

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 March 2009

Case No.: 2008-LCA-00031

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,

Complainant,

v.

ELITE MODEL MANAGEMENT MIAMI CORPORATION,

Respondent.

ORDER OF DISMISSAL WITH PREJUDICE

This case arises under the H-1B visa program of the Immigration and Nationality Act of 1952 (Act), 8 U.S.C.A. § 1101, et seq, as amended, and its implementing regulations found at 20 CFR Part 655, Subparts H and I, as applied to “fashion model[s] of distinguished merit and ability”. The appeal arises from the Administrator’s Determination Letter of June 2, 2008.

On February 13, 2009, a conference call was held with counsel for both Parties. Counsel indicated that all issues had been resolved in principle during the discovery phase of the case and that a formal hearing would not be required. Counsel indicated that an appropriate period of time would be required to formalize the agreements in a “Revised Determination Letter” which would be accepted by the Respondent. Both counsel anticipated that they would complete resolution of the issues and submit a joint request for dismissal of the current action by March 30, 2009. Because of the unique issues identified that involve seven identified H-1B3 “fashion model[s] of distinguished merit and ability” in the fashion industry and the anticipated amicable resolution of the complicated issues involving industry practices and federal policy, this Administrative Law Judge found compelling reasons to extend the time for formal hearing pursuant to 20 CFR § 655.835(c).

On March 30, 2009, the Parties filed a “Joint Motion to Dismiss with Prejudice.” The Parties correctly noted that the current case is based on the Respondent’s appeal of the Administrator’s June 2, 2008, Determination Letter. Exhibit “A” attached to the March 30, 2009, “Joint Motion to Dismiss with Prejudice” indicates that the Administrator has rescinded the June 2, 2008,

Determination Letter and that a new determination letter dated March 30, 2009, has been issued. Respondent has indicated that the March 30, 2009, determination letter will not be contested.

In view of the foregoing, all issues raised on appeal of the June 2, 2008, determination letter are moot. No issues remain to be adjudicated. Granting the “Joint Motion to Dismiss with Prejudice” is appropriate pursuant to 18 CFR §§ 18.29 and 18.39(b).

ORDER

IT IS HEREBY ORDERED that the “Joint Motion to Dismiss with Prejudice” is **GRANTED** and that **the cause of action** raised by the Administrator’s Determination Letter of June 2, 2008, now before the Office of Administrative Law Judges, is **hereby DISMISSED WITH PREJUDICE**.

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

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).