dates. As stated earlier, the Administrator has demonstrated that WinVision’s time records are unreliable, if not patently false, for those workers who testified and those who were able to produce their real time cards. I have no reason to doubt that the same could be demonstrated for those affected employees who did not testify.

WinVision’s Back Pay Liability

In addition to claims that the Administrator’s calculations were inaccurate because the wrong termination dates were used, workers took leaves of absence, and workers did not work all the hours used in the Investigator’s calculations, WinVision also argues that the Investigator did not include payments made to the affected workers directly by WinVision with “net checks” and payments made after their termination date to terminated employees for work performed during the investigative period.

I find no merit to these challenges to the calculations. Mr. Ramchandran, himself, testified that after the employees were given “net checks” the earnings information was still run through ADP after the payments were made. (HT, p. 471.) Additionally, the Investigator included in her back wages calculation payments made to the affected employees after the investigative period where the payment indicated it was for wages owed during the back pay period.

The back wages owed to each affected H-1B worker will be discussed separately. I reviewed the evidence and made my own calculations to confirm the back wages owed to each worker. In a few instances, my calculations differ from Ms. Hale's. Ms. Hale's work sheets, EX 82, detail how she made her calculations, but when I attempted to verify her calculations, I found some discrepancies. In making my calculations, I relied on the ADP payroll registers found in EX 64 and RX B¹⁴ for the pay periods in question.

Bosky Atlanti

Bosky Atlanti worked in Atlanta, Georgia, as a Programmer Analyst for 16 weeks from February 1, 2004,¹⁵ to the end of the back pay period. The prevailing wage for Ms. Atlanti's job in Atlanta, Georgia, at the time was \$37,981.00. (Stipulation Nos. 38-42.) With a calculated weekly wage rate of \$730.40 (\$37,981/52 weeks), Ms. Hale determined that Ms. Atlanti should have been paid \$11,686.40 for those 16 weeks. (EX 82.) Ms. Hale calculated, and I find, that Ms. Atlanti was paid a total of \$4,844 as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
2-15-04	3-30-04	\$1,344.00
3-15-04	6-1-04	\$2,184.00
4-15-04	5-14-04	\$1,316.00

Thus, I find Ms. Atlanti is owed \$6,842.40 (\$11,686.40 - \$4,844.00) in back wages.

Yunduan Bao – Back Wages Owed

WinVision denies that Mr. Bao ever worked for WinVision. (Respondent's Post-Hearing Brief, p. 7.) Mr. Ramchandran testified that Mr. Bao came to WinVision in October 2003 in response to a WinVision internet ad offering training and signed a "consulting agreement," which WinVision required of the students in their classes. (HT, pp. 384-867.) Mr. Ramchandran further testified that Mr. Bao completed the training after two to three months and then left. (HT, p. 388.) He next became aware of Mr. Bao when Mr. Boben asked him to sign a check for premium processing for Mr. Bao's LCA application. (HT, p. 389.) Then, in about April 2004, he learned that Mr. Bao was being recruited by Volt, a recruiter who recruited for Microsoft, but a conflict arose, and nothing was finalized with Mr. Bao. (HT, pp. 390, 397.) Mr. Ramchandran was adamant that Mr. Bao did not have an employment agreement with WinVision and had merely signed a consulting agreement. (HT, pp. 396, 397.) Mr. Iyer also testified that Mr. Bao

¹⁴ The Administrator's ADP payroll records in EX 64 ended with the pay period ending April 30, 2004, before the end of the investigative period, and did not include records for some of the payments made after May 18, 2004, for work done before May 18, 2004, though Ms. Hale included the post-May 18 payment figures in her worksheets. WinVision's RX B was more comprehensive and included payroll registers through the end of the investigative period, as well as the payroll registers showing payments after May 18, 2004, for work performed before May 18, 2004, that Ms. Hale apparently used in her calculations. I will only refer to specific Payroll Register pages of the Administrator's EX 64 since it was paginated, unless the Payroll Register pages are only found in RX B..

¹⁵ The parties stipulated that the LCA submitted on behalf of Ms. Atlanti indicated her intended period of employment was to begin January 19, 2004, Stipulation number 38, but Ms. Hale's back pay calculations began February 1, 2004, and the INS H1-B approval issued on January 29, 2004, RX C, states that it was valid beginning February 1, 2004.

was never an employee of WinVision and was merely being trained by WinVision. (EX 76, pp. 55-56.) In contrast, Mr. Bao stated in an affidavit that he was interviewed by WinVision and started working on October 21, 2003, under “OPT” status until January 28, 2004, when his H-1B visa was approved and he started working under H-1B status. (EX 78.)

WinVision’s claim that Mr. Bao was never an employee of WinVision is amply rebutted by the evidence. Mr. Bao did sign a “consulting agreement” with WinVision on October 21, 2003. (EX 57.) However, a review of the “consulting agreement” reveals that it is essentially an employment contract which prohibits Mr. Bao from obtaining employment with any client of WinVision’s while he is employed by WinVision and for a two-year period after his consulting agreement ends. The consulting agreement was effective immediately upon signing but did not disclose the compensation terms.

Moreover, the evidence clearly establishes that Mr. Bao was interviewed for a job with WinVision in October 2003. On October 15, 2003, Mr. Punnose, WinVision’s HR Manager wrote Mr. Bao referencing a discussion they had about Mr. Bao’s H-1B application and WinVision’s plans to submit a H-1B application on behalf of Mr. Bao. (EX 58.) Also, Mr. Punnose referred to the October interview in a November 3, 2003, letter offering Mr. Bao a position with WinVision. (EX 56.) Moreover, the parties stipulated that WinVision filed an LCA for Mr. Bao to work for it as a full-time Programmer Analyst beginning November 7, 2003, in Santa Clara, California with a prevailing wage of \$40,830.00. (Stipulation Nos. 43-46.) Furthermore, on November 24, 2003, Mr. Punnose sent letters to the Immigration and Naturalization Service, stating on behalf of WinVision, that WinVision wanted to apply for an H-1B petition for Mr. Bao, and Mr. Ramchandran, himself, signed the LCA Application for Mr. Bao. (EX 18; EX 54; EX 55.)

Additionally, Mr. Bao was sent e-mail messages asking him to perform various tasks on web sites for WinVision and referencing meetings with WinVision. (EX 59-62.) During his deposition, Mr. Ramchandran alleged that the e-mails sent to Mr. Bao asking him to make changes to web sites were part of his training. Mr. Ladha sent Mr. Bao an e-mail message on January 5, 2004, asking him to update an “indiacommerce.com” web site to change a phone number that was no longer being used and to update two associated web sites as well. (EX 59.) Mr. Ramchandran claimed that Mr. Bao was being trained to work with Pivot Path, a product used by that site, and that the request was part of Mr. Bao’s training. (EX 74, pp. 172-73.) After providing some somewhat evasive answers to questions about the “indiacommerce.com” web site, Mr. Ramchandran finally admitted that “indiacommerce.com” was a public WinVision web site. (EX 74, p. 176.)

I do not find credible Mr. Ramchandran’s claims that Mr. Ladha’s requests for Mr. Bao to make changes to a public web site that belonged to WinVision were part of a training exercise for someone who was not an employee. It does not make sense that trainees would be allowed to access and change a public Internet web site as a training exercise. Moreover, Mr. Iyer testified at his deposition that training was offered to employees as well as non-employees, and that non-employees were required to pay for their training, while employees received the training for free. (EX 76, pp. 52-53.) There is no evidence that Mr. Bao was ever asked or ever tendered any type of payment for the training he received, lending further support to a conclusion that Mr. Bao was an employee. Finally, Mr. Ramchandran notified the INS on May 24, 2004, that WinVision was

terminating its H-1B sponsorship of Mr. Bao. (EX 63.) This lends further support to a conclusion that Mr. Bao was an employee. Why would there be a need to terminate an H-1B sponsorship of someone who was not an employee?

The evidence clearly establishes that Mr. Bao worked for WinVision in Santa Clara, California. He started working for WinVision on October 21, 2003, before his H-1B visa was issued. His visa was issued January 27, 2004, and was valid from January 28, 2004, to November 6, 2006. Because he was not working under an approved LCA application, Ms. Hale determined his wage entitlement before January 28, 2004, based on the Federal minimum wage in effect at the time. She calculated that Mr. Bao should have been paid \$2,060.00 (40 hours/week x \$5.15 (minimum wage) x 10 weeks) between October 21, 2003, and January 27, 2004. (EX 82.)

The prevailing wage rate in Santa Clara during the period covered by Mr. Bao's H-1B visa was \$40,830. (Stipulation No. 45.) Thus, his prevailing weekly wage rate after his H-1B status was approved was \$785.19 (\$40,830.00/52 weeks). Using the prevailing weekly wage rate, Mr. Yunduan should have been paid \$10,207.47 for the 13 weeks he worked after his H-1B visa was approved. (EX 82.)

Since Mr. Bao received no wages for his work, I find he is owed \$12,267.47 (\$2,060.00 + \$10,207.47) in back wages.

Shatadru Chowdhury

Shatadru Chowdhury was an H-1B worker employed by WinVision as a programmer analyst working for WinVision in Santa Clara, California. His position was identified in his LCA as a full-time job with a prevailing wage of \$40,000. The prevailing wage and required wage for programmer analysts in Santa Clara, California, during the period covered by Mr. Chowdhury's LCA was \$40,000. (Stipulation Nos. 57-62; EX 21, pp. 284-86.) Mr. Chowdhury started working for WinVision on July 15, 2002, and left on October 31, 2003. (TR, pp. 175, 188; EX 64, p.1211.)

Ms. Hale determined, and I have confirmed, that he was paid \$5,916.66 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$916.66
6-15-03	10-8-03	\$1,000.00
6-30-03	11-5-03	\$1,000.00
7-15-03	12-2-03	\$1,000.00
10-15-03	1-30-03	\$2,000.00

Mr. Chowdhury's weekly prevailing wage was \$769.23 (\$40,000/50 weeks). During the 24 weeks that Mr. Chowdhury worked for WinVision, he should have been paid \$18,461.52. Thus, I find Mr. Chowdhury is owed \$12,544.86 (\$18,461.52 - \$5,916.66) in back wages.

Sreenivas Konduru

WinVision filed an LCA indicating that Mr. Konduru would be working for it as a Programmer Analyst and that his wage rate would be \$50,000.00 beginning October 1, 2003. However, the parties stipulated that WinVision intended to pay him \$60,000.00, which was the actual wage rate for programmer analysts with Mr. Konduru's qualifications. (Stipulation Nos.93-100.) Mr. Konduru worked for WinVision from May 19, 2003,¹⁶ to May 18, 2004, as a programmer analyst. His salary was \$60,000.00, which calculated out to be \$1,153.84 per week. He should have been paid \$60,000.00 for that time period.

Ms. Hale calculated that Mr. Konduru was paid \$28,901.50, broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$937.50
6-15-03	10-8-03	\$937.50
6-30-03	11-5-03	\$652.50
7-15-03	12-2-03	\$3,144.00
9-30-03	10-16-03	\$2,500.00
12-31-03	1-14-04	\$2,310.00
1-15-04	2-18-04	\$2,100.00
1-31-04	3-17-04	\$2,310.00
2-15-04	3-30-04	\$2,100.00
2-29-04	4-12-04	\$2,100.00
3-15-04	6-1-04	\$2,500.00
3-31-04	7-9-04	\$2,310.00
4-15-04	5-14-04	\$2,500.00
4-30-04	5-20-04	\$2,500.00

However, my analysis of the evidence shows that he was paid \$31,401.50. Ms. Hale's calculations did not include a payment of \$2,500.00 which was paid to him on October 30, 2003, for the period from October 1-15, 2003. (EX 64, p. 1272.)

WinVision argues that Mr. Konduru testified that he took a month-long vacation during May 2004, citing page 74 of the hearing transcript. (Respondent's Post-Hearing Brief, p. 2.) Respondent mis-states the testimony. Mr. Konduru testified that he might have taken one or two days off, but when asked to confirm that he took four weeks of leave between April 19, 2004, and May 14, 2004, Mr. Konduru emphatically said he did not. He testified that there was no way he would have taken four weeks of vacation at that time because he was planning to take a month-long vacation after May 24, 2004. (HT, pp. 71-74.)

WinVision asserts that the only periods when Mr. Konduru was not paid was for those periods when he was between employers. (Respondent's Post-Hearing Brief, p. 3.) The fact that Mr. Konduru was "between" employers and WinVision did not have work for Mr. Konduru does

¹⁶ There is no evidence in the record to explain the discrepancy between the LCA start date of October 1, 2003, and Mr. Konduru's appearance on the payroll before that date.

not excuse WinVision from paying Mr. Konduru his wages. He was identified in his LCA application¹⁷ as a full-time worker. The regulations require that an H-1B worker identified as a full-time worker must be paid, despite the lack of work, unless the non-productive period was due to conditions unrelated to employment which take the worker away from work voluntarily. 20 C.F.R. § 655.731(c)(7)(i). WinVision was obligated to continue to pay Mr. Konduru when he was “between” employers.

WinVision also argues that Mr. Konduru took leaves of absence at other times during his employment and that those times were noted in WinVision’s records. (Respondent’s Post-Hearing Brief, p. 6.) I have already discussed my conclusion that the WinVision time and payroll records were fabricated and see no need to discuss this claim any further in light of Mr. Konduru’s denials that he took any leaves of absences.

Thus, I find Mr. Konduru is owed \$28,598.50 (\$60,000.00 - \$31,401.50) in back wages.

Jimit Ladha

Jimit Ladha was employed by WinVision in Fremont, California, during the investigation period as a programmer analyst. His LCA application said that his intended dates of employment were February 4, 2003, to February 4, 2006, in Santa Clara, California, with a prevailing wage of \$45,000.00 per annum. (Stipulation Nos. 101-106.) Mr. Ladha worked for WinVision during the entire investigative period and should have been paid \$45,000.00 during that time period.

Ms. Hale calculated, and I find, that Mr. Ladha was paid \$14,375.00 during the investigation period broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$1,875.00
6-30-03	11-5-03	\$1,875.00
7-15-03	12-2-03	\$1,875.00
12-31-03	1-14-04	\$1,875.00
1-31-04	3-17-04	\$1,875.00
3-15-04	6-1-04	\$2,500.00
3-31-04	7-9-04	\$2,500.00

Thus, I find Mr. Ladha is owed \$30,625.00 (\$45,000.00 - \$14,375.00) in back wages.

Shilpa Vivesh Majmudar

Shilpa Majmudar was working for WinVision at the beginning of the investigative period. She testified that she started working for WinVision in Santa Clara, California, as a

¹⁷ The LCA application in evidence, RX L, and the stipulations agreed to by the parties, Stipulation No. 95, provide that Mr. Konduru was a full-time H-1B worker beginning October 1, 2003. Mr. Konduru was on WinVision’s payroll before October 1, 2003, the effective date of the LCA application that is in evidence. There was presumably another LCA application in effect before the on that is in evidence.

software developer in February 2002, and left on July 11, 2003. (HT, pp. 120-21.) The parties' stipulated that her LCA application listed her employment would begin February 2003. (Stipulation No. 109.) Regardless of whether she began in February 2002 or February 2003, she was working at WinVision on May 19, 2003. She testified that she left WinVision on July 11, 2003, and, as discussed earlier, she has offered e-mail evidence that she left on July 11, 2003. However, the ADP payroll records, which I and Ms. Hale relied on, show that she left June 15, 2003. The ADP records include periodic Employee Lists which list employees on the payroll and sometimes list their termination date. The Employee List for the pay period ending July 15, 2003, that listed the payroll checks issued on September 24, 2003, lists Ms. Majmudar as an employee. (EX 64, p. 1211.) However, the Employee List for the same pay period but for payroll checks issued December 2, 2003, lists her as being terminated June 15, 2003. (EX 64, p. 1225.) In light of the e-mail exchange concerning her termination on July 11, 2003, I conclude that the June 15, 2003, termination date entry that appeared on the December 2, 2003, Employee listing was entered in error and that she left WinVision on July 11, 2003.

The prevailing wage rate for Ms. Majmudar's job in 2003 was \$45,000.00, yielding a weekly wage of \$865.38 (\$45,000/52 weeks.) (Stipulation #112.) Ms. Majmudar should have been paid \$6,923.04 (\$865.38 x 8 weeks) for the time she worked during the investigative period. (EX 82.) Ms. Majmudar received no payments from WinVision during the back pay period, despite the fact that her name appeared on WinVision's ADP Employee Lists.

Thus, I find Ms. Majmudar is owed \$6,923.04.

Jacob Mathew

Mr. Mathew's name appears in the record as "Mathew Jacob" and as "Jacob Mathew." The Administrator refers to him as Mathew Jacob. However, the ADP payroll records list him as "Jacob Mathew." I find the ADP payroll records more likely to be correct since that was probably the name was used for income tax purposes. I will refer to him as Jacob Mathew.

Mr. Mathew was employed in Santa Clara, California, as a programmer analyst. Despite the fact that Mr. Mathew's LCA stated the prevailing wage for Mr. Mathew's job was \$39,520.00 per annum, WinVision has stipulated that the actual wage rate for programmer analysts with Mr. Mathew's experience, qualifications, and duties in the Santa Clara area was \$60,000.00 during the investigative period and that that was the wage he should have been paid. (Stipulation Nos. 82, 85, 86.) His weekly prevailing wage was \$1,153.85 (\$60,000/52 weeks). Mr. Mathew worked for 15 weeks from November 19, 2003, to February 27, 2004, and should have been paid \$17,307.75 (\$1,153.85 x 15 weeks).

Ms. Hale calculated that Mr. Mathew was paid \$4,000, broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
6-16-03	11-5-03	\$2,000.00
7-1-03	12-2-03	\$2,000.00

My calculations yielded a different result. Mr. Mathew also received the following payments:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid	Source
12-31-03	1-14-04	\$2,500.00	EX 64, p. 1293
1-31-04	3-17-04	\$2,000.00	EX 64, pp. 1298, 1300
3-15-04	6-1-04	\$2,500.00	EX 64, p. 1312

Thus, I find Mr. Mathew was paid \$11,000.00 during the investigative period and that Mr. Mathew is owed \$6,307.75 (\$17,307.75 - \$11,000.00) in back wages.

Abhijeet Nikte

Though Mr. Nikte's LCA application indicated that he would be working in Santa Clara, California, he actually worked as a Programmer Analyst in Connecticut. (Stipulation Nos. 113-118.) Mr. Nikte worked for WinVision beginning June 12, 2000, at a prevailing wage rate of \$45,000. (Stipulation Nos. 113-118; EX 64, p. 1211.) As discussed above, he worked during the investigative period from May 19, 2003, to October 30, 2003.

His prevailing weekly wage was \$865.38 (\$45,000.00/52 weeks). He should have been paid \$19,903.05 (\$865.38 x 23 weeks).

He was paid \$13,125.00 by WinVision, broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-30-03	\$1,875.00
6-15-03	10-8-03	\$1,875.00
6-30-03	11-5-03	\$1,875.00
7-15-03	8-11-03	\$1,875.00
8-15-03	12-5-03	\$1,875.00
9-30-03	10-16-03	\$1,875.00

The Administrator asserts that Mr. Nikte is owed \$6,778.05 (\$19,903.05 - \$13,125.00) in back wages.

Mr. Ramchandran offered evidence that five WinVision checks, totaling \$8,000.00, dated February 6, 2004, March 1, 2004, July 28, 2004, June 1, 2006, and June 18, 2006, were issued to Mr. Nikte and cashed by him. (RX GG.) These checks were not included in Ms. Hale's calculation of the back wages owed to Mr. Nikte. (EX 82.) WinVision argues that if these "net" checks were included as payments made to Mr. Nikte, their back pay liability for Mr. Nikte would be reduced (Respondent's Post-Hearing Brief, p. 6.) . I do not find that argument persuasive. Mr. Ramchandran admitted that he did not know what these checks were for. (HT,

p. 423.) He assumed they were net checks for wages owed to Mr. Nikte, but he was unable to correlate them against the ADP payroll records.

Mr. Nikte acknowledged that he received payments that were not payroll checks issued by ADP. (HT, p. 40.) He also stated that he received paychecks from time to time, but he said he had no way of knowing which paychecks belonged to which pay periods, or even which year. (HT, p. 45.) He also stated that he received paychecks from WinVision after he left, though he did not recall how many. (HT, p. 47.) More importantly, Mr. Ramchandran testified that after WinVision issued “net” checks were issued, the amounts in the net checks were incorporated into the ADP payroll system. Thus, if these amounts were in fact payments for wages, they would have already been incorporated in the ADP payroll records that were just analyzed. In the absence of any evidence whatsoever to establish that these checks issued to Mr. Nikte after he left WinVision were for wages owed to him during the back pay period, I decline to include those amounts as wages paid to Mr. Nikte.

I find Mr. Nikte is owed \$6,778.05 in back wages.

Mandar Nimkar

Mandar Nimkar started working for WinVision on August 16, 2002. (EX 64, p. 1211.) He worked in Santa Clara, California, from May 19, 2003, to July 11, 2003, as a programmer analyst, where the prevailing wage was \$45,000.00 for his job. (Stipulation Nos. 119-126.) The average weekly salary should have been \$865.38 (\$45,000/52 weeks), and Mr. Nimkar should have been paid \$6,923.04 (\$865.38 x 8 weeks).

Mr. Nimkar was paid \$2,750.00 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$1,375.00
6-15-03	10-8-03	\$1,375.00

I find Mr. Nimkar is owed \$4,173.04 (\$6,923.04 - \$2,750.00) in back wages.

Srinivas Pai

Srinivas Pai started working for WinVision on October 1, 2000, as a Programmer Analyst in Santa Clara, California at a prevailing wage of \$50,939.00. (EX 64, p. 1211; Stipulation No. 130.) He worked until January 31, 2004.

Based on a weekly prevailing wage during the investigation period of \$979.59 (\$50,939.00/52 weeks), Mr. Pai should have been paid \$36,244.83 (\$979.59 x 37 weeks) during the period worked.

Srinivas Pai was paid \$17,708.31 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$2,083.33

6-15-03	10-8-03	\$2,083.33
6-30-03	11-5-03	\$2,083.33
7-15-03	12-2-03	\$2,083.33
8-15-03	12-5-03	\$2,083.33
12-31-03	1-14-04	\$2,291.66
1-15-04	2-18-04	\$2,500.00
1-31-04	3-17-04	\$2,500.00

I find Mr. Pai is still owed \$18,536.52 in back wages.

Padmini Renduchintala

Padmini Renduchintala worked for WinVision in Santa Clara as a programmer analyst from May 1, 2004, to May 18, 2004. The prevailing wage for her position at the time was \$40,830.00 per year. (Stipulation Nos. 145-151.) Ms. Renduchintala should have been paid a weekly salary of \$785.19 (\$40,830.00/52 weeks). She should have been paid \$1,570.38 (\$785.19 x 2 weeks). Ms. Renduchintala received no payments for the work performed.

I find Ms. Renduchintala is owed \$1,570.38 in back wages.

Ajith Chandran Rohini

Ajith Chandran Rohini started working for WinVision as a programmer analyst in Santa Clara, California on July 1, 2002. (EX 64, p. 1211; Stipulation Nos. 152-157.) His prevailing wage was \$48,173.00, yielding a weekly prevailing wage of \$926.40 (\$48,173.00/52 weeks.)

When she calculated Mr. Rohini's back wages, Ms. Hale noted that he worked for WinVision during the investigative period from May 19 2003, to February 28, 2004. The termination date she used was incorrect. The detailed wage payment listings on her own worksheet shows that he was paid for the pay period ending March 15, 2004. (EX 82.) There is nothing in the record to show when Mr. Rohini left WinVision. The H-1B application that was admitted into evidence, RX F, was valid from December 1, 2003, through September 30, 2006, so that is of no help in determining when he left WinVision. However, there are no payroll register references to him after the March 15, 2004, pay period. For this reason, I will recalculate his back pay based on a termination date of March 15, 2004, which is two weeks more than Ms. Hale used for her calculation.

Mr. Rohini should have been paid \$39,835.20 (\$926.40 x 43 weeks) for the 43 weeks that were worked.

Mr. Rohini was paid \$10,012.00 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$750.00
6-15-03	10-8-03	\$750.00
6-30-03	11-5-03	\$262.00
10-15-03	10-30-03	\$1,875.00
12-31-03	1-14-04	\$1,500.00
1-31-04	3-17-04	\$1,500.00
2-15-04	3-30-04	\$1,500.00
3-15-04	6-1-04	\$1,875.00

Thus, I find Mr. Rohini is owed \$29,823.20 (\$39,835.20 - \$10,012.00) in back wages

Narayanan Seshadri

Narayanan Seshadri worked for WinVision for 12 weeks from March 1, 2004, to May 18, 2004, as a programmer analyst.¹⁸ The prevailing wage for the job he occupied at the time was \$56,400.00. (Stipulation Nos. 158-165.) Mr. Seshadri should have been paid a weekly prevailing wage of \$1,084.61 (\$56,400.00/52 weeks). He should have been paid \$13,015.32 (\$1,084.61 x 12 weeks) for the time he worked.

He was paid \$4,700.00 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
3-15-04	4-30-04	\$2,350.00
3-31-04	5-3-04	\$2,350.00

I find Mr. Seshadri is owed \$8,315.32 (\$13,015.32 - \$4,700.00) in back wages.

Susruth Sudhakaran

Susruth Sudhakaran started working as a programmer analyst for WinVision in Santa Clara, California on June 9, 2003, and worked until May 18, 2004. The prevailing wage for his job at the time was \$45,000.00. (Stipulation Nos. 166-171.) Mr. Sudhakaran should have been paid a weekly prevailing wage of \$865.38 (\$45,000/52 weeks) for a total of \$39,807.48 (\$865.38 x 46 weeks) for the 46 weeks that were worked.

Ms. Hale calculated, and I confirmed, that Mr. Sudhakaran was paid \$10,262.00 broken down as follows:

¹⁸ The Investigator's worksheet does not identify his work location during the investigation period, though he lived in Newton, Massachusetts at the time of the investigation.

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
6-30-03	8-28-04	\$2,062.00
7-15-03	9-24-03	\$1,375.00
7-31-03	11-7-03	\$1,375.00
8-15-03	12-5-03	\$1,375.00
12-31-03	1-14-04	\$1,375.00
1-15-04	2-18-04	\$1,350.00
1-31-04	3-17-04	\$1,350.00

I find Mr. Sudhakaran is owed \$29,545.46 (\$39,807.48 - \$10,262.00) in back wages.

Priya Suri

Priya Suri worked for WinVision beginning September 24, 2001, as a Programmer Analyst in Santa Clara, California. She worked from May 19, 2003, to April 30, 2004, during the investigative period at a prevailing wage of \$40,830.00. (EX 64, p. 1211; Stipulation Nos. 172-177.) The prevailing weekly wage for her job during the investigative period was \$785.19 (\$40,830.00/52 weeks). Ms. Suri should have been paid \$39,259.50 (\$885.19 x 50 weeks) during the investigative period.

Ms. Hale calculated that Priya Suri was paid \$21,499.98 broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$1,466.66
6-15-03	10-8-03	\$1,466.66
6-30-03	11-5-03	\$1,466.66
11-30-03	12-18-03	\$2,500.00
12-31-03	1-14-04	\$1,600.00
1-15-04	12-18-04	\$1,600.00
1-31-04	3-17-04	\$1,600.00
2-15-04	3-30-04	\$1,600.00
3-15-04	6-1-04	\$1,600.00
3-31-04	7-9-04	\$1,600.00
7-31-04	8-6-04	\$2,500.00
8-15-04	8-31-04	\$2,500.00

My calculations yielded a different result. I calculated that Ms. Suri was paid \$17,966.42 for the work she performed during the investigative period. Ms. Suri's paycheck on September 3, 2003, for the pay period ending May 31, 2003, was for \$1,466.00, not \$1,466.66. (Ex 64, p. 1185.) Ms. Hale omitted a payment of \$1,466.50 on December 2, 2003, for the pay period ending July 15, 2003, which appears on the payroll register for that pay period. (EX 64, p. 1208.) However, her worksheet includes payments of \$2,500.00 each for pay periods ending July 31, 2004, and August 15, 2004, which are outside the investigative period. The \$5,000.00 in payments made for those pay periods should not have been credited to WinVision.

Thus, I find Ms. Suri is owed \$21,293.08 (\$39,259.50 - \$17,966.42) in back wages.

Parthiban Veeramakali

Parthiban Veeramakali started working for WinVision on December 1, 2002. (EX 64, p. 1212.) He worked in Seattle, Washington, for WinVision as a programmer analyst during the entire back pay period from May 19, 2003, to May 18, 2004. The prevailing wage for his position in Seattle at the time was \$51,314.00. (Stipulation Nos. 178-183.) Mr. Veeramakali should have been paid \$51,314.00 during the investigative period.

Ms. Hale calculated, and my calculations confirm, that Mr. Veeramakali was paid \$15,997.90, broken down as follows:

Pay Period Ending Date	Date of Actual Payment	Amount of Wages Paid
5-31-03	9-3-03	\$1,104.16
6-15-03	10-8-03	\$1,214.58
6-30-03	11-5-03	\$1,214.58
7-15-03	12-2-03	\$1,214.58
9-30-03	10-16-03	\$1,875.00
12-31-03	1-14-04	\$1,500.00
1-15-04 ¹⁹	2-18-04	\$1,500.00
1-31-04	3-17-04	\$1,500.00
2-15-04	3-30-04	\$1,500.00
3-15-05	6-1-04	\$1,875.00
3-31-04	7-9-04	\$1,500.00

I find Mr. Veeramakali is owed \$35,316.10 (\$51,314.00 - \$15,997.90) in back wages.

Mayank Vyas

Mayank Vyas started working for WinVision on March 8, 2004, as a Programmer Analyst in Portland, Oregon. The prevailing wage rate in Portland, Oregon for his job during the investigative period was \$32,947.00. (EX 64, p. 1315; Stipulation Nos. 191-194.) Mr. Vyas's weekly prevailing wage rate was \$633.59 (\$32,947.00/52 weeks).

Mr. Vyas should have been paid \$6,969.49 (\$633.59 x 11 weeks) for the time worked, but received only one payment on June 1, 2004, for the pay period ending March 15, 2004, in the sum of \$1,250.00

I find Mr. Vyas is owed \$5,719.49 (\$6,969.49 - \$1,250.00) in back wages.

Total Back Wages Owed

In conclusion, I find WinVision failed to pay the prevailing wage to the 17 H-1B workers listed below in violation of 20 C.F.R. § 655.731. I further find that based on the employment

¹⁹ Ms. Hale's worksheet, EX 82, incorrectly lists the date as 1-15-03.

dates discussed above and the payroll registers found in EX 64 and RX B, the affected H-1B workers are owed back wages as set forth below:

H-1B Worker Name	Period covered	Wages owed	Wages paid	Back wages owed ²⁰
Atlani, Bosky	2/1/04 – 5/22/04	\$11,686.40	\$4,844.00	\$6,842.40
Bao, Yunduan	10/21/03 to 5/1/04	\$12,267.47	0	\$12,267.47
Chowdhury, Shatadru	5/19/03 to 10/31/03	\$18,461.52	\$5,916.66	\$12,544.86
Konduru, Sreenivas	5/19/03 to 5/18/04	\$60,000.00	\$31,401.50	\$28,598.50
Ladha, Jimit	5/19/03 to 5/22/04	\$45,000.00	\$14,375.00	\$30,625.00
Majmudar, Shilpa Vivesh	5/19/03 to 7/11/03	\$6,923.04	0	\$6,923.04
Mathew, Jacob	11/19/03 to 2/27/04	\$17,307.75	\$11,000.00	\$6,307.75
Nikte, Abhijeet	5/19/03 to 10/30/03	\$19,903.05	\$13,125.00	\$6,778.05
Nimkar, Mandar	5/19/03 to 7/11/03	\$6,923.04	\$2,750.00	\$4,173.04
Pai, Srinivas	5/19/03 to 1/31/04	\$36,244.83	\$17,708.31	\$18,536.52
Renduchintala, Padmini	5/1/04 to 5/18/04	\$1,570.38	0	\$1,570.38
Rohini, Ajith Chandran	5/19/03 to 3/15/04	\$39,835.20	\$10,012.00	\$29,823.20
Seshadri, Narayanan	3/1/04 to 5/18/04	\$13,015.32	\$4,700.00	\$8,315.32
Sudhakaran, Susruth	6/9/03 to 5/18/04	\$39,807.48	\$10,262.00	\$29,545.46
Suri, Priya	5/19/03 to 4/30/04	\$39,259.50	\$17,966.42	\$21,293.08
Veeramakali, Parthiban	5/19/03 to 5/18/04	\$51,314.00	\$15,997.90	\$35,316.10
Vyas, Mayank	3/8/04 to 5/18/04	\$6,969.49	\$1,250.00	\$5,719.49

Failure to Make Displacement Inquiries

As discussed earlier, WinVision placed some of its H-1B workers with secondary employers. The Administrator found that WinVision failed to make inquiries of those secondary employers as to whether or not U.S. workers would be displaced by the H-1B workers.

WinVision has admitted that it was an H-1B dependent employer. (Stipulation No. 10.) As an H-1B dependent employer, it was prohibited by 20 C.F.R. § 655.738(d)(5) from placing workers with a secondary employer without first making inquiries to determine if any U.S. workers would be displaced by the H-1B worker that was to be placed at the secondary employer. Ms. Hale found that WinVision had failed to make this inquiry for five H-1B workers who were placed with secondary employers. (HT, p. 262.) During an interview with Ms. Hale, Mr. Ramchandran admitted that WinVision did not make displacement inquiries before it placed an H-1B worker with a secondary employer to make sure that no U.S. workers would be displaced by the H-1B worker. Ms. Hale memorialized Mr. Ramchandran's statements in writing, and WinVision has acknowledged that Mr. Ramchandran signed his name to the bottom of her statement of the interview and that her written transcript is an accurate transcript of his statements. (Stipulation Nos. 270, 271.)

²⁰ The Wage Transcription and Computation Sheet Ms. Hale used to compute the back wages owed to each affected H-1B is EX 82.

Thus, I find that WinVision violated 20 C.F.R. § 655.738(d)(5) and failed to make inquiries of the secondary employers to determine if U.S. workers would be displaced by H-1B workers.

Acceptance of Filing Fee from H-1B Worker

After Mr. Bao's H-1B application was apparently not processed after it was submitted on November 24, 2003. On or about January 21, 2004, Mr. Punnose submitted a request to the INS asking for premium processing of Mr. Bao's H-1B petition, and enclosed a WinVision check for \$1,000 to pay for the processing. (EX 49; EX 51; EX 52.) The Administrator alleges that Mr. Bao was asked to reimburse WinVision for the \$1,000 premium processing fee.

An employer is prohibited from requiring or accepting payment from its employees for the H-1B petition filing fees. 20 C.F.R. § 655.73(c)(10)(ii).

WinVision denies asking Mr. Bao to pay for his H-1B application fee. However, Mr. Bao has stated under penalty of perjury that Mr. Punnose asked him to pay the \$1,000 processing fee. (EX 78.) More importantly, Mr. Bao wrote a check to WinVision for \$1,000 on January 21, 2004, right when WinVision paid \$1,000 for premium processing for Mr. Bao's H-1B application, and this check was deposited into WinVision's account. (EX 50.) Mr. Bao's sworn statement, when combined with his \$1,000 check to WinVision written when WinVision was paying \$1,000 for premium processing of Mr. Bao's H-1B application, lead me to conclude that WinVision did ask Mr. Bao to pay the processing fee for his H-1B visa application.

Thus, I find that WinVision violated 20 C.F.R. § 655.73(c)(10)(ii) and asked Mr. Bao to pay his H-1B application premium processing fee, and he is entitled to have be reimbursed for that fee.

Failure to Maintain Documentation

One of the issues in this case is whether WinVision failed to maintain documentation as required by 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i), 655.760(c), and 655.805(a)(15). The Administrator found these regulations were violated in her May 25, 2006, Determination. EX 48.

H-1B employers are required to maintain documentation relating to various aspects of the H-1B application process. They are required by 20 C.F.R. § 655.731(b) to maintain documentation to prove the validity of the wage statement in the LCA application. They are required by 20 C.F.R. § 655.738(e) to maintain documentation to show that inquiries were made to determine if U.S. workers would be displaced, especially if the H-1B worker will be placed with a secondary employer, and they are required by 20 C.F.R. § 655.739(i) to maintain documentation to show their recruitment efforts to hire U.S. workers. Also, H-1B employers are required by 20 C.F.R. § 655.760(c) to keep copies of all records required by the H-1B regulations for a specified period of time.

The records that are required to be maintained by 20 C.F.R. § 655.731(b) include payroll records necessary to document the validity of the wages being paid to the H-1B workers. WinVision claimed that it did not owe any back wages to the affected H-1B workers because

they took leaves of absences or voluntarily worked part time, but it had no documented leave requests. It only had the time sheets, filled out by WinVision managers which I have found to be either inaccurate or falsified to conform to the actual wages being paid to the H-1B workers. To the extent that any of the workers actually did take leaves of absence, WinVision failed to comply with 20 C.F.R. § 655.731(b) and 20 C.F.R. § 655.760(c) by failing to have written leave requests necessary to document those leaves of absence.

While Mr. Ramchandran admitted to Ms. Hale during his interview with her that WinVision made no displacement inquiries of the secondary employers it placed H-1B workers with, he testified at the hearing that verbal inquiries were made, but no documentation was kept relating to those inquiries. (HT, p. 466.) Mr. Iyer also testified that inquiries were made verbally but no inquiry was made in writing. (HT, p. 364.) Thus, WinVision had no documentation to show it made any displacement inquiries. These admissions establish violations of 20 C.F.R. § 655.738(e) and 20 C.F.R. § 655.760(c).

However, while there is evidence to show that WinVision did not maintain or keep any documentation to document leave requests or to show that displacement inquiries were made, no evidence was offered to show that WinVision failed to maintain the documentation required by 20 C.F.R. § 655.739(i) to demonstrate their efforts to recruit U.S. workers. Moreover, the Administrator has offered no argument to support a finding that this regulation was violated. Thus, I find WinVision did not violate 20 C.F.R. § 655.739(i).

WinVision could not violate 20 C.F.R. § 655.805(a)(15) because it is merely a listing in a list of violations the Administrator can investigate.

In conclusion, I find WinVision violated 20 C.F.R. § 655.731(b), 20 C.F.R. § 655.738(e), and 20 C.F.R. § 655.760(c), but did not violate 20 C.F.R. § 655.739(i) or 20 C.F.R. § 655.805(a)(15).

Interest on Back Wages Owed

The INA does not authorize the award of interest on back pay awards, and the Administrator has not asked that interest be awarded in this case. However, the Administrative Review Board has on a number of occasions awarded interest on back pay awards made for violations of the H-1B regulations. *Mao v. Nasser Engineering & Computing Services*, ARB No. 06-121, ALJ No. 2005-LCA-36, slip op. at 11 (ARB Nov. 26, 2008); *Inkwell v. American Information Technology Corp.*, ARB No. 04-165, ALJ No. 2004-LCA-13, slip op. at 8 (Sept. 29, 2006); *Amtel Group of Florida, Inc. v. Yongmahapakorn (Rung)*, ARB No. 04-087, ALJ No. 2004-LCA-006, slip op at 9-11 (ARB Sept. 29, 2006).

These decisions have been based on the ARB's decision in *Doyle v. Hydro Nuclear Services*, ARB Nos. 99-041, 99-042, 00-012, ALJ No. 1989- ERA-022, slip op. at 16-18 (May 17, 2000), a decision issued under the Energy Reorganization Act of 1974, 42 U.S.C.A. § 5851, ("ERA"), which also does not authorize interest on back pay awards. In *Doyle*, the ARB decided that because of the remedial nature of the whistleblower provisions of the ERA and the "make whole" goal of back pay, interest should be awarded for back pay awards to compensate the affected employee for the loss of any compound interest that might have been earned if the

affected employee had had the back wages available to invest. *Doyle*, slip op. at 18. Moreover, the Board held the same rate of interest would be awarded on back pay awards, both pre- and post-judgment. *Doyle*, slip op. at 21.

Thus, I find the affected H-1B employees are entitled to interest on the back wages owed to them by WinVision. The interest rate is that for underpayment of Federal income taxes, determined under 26 U.S.C. §6621(b)(3), plus three percentage points, compounded and posted quarterly. *Doyle*, slip op. at 16-18. The interest begins as of the date each of the back wages came due.

Additionally, I find that Mr. Bao is entitled to interest on the \$1,000.00 he paid for the H-1B premium processing fee to compensate him for the interest he might have earned if he had been able to invest that money.

The Administrator is ordered to calculate the interest that is owed to the affected H-1B workers.

Civil Penalties

In the May 25, 2006, Determination issued by the Administrator, the Administrator assessed civil money penalties totaling \$100,500 for WinVision's violations of the H-1B regulations. (EX 48.) This included a fine of \$3,750 per violation for failing to pay 26 workers the wages owed to them, a fine of \$2,500 for failing to make displacement inquiries of secondary employers, and a fine of \$500 requiring Mr. Bao to pay for his H-1B premium processing fee.

After this proceeding was initiated, WinVision provided additional payroll information which caused Ms. Hale to re-calculate the back wages that were owed, and her recalculation revealed that only the 17 individuals discussed in this Decision were owed back wages. (EX 82, EX 83.) As a result, the Administrator only asked for civil money penalties of \$63,750.00 for WinVision's failure to pay the prevailing wage to its H-1B workers.

The Administrator's \$63,750.00 civil money penalty was assessed under 20 C.F.R. § 655.810(b)(2) for WinVision's willful failure to pay 17 H-1B workers the required prevailing wage. An additional \$2,500.00 penalty was assessed under 20 C.F.R. § 655.810(c) for WinVision's failure to make the required displacement inquiries of five secondary employers, and a \$500 penalty was assessed under 20 C.F.R. § 655.810(c) for requiring Mr. Bao to pay for premium processing of his H-1B petition.

Civil money penalties are authorized by 20 C.F.R. § 655.810 for violations of the H-1B regulations. Under 20 C.F.R. § 655.810(b)(2), fines of up to \$5,000 per violation can be assessed for a willful failure relating to wages, and under 20 C.F.R. § 655.810(b)(1)(i), fines of up to \$1,000 per violation can be assessed for failing to make displacement inquiries. Additionally, fines of up to \$1,000 per violation can also be assessed under 20 C.F.R. § 655.810(b)(1)(v) for payment by an H-1B worker of the H-1B petition fee.

Susan Rincon, the Assistant District Director for the Department of Labor Wage and Hour Division in San Jose, made the actual determination of the civil money penalties that were assessed against the Claimant. She assessed a base fine of \$2,500 per violation for WinVision's

failure to pay the affected H-1B workers the wages they were entitled to under the LCA application filed by WinVision and increased the fine to \$3,750 per violation after considering the factors set out in 20 C.F.R. § 655.810(c).

In settling on the final \$3,750 fine per violation, which could have been as high as \$5,000, Ms. Rincon considered the fact that while there was no prior history of violations, WinVision's action at issue here was willful; it was serious because 17 employees were affected, and WinVision exhibited no good faith or commitment to future compliance with the regulations since WinVision denied any violations. She also considered the fact that WinVision benefited financially from the violations. (HT, pp. 313-318.)

After considering the criteria and reasons for Ms. Rincon's decision, I find that the \$3,750 fine per violation is appropriate for WinVision's violations of 20 C.F.R. § 655.731. Accordingly, WinVision is fined \$63,750 for its failure to pay the prevailing wages owed to 17 of its H-1B workers.

The H-1B regulations are 20 C.F.R. § 655.810(b)(1) provide that a civil money penalty of up to \$1,000 per violation is to be assessed for violations pertaining to displacement of U.S. workers and for payment by the H-1B worker of the H-1B filing fee. 20 C.F.R. §§ 655.810(b)(1)(i) and (v).

Ms. Rincon provided similar explanations for her decision to assess a \$500 per violation fine against WinVision for failing to make displacement inquiries of its secondary employers. In deciding that a \$500 fine per violation was appropriate for WinVision's failure to make the displacement inquiry, Ms. Rincon considered the fact that there had been no prior violation, that there were five workers affected, that the conduct was serious, and that WinVision refused to acknowledge that there had been a violation. (HT, pp. 320-23.) After considering these factors, she decided not to increase the base fine and left it at \$500 per violation.

I agree with Ms. Rincon, and WinVision is fined \$2,500 for failing to make displacement inquiries before placing five H-1B workers at secondary employers.

Ms. Rincon also decided to leave the fine for WinVision's recoupment of the \$1,000 H-1B premium processing fee from Mr. Bao at the \$500 level. She left it at that level because though WinVision denied the violation, she did not feel the violation was willful. (HT, pp. 319-20.)

I will adopt Ms. Rincon's determination that the appropriate fine for this violation was \$500. There was only one violation, and it appears that this was a violation appears to have been the result of actions by Mr. Punnose, who is no longer with WinVision.

Debarment Request

The Administrator asks that pursuant to 20 C.F.R. § 655.855, WinVision be debarred and that any LCA petitions filed by it be denied for a period of at least two years, citing 8 U.S.C. §§ 1154 and 1184(c), 20 C.F.R. §§ 655.810(b)(2)(i) and 655.810(d)(2). Under 20 C.F.R.

§ 655.855(d)(2), the Administrator would notify the Department of Homeland Security²¹ that WinVision was disqualified from approval of any H-1B petitions for at least two years.

Such a debarment is mandated by the regulations for a willful failure to pay the prevailing wage to H-1B workers. 20 C.F.R. §§ 655.810(b)(2) and 655.855(d)(2). WinVision's actions were not just willful, they were intentional. The discrepancies between the WinVision time and payroll records and the real time cards that Messrs. Nikte and Konduru were fortunately able to obtain from their direct employer cannot be explained away as simple mistakes, nor can the discrepancies in WinVision's claims as to incorrect termination dates.

I find that WinVision's violations of the LCA regulations was willful and that debarment for a period of two years is appropriate for WinVision's actions.

CONCLUSION

In conclusion, I find that WinVision WinVision failed to pay the prevailing wage to 17 H-1B workers identified in this decision in violation of 20 C.F.R. § 655.731 and that back wages, as set out above, plus interest, are owed to the affected employees. I further find that WinVision failed to make displacement inquiries of five secondary employers before assigning H-1B workers to those employers in violation of 20 C.F.R. § 655.738(d)(5). I also find that WinVision violated 20 C.F.R. § 655.73(c)(10)(ii) by requiring an H-1B worker to pay the fee for premium processing of his H-1B application and must reimburse the worker, with interest. Finally, I find WinVision violated the record keeping provisions of 20 C.F.R. § 655.731(b), 20 C.F.R. § 655.738(e), and 20 C.F.R. § 655.760(c), but did not violate 20 C.F.R. § 655.739(i) or 20 C.F.R. § 655.805(a)(15).

I also find that the Administrator's civil money penalties totaling \$66,750 and debarment for two years are an appropriate remedy for WinVision's violations of the LCA regulations.

Accordingly, the Administrator's Determination is AFFIRMED but modified as to the specific back pay amounts, plus interest, owed to the affected workers.

ORDER

It is ORDERED that

1. WinVision shall pay the Administrator, for delivery to Bosky Atlani, the sum of \$6,842.40 plus interest compounded on the amounts as they became due bimonthly.
2. WinVision shall pay the Administrator, for delivery to Yunduan Bao, the sum of \$12,267.47 plus interest compounded on the amounts as they became due bimonthly.
3. WinVision shall pay the Administrator, for delivery to Yunduan Bao, the additional sum of \$1,000.00 plus interest compounded from January 21, 2004.

²¹ The Administrator actually asked that the Attorney General be notified, but responsibility for processing H-1B visas now rests with the Department of Homeland Security, and the LCA application regulation, 20 C.F.R. § 655.855, refers to the Department of Homeland Security.

4. WinVision shall pay the Administrator, for delivery to Shatadru Chowdhury, the sum of \$12,544.86 plus interest compounded on the amounts as they became due bimonthly.
5. WinVision shall pay the Administrator, for delivery to Sreenivas Konduru, the sum of \$28,598.50 plus interest compounded on the amounts as they became due bimonthly.
6. WinVision shall pay the Administrator, for delivery to Jimit Ladha, the sum of \$30,625.00 plus interest compounded on the amounts as they became due bimonthly.
7. WinVision shall pay the Administrator, for delivery to Shilpa Viovesh Majmudar, the sum of \$6,923.04 plus interest compounded on the amounts as they became due bimonthly.
8. WinVision shall pay the Administrator, for delivery to Jacob Mathew, the sum of \$6,307.75 plus interest compounded on the amounts as they became due bimonthly.
9. WinVision shall pay the Administrator, for delivery to Abhijeet Nikte, the sum of \$6,778.05 plus interest compounded on the amounts as they became due bimonthly.
10. WinVision shall pay the Administrator, for delivery to Mandar Nimkar, the sum of \$4,173.04 plus interest compounded on the amounts as they became due bimonthly.
11. WinVision shall pay the Administrator, for delivery to Srinivas Pai, the sum of \$18,536.52 plus interest compounded on the amounts as they became due bimonthly.
12. WinVision shall pay the Administrator, for delivery to Padmini Renduchintala, the sum of \$1,570.38 plus interest compounded on the amounts as they became due bimonthly.
13. WinVision shall pay the Administrator, for delivery to Ajith Chandran Rohini, the sum of \$29,823.20 plus interest compounded on the amounts as they became due bimonthly.
14. WinVision shall pay the Administrator, for delivery to Narayanan Seshadri, the sum of \$8,315.32 plus interest compounded on the amounts as they became due bimonthly.
15. WinVision shall pay the Administrator, for delivery to Susruth Sudhakaran, the sum of \$29,545.46 plus interest compounded on the amounts as they became due bimonthly.
16. WinVision shall pay the Administrator, for delivery to Priya Suri, the sum of \$21,293.08 plus interest compounded on the amounts as they became due bimonthly.
17. WinVision shall pay the Administrator, for delivery to Parthiban Veeramakali, the sum of \$35,316.10 plus interest compounded on the amounts as they became due bimonthly.
18. WinVision shall pay the Administrator, for delivery to Mayank Vyas, the sum of \$5,719.49 plus interest compounded on the amounts as they became due bimonthly.
19. WinVision shall pay a \$66,750 civil money penalty to the Wage and Hour Division of the United States Department of Labor.

20. The Administrator shall notify the Department of Homeland Security that WinVision shall be disqualified from approval of any labor condition application petitions filed by, or on behalf of, WinVision for a period of not less than two years.

A

JENNIFER GEE
Administrative Law Judge

NOTICE OF REVIEW:

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within thirty (30) calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.845(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

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).