



Issue Date: 13 July 2009

CASE NO.: 2009-LCA-00024

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR
DIVISION, EMPLOYMENT STANDARDS
ADMINISTRATION, U. S. DEPARTMENT
OF LABOR**

Prosecuting Party,

v.

**SILICONLINKS, INC.,
Respondent.**

DECISION AND ORDER DISMISSING COMPLAINT

This matter arises under the Immigration and Nationality Act (“INA”) H-1B visa program, 8 U.S.C. § 1101(a)(15)(H)(i)(b) and § 1182(n), and the implementing regulations promulgated at 20 C.F.R. § 655.700, *et seq.* The 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 such class, the “H-1B” worker, is permitted to enter the United States on a temporary basis to work in special occupations. 8 U.S.C. § 1101(a)(15)(H)(i)(B); 20 C.F.R. § 655.700. An employer seeking to hire a nonimmigrant worker under an H-1B visa must obtain certification from the United States Department of Labor by filing a Labor Condition Application (“LCA”). 20 C.F.R. § 655.700(b).

I issued a Notice of Hearing and Prehearing Order on June 5, 2009, which included the following clear and concise language:¹

“Failure to comply with this Order, without demonstration of good cause, may result in the dismissal of the hearing request or the imposition of other appropriate sanctions against the offending party.”

¹ The Prehearing Order included reference to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18.

This case was scheduled by my original Order to be heard June 23, 2009, in Washington, DC. These types of cases (“LCA”) are considered to be of high importance, requiring expedited hearing procedures.

The Prosecuting Party failed to appear at the appointed time and place of the hearing. Respondent, who was unrepresented by counsel, was present and prepared for the hearing.

As a result of the failure to attend the hearing, I issued an Order to Show Cause² on June 23, 2009 to the Prosecuting Party.

The Prosecuting Party, by counsel, filed a Response on June 30, 2009. In his Response, the Regional Solicitor admits that my Notice was received by the Wage and Hour Division District Office in Raleigh, NC.³ However, Counsel for the Administrator also averred that the Regional Solicitor’s Office in Atlanta, GA “never received a copy” of the Court’s Notice issued on June 5, 2009.

The Certificate of Service for the original Notice clearly indicates the Regional Solicitor’s Office (Atlanta, GA) was sent a “hard” copy of the Notice, along with the Administrator (Washington, DC), ESA Wage and Hour Division (Raleigh, NC) and Counsel for Trial Litigation (DOL).⁴

Counsel also argues that “not having received any disclosures or exchanges from Respondent as contemplated by the Notice” somehow absolved the Prosecuting Party from taking appropriate action (including showing up at court) without “prompting” by the Respondent. It is not contemplated within the Rules that such blatant “blame shifting” should ever constitute a defense for a failure to appear in court or to comply with an order.

It should be noted that Respondent is not represented by counsel, thereby entitling him to some consideration for his lack of familiarity with the Rules of Procedure. The same cannot be said for the Regional Solicitor’s Office.

The parties were also given courtesy telephone calls⁵ by my law clerk the day before the hearing to ensure there were no last minute procedural questions that needed to be addressed. The Regional Solicitor’s Office related to my clerk that the District Director had forwarded the

² This Order was sent to the same mailing address as the Notice of Hearing without any evident “receipt” problems.

³ The Response does not address the date the Notice was received by the District Office nor does it explain why the District Office took no action to contact the RSOL to ensure that they were represented in the matter.

⁴ Additionally, the Respondent and the Court Reporter were mailed a hard copy of the Notice.

⁵ Actually, it was several telephone calls starting early in the day on June 22, 2009, leaving voicemail messages with and then speaking with a person(s) within the RSOL. Mr. Black did not speak to my law clerk until 3 or 4 PM.

file to the Regional Solicitor's Office on June 5th but that the file did not contain the Notice.⁶ While intimating during the conversation that this office had never forwarded a copy of the Notice to them (the Regional Solicitor's Office), Mr. Black stated that there would be no one available for court on June 23rd.

The Response from the Regional Solicitor's Office does not demonstrate good cause to show why this complaint should not be dismissed. I do not find the explanations proffered in the Response entirely credible. The Prosecuting Party had timely notice of the time, place and date of the hearing and all good efforts should have been made to ensure they complied with the Order of the Court.

The failure to provide an attorney in court once the "problem" was known shows a lack of concern for the importance of such a case and a general lack of professional courtesy, not only to this Court but also to the Complainant and Respondent as well.

For the above reasons, this complaint is **HEREBY DISMISSED** pursuant to the provisions of the Rules, 29 C.F.R. §§18.5(b) and 18.39(b).

IT IS SO ORDERED.

A
ROBERT B. RAE
Administrative Law Judge

Washington, D.C.

⁶ The Notice was issued June 5, 2009 and mailed the same day to all parties.

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-4309, 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).