



Issue Date: 16 July 2014

CASE NO. : 2013-LCA-00035

In the Matter of

**THE PRINCIPAL DEPUTY ADMINISTRATOR,
WAGE AND HOUR DIVISION,
*Prosecuting Party***

v.

**INTERNATIONAL TECHNOLOGIES INC.,
*Respondent.***

**ORDER DENYING MOTION FOR RECONSIDERATION
AND INCORPORATING AND APPROVING SETTLEMENT AGREEMENT**

This case arises under the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. §§ 1101 (a) (15)(H)(1)(b), 1182(n) and 1184 (c) and the implementing regulations in the Labor Condition Applications and Requirements for Employers Using Aliens in Specialty Occupations, 20 C.F.R. Subparts H and I, §§ 655.700 to 655.855.

I. Allegations

In this case, the Principal Deputy Administrator (PDA) alleges that International Technologies, Inc. (Respondent) owes back wages to two H-1B nonimmigrant workers, Sujive Nair and Krishna Naredla (Nair and Naredla). Respondent owes Nair \$35,920.00 in back wages for a period of nonproductive time during Nair's authorized employment from October 5, 2007, the day after Nair's project with Siemens Water Technologies (Siemens) ended, until February 6, 2008, the day before Nair transferred his visa to Axon Solutions Inc. (Axon), thereby ending ITI's obligation to pay the required wage of \$60.00 per hour, or \$2,400.00 per week, plus pre-judgment and post-judgment interest. PDA also alleges that Respondent owes \$3,327.50 in back wages to Naredla because of improper deductions on his last paycheck from the required wage rate of \$42.05 to \$15.00 per hour, totaling \$3,327.50. Of this reduction, Respondent reimbursed itself \$1,990.00 in unauthorized business expenses, \$500.00 for the USCIS petition filing fee (a

prohibited deduction), and \$837.50 for early termination of employment (another prohibited deduction). As a result of these deductions, Respondent owes Naredla the sum of \$3,327.50, plus pre- and post-judgment interest.

On April 16, 2014, pursuant to 29 C.F.R § 18.41, PDA moved for summary decision on all matters raised by the District Director's August 21, 2013 determination letter,¹ in which he found that Respondent owed back wages to Nair and Naredla.

On April 30, 2014, Respondent filed a response to PDA's motion. Regarding Nair, Respondent's President, Sanjay Anand, stated that he made an "extra" \$2,000 payment to Nair and all three requirements for a bona fide termination were completed on November 23, 2007, thus releasing Respondent from any further obligation. (Resp. Br., p. 1; AX 0100²). Regarding Naredla, Respondent contends it was allowed to deduct immigration expenses per the parties' employment agreement, and that \$3,327.50 was "a very small amount of whatever was paid to him in excess of the LCA wage." (*Id.* at 2.).

On May 14, 2014, the undersigned issued a Decision and Order granting Summary Decision to the Prosecuting Party. On June 2, 2014, Respondent filed a Petition for Reconsideration of the undersigned's Decision and Order. On July 14, 2014, the parties filed a Settlement Agreement, settling this dispute.

II. Order

1. Respondent, as the H-1B employer of Nair and Naredla, was obligated to pay the required wage as set forth herein for the entire period of their authorized employment.
2. Respondent owes back wages to Nair in the amount of \$35,920.00 plus post-judgment interest.
3. Respondent owes Naredla the sum of \$3,327.50 because of its action in improperly deducting that amount from his back wages, plus post-judgment interest, paid over a

¹ In its August 21, 2013 letter, the District Director initially assessed Respondent \$12,880.50 based upon a conservative but erroneous determination that Nair was terminated on November 23, 2007. PDA did not learn until after issuance of its August 21, 2013 letter when Respondent's President, Sanjay Anand, was deposed that Respondent had never offered Nair a return trip home, and thus a bona fide termination had not occurred because one of the three elements of such a termination was not present. 20 C.F.R. § 655.731(c)(7)(ii); *see also In the Matter of University of Miami, Miller School of Medicine*, ARB Case Nos. 10-090, 10-093 slip op. at p. 7 (Dec.20, 2011). In terms of compensable hours, the regulations require an employer to pay the H-1B worker for the number of hours listed on the LCA, even if the H-1B worker is non-productive, except where the employee voluntarily becomes non-productive or, as in this case, where the employee transfers his visa to another employer.

² "AX" refers to the Administrator's Exhibits.

period of two years to the U.S. Department of Labor, Wage, and Hour Division, as specified in the settlement agreement.

4. Respondent owes pre- and post-judgment interest on their back pay awards computed at the federal short-term interest rate plus 3 percentage points.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Respondent shall forthwith pay all amounts in accordance with the provisions of this agreed settlement, and that upon payment thereof within the delays allowed, they be discharged from further liability under the Act. Each party shall bear their own cost, fees, and other expenses incurred in connection with any stage of this proceeding.

So **ORDERED** this 15th day of July, 2014 in Covington, Louisiana.

**CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE**