



Issue Date: 19 September 2011

In the Matter of

ADORACION YABOT,
Prosecuting Party,

Case No.: 2011-LCA-00059

v.

BOARD OF EDUCATION of PRINCE GEORGE'S COUNTY,
Respondent.

ORDER OF DISMISSAL

This matter arises under the H-1B provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. §1101, as amended by the American Competitiveness and Workforce Improvement Act of 1998, 8 U.S.C. §§1101(a)(15)(H)(i)(b), 1154, 1182(n), and 1184(c), and the implementing regulations found at 20 C.F.R. Part 655, subparts H and I ("H-1B program"). The INA and the regulations establish an H-1B Labor Condition Application ("LCA") program for aliens who come to the United States temporarily to perform services in a "specialty occupation," as defined in section 214(I)(1) of the INA. *See* 8 U.S.C. §1101(a)(15)(H)(i)(b).

Under cover of a letter dated June 27, 2011, Adoracion Yabot ("Ms. Yabot") submitted numerous documents apparently constituting a request for hearing on her allegation that she was terminated in retaliation for having filed a complaint related to Respondent's alleged violations of the H-1B program. Among the documents is a copy of a complaint Ms. Yabot filed with the Administrator of the Wage and Hour Division (WHD), and a copy of a response from WHD indicating that her complaint had been accepted and was under investigation. Her request did not include any document reflecting that the Administrator made a determination regarding Ms. Yabot's complaint under 20 C.F.R. §§ 655.805 and 655.815.

Additionally, it was unclear either from Ms. Yabot's submission or from the Administrator's determination in *Administrator, Wage and Hour Division v. Board of Education of Prince George's County*, 2011-LCA-026 whether the Administrator's April 4, 2011 determination in that matter was intended to include a determination on Ms. Yabot's complaint.

Under 20 C.F.R. § 655.820, an interested party may request a hearing only after the Administrator has made a determination on the party's complaint. That request must be submitted not later than 15 days after the date of the Administrator's determination. 20 C.F.R. § 655.820. Thus, if the Administrator's determination of April 4, 2011 included a determination on Ms. Yabot's complaint, then she was required to file her request for hearing not later than April 19, 2011, and her request of June 27, 2011 was untimely. If, on the other hand, the

Administrator's determination was not intended to be a determination on Ms. Yabot's complaint, then the Administrator has not yet made a determination and her request for hearing is premature. I therefore issued an Order to Show Cause why this matter should not be dismissed on the grounds of untimeliness or because it is not ripe for hearing. Ms. Yabot was ordered to submit her response to the Order not later than August 26, 2011.

Ms. Yabot's response to the Order to Show Cause was dated August 26, 2011; however, it was postmarked September 6, 2011. As an explanation for her failure to submit her response by August 26, Ms. Yabot include a handwritten note saying:

I am awfully sorry I was not able to mail it immediately because I got sprained on my right foot and hurts for several days due to the earthquake on Aug. 22, 2011. I hurriedly go down to the 12 steps (stairs) from the small room attic where I presently live.

The Administrator has moved to strike Ms. Yabot's response as untimely, alleging that she did not attempt to excuse her late response, apparently overlooking the note set forth above. Nonetheless, the Administrator's motion will be granted. Ms. Yabot's explanation for her untimely response is not credible. First, the earthquake that affected the local area occurred on August 23, not August 22. Second, Ms. Yabot has not supported her claim of injury with medical documentation or with any other form of corroboration. I find her explanation to be self-serving and not worthy of belief.

I find that Ms. Yabot has not successfully shown cause why this matter should not be dismissed. The request for hearing was either untimely or premature.

ORDER

Based on the foregoing, IT IS ORDERED:

1. The Administrator's motion to strike Ms. Yabot's response to the Order to Show Cause is GRANTED, and
2. This matter is DISMISSED.

SO ORDERED.

A

PAUL C. JOHNSON, JR.

Associate Chief Administrative Law Judge

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).