

**U.S. Department of Labor**

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**Issue Date: 23 October 2012**

Case Nos. 2008-LCA-38  
2008-LCA-43  
2012-LCA-10

In The Matter Of:

Mohammed Rehan Puri,  
Claimant

v.

University of Alabama Birmingham  
Huntsville,  
Employer

**DECISION AND ORDER**

This case arises under the Immigration and Nationality Act (“Act” or “INA”), 8 U.S.C. § 1101 *et seq.*, as amended, and its implementing regulations at 20 C.F.R. Part 655, Subparts H and I. The INA allows employers to hire foreign workers under H-1B visas to work in specialty occupations on a temporary basis.<sup>1</sup> To do so, an employer must file a Labor Condition Application (“LCA”) with the Department of Labor, which specifies the working conditions and wage levels for the H-1B employee for the authorized period of employment. 8 U.S.C. § 1182(n)(1)(A); 20 C.F.R. §§ 655.730, 655.731, 655.732.

An employer is required to pay the H-1B worker from the date the worker “enters into employment” until the end date specified in the LCA. 20 C.F.R. § 655.731(c)(6). This is true even for periods when the H-1B employee is not working if his/her absence is employment-related, i.e., due to a lack of work. § 655.731(c)(7)(i). However, the employer is not required to pay the H-1B employee for periods that he/she chooses not to work or is unable to work due to a condition unrelated to his/her employment. Furthermore, if the employer effectuates a *bona fide* termination of the employment relationship prior to the end date specified in the LCA, it is no longer obligated to pay the employee. § 655.731(c)(7)(ii).

In this case, Dr. Mohammed Rehan Puri (“Complainant”), an H-1B employee, asserts that his employer, University of Alabama Birmingham Huntsville, (“UAB” or “Employer”) terminated his employment on July 27, 2007 but did not effectuate a *bona fide* termination until

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<sup>1</sup> Under the INA, specialty occupations are those that require “theoretical and practical application of a body of highly specialized knowledge, and...attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent).” 8 U.S.C.A. § 1184(h)(i).

June 11, 2009. Accordingly, Dr. Puri argues that he is entitled to back wages for this period with pre- and post-judgment interest.

## STATEMENT OF THE CASE

On June 18, 2007, Dr. Puri filed a complaint with the U.S. Department of Labor, Wage and Hour Division, alleging that UAB violated the INA by not paying its H-1B employees for the time required to obtain a license or permit or for time off due to a decision by the employer and by requiring them to pay an expedited processing fee for their visas. The Administrator investigated the complaint, and on July 1, 2008, it issued a determination letter, finding that UAB owed \$54,894.00 in back wages to 84 H-1B nonimmigrants.<sup>2</sup> Dr. Puri timely requested a hearing before the Office of Administrative Law Judges. A hearing was scheduled before the undersigned administrative law judge for December 18, 2008.

On December 11, 2008, Employer filed a Motion to Dismiss and in the alternative, a Motion for Summary Decision. Employer asserted that Complainant did not have standing and that summary decision was appropriate because UAB already paid Dr. Puri back wages. On April 27, 2009, I issued a Decision and Order Granting in Part and Denying in Part UAB's Motion to Dismiss. In this Order, I determined that Dr. Puri had standing to request a hearing on the issue of back and front wages. In addition, I found that Dr. Puri presented sufficient facts to survive summary judgment on the issue of back wages but not on the issue of unlawful discrimination. Accordingly, I specified that a hearing would go forward on the remaining issues in dispute: whether UAB's dismissal of Dr. Puri was a *bona fide* termination and whether Dr. Puri was entitled to wages through the date on which he received a check from UAB for his return transportation to Pakistan.

On July 23, 2009, Complainant submitted a Motion for Summary Decision. Employer submitted its response and its own Motion for Summary Decision on August 19, 2009. On September 14, 2009, I issued an order finding that I did not have jurisdiction to hear whether Employer effected a *bona fide* termination, as this issue was not the subject of an investigation or a determination by the Administrator. Accordingly, I granted summary decision for the Employer.

Complainant appealed, and on November 30, 2011, the Administrative Review Board ("Board") issued its Decision and Order of Remand, finding that I have authority to address Dr. Puri's claim for wages up through and including the end of his LCA period. As such, the Board vacated my Decision and Order and remanded for further proceedings consistent with its opinion.

While his appeal was pending, Dr. Puri filed another claim, 2012 LCA 10, to preserve his claim to wages for the entirety of his authorized employment period in the event his appeal was

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<sup>2</sup> While the Department of Labor was investigating Dr. Puri's complaint, it advised UAB that it should pay the fee for expediting H-1B applications in addition to the amount that the application fee reduced the workers' pay below the prevailing wage rate. On December 21, 2007, prior to the Administrator's decision, UAB issued back pay to the 84 H-1B employees affected, including Dr. Puri. (EX 7, 8).

unsuccessful. This case was assigned to Administrative Law Judge Lee J. Romero, Jr., who on January 19, 2012, issued an Order Cancelling Formal Hearing and Granting Motion to Consolidate 2012 LCA 10 with 2008 LCA 38 and 2008 LCA 43. All three of these cases are now assigned to me and the only issue that remains is whether Employer effectuated a *bona fide* termination of Complainant.

On March 15, 2012, I spoke with counsel for the parties, who advised me that they anticipated that they would be able to enter into factual stipulations and submit written briefs without the necessity of a hearing. The parties submitted a joint stipulation of facts on May 29, 2012. Complainant submitted a written brief on July 25, 2012 and Employer submitted its brief on July 27, 2012. The Administrator submitted its brief on July 31, 2012. On October 9, 2012, the Complainant submitted a reply brief, and on October 10, 2012, the Employer and Administrator submitted reply briefs. This case is now ready for a decision.

### **FACTUAL BACKGROUND**

On April 19, 2006, the Department of Labor certified a Labor Condition Application that the University of Alabama Birmingham Huntsville submitted to hire an H-1B nonimmigrant as a medical resident. (CX A).<sup>3</sup> Dr. Puri, a Pakistani citizen, was then hired as a first-year resident in the Family Medicine Program for the period of July 1, 2006 through July 1, 2009. (CX A; EX 13). The Labor Condition Application specified that he would be paid at an annual rate of \$40,782. (CX A).

On December 29, 2006, Dr. Allan J. Wilke, Residency Program Director, sent a memorandum to Dr. Puri informing him that his contract would not be renewed for the 2007-2008 academic year based on the faculty's recommendation. (CX C; EX 3). The memorandum noted that Dr. Puri could request a hearing within ten days of receipt of the memorandum. *Id.* On February 19, 2007, Dr. Wilke sent Dr. Puri a second memorandum notifying him that his residency appointment was being revoked. (CX D; EX 4). This memorandum again noted that Dr. Puri had ten days from its receipt to request a hearing. *Id.* Dr. Puri timely requested a hearing appealing both recommendations, and a hearing was held before the Judicial Review Committee on April 9, 2007. (CX E). Dr. Puri was placed on leave while the hearing was pending. (EX 7).

UAB asserts that the hearing was originally scheduled for March 5, 2007; however, it was rescheduled at Dr. Puri's request, in part, so that he could plan his wedding and visit his fiancée's family in Texas. (UAB Brief at 2). In contrast, Dr. Puri asserts that he requested that the hearing be moved to April so that he could properly prepare and compile evidence. (CX O). On May 21, 2007, Dr. Puri married a U.S. citizen, which changed his immigration status to that of a Lawful Permanent Resident. (EX 2, 5).<sup>4</sup> UAB alleges that it placed Dr. Puri on paid leave in February 2007; however, it changed this to unpaid leave in March 2007 due to his requests to delay the internal hearing process. (UAB Brief at 3).

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<sup>3</sup> Attachments A through O to Complainant's brief will be referred to as "CX" followed by the appropriate letter; attachments 1 through 17 to Employer's brief will be referenced as "EX" followed by the appropriate number. Exhibit A appended to the Administrator's brief will be referred to as "AX A."

<sup>4</sup> Dr. Puri's divorce, filed on October 16, 2009, was finalized on January 6, 2010. (EX 5).

On June 18, 2007, Dr. Puri filed his initial complaint with the Department of Labor, alleging that UAB failed to pay him for involuntary time off—from March 6, 2007 onward—and that UAB had improperly required H-1B employees to pay the expedited processing fees for their visas. (CX F). On June 30, 2007, UAB deposited \$8,335.15 into Dr. Puri's account to cover the period that he was unpaid from March 6, 2007 until that date.<sup>5</sup> (EX 7, 8).

Two days prior on June 28, 2007, the Judicial Review Committee upheld the decision to terminate Dr. Puri's residency. (EX 2, CX H). Dr. Puri was informed of this decision on July 2, 2007. (EX 2, CX E).

On July 24, 2007, the Dean's Council for Graduate Medical Education met to review this decision. (EX 2, CX H). In a July 26, 2007 memorandum, the chair of the Dean's Council reported that they unanimously upheld the decision to terminate Dr. Puri's residency. *Id.* This decision was mailed to Dr. Puri's lawyer on the same day, and it noted that Dr. Puri's termination was effective as of July 26, 2007.<sup>6</sup> *Id.* After paying Dr. Puri back wages from March 6, 2007 through June 30, 2007, UAB kept him on their payroll until July 27, 2007. (EX 7).

By letter dated July 30, 2007, UAB informed the U.S. Citizen and Immigration Services ("USCIS") that Dr. Puri was no longer affiliated with UAB and that his H-1B petition should be cancelled immediately. (CX I). USCIS followed up with a letter dated April 23, 2008 confirming that Dr. Puri's petition had been revoked. (CX J).

On May 22, 2009, Dr. Puri's counsel contacted UAB asking whether Dr. Puri had been paid the reasonable cost of his transportation home to Pakistan, as required under 8 U.S.C. § 1184(c)(5)(A) and 8 C.F.R. § 214.2(h)(4)(iii)(E). (EX 11). UAB sent Dr. Puri a check for \$1,506 with a letter dated June 10, 2009, stating that the check was for the reasonable cost of his return to Pakistan. (EX 2, CX P). The accompanying letter stated that the payment did not constitute an admission by UAB of its obligation to pay Dr. Puri for his return transportation or an admission regarding his effective date of termination. (EX 2).

Following his termination up to the present, Dr. Puri has continued to reside in the United States. Lowell Virginia Craft, Director of Graduate Medical Education at UAB, asserts that while Dr. Puri was awaiting the hearing before the Judicial Review Committee, he forwarded two different U.S. addresses to UAB for the purpose of communicating with him. (EX 13). Ms. Craft states that as a result of the communications she had with Dr. Puri and Dr. Puri's recent marriage to a U.S. citizen, she believed that he intended to remain in the United States. *Id.*

In his June 18, 2007 complaint filed with the Department of Labor, Dr. Puri indicated that he was residing in Houston, Texas. (CX F). Subsequently, on August 3, 2008, Dr. Puri sent a letter to the Office of Administrative Law Judges, noting that he had moved to Fairburn, Ohio.

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<sup>5</sup> As noted above, UAB paid Dr. Puri and the other H-1B employees before the Administrator issued its decision finding that the company owed \$54,894 in back wages to 84 H-1B nonimmigrants for improperly charging them the fee for expediting their visas and for doing background checks. (EX K, O).

<sup>6</sup> Although the letter, which was dated July 26, 2007, stated that Dr. Puri's termination was effective as of that date, the parties have stipulated that UAB records reflect that his termination was effective as of July 27, 2007.

(EX 15). In an affidavit taken on September 24, 2009, Dr. Puri then stated that he was currently residing in Dayton, Ohio. (EX 12). During his June 8, 2011 interview with the Wage and Hour Division, he explained that he was living in Dayton while completing his Masters in Public Health, which he received on June 1, 2010. *Id.*

On January 4, 2012, Dr. Puri filed a Notice of Change of Address with the undersigned, noting that he had moved to Madison, Tennessee. (EX 16). Dr. Puri filed another Notice of Change of Address on March 1, 2012, indicating that he was now living in Valley Stream, New York. (EX 17).

## STIPULATIONS

The parties stipulated to the following facts:

1. UAB obtained a certified Form ETA-9035E Labor Condition Application in ETA Case Number I-06109-2420143 for the employment of Dr. Puri at a wage of \$40,782.00 for the period from 07/01/2006 through 07/01/2009.
2. Dr. Puri was sent notice of the Judicial Review Committee's decision regarding his termination by letter from UAB dated July 2, 2007 and signed by Anthony W. Patterson FACHE, Associate Vice President/DIO, Secretary, Dean's Council for Graduate Medical Education. After further review of the termination decision in accordance with UAB policy, the termination decision was confirmed, and a letter dated July 26, 2007 was sent to Dr. Puri's attorney, Caroline Lam, informing her of the final decision to terminate. UAB records state that the termination was effective on July 27, 2007.
3. The U.S. Department of Homeland Security was notified of the termination of Dr. Puri's employment by letter dated July 30, 2007 from Lisa Townsend, Associate Director, Alternative Responsible Officer, UAB.
4. A check for One Thousand Five Hundred Six and 00/100 Dollars (\$1,506.00) from UAB and payable to Dr. Puri was received by Dr. Puri's counsel, David E. Larson, on June 11, 2009. Accompanying the check was a letter stating: "Enclosed is a check issued to Rehan Puri in the amount of \$1,506.00 as full and complete payment for the reasonable cost of transportation to his home country. This payment is being made voluntarily by UAB. The payment does not constitute any admission by UAB related to the obligation to pay Puri the cost of transportation to his home country, which UAB does not concede, as Puri intended to remain in the United States at the time of his termination. Nor does it constitute an admission by UAB related to the effective date of Puri's termination from the residency program or an admission related to any other issue pending before the administrative law judge."
5. In an affidavit dated January 8, 2009, Dr. Puri stated the following in reference to the time after the termination of his employment at UAB: "My visa status was also in jeopardy and every day I feared that removal from this country was near. However, I married my wife, a U.S. citizen, on May 21, 2007, and this momentous and joyous

occasion brought some serenity and calmness to my mind...[T]wo of the other physician foreign colleague residents, who were also terminated during the same period of time as I was, left for India as they could not survive without money. However, I did not want to give up.”

6. Wage-Hour Investigator Timothy Erwin of the U.S. Department of Labor, Wage and Hour Division, reported that, in a June 8, 2011 telephone conversation with Dr. Puri, Dr. Puri stated that, prior to his termination, he informed his program director at UAB that he did not wish to return to Pakistan and that he was getting married to a U.S. citizen. During the interview with Investigator Erwin, Dr. Puri also stated that, after his termination, he informed UAB that he was not going back to Pakistan, that he was getting married in the United States and that he did not wish to leave.

(EX 2).

### APPLICABLE LAW

As discussed above, the INA allows U.S. employers to hire H-1B nonimmigrants on a temporary basis. 8 U.S.C.A. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700. Under the INA’s “no benching” provisions, the employer must pay the employee for time he does not work if his absence from work is due to a decision by the employer. 20 C.F.R. § 655.731(c)(7)(i). However, if the employee’s decision not to work is voluntary or is not employment-related, the employer is not obligated to pay him/her. § 655.731(c)(7)(ii). For instance, an employer is not required to pay an H-1B worker who takes time off to tour the United States, care for a sick relative, is on maternity leave, or is temporarily incapacitated due to an automobile accident. *Id.* Furthermore, if the employer effectuates a *bona fide* termination of the employment relationship prior to the end date specified in the LCA, it is no longer obligated to pay the employee. *Id.*

An employer must follow three steps to effectuate a *bona fide* termination: 1) notify the employee that the employment relationship has ended; 2) notify USCIS that the employment relationship has ended; and 3) under certain circumstances, provide the employee with the reasonable cost of transportation to his/her home country. *See, e.g., Wirth v. Univ. of Miami*, ARB No. 10-090, 10-093, ALJ No. 2009-LCA-036 (Dec. 20, 2011) (citing *Gupta v. Jain Software Consulting, Inc.*, ARB No. 05-008, ALJ No. 2004-LCA-039, slip op. at 3 (ARB Mar. 30, 2007)). The employer must prove by a preponderance of the evidence that it effected a *bona fide* termination. *Adm’r, Wage & Hour Div. v. Ken Techs., Inc.*, ARB No. 03-140, ALJ No. 2003-LCA-25 (ARB Sept. 30, 2004).

### DISCUSSION

The only question that remains in this case is whether UAB effectuated a *bona fide* termination of Dr. Puri’s employment, which would cut off its liability to pay him from July 27, 2007, his last date of pay, through July 1, 2009, the end of his authorized period of employment, as specified on the LCA.<sup>7</sup> The parties stipulate that a letter was sent to Complainant’s counsel

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<sup>7</sup> Although Dr. Puri previously argued that he was also owed back wages for June 30, 2007 through July 30, 2007, he now appears only to argue that he is entitled to back wages from July 27, 2007 through June 11, 2009. *See* Complainant’s Brief at 18.

dated July 26, 2007 informing her of UAB's final decision to terminate Dr. Puri. In addition, the parties stipulate that Employer sent a letter to USCIS dated July 30, 2007, notifying it of the same. Accordingly, I must determine whether UAB was obligated to provide Dr. Puri with the reasonable cost of his transportation home to Pakistan. If I determine that UAB was required to make this payment, it will only be liable for back wages through June 11, 2009, when Dr. Puri received a check from UAB for his return flight home.

UAB asserts that it was not required to pay Dr. Puri for his flight home because he made it clear that he intended to remain in the United States. In addition, UAB notes that Dr. Puri lawfully resided in the United States following his dismissal, for he married a U.S. citizen on May 21, 2007, which changed his immigration status to that of a Lawful Permanent Resident.

Similarly, the Administrator emphasizes that employers are only required to pay for return transportation "under certain circumstances," as specified in the regulations at 20 C.F.R. § 655.731(c)(7)(ii). To exemplify this, it cites to the comments accompanying the regulations, which note the following:

Once an employer terminates the employment relationship with the H-1B nonimmigrant...that H-1B employee *must either depart the United States upon termination of his or her services, or seek an immigration status for which he or she may be eligible*. Therefore, under no circumstances would the Department consider it to be a bona fide termination if the employer rehires the worker if or when work later becomes available unless the H-1B worker has been working under an H-1B petition with another employer, the H-1B petition has been cancelled and the worker has returned to the home country and been rehired by the employer, *or the nonimmigrant is validly in the United States pursuant to change of status*.

65 Fed. Reg. 80,171 (Dec. 20, 2000) (emphasis added). The Administrator also highlights INS's<sup>8</sup> policy, which noted that H-1B employees should "depart the United States upon termination of their services or seek a change of immigration status for which they may be eligible." 76 No. 9 Interpreter Releases 378 (Mar. 8, 1999).

Administrative Law Judges have previously found that an employer effected a *bona fide* termination even though it did not pay for a nonimmigrant's transportation home. In *Vojtisek-Lom v. Clean Air Technologies International, Inc.*, an H-1B employee was hired to work through December 31, 2005; however, he was terminated on March 16, 2005. ALJ No. 2006-LCA-009 (July 30, 2009). Rather than returning home, the claimant began working with a different company in April. *Id.* He continued in that employment on a full-time basis for a year then began working for a different U.S. employer in early 2006. *Id.*

In that case, the respondent never offered to pay for the claimant's return trip, and it did not inform USCIS of his termination until July 29, 2005. Nonetheless, based on the claimant's testimony that his attorney notified USCIS of his termination within a week or two of being fired, the administrative law judge ("ALJ") found that the employer effectuated a *bona fide*

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<sup>8</sup> In 2003, the Immigration and Naturalization Service, or INS, was absorbed into the Department of Homeland Security.

termination on March 31, 2005. *Id.* The ALJ noted: “[t]here is no apparent reason why notice to USCIS by the nonimmigrant, which in substance is similar to notice by the employer, would fail to end the H-1B employment relationship.” *Id.* Although the employer did not offer to pay for Vojtisek-Lom’s return transportation, the ALJ held that it was inappropriate to award back wages subsequent to the start of his employment with the new company, for back wages are not meant to be punitive, but rather, make a claimant whole. *Id.*<sup>9</sup>

Similarly, in *Administrator, Wage and Hour Division v. Itek Consulting, Inc.*, ALJ No. 2008-LCA-00046 (May 6, 2009), the ALJ determined that the employer only owed a claimant back wages through February 22, 2007, the date he began working with a new employer, even though the claimant was never advised as to when his last day of work would be, the employer did not notify USCIS of his termination until March 2, 2007, and the employer never offered to pay for the claimant’s transportation back to his home country.

Finally, in *Wirth v. University of Miami*, a university teaching hospital terminated an H-1B employee on July 24, 2007, approximately two years prior to the end of her authorized period of employment. In both July and August 2007, Ms. Wirth rejected the University’s offer of \$5,000 for her relocation expenses, including the cost of return airfare for her and her children. In October, the University then delivered her a check for her relocation expenses, excluding the cost of airfare, as Ms. Wirth had refused to tell them the cost. The University notified USCIS of Ms. Wirth’s termination on December 12, 2007, and on March 8, 2008, Ms. Wirth returned the check.

The ALJ determined that the University effected a *bona fide* termination on December 12, 2007. The ARB affirmed this decision, finding that the University effected a *bona fide* termination by offering Ms. Wirth the cost of her return flight despite her rejection. Nonetheless, the ARB determined that the University was still liable for the cost of airfare.

These cases reflect that the criteria for effecting a *bona fide* termination are flexible and that awards of back wages are not intended to be punitive. In both *Itek* and *Vojtisek-Lom*, the ALJs found that it would be inappropriate to award back wages after the claimants began working for a new employer. As discussed above, the comments to the regulations provide for this: an H-1B worker must either leave the United States or seek a change in immigration status once its employment relationship has been terminated. 65 Fed. Reg. 80,171 (Dec. 20, 2000). In *Itek* and *Vojtisek-Lom*, the H-1B employees were able to adjust their status by working for a different employer under a new H-1B petition. Similarly, Dr. Puri was able to change his immigration status by marrying a U.S. citizen, which obviated the need for him to leave the United States.<sup>10</sup> The clear intent of the regulations is to prevent H-1B employees from remaining in the United States illegally once their petitions have been revoked; employers are required to

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<sup>9</sup> This decision was affirmed by the Administrative Review Board (“ARB”); however, the issue of whether the employer effectuated a *bona fide* termination was not discussed. ARB No. 07-097, ALJ No. 2006-LCA-009 (July 30, 2009).

<sup>10</sup> The Complainant’s statement that it was “entirely possible” that he planned to return home to Pakistan while the process of obtaining permanent resident status was pending is irrelevant. See Complainant’s Reply Brief at 16. By virtue of his May 21, 2007 marriage to a U.S. citizen, the Complainant was not *required* to leave the country when his H-1B status was revoked.

pay for their return transportation only “under certain circumstances,” i.e., when the nonimmigrants have not otherwise obtained lawful status. *See* 20 C.F.R. § 655.731(c)(7)(ii) (citing 8 C.F.R. § 214.2(h)(4)(iii)(E)).

Here, the purposes of the regulations would be contravened by awarding Dr. Puri back wages through June 11, 2009. On May 21, 2007, two months prior to his termination, Dr. Puri obtained a change in immigration status when he married a U.S. citizen, a status that rendered his presence in the United States lawful even after his termination. The evidence clearly reflects that UAB was aware of Dr. Puri’s marriage; Dr. Puri concedes that he informed his program director that he was getting married to a U.S. citizen and that he did not wish to return to Pakistan, which the director confirmed in an affidavit. (EX 2, 13).

Dr. Puri cites to *Limanseto v. Ganze & Co.*, ALJ No. 2011-LCA-00005 (June 30, 2011), as evidence that UAB did not effectuate a *bona fide* termination; however, this case is inapposite. There, the claimant returned to his home country of Indonesia with his own money even before the employer notified USCIS that it had terminated his employment. *Id.* By contrast, Dr. Puri has continued to reside in the United States despite receiving a check for his return transportation on June 11, 2009.

As UAB notes, requiring employers to pay for return transportation not only dissuades H-1B employees from working in the country illegally; it embodies a notion of fairness, for these workers cannot lawfully earn money to pay for their return transportation once their petitions have been revoked. Although this equity was served by requiring the employer in *Limanseto* to pay for the claimant’s return airfare, the same is not true for Dr. Puri: Dr. Puri changed his immigration status even prior to his dismissal from UAB, and he has continued to lawfully reside in the United States despite receiving a check for his return airfare in 2009.

Based on the aforementioned discussion, I find that UAB effectuated a *bona fide* termination of Dr. Puri on July 30, 2007, when it notified USCIS that they should revoke his petition. The regulations acknowledge that there are circumstances when an employer is not required to pay for an H-1B employee’s return trip home, specifically, when he has obtained a change in his immigration status. Awarding Dr. Puri back wages for the two years following his termination, when he was lawfully residing in the United States, would contravene the purpose of the INA and its implementing regulations.

Furthermore, it appears that Dr. Puri was actually overpaid. On June 18, 2007, Dr. Puri filed a complaint with the Department of Labor, alleging that he had not been paid since March 6, 2007. (CX F). On June 30, 2007, UAB deposited \$8,335.15 into Dr. Puri’s account to cover the period that he was unpaid from March 6, 2007 until that date. (EX 7, 8). However, marriage records reflect that Dr. Puri was married in Houston, Texas on May 21, 2007, and in a letter to the undersigned dated September 8, 2008, Dr. Puri wrote, “[i]n order to be legal in the U.S. I got married here. I had to take more loans from other friends and *had to travel several places to talk to local families.*” (emphasis added) (EX 5, 6). Although it is unclear from the record how much time Dr. Puri spent in Houston for his wedding and visiting his in-laws, an H-1B employee is not entitled to pay for time that he voluntarily chooses not to work. 20 C.F.R. § 655.731(c)(7)(ii). The regulations make clear that an employer is not required to pay an H-1B worker who takes

time off for personal reasons, such as touring the United States or caring for a sick relative. *Id.* Accordingly, UAB was not required to pay Dr. Puri for the time he spent in Houston getting married and visiting his in-laws.

## CONCLUSION

Based on the foregoing discussion, I find that UAB effectuated a *bona fide* termination of Dr. Puri's employment on July 30, 2007 when it informed USCIS that they should revoke his H-1B petition. As Dr. Puri was only paid through July 27, 2007, the effective date of his termination, he is entitled to back wages from July 27, 2007 through July 30, 2007.<sup>11</sup> In 2007, July 27<sup>th</sup> fell on a Friday; accordingly, Dr. Puri is only entitled to back wages for July 30<sup>th</sup>, which was a Monday. Dr. Puri's statement of wages from June 1, 2007 through June 30, 2007 reflects that he was paid a base salary of \$3,398.50. As there were twenty-one working days in June 2007, this would equate to a daily wage of \$161.83. Accordingly, Dr. Puri is entitled to \$161.83 in back wages for July 30, 2007. Although the INA does not specifically authorize an award of interest on back pay, the Board has found that interest shall be paid on awards of back pay, with compound interest to be paid pre-judgment. *Amtel Group v. Yongmahapakorn (Rung)*, ARB No. 04-087, ALJ No. 2004-LCA-6, slip op. at 5 (ARB Jan. 29, 2008); *see also Innawalli v. Am. Info. Tech. Corp.*, ARB No. 04-165, ALJ No. 2004-LCA-13, slip op. at 7-8 (ARB Sept 29, 2006). As such, I find that pre-judgment compound interest is due on the back pay and post-judgment interest is due on all amounts until they are paid or otherwise satisfied. The Board has held that the appropriate interest rate is that charged on the underpayment of federal income taxes prescribed under 26 U.S.C. § 6621(a)(2). *Mao v. Nasser*, ARB No. 06-121, ALJ No. 2005-LCA-036 (ARB Nov. 26, 2008).

## ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that Respondent, UAB, pay back wages in accordance with the above findings for July 30, 2007 with pre- and post-judgment interest.

**SO ORDERED.**

LINDA S. CHAPMAN  
Administrative Law Judge

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<sup>11</sup> Although the evidence reflects that Dr. Puri was previously overpaid, UAB has not cited any authority for the proposition that the back wages it owes to Dr. Puri can be offset by this previous overpayment.

**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, 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. *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* 20 C.F.R. § 655.840(a).