



Issue Date: 29 October 2012

Case No.: 2012-LCA-00011

In the Matter of:

ADMINISTRATOR, WAGE AND
HOUR DIVISION,
Prosecuting Party,

v.

MG GLOBALSOFT, LLC,
Respondent.

DECISION AND ORDER DISMISSING CLAIM

This case arises under the H-1B provisions of the Immigration and Nationality Act, 8 U.S.C. § 1182(n), and the implementing regulations contained at 20 C.F.R. § 655 Subparts H and I. On November 17, 2011, the Administrator determined that the Respondent violated the H-1B provisions of the Immigration and Nationality Act, and ordered the Respondent to pay \$102,538.56 in back wages and a \$10,050.00 civil penalty.

Although the procedural history of this case prior to being referred to the Office of Administrative Law Judges is not entirely clear, it appears that the Administrator commenced an investigation against the Respondent for H-1B violations sometime in 2009. At that time, the Respondent retained attorney Dehai Tao to represent them during the investigation. However, in June 2009, the Respondent dissolved, as evidenced by the filing of a certificate of dissolution with the Michigan Department of Energy, Labor, & Economic Growth. On November 29, 2011, in response to the Administrator's November 17, 2011, determination letter, attorney Tao stated that while he was retained by the Respondent in 2009 and presented some evidence to rebut the Administrator's allegations, he had not been in contact with the Administrator until the November 17, 2011, letter and believed the Administrator should know that the Respondent had dissolved. He attached a copy of the dissolution certificate to the letter.

On October 4, 2012, in an email to one of the Administrator's investigators, attorney Tao indicated that he has not been in contact with the Respondent's officers since 2009 when they faxed him the dissolution certificate and stated that he wished to withdraw as attorney of record. On October 22, 2012, the Administrator filed a "Motion to Strike Respondent's November 29, 2011, Letter in Response to the Administrator's November 17, 2011, Letter for Failure to Comply with 20 C.F.R. § 655.820 and to Enter a Decision and Order Affirming the Administrator's Determination Under 20 C.F.R. §

655.840.” The Administrator argued that attorney Tao’s letter in response to the Administrator’s determination letter failed to specify the issues giving rise to the request for a hearing and state why he believes the Administrator’s determination is in error, as required by 20 C.F.R. § 655.820(c)(3) and (4). The Administrator further argued that as the request for a hearing was invalid, a Decision and Order affirming the Administrator’s November 17, 2011, determination should be entered.

Pursuant to 20 C.F.R. § 655.820, an employer desiring review of the Administrator’s determinations may request a hearing before an administrative law judge. The request must, among other things, specify the issues in the notice of determination giving rise to the request and state why the party requesting the hearing believes the determination is in error. 20 C.F.R. § 655.820(c)(1)-(6). Here, I agree with the Administrator that attorney Tao’s November 29, 2011, letter did not comply with the requirements of 20 C.F.R. § 655.820—because it was not actually a request for a hearing. Attorney Tao was merely notifying the Administrator that while he had represented the Respondent in 2009, the Respondent had since dissolved. He made this clear in the October 14, 2012, email, wherein he stated that he had not been in contact with the Respondent’s officers since the dissolution and wished to be removed as the attorney of record.

Because I do not find that a valid request for a hearing was made in this case, I deny the Administrator’s request that I enter a Decision and Order affirming the Administrator’s determination. As there was no request for a hearing, this Office lacks jurisdiction to review the Administrator’s Determination and the matter must be dismissed. The Administrator’s November 17, 2011, determination is therefore final. 20 C.F.R. § 655.815(c)(3).

Accordingly, it is **HEREBY ORDERED** that:

1. The Administrator’s request for a Decision and Order affirming the Administrator’s November 17, 2011, determination is **DENIED**; and
2. This case is **DISMISSED**.

JOSEPH E. KANE
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).