



**Issue Date: 07 May 2008 No. 2008-LCA-7**

In The Matter Of:

Federica Deigan,  
Claimant

v.

University of Maryland,  
College Park,  
Employer

### **ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the Labor Condition Application provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101 and § 1182 (“the INA”), and the implementing regulations set forth at 20 C.F.R. Part 655, et seq. Under the INA, an employer may hire nonimmigrant workers from “specialty occupations” to work in the United States for prescribed periods of time. 8 U.S.C. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700. Such workers are issued H-1B visas by the Department of State upon approval by the Immigration and Naturalization Service (or “INS”). 20 C.F.R. § 655.705(b). In order for the H-1B visa to be issued, the employer must file a Labor Condition Application (or “LCA”) with the Department of Labor, and detail, *inter alia*, the wage rate and working conditions for the H-1B employee. 8 U.S.C. § 1182(n)(1)(D); 20 C.F.R. §§ 655.731 and 732. Once the Department of Labor certifies the LCA, INS can then approve the nonimmigrant’s H-1B visa petition. 8 U.S.C. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700(a)(3). Workers hired under H-1B visas must be paid prevailing wages pursuant to 20 C.F.R. § 655.805(a)(2). Employers are required to comply with reporting requirements set forth at 20 C.F.R. §§ 655.730 and 655.731; notice posting requirements set forth at 20 C.F.R. § 655.805(a)(5); and record retention requirements of 20 C.F.R. §§ 655.731(b), 655.738(e), 655.760(c).

In the instant matter, the Complainant, Federica Deigan, who is currently employed with the Respondent, the University of Maryland College Park, applied for an open position with the Respondent. After a search process, the Respondent selected a candidate who was a foreign national, and sponsored her for H-1B status. The Complainant then filed a complaint with the Administrator, Wage and Hour Division (“the Administrator”), alleging violations of provisions of the INA. The Administrator investigated Complainant’s allegations, and by a Notice of Determination issued on December 3, 2007, advised that it had been determined that the Respondent failed to provide notice of the filing of the Labor Condition Application. No civil money penalty was assessed in connection with this violation. With respect to the Complainant’s allegation that the selection of the H-1B worker had adversely affected her employment, the Administrator concluded after investigation that this allegation was not

substantiated. Complainant appealed the Administrator's conclusion and requested a hearing before the Office of Administrative Law Judges ("OALJ"). The matter was assigned to me for hearing.

Hearing in this matter was scheduled to commence on May 6, 2008 at 10:00 o'clock a.m. Shortly before the scheduled hearing, Mr. Howard B. Hoffman, Esq., counsel for the Complainant, submitted a Motion to Dismiss Appeal, requesting that her appeal be withdrawn with prejudice. Mr. Hoffman represented that the parties had reached a resolution of the matter on May 5, 2008, and that the Respondent consented to the filing of the motion.

Based on Mr. Hoffman's representations, I find that it appropriate to grant the Complainant's motion, and IT IS HEREBY ORDERED that the Complainant's appeal and request for a hearing is withdrawn, with prejudice. This Order of Dismissal constitutes the Final Order of the Secretary.

SO ORDERED.

**A**

LINDA S. CHAPMAN  
Administrative Law Judge