



Issue Date: 19 July 2011

Case No. 2011-LCA-00038

In the Matter of

**ARVIND GUPTA**

Prosecuting Party

v.

**HEADSTRONG, INC.**

Respondent

**ORDER DENYING COMPLAINANT'S MOTION FOR A MORE DEFINITE STATEMENT; AND DISMISSING CASE BASED ON LACK OF JURISDICTION**

This matter arises under the Immigration and Nationality Act 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, subparts H and I (§§ 655.700 to 655.855).

Background

By Order dated May 13, 2011, I directed the Complainant and Administrator to show cause why this matter should not be dismissed based on lack of jurisdiction, and to file submissions not later than June 15, 2011. I authorized (but did not require) the Respondent to file a submission by June 29, 2011.

In my Order to show cause, I noted that the Complainant stated he submitted his "Notice of Preliminary Matter and Request for Hearing," in April 2011, because he had been advised that his complaint against the Respondent was pending before the Office of Administrative Law Judges ("before the ALJ"), and he was directed to that office. My Order to show cause also indicated that, so far as I was aware, any complaint by the Complainant against the Respondent was currently vested with the Administrative Review Board (because the Complainant had appealed my Order dated October 12, 2010, in which I dismissed the Complainant's complaint against the Respondent (Case No. 2010-LCA-00032)), and I was aware of no other case pending regarding this Complainant and this Respondent.

The Complainant and the Administrator timely filed responses. The Respondent did not file any submission, and the time for filing a submission has passed. See 29 C.F.R. § 18.6(b).

In his submission, the Complainant stated that he submitted a new complaint against the Respondent to the Administrator in January 2011 (and resubmitted it in March 2011, because the complaint he had submitted in January "could not be located in DOL systems"). The

Complainant also stated that, in a telephone discussion on May 16, 2011, Department of Labor (“DOL”) officials informed him that their initial advice, to submit his complaint to the Office of Administrative Law Judges, had been in error. Additionally, Complainant reported that DOL officials “agreed to further review the complaint and issue a separate letter communicating their determination to the Complainant.” Thereupon, according to the Complainant, on May 18, 2011, the DOL informed the Complainant that there was no reasonable cause to conduct an investigation, because the alleged violations occurred more than 12 months before the date of his complaint. The Complainant provided a copy of the Administrator’s letter.<sup>1</sup> On review, I find that the Administrator’s letter indeed stated that the Administrator found “no reasonable cause to conduct an investigation.”

In the Administrator’s response, the Administrator stated that jurisdiction over this matter is lacking because the misconduct alleged by the Complainant against the Respondent took place more than 12 months prior to the submission of his complaint; and the Complainant is attempting to re-litigate matters previously adjudicated in the earlier case involving the same parties (ALJ Case No. 2010-LCA-00032). The Administrator’s representative also stated that the Administrator supported dismissal of the current case.

#### Complainant’s Motion

On June 20, 2011, the Complainant submitted a “Motion for a More Definite Statement.” In the Motion, the Complainant requested that the Administrator be directed to specify the dates the Administrator used to determine that the Complainant’s 2011 complaint was untimely. By letter dated June 20, 2011, the Administrator filed a response which stated that the Complainant’s Motion was not appropriate.

As the Complainant conceded in his “Motion for a More Definite Statement,” his 2011 complaint alleged violations by the Respondent on the following dates: “03/16/2006; 11/28/2006-11/08/2007.”<sup>2</sup> I find that the Complainant’s 2011 complaint adequately establishes a basis for the Administrator’s conclusion that his complaint was untimely, because the latest date of a violation asserted therein, November 8, 2007 (“11/08/2007”), is clearly more than 12 months prior to the date the Complainant filed his complaint, which was in 2011.<sup>3</sup>

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<sup>1</sup> The Administrator’s letter is at Exhibit 3 to the Complainant’s “Response to Order to Show Cause.”

<sup>2</sup> The Complainant submitted a copy of his complaint as Exhibit 2 to his “Notice of Preliminary Matter and Request for Hearing,” dated April 21, 2011. As the record reflects, it was the Complainant’s filing of the “Notice of Preliminary Matter and Request for Hearing” that prompted me to issue the Order to Show Cause on May 13, 2011.

<sup>3</sup> The Complainant asserts a January 2011 date of filing. The Complainant contends that the Administrator does not have a record of the January 2011 filing in the Administrator’s systems, so he resubmitted his complaint in March 2011. He alleged violations by the Respondent up to November 2007. Even presuming that the Complainant filed his complaint in January 2011 and not in March 2011, he filed his complaint 38 months after the date of the latest alleged violation, much more than the 12 months permitted under the regulation. See 20 C.F.R. § 655.806(a)(5).

Upon due consideration, and based on the foregoing, I DENY the Complainant's "Motion for a More Definite Statement."

### Discussion

The governing regulation vests considerable authority in the Administrator. Among the powers delegated to the Administrator is the power to determine whether an investigation on a complaint is warranted. 20 C.F.R. § 655.806(a). Indeed, the regulation specifically states that no hearing or appeal shall be available where the Administrator "determines that an investigation on a complaint is not warranted." 20 C.F.R. § 655.806(a)(2) (emphasis added).

In addition, 20 C.F.R. 655.820(b) states that a party may request a hearing when the Administrator makes a determination, after investigation (emphasis added). Further, 20 C.F.R. § 655.835 indicates that administrative law judges conduct proceedings "upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 655.820."

Based on the record before me, I find that the Claimant's request for hearing did not comply with 20 C.F.R. § 655.820, because that provision permits requests for hearings to be made only after the Administrator has made an investigation. The Administrator determined that an investigation on the Complainant's complaint was not warranted. The Administrator's letter dated May 18, 2011, which is of record, establishes this was the Administrator's determination.<sup>4</sup> Further, under 20 C.F.R. 655.806(a)(2), no hearing or appeal is available where the Administrator has determined that investigation of a complaint is not warranted.

Consequently, based on these regulatory provisions and the record before me, I find that the Complainant has no right to request a hearing, because the Administrator determined that no investigation was warranted. 20 C.F.R. § 655.806(a)(2). Moreover, because administrative law judges may only hear cases based on requests properly made under 20 C.F.R. § 655.820, and that provision permits requests for hearings only after the Administrator has conducted an investigation, I also find that I lack jurisdiction to entertain the Complainant's request for hearing, because it does not comport with this regulatory provision (as explained above).

### Conclusion

Consequently, based on the foregoing, I conclude that this matter must be DISMISSED for lack of jurisdiction.<sup>5</sup>

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<sup>4</sup> The Complainant provided me with this document (see Exhibit 3 to Complainant's response to my Order to Show Cause). Therefore, I find it is indisputable that the Administrator actually communicated this determination to the Complainant.

<sup>5</sup> I also have considered the Administrator's assertion that this matter should be dismissed, because the Complainant's earlier complaint alleges the same allegations against the same respondent, and is currently before the Administrative Review Board. Because I dismiss the matter before me based on lack of jurisdiction, I find it is not necessary for me to address the Administrator's assertion.

SO ORDERED.

**A**

Adele H. Odegard  
Administrative Law Judge

Cherry Hill, New Jersey

**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* 29 C.F.R. § 655.840(a).