

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 November 2012

CASE NO.: 2012-LCA-00061

In the Matter of:

ALI VAKILI,
Prosecuting Party,

vs.

PREMIER MEDICAL DOCTORS, INC.,
Respondent.

ORDER DISMISSING CASE

This case, which arises under the H-1B provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(n), was originally scheduled to go to hearing before me on November 20, 2012. I vacated the hearing on October 26, 2012, and ordered the parties to show cause why this case should not be dismissed. I issued the order after reviewing the case file and arriving at the conclusion that the case was referred to my office for hearing in error.

In my Order to Show Cause, I stated the following:

I have reviewed the case file, and it appears to me that this case was referred for hearing in error. My case file consists of the complaint filed by Levi Barlavi on behalf of Ali Vakili and the determination made by the Regional Administrator for the Department of Labor Wage and Hour Division. This case appears to have been initiated when Ali Vakili filed a complaint dated March 29, 2012, with the Wage and Hour Division alleging that the Respondent had failed to comply with regulations for the H-1B non-immigrant worker program. This apparently led to an investigation and a determination by the Administrator for the Wage and Hour Division that the Respondent had violated three H-1B regulations and an assessment of \$2,000 in civil money penalties against the Respondent.

The H-1B regulations at 20 C.F.R. § 655.820 provide that a hearing can be requested by any interested party. However, § 655.820(b) defines an interested party as a complainant where the Administrator found no violation or as the employer where the Administrator found a violation. Under this regulation, the only party that could request a hearing in this case is the Respondent since the Administrator found a violation of the H-1B regulations. However, my case file includes no hearing request from the Respondent. It actually includes no hearing

request from either party, which leads me to conclude that the OALJ National office referred this case for hearing in error.

I informed the parties that I needed to determine if there was actually a request for a hearing, and if there was no request, the case would be dismissed. Neither party responded to my order by the November 9, 2012, deadline that I set. Thus, it appears that my conclusion that this case was referred for hearing in error was correct.

It is hereby ORDERED that this case be DISMISSED WITH PREJUDICE.

JENNIFER GEE
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* 20 C.F.R. § 655.840(a).