



**Issue Date: 08 December 2011**

CASE NO.: **2012-LCA-00005**

In the Matter of

**ASHUTOSH KUMAR,**  
Prosecuting Party,

v.

**SAMUHA, INC.,**  
Respondent,

**ORDER OF REMAND**

The above-captioned case concerns a complaint filed by Ashutosh Kumar against Samuha, Inc., pursuant to Regulations at 20 C. F. R. Part 655, H-1B Specialty Occupations under the Immigration and Nationality Act (INA) administered by the U. S. Department of Labor (DOL).

According to the Employment Standards Administration (ESA) Form 10#-4 received by the Administrator on April 6, 2009, Mr. Kumar checked off the following H-1B violations:

1. Employer failed to pay the H-1B worker the higher of the prevailing or actual wage;
2. Employer failed to provide fringe benefits to the H-1B worker equivalent to those provided to U. S. Workers (e.g. cash bonuses, stock options, and vacations and holidays, health benefits, insurance, retirement and savings plans);
3. Employer failed to pay H-1B worker for time off due to a decision by the employer (e.g. for lack of work) or for time needed by the H-1B worker to acquire a license or permit.

On page three of the form, Mr. Kumar stated with more specificity as follows:

I am on H1-B visa, full-time permanent employee of Samuha Inc., NJ. My last project was in Chicago, IL.

My employer has not been paying me any salary since December 2008, though the month of December pay stub was generated for me, however, no salary was transferred to my account.

I had utilized some medical services and my employer has promised that the company would pay for those medical bills of lump sum amount of \$2252, however my employer has not paid those medical bills yet.

My employer has canceled my H1-B because he was suspecting that I would complain to Department of Labor against him.

Right now I am out of funds and I would like my employer to pay me following wages/benefits:

1. My salary from December 2008 til date.
2. \$2252 towards medical bills.
3. Air fare to go back to India.

By letter dated October 5, 2011, the DOL Wage and Hour Division in Lawrenceville, New Jersey issued an Administrator's Determination after an investigation of Samuha, Inc. That determination found that Samuha, Inc. had committed the following violations:<sup>1</sup>

1. failure to post notice of LCA filing for 10 days in two conspicuous locations at each place of employment where any H-1B nonimmigrant will be employed (20 C. F. R. § 655.734. See 20 C. F. R. § 655.805(a)(5).

2. failure to obtain LCAs for all areas of employment.

The Administrator's determination did not address the specific violations Mr. Kumar alleged with regard to Samuha's failure to pay him properly or reimburse him for his medical bills or airfare.

Mr. Kumar filed a timely appeal of the determination as an aggrieved party.

The Office of Administrative Law Judges is not an investigative branch of DOL. It is clear from the complaint and the Administrator's determination that the investigation failed to address Mr. Kumar's specific complaints with regard to his back pay and other benefits. 20 C. F. R. § 655.815©(1) requires that the Administrator's determination address these requested remedies.

Accordingly, IT IS ORDERED that this matter is REMANDED to the Administrator of the Wage and Hour Division for a more thorough investigation and determination.

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<sup>1</sup> No civil money penalties were assessed for either violation.

SO ORDERED

**A**

DANIEL A. SARNO, JR.  
District Chief Administrative Law Judge

DAS,JR./ccb  
Newport News, Virginia