



Issue Date: 03 November 2016

Case No.: 2016-LCA-00026

In the Matter of

**SRI KRISHNA CHIRUMAMILLA**  
Prosecuting Party

v.

**INFOSMART SYSTEMS, INC.**  
Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY DECISION**

**1. Nature of Motion.** This proceeding involves a claim under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. §§ 1101(a)(15)(H)(1)(9)(b), 1182(n), and 1184(c) and the regulations promulgated at 20 C.F.R. Part 655, Subparts H and I. Pursuant to the Federal Rules of Civil Procedure (FED. R. CIV. P.), Respondent filed a Motion for Summary Judgment under FED. R. CIV. P. 56.<sup>1</sup> In support of its Motion for Summary Judgment, Respondent argues the evidence of record fails to show a genuine dispute as to any material fact regarding either the wages paid or benefits provided to the Prosecuting Party under the INA. As discussed below in more detail, the Prosecuting Party filed no substantive response to the motion.

**2. Findings of Fact and Procedural History.**

a. On January 29, 2016, the Prosecuting Party, proceeding *pro se* in this matter, filed Form WH-4 with the Wage and Hour Division, United States Department of Labor, listing several Labor Condition Application (LCA) violations of the H-1B visa program committed by Respondent. On page three in paragraph eight of the form, the Prosecuting Party recorded a “description of the facts and circumstances which support allegations . . . .” In this section, the Prosecuting party made eight assertions enumerated in Roman numerals and three additional unnumbered grievances annotated in the left margin of the form. The entry for numeral (i) notes

---

<sup>1</sup> 29 C.F.R. Part 18, Subpart A, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, governs the procedure in this hearing. The FED. R. CIV. P. only apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order. 29 C.F.R. § 18.10(a). Therefore, the undersigned interprets Respondent’s Motion for Summary Judgment as a Motion for Summary Decision, as provided by 29 C.F.R. § 18.72.

“doesn’t pay LCA amounts . . . .” The entry for numeral (iv) notes “cancels health insurance randomly . . . .”

b. On June 20, 2016, the Administrator of the Wage and Hour Division (WHD) issued a determination letter and, upon the conclusion of an investigation, found that Respondent did not commit any of the alleged violations. The investigation was limited to Respondent’s failure to pay the required wage rate.

c. On June 27, 2016, the Prosecuting Party mailed a letter to the Office of Administrative Law Judges (OALJ). The letter asserted a substantial array of different allegations of misconduct combined with “Questions to DOL-ALJ . . . .” As illustrative, non-exhaustive examples, the Prosecuting Party alleged “unpaid wages,” “obstructing Truth, Justice,” “Abuse/Captive/Torture/Blackmail/ Financial squeezing Treatment at Infosmart,” and “illegal termination from job.” The Prosecuting Party also posed a number of questions such as “what is your stance on Leave Letters?” “When Employment Agreements exist why are most of companies running a parallel system of %% basis and why is DOL allowing such???” and “Doe [sic] we need any change in the current United States Immigration/Labor Laws . . . .” The letter also lacked a clear structure and used confusing grammar and sentence format. Additionally, the Prosecuting Party did not specifically state in the letter that he requested a hearing. However, he did ask for more time to “consolidate the proofs for violations happened and cover up . . . .” The letter also referenced the WHD investigation and determination. OALJ received the Prosecuting Party’s request for hearing on July 11, 2016.

d. On July 21, 2016, the undersigned issued a Notice of Hearing and Prehearing Order, which set this case for hearing on August 24-25, 2016 in Dallas Texas.

e. On August 11, 2016, the Prosecuting Party filed a request to continue the hearing date to engage in further discovery. The Prosecuting Party also requested the following relief: (1) the name of a government attorney for guidance; (2) financial assistance from the U.S. Department of Labor while the claim is pending before OALJ; (3) assistance in securing an attorney; (4) information on the status of any investigation; and (5) information concerning the Prosecuting Party’s “status to work.” On August 18, 2016, the undersigned granted the Prosecuting Party’s request for a continuance and rescheduled the hearing for October 12-13, 2016 in Dallas, Texas. The undersigned denied the Prosecuting Party’s remaining requests for relief because the Act does not provide for such action.

f. On August 25, 2016, Respondent’s counsel, Ms. Princy Sethi-Wadhwa, filed a Notice of Appearance on behalf of Respondent.

g. On August 26, 2016, the undersigned sent the Prosecuting Party a letter seeking confirmation that he intended to represent himself *pro se* at the hearing. The letter enclosed a “Confirmation of Intent to Proceed Pro Se” form. The undersigned required the Prosecuting Party to sign, execute, and return the form by mail no later than ten days from August 26, 2016.

h. On September 26, 2016, the Prosecuting Party, counsel for Respondent, and the

undersigned's Law Clerk and Attorney Advisor participated in a prehearing status teleconference. The parties were reminded that the Notice of Hearing and Prehearing Order required the filing of a Prehearing Statement and Stipulation Form to the undersigned no later than fifteen days before the hearing. The parties were also reminded that the Notice of Hearing and Prehearing Order required the exchange of exhibits between the parties no later than fifteen days before the hearing. The Prosecuting Party was specifically reminded to promptly sign, execute, and return the "Confirmation of Intent to Proceed Pro Se" form to the undersigned.

i. On September 29, 2016, Respondent filed its Prehearing Statement, Stipulations of Fact, and Motion to Dismiss and Motion for Summary Decision. In its motion, Respondent alleged the Prosecuting Party failed to timely exchange any exhibits that he plans to use to prove his case. Respondent also alleged that the Prosecuting Party failed "to assert a plausible claim or set forth sufficient factual allegations to support the claim."

j. On October 4, 2016, as a result of Respondent's motions, the undersigned issued three separate Orders:

1) First, the undersigned issued a "Notice Postponing Hearing." This notice postponed the hearing scheduled for October 12, 2016 and provided that a new hearing notice would be issued, if necessary, pending full resolution of Respondent's motions.

2) Second, the undersigned issued a "Ruling on Respondent's Motion to Dismiss and Order Requiring Respondent to Supplement Motion for Summary Decision With Supporting Evidence." This order denied Respondent's Motion to Dismiss, but deferred ruling on the Motion for Summary Decision. This order required Respondent to supplement its Motion for Summary Decision with supporting evidence to establish there is no genuine issue as to any material fact that Respondent committed any LCA violations within fourteen days of the date of the order. It further required the Prosecuting Party to file a response to Respondent's Motion for Summary Decision that clearly identified the evidence he believed would establish violations of his employment wages or benefits committed by Respondent within fourteen days of the date of the order.

3) Third, to ensure the Prosecuting Party, acting in his *pro se* capacity, understood exactly what was required in his response and the consequences of his failure to comply, the undersigned issued a separate "Order Directing Prosecuting Party to Respond to Respondent's Motion for Summary Decision, Exchange Exhibits and Comply with Document Filing Requirements." This order specifically required the Prosecuting Party to clearly state his claim and set forth sufficient evidence to show a basis for any LCA violation by Respondent within fourteen days of the date of the order. It also advised the Prosecuting Party that if he failed to timely respond to the order, then he will be deemed to have waived his opportunity to reply to Respondent's Motion for Summary Decision. This order further specifically advised the Prosecuting Party that his "failure to respond could result in the undersigned granting Respondent's Motion for Summary Decision." In addition, this order required the Prosecuting Party to properly execute and sign the "Confirmation of Intent to Proceed Pro Se" Form, file a Prehearing Statement and Stipulation Form, and exchange all exhibits with Respondent that would be used as evidence in this case.

k. To confirm the parties' prompt receipt of the three orders issued on October 4, 2016, the undersigned's Law Clerk and Attorney Advisor emailed PDF copies of the orders to both parties. On October 11, 2016, the undersigned's Law Clerk and Attorney Advisor spoke with the Prosecuting Party on the telephone and explained the orders' requirements, filing deadlines, and the consequences for the failure to comply with the orders' established filing deadlines.

l. On October 7, 2016, the Prosecuting Party returned the signed and executed "Confirmation of Intent to Proceed Pro Se" form. This confirmed the Prosecuting Party's understanding that he would not have the services of an attorney and acknowledgement that he would be obligated to "comply with all the procedural requirements directed by the judge in the notice of hearing and all other prehearing orders."

m. Also on October 7, 2016, the Prosecuting Party filed a Prehearing Statement,<sup>2</sup> Witness List, and OALJ subpoena forms. In his Prehearing Statement under a section titled "Precise statement of Relief Sought," the Prosecuting Party identified five distinct requested remedies: 1) "Immigration: Grant U Visa for me and my ex-wife due to the harassment . . ."; 2) "Damages: \$\$\$351 Million US Dollars, non-taxable paid to me within 1 week of the ALJ Judgment. (i.e. 10/18/2016)"; 3) "Change of Management at Infosmart . . ."; 4) "12 month time for me to re-group and plan my life due to this torture"; and 5) "Open Apology Letter on Infosmart Systems Inc Letterhead stating violations clearly and side effects happened –To me, my Family (Parents&ex-In-Laws, Relatives)."

n. Paragraph 2 of the Prosecuting Party's Prehearing Statement provides:

The Facts disputed by the parties –

- a. Leave Letter when employee is not sick.
- b. At least 25+ pay stubs equivalent money was not paid since 2010-2014 (December).
- c. Like to see all purchase orders and all LCA's be verified.

Additionally, paragraph 3 of the Prehearing Statement notes "The disputed issues of law to be resolved-Firing from job when you cant [sic] afford taxi and don't have Driver License. Warning to people involved in cases for harassment."

o. None of the Prosecuting Party's filings on October 7, 2016, however, contain a specific reply to Respondent's Motion for Summary Decision.

p. On October 17, 2016, Respondent timely supplemented its Motion for Summary Decision. Respondent attached the following exhibits to supplement its Motion for Summary Decision: 1) W-2s issued to the Prosecuting Party from 2011-2015 and paystubs from the time the Prosecuting Party worked for Respondent from January to March of 2016; 2) paystubs from December 2013, December 2014, and December 2015 reflecting the year to date total wages paid to the Prosecuting Party; 3) a letter dated January 1, 2014 written by the Prosecuting Party to Respondent requesting an indefinite amount of time off from his employment for personal

---

<sup>2</sup> The Prosecuting Party's Prehearing Statement was dated "7/31/2016."

reasons; 4) an affidavit executed by Ms. Nagini Kolli, a Human Resource Manager for Respondent, detailing her interactions with the Prosecuting Party concerning his enrollment in company health insurance, proof of Respondent's enrollment in the Respondent-sponsored health insurance plan from 2014-2015, and proof of Respondent advising the Prosecuting Party to re-enroll in a revised health insurance plan in December 2015; 5) a June 20, 2016 letter from the United States Department of Labor, Wage and Hour Division, advising that Respondent did not commit any violations under the H-1B provisions; and 6) a September 6, 2016 letter from the Texas Workforce Commission finding no violations of law by Respondent in Texas and concluding the Prosecuting Party was not entitled to any unpaid wages under the Texas Payday Law.

q. On October 18, 2016, the Prosecuting Party filed a document styled "2014 Work proof-Interview Calls for new projects." This filing contained the name twenty-four "IT Vendors," phone numbers, and dates. No explanation concerning the reason or purpose for this filing was provided. The Prosecuting Party's filing from October 18, 2016 again did not contain a reply of any kind to Respondent's Motion for Summary Decision.

### **3. Applicable Law and Analysis.**

a. *Labor Condition Applications.* This matter arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1101 *et seq.* and the regulations promulgated at 20 C.F.R. Part 655, Subparts H and I. An H-1B visa permits American employers to temporarily employ nonimmigrant aliens to perform specialized occupations in the United States. 8 U.S.C. § 1101(a)(15)(H)(i)(b). The INA defines a "specialty occupation" as an occupation requiring the application of highly specialized knowledge and the attainment of a bachelor's degree or higher. 8 U.S.C. § 1184(i)(1). An employer seeking to hire an alien on an H-1B visa must first obtain certification by filing a Labor Condition Application (LCA) with the U.S. Department of Labor. 20 C.F.R. 655.730(a). The employer is required to pay an H-1B worker a wage rate which is at least the greater of its actual wage rate or the locally prevailing wage for the occupation. 20 C.F.R. § 655.731(a). The wage requirement also includes the employer's obligation to offer benefits and eligibility for benefits provided as compensation for services to H-1B nonimmigrants on the same basis, and in accordance with the same criteria, as the employer offers to U.S. workers. *Id.*

b. *Motion for Summary Decision.* A party may move for summary decision, identifying each claim or defense - or the part of each claim or defense - on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law. 29 C.F.R. § 18.72(a).

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, admissions, interrogatory answers, or other materials; or showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. 29 C.F.R. § 18.72(c)(i)-(ii).

In order for Respondent's motion to be granted, there must be no disputed material facts upon a review of the evidence in the light most favorable to the non-moving party (i.e., Prosecuting Party). *Hasan v. Enercon Servs., Inc.*, ARB No. 10-061, ALJ Nos. 2004-ERA-022, -027, slip op. at 4-5 (ARB July 28, 2011). However, the non-moving party must present affirmative evidence in order to defeat a properly supported motion for summary decision. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247 (1986). Where the record taken as a whole could not lead a trier of fact to find for the non-moving party, there is no genuine issue for trial. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). These legal burdens and standards of persuasion are also incorporated into the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges. *See* 29 C.F.R. § 18.72(e).

c. *Analysis.* In its motion, Respondent asserts that "the exact nature of Employee's claim still remains unclear. That is, Employee has yet to assert a plausible claim or set forth sufficient factual allegations to support that claim." The undersigned acknowledges that the Prosecuting Party's case filings are disjointed and unfocused. However, the undersigned appreciates that a party who proceeds *pro se* typically lacks the legal sophistication to efficiently summarize legal assertions and arguments. Read in their entirety, the case filings by the Prosecuting Party clearly reflect an effort to assert that Respondent failed to pay proper wages or provide health benefits. Based on this conclusion, the undersigned earlier denied the portion of Respondent's motion requesting dismissal of the claim.

However, Respondent also contends there is no evidence to support the Prosecuting Party's claim that Respondent failed to pay nonimmigrant workers the higher (amount) of the prevailing or actual wage or failed to provide fringe benefits to nonimmigrant workers on the same basis as it does for U.S. workers. This necessitates that the undersigned evaluate whether there is a genuine dispute as to any material fact pertaining to either the wages paid or the health benefits offered to Prosecuting Party.

In the supplemental exhibits submitted to support its motion, Respondent provided documentation showing the Prosecuting Party received wages and other compensation from Respondent in the amount of \$57,306.79 in 2015, \$21,731.34 in 2014, \$72,654.00 in 2013, \$74,176.10 in 2012, and \$11,200.00 in 2011. The exhibits further revealed that on January 1, 2014, the Prosecuting Party requested an indefinite amount of time off for personal reasons and "would let [Respondent] know [his] joining date when [he was] ready" to return to work. Additionally, Respondent's Human Resource Manager, Ms. Kolli, executed an affidavit where she declared that the Prosecuting Party declined participation in the Respondent-sponsored health insurance program because he maintained that his wife's insurance plan covered his medical needs. This affidavit further maintained that Respondent offered the Prosecuting Party health insurance after he completed an application for health insurance on October 1, 2014. As a result, and as confirmed by health insurance records attached to this affidavit, Respondent provided the Prosecuting Party health insurance coverage from October 1, 2014 through December 31, 2015. Sometime in December 2015, and as documented by attachments to this affidavit, Respondent decided to change the health insurance plan offered to its employees beginning on January 1, 2016. Respondent's Human Resources Department sent an email to all employees on December 8, 2015 requesting them to complete a new health insurance enrollment

application. The Prosecuting Party did not reply to this email or submit a new application form. The affidavit further declared that Ms. Kolli called the Prosecuting Party on December 18, 2015 to remind him to complete a new health insurance application; however, the Prosecuting Party responded he was not interested in the revised Respondent-sponsored health insurance coverage. Therefore, Respondent has set forth evidence that establishes that it paid proper wages and provided insurance coverage to the Prosecuting Party.

Conversely, the Prosecuting Party never answered the undersigned's order that required him to file a response to Respondent's Motion for Summary Decision no later than fourteen days from the date of the order. As previously noted, the undersigned also issued a separate written order specifically directed to the Prosecuting Party that clearly detailed the consequences of his failure to comply with the order, including the granting of Respondent's Motion for Summary Decision. The undersigned's Law Clerk and Attorney Advisor also informally explained to the Prosecuting Party the requirements of this order and the possible consequences of a failure to respond on October 11, 2016. Not only did the Prosecuting Party fail to rebut the motion, he never provided any justification for his failure to respond. This failure to comply with the undersigned's order alone is grounds for dismissal of this claim. *See Walia v. Veritas Healthcare Solutions LLC*, ARB No. 14-002, ALJ No. 2013-LCA-005 (ARB Feb. 27, 2015) (affirming the ALJ's dismissal of the claim based on the prosecuting party's failure to respond to the ALJ's order to show cause for failure to participate in the discovery process); *see also Newport v. Fla. Power & Light, Co.*, ARB No. 06-110, ALJ No. 2005-ERA-024, slip op. at 4 (ARB Feb. 29, 2008) (holding ALJ's have "inherent authority" to "manage their own affairs as to achieve the orderly and expeditious disposition of cases.").

As a result of his failure to answer Respondent's Motion for Summary Decision, the Prosecuting Party never submitted any documentation or other evidence to support his allegation that Respondent did not pay actual or prevailing wages or failed to provide him or any other H-1B employee with health insurance coverage or other mandatory fringe benefits during the course of his employment with Respondent. Notably, despite the fact that the undersigned granted the Prosecuting Party's motion to continue the hearing to engage in further discovery on August 18, 2016, the Prosecuting Party still failed to submit any witness statements, affidavits, or payroll or medical benefits records that support his allegations. Therefore, the only facts in the record pertaining to the issues of wages or health benefits come directly from Respondent. These facts indicate Respondent properly paid the Prosecuting Party and offered him access to health benefits. Nothing in the record contradicts this information in any way. As a result, the record clearly establishes there are no genuine issues of material fact regarding whether the Respondent complied with H-1B requirements.

Taken as a whole, the record in this case demonstrates no factual basis for either of the two H-1B program violations alleged by the Prosecuting Party in his claim. Consequently, the undersigned concludes the Prosecuting Party failed to satisfy his burden of presenting sufficient facts or other evidence to rebut Respondent's evidence and survive a motion for summary decision. Summary decision in Respondent's favor is warranted. *See He v. Citigroup*, ARB No. 04-119, ALJ No. 2004-LCA-16 (ARB Sept. 30, 2005) (finding the ALJ properly granted the respondent's motion for summary decision because there was no existence of an issue of material

fact as the prosecuting party failed to support the contention she was an underpaid H-1B employee or produce evidence that other H-1B employees were underpaid by the respondent).

**4. Ruling and Order.** Respondent's Motion for Summary Decision is granted. The Prosecuting Party's request for a hearing on this claim is dismissed.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY**  
**ADMINISTRATIVE LAW JUDGE**

**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.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition only one copy need be uploaded.

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.