

U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)



Issue Date: 25 May 2011

Case No.: 2011-LCA-00034

In the Matter of:

Administrator, Wage and Hour Division,
United States Department of Labor,

Complainant/Prosecuting Party,

v.

iFuturistics, Inc.,

Respondent.

ORDER OF DISMISSAL WITHOUT 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.

By the Administrator's Determination of April 13, 2011, the Administrator found that the Defendant had committed four violations of the H1B provisions of the Act. The four violations were: (1) the Defendant failed to pay required wage rate for productive work & non-productive hours to 10 non-immigrant workers in the total amount of \$173,148.43; (2) the Defendant failed to make required displacement inquiry of another employer at worksite of H1B worker per 20 CFR §655.738 and §655.805(a)(8); (3) the Defendant accepted payment from a H1B worker for the additional petition fee incurred for filing H1B petition in violation 20 CFR §655.731(c)(10)(ii) & 655.805(a)(11); and (4) the Defendant failed to maintain required documentation pursuant to 20 CFR §655.731(b), §655.738(e), §655.739(i) and/or §655.760(c). The Administrator ordered the payment of back wages, imposed a fine totaling \$900.00 and ordered the Defendant to maintain the necessary documentation in the future.

On April 26, 2011, the Defendant filed an answer and request for formal hearing. The Defendant disputed the back wage payments set forth, denied the allegation of not making the required displacement inquiry, denied taking payments from H1B nonimmigrant workers for H1B petitions, and denied failing to maintain documentation by submitting copies of documentation supporting the Defendant's position.

On May 6, 2001, this Administrative Law Judge held a telephonic prehearing conference call with the Parties' respective counsel. The Solicitor indicated that two errors in the April 13, 2011, determination letter would be corrected by withdrawing the April 13, 2011 Administrator's Determination letter and issuing a new letter. The Parties agreed to attempt resolution of the issues with direct contact between the Defendant company officials and the local Wage and Hour Division investigators. A formal hearing was scheduled to commence June 7, 2011, in Charlotte, North Carolina.

On May 24, 2011, the Solicitor filed a "Motion to Withdraw Determination Letter and For Dismissal Without Prejudice." The Solicitor averred that "the Determination Letter issued April 13, 2011, contains two clerical errors and therefore the Administrator seeks to withdraw it. The Administrator and iFuturistics intend to further discuss the factual issues identified in the investigation of iFuturistics, Inc., and the Administrator will issue a Determination letter following those discussions."

This Administrative Law Judge finds that the Defendant will not be prejudiced by dismissal of the current complaint without prejudice and that further discussions between the Parties will further limit the issues involved in this case and best serve the interests of justice. Accordingly, granting the Motion to Dismiss Without Prejudice is appropriate pursuant to 18 CFR §§ 18.29 and 18.39(b).

ORDER

IT IS HEREBY ORDERED that:

1. **the "Motion to Withdraw Determination Letter and For Dismissal Without Prejudice" is GRANTED;**
2. **the formal hearing** scheduled to commence on June 7, 2011, in Charlotte, North Carolina, **is CANCELLED;** and,
3. **the cause of action** raised by the Administrator's Determination Letter of April 13, 2011, and now before the Office of Administrative Law Judges, **is hereby DISMISSED WITHOUT PREJUDICE.**

A

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, 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).