



Issue Date: 09 September 2011

Case No.: **2007-LCA-17**

In the Matter of:
ADMINISTRATOR, WAGE AND HOUR DIVISION,
Prosecuting Party

v.

GLOBAL PROFESSIONAL HEALTHCARE PROVIDERS, INC.,
Respondent

**DECISION AND ORDER DISMISSING THE
RESPONDENT'S REQUEST FOR HEARING**

This proceeding arises under the H-1B visa provisions of the Immigration and Nationality Act (INA)¹ and implementing regulations.² The Respondent, Global Professional Healthcare Providers, Inc. (Global) requested review of a determination by the Prosecuting Party, the Administrator of the Wage and Hour Division (the Administrator), that it committed violations of the INA. On July 19, 2011, counsel for Global filed notice that it is no longer in operation, has no remaining assets (to counsel's knowledge), and will no longer be able to participate in this matter. On August 3, 2011, the Administrator moved to strike Global's request for a hearing and requested that I issue a Decision and Order affirming the Administrator's April 17, 2007, determination of Global's violations and related penalties. Counsel for Global objected, noting that a judge assigned to this case previously denied summary judgment on some issues. Counsel contended that as a result of the denial of summary judgment, the Administrator must prove the violations even if Global does not defend. The Administrator responded that he is entitled to the relief sought in his motion, or, in the alternative, sought sanctions for Global's failure to cooperate in discovery in the form of a favorable Decision and Order on the merits. Global's argument that the case must proceed to hearing even if it does not participate has no merit. For the reasons given below, I find that Global's request for hearing should be dismissed, and the Administrator's 2007 determination should become the final decision of the Secretary of Labor.

PROCEDURAL HISTORY

On April 17, 2007, on behalf of the Administrator, the Acting District Director of the Chicago office of the Wage and Hour Division issued a determination that Global had violated the LCA in that it failed to pay wages as required; substantially failed to

¹ 8 U.S.C. §§ 1101(a)(15)(H)(i)(B) and 1182(n).

² 20 C.F.R. 655 Subparts H and I (2011).

provide notice of filing of the Labor Condition Application as required; failed to make required displacement inquiry of secondary employer; required or accepted payment of the additional petition fee; failed to make available for public examination the Labor Condition Application and other documents as required; and failed to comply with the provisions of subpart H or I. As a result of the violations, the Administrator assessed a civil money penalty in the amount of \$34,000.00, and back wages in the amount of \$644,783.75 due to 49 H-1B nonimmigrant workers. Global's request for a hearing was filed on May 1, 2007. Thereafter, there were extensive proceedings before various judges. Settlement judge proceedings did not result in a settlement. The Administrator's motion for partial summary judgment was granted in part, and denied in part. The case was reassigned to me on May 12, 2010. Global changed counsel in August 2010. Proceedings before me primarily related to discovery disputes arising from Global's failure to cooperate with the Administrator's discovery. I held telephone conferences and issued scheduling orders in August 2010, November 2010, January 2011, March 2011, and June 2011. During the last telephone conference, counsel for Global agreed to produce 10,000 pages of documents responsive to the Administrator's discovery requests on July 20, 2011, and appear in Las Vegas, Nevada, the week of August 22, 2011, to complete the 30(b)(6) deposition of Global's former CEO (which deposition had begun in Chicago in November 2009). But Global did not go forward with either commitment. Instead, counsel filed his notice that Global would no longer participate in the proceedings.

APPLICABLE STANDARDS

The regulations implementing the LCA provide that a determination by the Administrator becomes final and not appealable if no interested party timely requests a hearing before an administrative law judge.³ But the Administrator's determination becomes inoperative if a timely request for hearing is filed, "unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision."⁴ But the regulations do not address what happens if the party who requested a hearing stops participating in the proceedings. They do state, however, that except as specifically provided, and to the extent they do not conflict with the implementing regulations, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges"⁵ apply to administrative proceedings under the LCA.⁶ Those rules provide that a request for hearing may be dismissed if it is abandoned by the party who filed it.⁷

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On April 17, 2007, on behalf of the Administrator, the Acting District Director of the Chicago office of the Wage and Hour Division issued a determination that Global had violated the LCA in that it failed to pay wages as required; substantially failed to

³ 20 C.F.R. § 655.815(c)(3), (d) (2011).

⁴ 20 C.F.R. § 655.820(a) (2011).

⁵ 29 C.F.R. Part 18A (2010).

⁶ 20 C.F.R. § 655.825 (2011).

⁷ 29 C.F.R. § 18.39(b) (2010).

provide notice of filing of the Labor Condition Application as required; failed to make required displacement inquiry of secondary employer; required or accepted payment of the additional petition fee; failed to make available for public examination the Labor Condition Application and other documents as required; and failed to comply with the provisions of subpart H or I. As a result of the violations, the Administrator assessed a civil money penalty in the amount of \$34,000.00, and back wages in the amount of \$644,783.75 due to 49 H-1B nonimmigrant workers.

2. Global timely filed a request for hearing on May 1, 2007.

3. Global does not intend to participate in this matter further. *See* letter from counsel dated July 19, 2011.

4. Global has abandoned its appeal of the Administrator's determination.

5. Global's request for hearing should be dismissed.⁸

6. The Administrator's determination will become operative as the final order of the Secretary of Labor as of the date this Decision and Order dismissing the request for hearing is issued.⁹

7. The civil money penalties and back wages assessed by the Administrator are immediately due for payment as of the date this Decision and Order renders the Administrator's determination operative.¹⁰

IT IS THEREFORE ORDERED:

1. Global's request for hearing is DISMISSED.

2. The Administrator's determination in this matter issued on April 17, 2007, is the final decision of the Secretary of Labor, effective as of the date of this Decision and Order.

3. Global shall pay a civil money penalty in the amount of \$34,000.00, and back wages in the amount of \$644,783.75 to the 49 H-1B nonimmigrant workers identified in the Administrator's determination in accordance with the procedures established by the Administrator and the regulations.¹¹

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Alice M. Craft
Administrative Law Judge

⁸ 29 C.F.R. § 18.39(b) (2010).

⁹ *See* 20 C.F.R. § 655.820(a) (2011).

¹⁰ *See* 20 C.F.R. § 655.810(f) (2011).

¹¹ *Id.*

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within 30 calendar days of the date of issuance of the administrative law judge’s decision.¹² The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room 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.¹³

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 30 days of the date the Petition is filed notifying the parties that it has accepted the case for review.¹⁴

¹² See 20 C.F.R. § 655.845(a) (2011).

¹³ See 20 C.F.R. § 655.845(a) (2011).

¹⁴ See 20 C.F.R. § 655.840(a) (2011).