U.S. Department of Labor

Office of Administrative Law Judges
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ISSUE DATE: 27 MARCH 2015

CASE NO.: 2013-LCA-00029

In the Matter of:

NITHYA VINAYAGAM,
Prosecuting Party,

vs.

CRONOUS SOLUTIONS, INC.,
SWAPNA PASHAM,
Respondents.

Order Granting Summary Decision

Cronous Solutions, Inc. (Cronous) and Swapna Pasham, Respondents, move for a final order in their favor without a trial (summary judgment). The Prosecuting Party, Nithya Vinayagam, who wants to proceed to trial, opposes the motion. The dispute arises under the Immigration and Nationality Act of 1990 (INA), as amended by the American Competitiveness and Workforce Improvement Act of 1998.[1]

A worker can be permitted to enter the United States as nonimmigrant to work in specialized occupations under the H–1B visa program.[2] The worker becomes the beneficiary of the employer's application for entry.[3] A company such as Cronous that petitions to bring a nonimmigrant into the United States shoulders the obligation to pay the worker for nearly all the time

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[1] Pub. L. 102–232, 105 stat. 17333 (8 U.S.C. 1101), as implemented by 20 C.F.R. Part 655 (2014).

[2] 8 U.S.C.A § 1101(a)(15)(H)(i)(b).

[3] 8 U.S.C.A. § 1182(n); 20 C.F.R. § 655.700-.760 (Subpart H).

in the United States,[4] whether or not Cronous has a client who will pay it for the services of its H–1B worker.[5]

An employer must pay for the worker's entire H–1B visa period, unless:

a. the employee is unavailable to work due to her own choice or to personal circumstances,[6] or

b. a bona fide termination of employment takes place, and USCIS revokes her H–1B the status.[7]

Ms. Vinayagam claims back wages. The proof offered shows she has been appropriately compensated. Respondents' motion is granted, and the matter is dismissed.

I. Background

Cronous was incorporated in Delaware, had its principle place of business in Georgia,[8] but now has dissolved.[9] Cronous recruited software analysts and programmers outside the United States, and arranged to place them as contract employees at businesses in the United States.[10] Each worker remained an employee of Cronous.[11] In 2007, Cronous hired Ms. Vinayagam, a citizen of India, to work as a software analyst/programmer.[12]

Cronous filed an H–1B petition with United States Citizenship and Immigration Services (USCIS) on March 30, 2007, on behalf of Ms. Vinayagam.[13] As part of the statutory process, Cronous made a labor condition application to the United States Secretary of Labor, in which it promised to observe a number of the Secretary's regulations when dealing with Ms. Vinayagam as an employee.[14] Her complaint seeks to enforce some of those promises, among them the promise to pay her as an H–1B nonimmigrant. After the Secretary approved the labor condition application, USCIS approved the Cronous H–1B

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[4] 8 U.S.C.A. § 1182(n)(1)(A)(i); 20 C.F.R. §§ 655.731, 655.732.

[5] 8 U.S.C.A. § 1182(n)(2)(C)(vii)(I).

[6] 20 C.F.R. § 655.731(c)(7)(ii).

[7] 8 CFR § 241.2(h)(11)(i)(A).

[8] R. Ex.-B. at 1.

[9] R. Ex.-B at 2.

[10] Ms. Vinayagam Depo. at 9–10.

[11] Ms. Vinayagam Depo. at 9–10.

[12] Ms. Vinayagam Depo. at 9–10.

[13] R. Ex.-C at 4.

[14] R. Ex.-D.

application on May 13, 2007.[15] Ms. Vinayagam obtained H–1B status.[16] Cronous represented in the labor condition application it would employ her for three years from October 1, 2007 to September 28, 2010.[17]

After she arrived from India, Cronous arranged job interviews for Ms. Vinayagam. It placed her June 2008 as a contract worker at GE Plastics[18] for about three months, until Cronous' contract with GE Plastics expired.[19] Cronous then arranged more interviews, hoping to place Ms. Vinayagam elsewhere.[20] Those efforts failed. Cronous found no placement, and she performed no further work for Cronous.[21]

Cronous management decided to wind down its business in January 2009.[22] Employees who were not working on specific client contracts were told that their services were no longer needed.[23] Kowsala Rajendra was the Cronous representative who informed Ms. Vinayagam that Cronous was shutting down operations and that she should leave the United States immediately.[24] Ms. Vinayagam asked that Cronous pay all salary owed to her and provide one-way airfare back to India.[25] She had been fired. The H–1B regulations oblige an employer to pay for the return to the worker's home country if the employment ends sooner than the period described in its labor condition application.[26]

By January 2009, Ms. Vinayagam had received pay checks from Cronous for June, July, and August 2008 (her three months at GE Plastics), in the amounts of $2,784.26, $3,093.63, and $3,996.07 respectively.[27] After her conversation with Ms. Rajendra, Ms. Vinayagam received two more pay checks, in

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[15] R. Ex.-E.

[16] R. Ex.-E.

[17] R. Ex.-D at 3.

[18] Ms. Vinayagam Depo. at 16.

[19] Ms. Vinayagam Depo. at 16–17.

[20] Ms. Vinayagam Depo. at 20.

[21] Ms. Vinayagam Depo. at 16–17.

[22] R. Ex.-B at 2.

[23] R. Ex.-B at 2.

[24] Ms. Vinayagam Depo. at 24.

[25] Ms. Vinayagam Depo. at 25.

[26] 8 CFR 214.2(h)(4)(iii)(E)).

[27] C. Ex.-B at 1–3.

January and February 2009 in the amounts of $3,348.48 and $4,333.33.[28] Nothing was paid for her return airfare to India.[29]

Cronous told USCIS on January 15, 2009, that Ms. Vinayagam had been terminated. It withdrew the H–1B petition filed on her behalf,[30] action consistent with having fired her. On March 17, 2009, USCIS granted Cronous's request and revoked Ms. Vinayagam's H–1B visa.[31] Ms. Vinayagam did no more work for Cronous, but did not return to India; she remains to this day in the United States without a valid visa.[32]

On June 15, 2010, Ms. Vinayagam sued Cronous and Ms. Pasham, as Cronous's President,[33] in the United States District Court for the Northern District of Georgia.[34] Her complainant alleged Cronous failed to pay her minimum wage, committed promissory fraud, breached its contract to employ her, and retaliated against her for making wage complaints. The parties entered into a settlement agreement and general release on August 2011, in which Ms. Vinayagam was paid $45,000 for all back wages until February 28, 2009.[35] These settlement terms did not bar Ms. Vinayagam from pursuing a claim with the United States Department of Labor (DOL) for back wages after February 28, 2009.[36] Cronous never admitted it would be liable for any such wages.[37]

In May 2009, Ms. Vinayagam complained to the Wage and Hour Division of the Department of Labor, that Cronous owed her wages.[38] The Wage and Hour Division concluded on June 17, 2013, that Cronous had failed to pay all that the INA required.[39] Wage and Hour determined Cronous owed Ms. Vinayagam $24,166.65—a sum less than Cronous paid her to settle the litigation in the federal court in Atlanta.[40] Wage and Hour

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[28] C. Ex.-B at 4–5.

[29] Ms. Vinayagam Depo. at 27–28.

[30] R. Ex.-G.

[31] R. Ex.-H.

[32] Ms. Vinayagam Depo. at 35.

[33] Ms. Vinayagam

[34] R. Ex.-I.

[35] R. Ex.-J at 2–3.

[36] R. Ex.-J at 2–3.

[37] R. Ex.-J at 2–3.

[38] R. Ex.-K.

[39] R. Ex.-L at 1.

[40] R. Ex.-L at 1; R. Ex.-J at 2–3.

imposed no civil monetary penalty on Cronous.[41] Nor did it require Cronous to pay anything more as back wage to Ms. Vinayagam—it treated the settlement amount as more than enough to satisfy the $24,166.65 liability.[42]

On June 24, 2013, Ms. Vinayagam referred this matter to the DOL's Office of Administrative Law Judges, claiming that Wage and Hour was wrong, and Cronous owed her wages after February 28, 2009.[43] The papers submitted on summary judgment show no triable issue of fact. Her claim is dismissed.

II. Standard for Summary Decision

The standard for summary decision is indistinguishable from the standard set out in Rule 56 of the Federal Rules of Civil Procedure.[44] Summary decision is proper if the

- affidavits and declarations,
- materials offered with the motion obtained by discovery, or
- other materials offered that qualify as admissible proof,

show there is no genuine issue of material fact.[45] A genuine issue of material fact "is one, the resolution of which could establish an element of a claim or defense and, therefore, affect the outcome of the litigation."[46]

Cronous and Ms. Pasham bear the burden to explain with argument and appropriate proof why Ms. Vinayagam cannot establish one or more essential elements of her claim.[47] They did so. The burden of going forward shifts to Ms. Vinayagam to demonstrate a genuine issue of material fact remains for trial.[48] She may not rest upon allegations or denials; she must produce admissible evidence to support the essential elements of her claim.[49]

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[41] R. Ex.-L at 1.

[42] R. Ex.-L at 1; R. Ex.-J at 2–3.

[43] R. Ex.-M.

[44] *Mara v. Sempra Energy Trading, LLC.*, ARB No. 10-051, slip op. at 5 (ARB June 28, 2011).

[45] 29 C.F.R. §§ 18.40(d); *Mara v. Sempra Energy Trading, LLC.*, ARB No. 10-051, slip op. at 5 (ARB June 28, 2011).

[46] *Frederickson v. The Home Depot U.S.A., Inc.*, ARB No. 07-100, slip op. at 5 (ARB May 27, 2010)(citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–24 (1986)).

[47] *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–24 (1986).

[48] *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–24 (1986).

[49] 29 C.F.R. §§ 18.40(c).

On a motion for summary decision, all evidence and inferences are viewed in a light most favorable to the non-movant.[50] When the non-movant fails to establish an essential element of her claim, however, there is no issue of genuine fact and the movant is entitled to summary decision.[51] As one court of appeals has said, summary judgment is "not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of the events."[52]

III. No Piercing the Corporate Veil

A. Standard of Law

To recover from Ms. Pasham personally, Ms. Vinayagam would first have to pierce the corporate veil for Cronous. I assume this issue arises because Cronous, having been dissolved, is judgment-proof. Both parties agree that the corporate law of Georgia applies here.[53] A corporation is legally distinct from its officers and shareholders,[54] so Georgia courts approach the question whether to disregard a corporation's separate legal existence cautiously.[55]

The courts of Georgia pierce the corporate veil when it "serves justice or frustrates fraud."[56] To be personally liable, a party must have used a corporate entity "to defeat justice, perpetuate fraud or to evade contractual or tort responsibility."[57] The proponent must show that "shareholders disregarded the corporate entity and made it a mere instrumentality for the transaction of their own affairs; that there is such a unity of

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[50] *Mara v. Sempra Energy Trading, LLC.*, ARB No. 10-051, slip op. at 5 (ARB June 28, 2011).

[51] *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–24 (1986).

[52] *Steen v Myers*, 486 F.3d 1017, 1022 (7th Cir. 2007), quoting *Hammel v. Eau Galle Cheese Factory,* 407 F.3d 852, 859 (7th Cir. 2005).

[53] "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." 28 U.S.C. § 1652.

[54] *Clark v. Cauthen,* 239 Ga.App. 226, 227 (Ga. Ct. App. 1999).

[55] *Pazur v. Belcher*, 290 Ga.App. 703, 706 (Ga. Ct. App. 2008).

[56] *Functional Products Trading, S.A. v. JITC, LLC*, No. 1:12-CV-0355-WSD, at 5–6 (N.D. Ga. July 29, 2014).

[57] *Pazur v. Belcher,* 290 Ga.App. 703, 705–06 (Ga. Ct. App. 2008).

interest and ownership that separate personalities of the corporation and owners no longer exist."[58]

Neither an individual's the sole ownership of a corporation, nor the sole owner using the corporation to promote his ends (i.e., to profit from its activities) matter in deciding whether to pierce the corporate veil.[59] There must be evidence of abuse of the corporate form.[60] Without evidence of serious misconduct or fraud, such as using corporate funds for personal expenses, commingling of assets, or some other abuse of the corporate form that indicates the corporate arrangement was nothing but a sham, courts do not pierce the corporate veil.[61]

B. Ms. Vinayagam Cannot Pierce the Corporate Veil on the Facts Offered

The evidence Ms. Vinayagam has offered falls short. She predicates the claim against Ms. Pasham on her knowledge that Ms. Pasham was the president of Cronous, signed the labor condition application for the H–1B visa, signed Cronous tax returns, and had the right to hire and fire Cronus employees.[62] None are improper acts. The specifics Ms. Vinayagam points to, alone or taken together, won't support a reasonable inference that the corporate entity was a sham,[63] an alter ego of Ms. Pasham.[64]

Ms. Vinayagam claims that more discovery and the presentation of additional evidence and testimony at trial will prove Cronous was the alter ego of Ms. Pasham. Summary judgment is not so easily avoided. She doesn't say what additional facts are being sought, why she has yet to discover them, or how more time would help get them. Additional discovery is not required under Rule 56(d) unless Ms. Vinayagam can show how more discovery would make a difference.[65] She hopes for a deus ex machina.

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[58] *Pazur v. Belcher*, 290 Ga.App. 703, 706 (Ga. Ct. App. 2008).

[59] *Clark v. Cauthen*, 239 Ga.App. 226, 227 (Ga. Ct. App.1999).

[60] *Clark v. Cauthen*, 239 Ga.App. 226, 227 (Ga. Ct. App. 1999).

[61] *Functional Products Trading, S.A. v. JITC, LLC*, No. 1:12-CV-0355-WSD, at 5–6 (N.D. Ga. July 29, 2014).

[62] Ms. Vinayagam Depo. at 46–48.

[63] *Functional Products Trading, S.A. v. JITC, LLC*, No. 1:12-CV-0355-WSD, at 5–6 (N.D. Ga. July 29, 2014).

[64] *Chance v. Pac-Tel Teletrac Inc.*, 242 F.3d 1151, 1161 (9th Cir. 2001).

[65] *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 845-46 (9th Cir. 2002).

IV. Liability for Additional Wages Under the INA

A. Statutory and Regulatory Framework

The INA allows a nonimmigrant to enter the United States to work in specialty occupations on an H–1B visa.[66] The H–1B program requires a petitioner (employer) to file a labor condition application with the Secretary of Labor.[67] Through attestations in the application the employer states the wage rate and length of time it will employ the H–1B beneficiary.[68] If the Secretary certifies the labor condition application, the employer must file the approved application, with USCIS Form I-129, and other required documents that comprise an H–1B petition.[69] If USCIS grants it, the H–1B beneficiary must apply to the State Department for the H–1B visa to enter the United States for the time the labor condition application gave.[70]

An H–1B employer is obligated to pay wages even when the nonimmigrant is unproductive because the employer lacks work for the H–1B visa holder.[71] An employer is relieved of the duty to pay if conditions unrelated to work take the nonimmigrant away from job duties (such as touring the United States or caring for an ill relative), or render the nonimmigrant unable to work (such as maternity leave or an auto injury that incapacitates the worker).[72]

An employer is no longer obligated to pay an H–1B employee after a bona fide termination.[73] That sort of termination has three elements. The Secretary obliges the employer to:

a. notify the H–1B employee of termination;

b. notify USCIS the employment relationship has been terminated so the H–1B petition can be canceled; and

c. provide the H–1B beneficiary with payment for transportation home under certain circumstances.[74]

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[66] 8 U.S.C.A § 1101(a)(15)(H)(i)(b).

[67] 8 U.S.C.A. § 1182(n); 20 C.F.R. § 655.700-.760 (Subpart H).

[68] 8 U.S.C.A. § 1182(n)(1)(A)(i); 20 C.F.R. §§ 655.731, 655.732.

[69] 8 U.S.C.A. § 1182(n)(1)(A)(i); 20 C.F.R. §§ 655.731, 655.732.

[70] 20 C.F.R. § 655.705(a)–(b).

[71] 8 U.S.C.A. § 1182(n)(2)(C)(vii)(I).

[72] 20 C.F.R. § 655.731(c)(7)(ii).

[73] 8 C.F.R. § 241.2(h)(11)(i)(A) (regulations of the Department of Homeland Security, the umbrella department of government for USCIS).

[74] *Amtel Group of Fla., Inc. v. Yongmahapakorn*, ARB No. 04-087, ALJ No. 2004-LCA-006, slip op. at 11 (ARB Sept. 29, 2006).

An employer does not have to pay for transportation home when a nonimmigrant quits voluntarily before the period set in the labor condition application expires[75] or obtains another lawful status that permits residency in the United States.[76]

Decisions of the Administrative Review Board limit an employer's liability for wages even when all three elements of a bona fide termination are not present.[77] In disputes over when an obligation to pay wages persists, the Board primarily looks to two factors: was USCIS notified that the H–1B employee was terminated; and did the employer offered return airfare to the employee's country of origin.[78]

If an employer neither notifies USCIS of termination nor pays for transportation costs, the employer's liability to pay wages for the full labor condition application period remains.[79] If, however, an employer notifies USCIS of the termination but fails

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[75] 8 C.F.R. § 214.2(h)(4)(iii).

[76] *Mohammed Rehan Puri v. University of Alabama Birmingham Huntsville*, ALJ No. 2012-LCA-10, at 7 (Oct. 23, 2012).

[77] *Administrator, Wage and Hour Division, United States Department of Labor v. Barclays Capital, Barclays Group U.S., Inc.*, ALJ No. 2011-LCA-00025, at 28 (Sept. 13, 2012) (explaining an employer's obligation to pay ended when it reported employee termination to the proper authority despite no bone fide termination).

[78] *Zhaolin Mao v. Nasser Engineering & Computing Services*, ARB No. 06-121, ALJ No. 2005-LCA-36, at 9 (ARB Nov. 26, 2008) (concluding reporting employee termination to DHS is the "critical element of proof" that an employer is relieved of its obligation to pay an H–1B employee); *Administrator, Wage and Hour Division, United States Department of Labor v. Abacuss Software Technologies,* ALJ No. LLC, 2012-LCA-00015, at 25–27 (July 24, 2012) (concluding Abacuss owed employee benefits up until it informed USCIS of termination); *Administrator, Wage and Hour Division, United States Department of Labor v. Barclays Capital, Barclays Group U.S., Inc.*, ALJ No. 2011-LCA-00025, at 28 (Sept. 13, 2012) (finding an employer's obligation to pay ended when it reported employee termination to the proper authority). In some circumstances, an employer's liability for wages ends on the date an employee's H–1B petition is revoked, rather than the date on which USCIS is notified of the employee's termination. *Administrator, Wage and Hour Division, United States Department of Labor v. Help Foundation of Omaha, Inc.*, ARB No. 07-008, ALJ No. 2005-LCA-037, at 12–13 (ARB Dec. 31, 2008). In *Help Foundation*, an employer informed the DOL that it had terminated an employee, but it did not report the termination to DHS as required. The ARB held that the date the petition was revoked ended the employer's obligation to pay wages instead of the date that it reported the termination to DHS.

[79] *Amtel Group of Fla., Inc. v. Yongmahapakorn*, ARB No. 04-087, ALJ No. 2004-LCA-006, slip op. at 11 (ARB Sept. 29, 2006); *Zhaolin Mao v. Nasser Engineering & Computing Services*, ARB No. 06-121, ALJ No. 2005-LCA-36, at 9 (ARB Nov. 26, 2008).

to provide the return airfare, the Board relieves the employer of the obligation to pay wages after the date USCIS was notified.[80] The failure to report termination to USCIS becomes "the critical element of proof" to determine whether the employer has been relieved of its obligation to pay salary.[81]

B. Cronous Was Relieved of Liability to Pay Wages When It Notified USCIS of the Termination

The first and second requirements for a bona fide termination were met. In or around January 2009, Cronous told Ms. Vinayagam she was terminated.[82]

On January 15, 2009, Cronous informed USCIS of that termination,[83] and withdrew the H–1B petition it had filed on Ms. Vinayagam's behalf.[84] USCIS granted Cronous's request and revoked the H–1B petition, effective March 17, 2009.[85] Cronous failed to meet the third requirement, however, to offer her airfare to India.[86] On this factor the claim rises or falls.

Under controlling precedent, failure to meet the third requirement is not fatal to Cronous's motion. Even in the absence of a bona fide termination, Cronous's obligation to pay ceased on January 15, 2009, the date it informed USCIS of Ms. Vinayagam's termination.[87] Ms. Vinayagam has been fully compensated through January 15, 2009.[88] She received a settlement in August 2011 from Cronous in the amount of $45,000, which included back pay through February 28, 2009.[89] The Wage and Hour Division

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[80] *Zhaolin Mao v. Nasser Engineering & Computing Services*, ARB No. 06-121, ALJ No. 2005-LCA-36, at 9 (ARB Nov. 26, 2008); *Administrator, Wage and Hour Division, United States Department of Labor v. Help Foundation of Omaha, Inc.*, ARB No. 07-008, ALJ No. 2005-LCA-037, at 13 (ARB Dec. 31, 2008); *Administrator, Wage and Hour Division, United States Department of Labor v. Abacuss Software Technologies,* ALJ No. LLC, 2012-LCA-00015, at 25–27 (July 24, 2012).

[81] *Zhaolin Mao v. Nasser Engineering & Computing Services*, ARB No. 06-121, ALJ No. 2005-LCA-36, at 9 (ARB Nov. 26, 2008).

[82] Ms. Vinayagam Depo. 24.

[83] R. Ex.-G.

[84] R. Ex.-G.

[85] R. Ex.-H.

[86] Ms. Vinayagam Depo. 27–28.

[87] *Administrator, Wage and Hour Division, United States Department of Labor v. Barclays Capital, Barclays Group U.S., Inc.*, ALJ No. 2011-LCA-00025, at 28 (Sept. 13, 2012).

[88] R. Ex.-J.

[89] R. Ex.-J.

determined on June 17, 2013 that Cronous owed Ms. Vinayagam $24,166.65 in wages.[90] Wage and Hour did not require Cronous to make further payment, however, because it concluded the settlement was adequate compensation for Cronous's assessed liability.[91] Ms. Vinayagam has been compensated by the settlement agreement for more than the wages she was due.

V. Travel Expenses

Cronous never paid for the cost of Ms. Vinayagam's travel back to India.[92] Ms. Vinayagam didn't request it. I doubt she could, when she never returned to India. But this procedural point controls: No affidavit or declaration from Ms. Vinayagam offers a reasonable basis to estimate that airfare retrospectively. All she requested was more in back wages. She isn't entitled to more. I would not award Ms. Vinayagam what she hasn't requested.[93] No dispute over the airfare amount could preclude summary disposition.

VI. Conclusion

Respondent's motion for summary decision is **GRANTED** and the claims of Ms. Vinayagam are **DISMISSED.**

So Ordered.

Digitally signed by William Dorsey
DN: CN=William Dorsey,
OU=Administrative Law Judge, O=Office of Administrative Law Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

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[90] R. Ex.-L at 1.

[91] R. Ex.-L at 1.

[92] Ms. Vinayagam Depo. 27–28.

[93] *Kevin Limanseto v. Ganze & Company*, ARB No. 11-068, ALJ No. 2011-LCA-005, at 7 & n.28, 8, 9 & n.32 (ARB June 6, 2013) (awarding airfare that an H–1B nonimmigrant sought; he returned to his home country of Indonesia when he was fired before the period of authorized employment stated in the labor condition application expired).

NOTICE OF APPEAL RIGHTS: Any interested party desiring review of this Decision and Order may file a petition for review with the Administrative Review Board (Board) pursuant to 20 C.F.R. § 655.845. To be effective, such petition shall be received by the Board within thirty (30) calendar days of the date of this Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge. Once an appeal is filed, all inquiries and correspondence should be directed to the Board. The Board's address is:

U.S. Department of Labor
Administrative Review Board
Room S5220 FPB
200 Constitution Ave NW
Washington, DC 20210

If no petition for review is filed, this Decision and Order becomes the final order of the Secretary of Labor. *See* 20 C.F.R. § 655.840(a). If a petition for review is timely filed, this Decision and Order shall be inoperative unless and until the Board issues an order affirming it, or, unless and until 30 calendar days have passed after the Board's receipt of the petition and the Board has not issued notice to the parties that it will review this Decision and Order.